

**Vaidya v Itria Ventures LLC**

2024 NY Slip Op 32709(U)

August 2, 2024

Supreme Court, New York County

Docket Number: Index No. 651169/2024

Judge: Joel M. Cohen

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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 03M

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RAJ R VAIDYA, RAKESH H VAIDYA	<b>INDEX NO.</b>	<u>651169/2024</u>
Petitioners,	<b>MOTION DATE</b>	<u>03/05/2024, 04/17/2024</u>
- v -	<b>MOTION SEQ. NO.</b>	<u>001 002</u>
ITRIA VENTURES LLC,		
Respondent.	<b>DECISION + ORDER ON MOTION</b>	

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HON. JOEL M. COHEN:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 15, 50 were read on this motion to STAY ARBITRATION.

The following e-filed documents, listed by NYSCEF document number (Motion 002) 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 51, 52 were read on this motion to COMPEL ARBITRATION.

Raj R. Vaidya (“Raj”) and Rakesh H. Vaidya (“Rakesh”) (collectively, “Petitioners”) move by Petition for an Order pursuant to CPLR 7503(c) permanently staying the respondent Itria Ventures LLC (“Respondent”) from proceeding to arbitration under the parties’ contracts (Mot. Seq. 001). Respondent moves for an Order dismissing the Petition and compelling arbitration pursuant to notices of arbitration issued by Respondent (Mot. Seq. 002). For following reasons, the Petition is denied and Respondent’s motion is granted.

As relevant here, from March 31, 2022, to January 27, 2023, Itria provided approximately \$4.3 million in funding to a number of business entities owned or controlled by Petitioners (the “Merchants”) pursuant to eight Future Receivables Sale Agreements (“FRSA(s)”), with Petitioners executing certain guarantees (NYSCEF 1 [“Petition”] ¶¶3-4; NYSCEF 6 [“FRSA”]; NYSCEF 7 [“Amendments”]).

According to Respondent, when the Merchants defaulted under the FRSAs, Itria obtained judgment against the Merchants pursuant to confessions of judgment with respect to four of the agreements (NYSCEF 30 [“Smalbach Aff”] ¶17-18). Itria subsequently served notices of its intent to arbitrate its claims for breach of contract against the Merchants with respect to the remaining four FRSAs and against Petitioners, as guarantors, on all eight of the guarantees (*id.*; Petition ¶1). Since this Petition to stay arbitration was only brought by the Petitioners, and not the Merchants, it pertains only the guarantees.

### DISCUSSION

“[A]s a general matter, on a motion to compel or stay arbitration, a court must determine, ‘in the first instance ... whether parties have agreed to submit their disputes to arbitration and, if so, whether the disputes generally come within the scope of their arbitration agreement’” (*Northeast & Cent. Contractors, Inc. v Quanto Capital, LLC*, 203 AD3d 925 [2d Dept 2022] [citations omitted]). “The threshold issue of whether there is a valid agreement to arbitrate is for the court and not the arbitrator to determine” (*id.*). Additionally, “where a contract containing an arbitration provision ‘affects’ interstate commerce, disputes arising thereunder are subject to the [Federal Arbitration Act]” (*Matter of Diamond Waterproofing Sys., Inc. v 55 Liberty Owners Corp.*, 4 NY3d 247, 252 [2005]).

“The party seeking a stay of arbitration has the burden of showing the existence of sufficient evidentiary facts to establish a preliminary issue which would justify the stay” (*Travelers Personal Ins. Co. v Hanophy-Ryan*, 200 AD3d 695 [2d Dept 2021]). “Thereafter, the burden shifts to the party opposing the stay to rebut the prima facie showing” (*Matter of Merchants Preferred Ins. Co. v Waldo*, 125 AD3d 864, 865 [2d Dept 2015]).

