

Chablaney v Gemini Trust Co., LLC

2023 NY Slip Op 33127(U)

September 7, 2023

Supreme Court, New York County

Docket Number: Index No. 650076/2023

Judge: Andrew Borrok

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
 COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 53

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SANJAY CHABLANEY,	INDEX NO.	<u>650076/2023</u>
Plaintiff,		
- v -	MOTION DATE	<u>02/14/2023, 03/13/2023</u>
GEMINI TRUST COMPANY, LLC, TYLER WINKLEVOSS, CAMERON WINKLEVOSS	MOTION SEQ. NO.	<u>003 004</u>
Defendant.	DECISION + ORDER ON MOTION	

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HON. ANDREW BORROK:

The following e-filed documents, listed by NYSCEF document number (Motion 003) 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 46, 47, 48, 56, 57

were read on this motion to/for CONSOLIDATE/JOIN FOR TRIAL.

The following e-filed documents, listed by NYSCEF document number (Motion 004) 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 49, 50, 51, 52, 58, 59, 60

were read on this motion to/for COMPEL ARBITRATION.

Upon the foregoing documents, (i) the motion (Mtn. Seq. No. 003) to consolidate the case captioned *Ryan Cobourn v Gemini Trust Company, LLC et al*, Index No. 650567/2023 (the **Cobourn Action**) with an into this action and (ii) the motion (Mtn. Seq. No. 004) to compel arbitration are both granted.

The plaintiff’s motion to consolidate is substantively unopposed. The timing issues raised by the defendants in opposing the motion are moot. For completeness, because the allegations in this action and the Cobourn Action unquestionably involve common questions of law and fact, consolidation is appropriate (*Progressive Ins. Co. v Countrywide Ins. Co.*, 10 AD3d 518, 519 [1st Dept 2004]).

With respect to the motion to compel arbitration, Gemini Trust Company, LLC (**Gemini**) is a privately-owned cryptocurrency exchange launched in 2014 which lets customers buy, sell, trade and securely store more than 60 cryptocurrencies (NYSCEF Doc. No. 1, ¶ 2). Significantly, when Gemini decided to change its user agreement to provide for arbitration, they sent out an email highlighting that their alternative dispute provision had changed, included a hyperlink of the revised agreement (which users could access without agreeing to the terms of the revised agreement), encouraged users to read the revised agreement including its alternative dispute provision and provided an email address where users could email any questions that they had about the revised agreement (NYSCEF Doc. Nos. 25, 26). The complaint does not allege that the plaintiffs made any such inquiry or that they were otherwise not provided this information.

In addition, on the “log-in” screen, Gemini fully disclosed that the alternative dispute resolution provision had changed and indicated that by “signing in” users were agreeing to be bound by the revised agreement including its dispute resolution provision. The plaintiffs signed in and by doing so agreed to the terms of the revised agreement, including the agreement to arbitrate (*Brooks v Lang Yang*, 216 AD3d 505, 506 [1st Dept 2023]). As such, the motion to compel arbitration is granted and this lawsuit as consolidated is stayed (CPLR 7503[a]).

It is hereby ORDERED that the defendants’ motion to consolidate is granted and *Ryan Cobourn v Gemini Trust Company, LLC et al*, Index No. 650567/2023 is consolidated into the above-captioned action; and it is further

ORDERED that the consolidation and the consolidated action shall bear the following caption:

SANJAY CHABLANEY, RYAN COBOURN,

Plaintiffs,

-against-

GEMINI TRUST COMPANY LLC, TYLER WINKLEVOSS, and CAMERON

WINKLEVOSS,

Defendants

And it is further;

ORDERED that the pleadings in the actions hereby consolidated shall stand as the pleadings in the consolidated action; and it is further

ORDERED that, within 30 days of this decision and order, plaintiff shall serve a copy of this order with notice of entry on the Clerk of the Court (60 Centre Street, Room 141 B), who shall consolidate the documents in the actions hereby consolidated and shall mark the records to reflect the consolidation; and it is further

ORDERED that counsel for the plaintiff shall contact the staff of the Clerk of the Court to arrange for the effectuation of the consolidation hereby directed; and it is further

ORDERED that service of this order upon the Clerk of the Court shall be made in hard-copy format if this action is a hard-copy matter or, if it is an e-filed case, shall be made in accordance with the

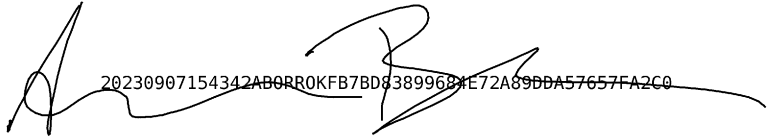
procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the “E-Filing” page on the court’s website at the address www.nycourts.gov/supctmanh); and it is further

ORDERED that, as applicable and insofar as is practical, the Clerk of this Court shall file the documents being consolidated in the consolidated case file under the index number of the consolidated action in the New York State Courts Electronic Filing System or make appropriate notations of such documents in the e-filing records of the court so as to ensure access to the documents in the consolidated action; and it is further

ORDERED that, within 30 days of this decision and order, plaintiff shall serve a copy of this order with notice of entry on the Clerk of the General Clerk’s Office (60 Centre Street, Room 119), who is hereby directed to reflect the consolidation by appropriately marking the court’s records; and it is further

ORDERED that the defendants’ motion to compel arbitration is granted and the parties are directed to arbitrate the claims in accordance with the User Agreement; and it is further

ORDERED that all proceedings in this action are hereby stayed pending resolution of such binding arbitration.



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9/7/2023
DATE

ANDREW BORROK, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE