

Kallman v Kallman

2025 NY Slip Op 31933(U)

May 22, 2025

Supreme Court, New York County

Docket Number: Index No. 655193/2024

Judge: Lyle E. Frank

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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. LYLE E. FRANK PART 11M

Justice

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RICHARD KALLMAN AS CO-TRUSTEE OF THE KALLMAN
FAMILY IRREVOCABLE TRUST, RICHARD KALLMAN,

Plaintiff,

- v -

KINERET KALLMAN AS CO-TRUSTEE OF THE KALLMAN
FAMILY IRREVOCABLE TRUST, KINERET KALLMAN, IRA
ALLEN WALKER, UBS FINANCIAL SERVICES,
INC., UNKNOWN UBS EMPLOYEES 1-10

Defendant.

-----X

INDEX NO. 655193/2024

11/27/2024,
11/27/2024,
12/18/2024,

MOTION DATE 02/03/2025

001 002 003
005

MOTION SEQ. NO. 005

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 22, 23, 24, 25, 26, 27, 32, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 88

were read on this motion to/for COMPEL ARBITRATION.

The following e-filed documents, listed by NYSCEF document number (Motion 002) 28, 29, 33, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 89, 90, 91, 92, 93

were read on this motion to/for COMPEL ARBITRATION.

The following e-filed documents, listed by NYSCEF document number (Motion 003) 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 54, 55, 87

were read on this motion to/for STAY.

The following e-filed documents, listed by NYSCEF document number (Motion 005) 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110

were read on this motion to/for STRIKE PLEADINGS.

Upon the foregoing documents, mot. seq. 001 is granted, mot. seq. 002 is granted in part and denied in part, and mot. seq. 003 and 005 are mooted.

Background

Richard Kallman (in both his personal capacity and trustee capacity, “Plaintiff”) and Kineret Kallman (in both her personal capacity and trustee capacity, “Mrs. Kallman”) were married in 1996, have two children, and in 2019 were both designated as co-trustees of an

irrevocable trust that was initially funded by Plaintiff's parents (the "Trust"). The Trust was originally being held in an account managed by non-party JP Morgan. Then in 2023, Mrs. Kallman informed Plaintiff that she wanted to move her personal accounts and the Trust account to defendant UBS Financial Services ("UBS"), with the Trust account to be managed by UBS employee defendant Ira Allen Walker ("Walker", collectively with UBS "Defendants").

Plaintiff consented to the move, and in the process signed a UBS Client Relationship Agreement ("CRA"), which contained a binding arbitration provision. Plaintiff alleges, based upon information and belief, that by this point Walker and Mrs. Kallman were already engaged in an extra-marital affair, Mrs. Kallman was planning a divorce, and that the move was orchestrated by Mrs. Kallman and Walker in an attempt to gain control over the Trust and its assets. Part of the plan, as alleged by Plaintiff, was to use the control over the Trust in order to extort extra money in the divorce proceedings and to "buy favor" with the couple's children.

A few months after the Trust account was transferred to UBS, Mrs. Kallman moved in with Walker and told Plaintiff that she wanted a divorce. As the divorce proceedings progressed, Walker would appear on behalf of Mrs. Kallman and make demands for settlement payments. Walker is alleged to have engaged in numerous improper attempts to influence and control the divorce proceedings, including making demanding calls to Plaintiff's employer and brother, making false allegations to the police, using ethnic slurs to refer to Plaintiff's divorce attorney, and threatening said attorney with physical violence. Walker is also accused of having made distributions from the Trust without Plaintiff's consent in violation of the Trust terms. Plaintiff filed the underlying proceeding in October of 2024. The amended complaint contains thirteen causes of action, pled against Walker, UBS, Mrs. Kallman, and unidentified UBS employees who aided Walker.

Discussion

These present motions all arise from the arbitration clause in the CRA. In motion sequence 001, UBS moves to compel arbitration and to stay this proceeding pending the outcome of arbitration. In motion sequence 002, Walker likewise moves to compel arbitration and stay the action. Walker also in motion sequence 003 brings an order to show cause requesting that all proceedings in this action be stayed pending resolution of the two arbitration motions. This motion is now mooted. Finally, in motion sequence 005 Plaintiff has moved to strike material from Walker's reply papers and have certain facts from the Plaintiff's affirmation deemed uncontested for the purposes of the motions to stay arbitration. This motion is likewise mooted by this Order. Plaintiff also opposes the motions to compel arbitration. For the reasons that follow, the motions to compel arbitration are granted as to all claims asserted against UBS and all claims asserted against Walker with the exception of the Intentional Infliction of Emotional Distress claim. All claims in this proceeding with the exception of the IIED claim are stayed pending determination of the arbitration.

The Parties Dispute the Validity and Scope of the Arbitration Provision

The CRA's arbitration provision states, in the relevant part, that the parties agree to "resolve any controversy, claim or issue in any controversy that may arise between you and UBS Financial Services Inc. by arbitration [...] including but not limited to controversies, claims or issues in any controversy concerning any account, transaction, dispute or the construction, performance or breach of this Agreement or any other agreement." UBS's position is that all claims against them in this action must be sent to arbitration pursuant to this provision. Generally, a court determines whether an action comes within the scope of an arbitration provision and once "the requisite relationship is established between the subject matter of the

dispute and the subject matter of the underlying agreement to arbitrate”, the court’s inquiry ends. *Sisters of St. John the Baptist, Providence Rest Convent v. Phillips R. Geraghty Constructor, Inc.*, 67 N.Y.2d 997, 998 [1986]. Furthermore, broad arbitration clauses are to be given their full effect. *Herrero v. For the Dissolution of Tenth Ave., Fine Foods, Inc.*, 168 A.D.2d 343, 344 [1st Dept. 1990]. Walker argues that as a UBS employee, claims asserted against him must likewise be subject to arbitration. Employees and agents of a business entity may enforce arbitration agreements when acting on behalf of the principal. *See, e.g., Hirschfeld Prods. v. Mirvish*, 218 A.D.2d 567, 569 [1st Dept. 1995]; *Huntsman Intl. LLC v. Albemarle Corp.*, 163 A.D.3d 420, 421 [1st Dept. 2018].

Plaintiff opposes the motion, arguing that 1) the CRA was only signed by Plaintiff in his capacity as Trustee, and not in his individual capacity; 2) the CRA is not enforceable because it was fraudulently induced; 3) the claims at issue are not commercial in nature and therefore would not be suited for FINRA arbitration, nor was there a meeting of the minds regarding the scope of claims to be arbitrated; and 4) the terms of the Trust do not permit arbitration and the Trust should prevail over the CRA.

The CRA Was Signed by Richard Kallman in His Capacity as Trustee

Plaintiff argues that he only signed the CRA in his capacity as trustee, and Defendants argue that he signed in both his personal and trustee capacity. This dispute is relevant because New York law does not extend the right to compel arbitration to a party that did not sign the agreement in question. *Greater N.Y. Mut. Ins. Co. v. Rankin*, 748 N.Y.S.2d 381, 382 [1st Dept. 2002]. An arbitration provision cannot be enforced against a party in their individual capacity if they only signed the relevant agreement in their official capacity. *Jevremov v. Crisci*, 129 A.D.2d 174, 178 [1st Dept. 1987]. Defendants’ argument that there was no limiting language added to

the signature line does not avail them, as the lack of such language does not in and of itself provide a “rational basis” for the argument that a signatory intended to be bound in their individual capacity. *Id.* Turning to the CRA, it is clearly an agreement related to the Trust. The signature page requires that the Trust’s TIN be entered, it is called a “Trust Signature Page”, it states that “[a]ll trustees must sign this document”, and further describes the signature as a “Trustee Certification”. Plaintiff clearly signed the CRA in his trustee capacity and not his individual capacity.

The question then becomes whether Plaintiff’s claims against Defendants were brought in his capacity as Trustee or in his individual capacity. Claims that are brought in his individual capacity would not be subject to the CRA (which he did not sign in his individual capacity), and therefore the claims would not be subject to binding arbitration. Of the claims brought against Defendants, the majority clearly relate to the Trust, have alleged violations of the terms of and fiduciary duties arising from the Trust, and were brought by Plaintiff in his capacity as trustee. For example, the eleventh cause of action alleges that “Mr. Walker and the UBS Employees violated the terms of the Trust by facilitating an unauthorized distribution of Trust funds from the UBS account” and alleges that UBS is liable for this behavior under a *respondeat superior* theory. These claims have been brought by Plaintiff in his capacity as trustee, and therefore for these claims Plaintiff was a signatory to the CRA.

But the tenth cause of action, asserting intentional infliction of emotional distress against Mrs. Kallman and Walker, is clearly brought by Plaintiff in his personal capacity. The allegations are that Walker was engaged in an intentional or reckless scheme to extort millions from Plaintiff during the course of his divorce proceeding, and that Walker’s behavior during said proceeding inflicted severe emotional distress upon Plaintiff. These allegations clearly

constitute a private tortious claim against Walker, and do not arise out of Plaintiff's trustee capacity. Therefore, the tenth cause of action does not fall under the scope of the CRA because Plaintiff (as a private individual) was not a signatory to the CRA.

Fraudulent Inducement Has Not Been Shown as To the Arbitration Provision

Plaintiff argues that the arbitration provision cannot be enforced because the CRA was fraudulently induced. Defendants counter that in order to avoid arbitration, the claim of fraud in the inducement must be directed to the arbitration provision itself, and not the agreement as a whole. The general rule in New York law is that claims of fraud in the inducement must be determined by an arbitrator. *Matter of PricewaterhouseCoopers, LLP v. Cahill*, 205 A.D.3d 463, 464 [1st Dept. 2022]. In order to avoid the arbitration provision, a party must show that fraud permeated the entire agreement to the extent that the agreement did not result from arm's length negotiations. *See, e.g., Housekeeper v. Lourie*, 39 A.D.2d 280, 285 [1st Dept. 1972]. While Plaintiff has made allegations regarding the motivations of Mrs. Kallman and Walker in urging Plaintiff to move the Trust from JP Morgan to UBS, the agreement in question was made between Plaintiff and UBS, not Plaintiff and Walker or Plaintiff and Mrs. Kallman. There have been no allegations that go to the lack of arm's length negotiations between Plaintiff and UBS as relates to the CRA. Because there has not been a showing of fraudulent inducement of the arbitration provision itself, nor that the CRA was not the result of arm's length negotiation between Plaintiff and UBS, the question of fraudulent inducement is one for the arbitrator, not this Court.

The Scope of the Provision Clearly Encompasses the Present Claims Against UBS and Walker

Plaintiff also argues that the arbitration provision in question does not encompass the types of non-commercial claims that are at play here, and that there can be no showing of a

meeting of the minds to arbitrate claims arising from such a fact pattern as is the case here. The language of the arbitration provision is very broad, however, stating that it applies to “any controversy, claim or issue in any controversy that may arise” between the parties. Plaintiff points to the language related breach of the CRA, but the words “including but not limited to” clearly indicate that the list that follows is not meant to be exhaustive. Furthermore, Defendants have cited to multiple FINRA cases that involved claims such as *respondeat superior* and fact patterns involving intermarital affairs, showing that these claims are capable of being resolved in arbitration.

Finally, there is a scope issue regarding claims asserted against Walker. As addressed above, “employment-related” claims against an agent of a signatory to an arbitration provision likewise entitles the agent to demand arbitration. *DiBello v. Salkowitz*, 4 A.D.3d 230, 232 [1st Dept. 2004]. Therefore, to the extent that the claims asserted against Walker (outside of the tenth cause of action, as addressed above), relate to Walker’s employment with UBS and status as an agent of the company, such claims are subject to the arbitration provision. The third and fourth causes of action allege that Walker’s behavior towards the Trust and distributions from it were a breach of fiduciary duty and aiding a breach of Mrs. Kallman’s fiduciary duty as trustee. The fifth, sixth, eighth, and ninth causes of action all revolve around allegedly unauthorized distributions and transfers from the Trust. These claims involve actions taken by Walker in his role as an agent of UBS, thus bringing him under the arbitration provision in the CRA.

The CRA and the Trust Provisions

Plaintiff argues that because the Trust contains provisions that require disputes to be litigated in New York state courts, and not arbitration, the CRA’s arbitration provision cannot compel arbitration in this matter. He argues that the CRA’s arbitration provision impermissibly

operates to amend the terms of the irrevocable Trust. The CRA does not, however, govern the Trust or the direct administration of it, but instead delineates the relationship between trustees and the entity managing the Trust. The arbitration provision of the CRA does not conflict with the forum clause of the Trust because the claims in this matter arise out of the client relationship between Plaintiff as trustee and UBS (and its employee Walker), and do not arise out of a dispute over the terms of the Trust itself.