Here, it is undisputed that the FRSAs contain broad arbitration clauses. For example:

Except as expressly otherwise provided herein, each party agrees to confidential arbitration of all disputes and claims arising out of or relating to this Agreement, including issues relating to the arbitrability of any dispute or claim (collectively, “claims”). If a party seeks to have a dispute settled by arbitration, that party must first send to the other party, by certified mail, a written Notice of Intent to Arbitrate (the “Notice”). If the parties do not reach an agreement to resolve the claim within thirty (30) days after the Notice is received, Purchaser and Merchant agree that the claim will be resolved by a final and binding arbitration proceeding with JAMS, Inc. (“JAMS”) in New York County, State of New York, under the Optional Expedited Arbitration Procedures then in effect. . . . Purchaser and Merchant agree that, except as expressly otherwise provided herein, (i) arbitration is the required and exclusive forum for the resolution of all claims and (ii) to the fullest extent permitted by law, Purchaser and Merchant are each permanently giving up their right to a jury trial in any forum and the right to a judicial forum for the resolution of any and all claims. . . . Notwithstanding any provision hereof, upon a Material Breach by Merchant, Purchaser may commence a judicial action to collect Contract Damages, or to enforce any collection remedy under this Agreement or at law. And in any such judicial proceeding Purchaser shall have the right to respond to any defenses or claims asserted by any Merchant or Guarantor by contending, among other things, that Merchant’s or Guarantor’s claims or defenses must be arbitrated under this arbitration clause. Merchant agrees that the commencement of any such judicial action shall not constitute a waiver by Purchaser of its right to arbitrate any such claims arising under this Agreement.

(NYSCEF 31-35 § 15(g); NYSCEF 36-38 § 15(e)).<sup>1</sup>

Nevertheless, Petitioners argue that the FRSAs are disguised loans which charge interest in violation of New York’s usury laws, and that usury is a threshold question for the Court to decide, not the arbitrator. Petitioners rely principally upon *Durst v Abrash* (22 AD2d 39, 42-43 [1st Dept 1964], *affd.*, 17 NY2d 445 [1965]) for the proposition that, as a matter of public policy, a defense of usury under New York law must be decided by the Court rather than an arbitrator

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<sup>1</sup> Petitioners originally argued that since Raj only signed separate guarantee agreements (the Amendments) and those amendments did not expressly incorporate the arbitration provisions of the FRSAs, he is not subject to the arbitration clause in the FRSAs. In Petitioners’ opposition to Respondent’s motion, Petitioners submit that upon review of the exhibits submitted by Respondent, they “abandon any arguments to stay arbitration based on the lack of Petitioner Raj’s signature on any of the FRSAs or performance guaranties” (NYSCEF 43 at 1).

(*id.* at 42-43 [“No precedent suggests that illegality may be waived in advance. If so, such waiver would be accomplished indirectly by inserting an arbitration clause in the otherwise illegal agreement, thus precluding court control of the public policy issue”]).

Even assuming *Durst* remains good law in New York despite many years of development of the law of arbitration since 1964,<sup>2</sup> it is clearly *not* the law in a case governed by the Federal Arbitration Act. In *Buckeye Check Cashing, Inc. v Cardegna*, 546 US 440 [2006], a case involving a claim of usury, the United States Supreme Court held that “regardless of whether the challenge is brought in federal or state court, a challenge to the validity of the contract as a whole, and not specifically to the arbitration clause, must go to the arbitrator” (*id.* at 449). The decision was premised on the principles (established in *Prima Paint Corp. v Flood & Conklin Mfg. Co.*, 388 US 395 [1967] and *Southland Corp. v Keating*, 465 US 1, 104 S Ct 852, 79 L Ed 2d 1 [1984]) that “an arbitration provision is severable from the remainder of the contract,” and that “unless the challenge is to the arbitration clause itself, the issue of the contract’s validity is considered by the arbitrator in the first instance” (*Buckeye Check Cashing*, 546 US at 445-46). New York courts have faithfully applied these principles in cases governed by the Federal Arbitration Act (e.g., *Matter of Monarch Consulting, Inc. v Natl. Union Fire Ins. Co. of Pittsburgh, PA*, 26 NY3d 659, 674-75 [2016]).

Here, there is little question that Federal Arbitration Action applies because the FRsAs clearly “affect” interstate commerce (*Matter of Diamond Waterproofing Sys., Inc. v 55 Liberty Owners Corp.*, 4 NY3d 247, 252 [2005]). Even assuming the truth of Petitioners’ assertion that

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<sup>2</sup> *Durst* was cited recently for the proposition that usury is an example “where courts have held that public policy renders a particular issue nonarbitrable” (*Denson v Donald J. Trump For President, Inc.*, 180 AD3d 446, 450 [1st Dept 2020]), but the case itself did not involve usury and the reference was dicta.

the business conducted between the parties occurred exclusively within the State of New York, the guarantees are between parties from different states: Itria is a Delaware limited liability company with its principal place of business in New York and Petitioners are residents of the State of New Jersey (NYSCEF 30 [“Smalbach Aff”] ¶¶2-3). The agreement that is the subject of this special proceeding thus clearly “affects” interstate commerce (*Bergassi Group LLC v Allied World Ins. Co.*, 193 AD3d 524 [1st Dept 2021] [“The surety agency agreement here between corporations from different states gave rise to a finding of interstate commerce and was subject to the FAA”]; *see also Cavalry LLC v Funding Metrics, LLC*, 2021 NY Slip Op 32017(U) [Sup Ct, Orange County 2021] [“An agreement between corporations from different states is one ‘involving commerce’ and hence subject to the FAA”]; *cf. Smith v Nobiletti Builders, Inc.*, 177 AD3d 807, 810 [2d Dept 2019] [finding that contract to renovate plaintiff’s New York residence did not implicate the FAA as all “of the named defendants are local commercial entities, who lack either a multi-state or national presence”]).

“Once a dispute is covered by the FAA, it applies to all questions of validity and enforceability” (*Dolomite, S.p.A. v Beconta, Inc.*, 129 Misc 2d 857, 859 [Sup Ct, NY County 1985]). Under the FAA, as noted above, courts have found that there are generally two types of challenges to the validity of arbitration agreements: those that challenge the validity of the agreement to arbitrate itself, and those that challenge the contract as a whole based on illegality, fraud, or the like (*Monarch Consulting*, 26 NY3d at 674-75). “[A]ttacks on the validity of the contract, as distinct from attacks on the validity of the arbitration clause[,] itself, are to be resolved ‘by the arbitrator in the first instance, not by a federal or state court’ ” (*id.*).

Accordingly, since Petitioners challenge the legality of the underlying FRSAs on usury grounds, rather than the legality of the arbitration provisions themselves, the question of whether

the FRSA's are void as disguised usurious loans is for the arbitrator to decide in the first instance.

Given this finding, the Court need not address the parties' arguments relating to usury.

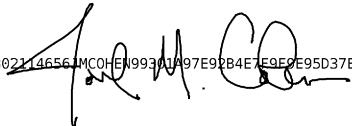
Accordingly, it is

**ORDERED** that Petitioners' Petition and Motion to Stay Arbitration (Mot. Seq. 001) is **DENIED**; it is further

**ORDERED** that Respondent's Motion to Compel Arbitration (Mot. Seq. 002) is **GRANTED**; it is further

The Clerk is directed to enter judgment dismissing the Petition.

This constitutes the Decision and Order of the Court.

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JOEL M. COHEN, J.S.C.

8/2/2024  
DATE

CHECK ONE:

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<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED

<input type="checkbox"/>	NON-FINAL DISPOSITION		
<input checked="" type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>	OTHER

APPLICATION:

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CHECK IF APPROPRIATE:

<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN
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