

Moreno v Plycon Van Lines

2024 NY Slip Op 35133(U)

December 9, 2024

Supreme Court, Suffolk County

Docket Number: Index No. 629996/2023

Judge: Maureen T. Liccione

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This opinion is uncorrected and not selected for official publication.

Short Form Order

Index No. 629996/2023

SUPREME COURT – STATE OF NEW YORK
PART 78 – SUFFOLK COUNTY

P R E S E N T:

Hon. Maureen T. Liccione

Justice Supreme Court

-----x
SANTOS MORENO, on behalf of himself and all
other persons similarly situated,

Plaintiff,

-against-

PLYCON VAN LINES and
CHRISTOPHER A. PLIACONIS,

Defendants.
-----x

Mot. Seq. No. 001 – MG
Orig. Return Date: 06/20/2024
Mot. Submit Date: 10/16/2024

PLAINTIFF’S ATTORNEY
ROMERO LAW GROUP PLLC
490 Wheeler Road, Suite 250
Hauppauge, New York 11788

DEFENDANTS’ ATTORNEY
LEWIS BRISBOIS BISGAARD &
SMITH LLP
77 Water Street, Suite 2100
New York, NY 10005

Upon the reading and consideration of NYSCEF documents numbered 6 to 17 and 20 to 38, it is:

ORDERED that defendants’ unopposed motion to compel arbitration and to stay this action is granted; and it is further

ORDERED that this action shall be stayed pending the completion of the arbitration between the parties.

Plaintiff Santos Moreno brings this action individually and as a class action pursuant to CPLR 901 to recover unpaid overtime wages that the defendants Plycon Van Lines Inc. (Plycon) and Christopher A. Pliaconis (Pliaconis) allegedly owe him and similarly situated employees of the defendants under the New York Labor Law Articles 6 and 19, § 650 et seq., and New York State Department of Labor Regulations. Plycon operates a moving company, and Pliaconis is an owner, officer and director of Plycon. Plaintiff was employed by the defendants as a truck driver

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and driver's helper from on or about August 2019 to on or about November 2023. He claims that he was not paid overtime wages when he worked more than forty (40) hours per week.

Plaintiff filed his complaint in December 2023. In May 2024, the defendants moved to compel arbitration of plaintiff's claims and to stay this action pursuant to CPLR 7503 (a). In support of their motion, defendants submit, inter alia, the affirmation of Pliaconis and the TriNet Terms & Conditions Agreement (T&C Agreement). The motion was adjourned by the parties a number of times, and no opposition to the motion was filed by plaintiff.

In their motion, defendants explain that Plycon uses TriNet as its professional employer organization (PEO). Defendants allege that all of Plycon's employees are "technically" employed by TriNet, which handles payroll, workers' compensation, but Plycon retains control over hiring, supervision, discipline, and termination (NYSCEF Doc No. 10). When employees are hired, they are directed to complete the necessary new hire paperwork by TriNet via email and directed to access the TriNet platform. On the platform, the new hires are shown and asked to read and acknowledge various forms. One of those forms is the T&C Agreement. The T&C Agreement contains nine sections, each of which must be clicked through to complete the registration process. The T&C Agreement explains TriNet's business and its relationship to Plycon and that the two entities are co-employers.

Section 8 of the T&C Agreement, entitled "Disputes Resolution Protocols ('DRP') and Mandatory Arbitration of Claims" states:

Subject to and without superseding the specific terms in subsections (a) through (f) below, the DRP [Dispute Resolution Protocol] expressly requires that arbitration will be used instead of going before a court (for a judge or jury trial) and that NO JURY TRIAL WILL BE PERMITTED (unless applicable law does not allow enforcement of a pre-dispute jury trial waiver in the particular circumstances presented) for any dispute arising out of or relating to your co-employment with TriNet and/or arising out of or relating to your employment with your company, and for any dispute with an employee, officer, or director of TriNet or of a TriNet client.

(NYSCEF Doc No. 11).

Section 9 of the T&C Agreement is entitled "Acknowledgement" and explains that:

By acknowledging below, I confirm that I have read and understand the contents of this TCA including, but not limited to, the Dispute Resolution Protocol ("DRP"), which includes my agreement to mandatory arbitration of disputes arising out of or

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relating to my employment and a waiver of my right to a jury trial (except as specifically provided in the DRP).

(*Id.*).

Pursuant to Pliaconis' affirmation, after the new hire enrolls, TriNet sends an email to the employee which confirms the employee's acceptance of the T&C Agreement.

Defendants argue that plaintiff completed the process described above. Defendants' motion papers include as an exhibit a form generated by TriNet which defendants allege reflects that plaintiff completed the process and acknowledged all of the forms and thereby assented to the T&C Agreement. Defendants also provide an email TriNet sent to plaintiff's personal email address on August 1, 2022, which confirmed plaintiff's "acceptance of the TriNet Terms & Conditions Agreement" on August 1, 2022. The email included a copy of the agreement that plaintiff allegedly accepted.

On a motion to compel an arbitration, a court must first determine whether the parties agreed to arbitration and, if so, whether the dispute generally falls within the scope of their arbitration agreement (*Sisters of St. John the Baptist, Providence Rest Convent v Phillips R. Geraghty Constructor, Inc.*, 67 NY2d 997, 998 [1986]; *Yeled V'Yalda Early Childhood Ctr., Inc. v Attentive Behav. Mental Health Counseling, P.C.*, 208 AD3d 1209, 1210 [2d Dept 2022]; *Degraw Const. Grp., Inc. v McGowan Builders, Inc.*, 152 AD3d 567, 569 [2d Dept 2017]). "A party seeking to compel arbitration must establish 'the existence of a valid agreement to arbitrate'" (*DiGregorio v Long Island Univ.*, 221 AD3d 780, 781 [2d Dept 2023], quoting *Wolf v Hollis Operating Co., LLC*, 211 AD3d 769, 770 [2d Dept 2022]). When deciding whether the parties agreed to arbitrate a certain matter, ordinary state-law principles that govern the formation of contracts apply (*Yeled V'Yalda Early Childhood Ctr., Inc.*, 208 AD3d at 1210; see *Mozzachio v Schanzer*, 188 AD3d 873, 874 [2d Dept 2020]). The agreement to arbitrate "must be clear, explicit and unequivocal and must not depend upon implication or subtlety" (*Ferarro v E. Coast Dormer, Inc.*, 209 AD3d 717, 718 [2d Dept 2022]; *Sutphin Retail One, LLC v Sutphin Airtrain Realty, LLC*, 143 AD3d 972, 973 [2d Dept 2016]).

Inasmuch as an arbitration clause is a contractual right, "the general rule is that only a party to an arbitration agreement is bound by or may enforce the agreement" (*Degraw Const. Grp., Inc. v McGowan Builders, Inc.*, 152 AD3d 567, 569 [2d Dept 2017]). However, "[a] nonsignatory to an arbitration clause may, in certain situations, compel a signatory to the clause to arbitrate the

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signatory's claims against the nonsignatory despite the fact that the signatory and nonsignatory lack an agreement to arbitrate' ” (*Mozzachio v Schanzer*, 188 AD3d 873, 875 [2d Dept 2020]; *Degraw Const. Grp., Inc.*, 152 AD3d at 569). “ ‘A non-party to an arbitration agreement may compel a party to arbitration if the relevant state contract law allows the non-party to enforce the arbitration agreement’ ” (*Mozzachio*, 188 AD3d at 875, quoting *Degraw Const. Grp., Inc.*, 152 AD3d at 569).

Here, defendants demonstrated that as part of his employment with TriNet and Plycon, plaintiff accepted the terms of the T&C Agreement, which included an “explicit and unequivocal” arbitration agreement (*Wu v Uber Techs.*, -- NY3d --, 2024 NY Slip Op 05869 [2024] [upholding validity of assent to click-through agreement to arbitrate on on-line application]; *Meyer v Uber Techs., Inc.*, 868 F 3d 66 [2d Cir 2017] [same]; *Mejia v Linares*, 219 AD3d 1251, 1252 [1st Dept 2023] [same]). The arbitration clause in the T&C Agreement was sufficiently broad to include the dispute at issue in this case, as it specifically provided that “any dispute arising out of or relating to your co-employment with TriNet and/or arising out of or relating to your employment with your company” shall be arbitrated (NYSCEF Doc No. 11; see *Sutphin Retail One, LLC*, 143 AD3d at 973). The instant dispute involves allegations of non-payment of overtime wages to plaintiff and other similarly employees of defendants, which is clearly related to the employment of plaintiff with Plycon. The “company” referred to in the T&C Agreement is Plycon, as the T&C Agreement provides that:

Your relationship with TriNet is beginning because the company you work for (“your worksite employer,” “your company” or “my company”) is a TriNet customer. This means that your company has entered into an agreement with a TriNet PEO company to share certain employer responsibilities as co-employers.

(NYSCEF Doc No. 11).

Although Pliaconis is not a signatory to the T&C Agreement, the allegations against Pliaconis in the complaint relate to his behavior as an owner, officer, and director of Plycon (*Mozzachio*, 188 AD3d at 875; *DiBello v Salkowitz*, 4 AD3d 230, 232 [2004]). Therefore, Pliaconis is entitled to enforce the arbitration clause contained in the T&C Agreement between plaintiff and TriNet and Plycon (*Mozzachio*, 188 AD3d at 875). Additionally, the T&C Agreement provides: “this DRP covers any dispute arising out of or relating to your co-employment with TriNet, including your TriNet co-employer, and/or arising out of or relating to your employment with your

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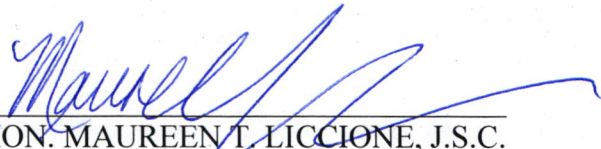
company, as well as any dispute with an employee, officer, or director of TriNet or of a TriNet client (all of whom, in addition to TriNet clients, are intended to be beneficiaries of this DRP) (“covered dispute”)” (NYSCEF Doc No. 11). Pliaconis is such employee, officer or director.

Accordingly, defendants’ unopposed motion to compel arbitration of plaintiff’s claims and to stay this action pursuant to CPLR 7503 (a) is granted. Counsel for the defendants is to notify the Court and all parties via NYSCEF when the arbitration proceeding has been completed.

The foregoing constitutes the decision and Order of the Court.

ENTER

DATE: December 9, 2024
Riverhead, NY


HON. MAUREEN T. LICCIONE, J.S.C.

FINAL DISPOSITION NON-FINAL DISPOSITION