A Stay of the Proceedings Is Warranted for All Claims Save the IIED Claim

Defendants have asked for the proceeding to be stayed pending determination of the arbitration, and Plaintiff opposes. Generally, an action “may be stayed temporarily pending arbitration proceedings where the resolution of the issues in the latter may also resolve and render academic issues in the former.” *Greenky v. Aytes*, 40 A.D.3d 545, 545 [1st Dept. 2007]. Under CPLR § 7503(a), if a motion to compel arbitration is granted, “the order shall operate to stay a pending or subsequent action, or so much of it as is referable to arbitration.” Defendants have also asked for a stay of all proceedings pursuant to CPLR § 2201, which permits a court to stay proceedings “upon such terms as may be just.” Here, a stay of all claims going to arbitration are mandatory under CPLR § 7503. What remains for consideration under CPLR § 2201 are the claims against Mrs. Kallman and the IIED claim against Walker.

The Court finds that it would be just to stay the claims asserted against Mrs. Kallman, with the exception of the IIED claim, pending the arbitration. Most of these claims involve her status as a co-trustee of the Trust and could reasonably be impacted by the res judicata of the arbitrator’s determination. They also involve similar allegations of unauthorized distributions and disbursements from the Trust. The Court does not, however, find that it would be just to stay the proceeding as to the IIED claim against Walker and Mrs. Kallman. The tenth cause of action

involves allegations regarding Walker and Mrs. Kallman's tortious behavior towards Plaintiff and others during the divorce proceedings, separate and apart from the allegations of mismanagement of the Trust that the arbitrator will be dealing with. On these facts, the Court finds that the tenth cause of action may proceed forward.

Conclusion

All claims asserted against UBS, and all claims asserted against Walker except for the IIED claim, were brought at least partly by Plaintiff in his capacity as trustee. Because Plaintiff signed the CRA with the arbitration provision as a trustee, these claims thus fall under the ambit of the arbitration provision on his side. Because the claims asserted against UBS and all claims asserted against Walker except the tenth cause of action involve actions taken (or not taken) by UBS and employees of UBS in the course of their employment, both Walker and UBS are likewise considered signatories to the arbitration provision. The broadness of the arbitration provision clearly encompasses "all" claims that the parties to the agreement have against each other, therefore, all claims asserted against UBS and Walker with the exception of the tenth cause of action fall squarely under the arbitration provision. The IIED claim, however, contains allegations that clearly related to Plaintiff in his personal capacity (who is a non-signatory to the CRA), thus removing the tenth cause of action for IIED against Walker from the ambit of the CRA and the arbitration provision. Because all the causes of action save the tenth revolve around allegations of mishandling of the Trust, and thus will be impacted by the res judicata of the arbitration, the Court finds that it would be proper to stay this proceeding for all claims except the IIED claim against Walker and Mrs. Kallman. Accordingly, it is hereby

ADJUDGED that defendant UBS Financial Services, Inc.’s motion to compel arbitration and to stay this action as to claims against them is granted; and it is further

ADJUDGED that defendant Ira Allen Walker’s motion to compel arbitration and to stay this action as to claims against him is granted except as to the tenth cause of action; and it is further

ADJUDGED that motions sequence 003 and 005 are hereby deemed moot; and it is further

ORDERED that plaintiff Richard Kallman shall arbitrate his claims against defendants UBS Financial Services, Inc. and Ira Allen Walker in accordance with the Client Relationship Agreement, except as to the tenth cause of action; and it is further

ORDERED that all proceedings in this action excepting those relating to the tenth cause of action are hereby stayed, except for an application to vacate or modify said stay; and it is further

ORDERED that any party may make an application by order to show cause to vacate or modify this stay upon the final determination of the arbitration.

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5/22/2025

DATE

LYLE E. FRANK, J.S.C.

CHECK ONE:

CASE DISPOSED
GRANTED DENIED
SETTLE ORDER
INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION
GRANTED IN PART
SUBMIT ORDER
FIDUCIARY APPOINTMENT

OTHER
REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: