

Rabbani v Harbert Discovery Fund, LP

2025 NY Slip Op 33771(U)

October 2, 2025

Supreme Court, New York County

Docket Number: Index No. 652706/2025

Judge: Anar R. Patel

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 45

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ELAZAR RABBANI,

Plaintiff,

- v -

HARBERT DISCOVERY FUND, LP, HARBERT
DISCOVERY CO-INVESTMENT FUND I, LP,
HARBERT FUND ADVISORS, INC., HARBERT
MANAGEMENT CORP., KENAN LUCAS

Defendants.

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INDEX NO. 652706/2025

MOTION DATE 08/08/2025

MOTION SEQ. NO. 002

DECISION + ORDER ON MOTION

HON. ANAR RATHOD PATEL:

The following e-filed documents, listed by NYSCEF document number (Motion 002) 27–32, 37, 39–43 were read on this motion to/for STAY.

Defendants Harbert Discovery Fund, LP, Harbert Discovery Co-Investment Fund I, LP, Harbert Fund Advisors, Inc., Harbert Management Corp., Kenan Lucas (collectively, “Defendants”) move to stay the proceedings in this action pending resolution of an arbitration proceeding between Plaintiff Elazar Rabbani (“Plaintiff”) and his former employer, non-party Enzo BioChem, Inc. (“Enzo”), or, in the alternative, to compel Plaintiff to arbitrate his claim against Defendants and stay all proceedings pending resolution of the arbitration. For the reasons as set forth below, Defendants’ Motion is granted.

Relevant Factual and Procedural Background

Plaintiff, former CEO of Enzo, alleges a singular cause of action against Defendants, a consortium of investment funds¹ invested in Enzo during the relevant time period, for tortious interference with the Amended and Restated Employment Agreement (“Employment Agreement”) between Plaintiff and Enzo. Plaintiff alleges that Defendants’ actions caused Enzo to breach the Employment Agreement by not paying Plaintiff the full amount of severance payments due under the Employment Agreement. NYSCEF Doc. No. 8 (“Compl.”) at ¶¶ 84–97. Enzo terminated Plaintiff effective April 21, 2022. *Id.* at ¶¶ 63, 69. Pursuant to the arbitration provision in the Employment Agreement, Enzo commenced arbitration proceedings with the American Arbitration Association (AAA) against Plaintiff on July 8, 2022. NYSCEF Doc. No. 30 (Demand for Arbitration). The Demand seeks, *inter alia*, a declaration that Enzo has fully

¹ Defendant Kenan Lucas is a former Managing Director and Portfolio Manager of the Harbert Discovery Fund. Compl. at ¶ 15.

satisfied its contractual obligations to Plaintiff with respect to severance pay. *Id.* On August 4, 2022, Plaintiff filed a counterclaim against Enzo for breach of the Employment Agreement, among other counterclaims. NYSCEF Doc. No. 31 (Answer, Affirmative Defenses, and Counterclaims).

Plaintiff commenced this action by filing the Summons with Notice on April 30, 2025. Defendants filed the instant motion on August 8, 2025; the motion was fully submitted as of September 23, 2025.

Legal Discussion

Action is Appropriately Stayed Pending Resolution of the Arbitration Proceeding

“Tortious interference with contract requires the existence of a valid contract between the plaintiff and a third party, defendant’s knowledge of that contract, defendant’s intentional procurement of the third-party’s breach of the contract without justification, actual breach of the contract, and damages resulting therefrom.” *Lama Holding Co. v. Smith Barney Inc.*, 88 N.Y.2d 413, 424, 668 N.E.2d 1370 (1996) (internal citations omitted).

The viability of Plaintiff’s claim in this action—that Defendants tortiously interfered with the Employment Agreement—turns on the adjudication of whether there was a breach of the Employment Agreement—a claim pending in the arbitration proceeding. Accordingly, “the proper course is to stay judicial proceedings pending completion of the arbitration, particularly where, as here, the determination of issues in arbitration may well dispose of non arbitrable matters.” *Cnty. Glass & Metal Installers, Inc. v. Pavarini McGovern, LLC*, 65 A.D.3d 940, 885 N.Y.S.2d 288 (1st Dept. 2009) (internal citation omitted). Doing so ensures judicial economy and the avoidance of potentially inconsistent results. The Court therefore determines that Defendants establish a sound basis to stay the proceedings pending resolution of the arbitration.

Plaintiff’s arguments opposing a stay of this action are unpersuasive. First, Plaintiff’s recasting of this action as “Harbert’s scheme to avoid liability for securities fraud” is misleading. Plaintiff alleges a tortious interference with contract claim here and the Court will not read in causes of action absent from the Complaint. Second, Plaintiff’s speculation that settlement of the arbitration prior to the issuance of an award may not narrow the issues in this action is illogical—parties in any action can engage in settlement discussions at any point notwithstanding possible preclusive effects of a legal ruling. Finally, Plaintiff’s efforts to predict the timeline of events in the arbitration proceeding or in this action ring hollow. *See* NYSCEF Doc. No. 42 at 10 (“there is no chance of inconsistent rulings and almost no chance that the Court would have to address any substantive motions (other than the present motion) before the Arbitration hearing is scheduled to occur”). The Court does not credit Plaintiff’s conjecture as to the progression of either matter. Rather, the parties state that the arbitration hearing will take place on or around November 17, 2025, and therefore there is no indication that either party will be prejudiced by any undue delay.

Plaintiff’s Claim is Subject to Mandatory Arbitration

Defendants, who are non-signatories to the Employment Agreement, can invoke the arbitration provision (§15) because of their alleged close relationship to the signatories. *See Berger v. Signac*, 194 A.D.3d 402 (1st Dept. 2021); *see also Dogmoch Int’l. Corp. v. Dresdner Bank*, 304

A.D.2d 396 (1st Dept. 2003); *Hirschfeld Prods. Inc. v. Mirvish*, 218 A.D.2d 567, 569 (1st Dept. 1995), *aff'd* 88 N.Y.2d 1054 (1996). The arbitration provision encompasses “[a]ny dispute or controversy arising under or in connection with this Agreement,” and explicitly invokes the rules of the AAA. The Complaint alleges a breach of the Employment Agreement due to Enzo’s failure to remit severance payments. Thus, there can be no dispute that the claims in this action “arise under” or “in connection” with the Employment Agreement. Further, the Complaint alleges a close relationship between Enzo and Defendants. For example,

- “Harbert was able to install a new CEO at Enzo, obtain control of four out of five directors on Enzo’s board, and effectuate Rabbani’s termination.” Compl. at ¶ 5.
- “After the Harbert Directors joined Enzo’s Board, it became apparent that they had not ‘already studied Enzo and the challenges it faces,’ and had no plan to propose to Enzo’s Board or management. Harbert simply wanted to take control of the Board to advance its activist investor strategies, including the sale of Enzo, in whole or in parts.” *Id.* at ¶ 33.
- “Over the course of the next two years, Harbert—acting in concert with another activist investor, Bradley Radoff (‘Radoff’)—engaged in a campaign to push out Enzo’s existing inside and independent board members and take control of the board in furtherance of its plans to sell off Enzo’s assets. Through additional proxy contests and threats of proxy contests, Harbert was successful in taking control of the board.” *Id.* at ¶ 40.
- “Harbert had taken control of Enzo’s board.” *Id.* at ¶ 57.
- “Thus, at a board meeting on January 4, 2022—the day after Harbert took control of the board—Harbert used its domination and control of the board to cause Enzo to announce Rabbani’s termination.” *Id.* at ¶ 62.
- “By exerting its control over Enzo’s board (including, on information and belief, with express threats to board members) and exploiting conflicts of interest, Harbert effected the dismissal of the Harbert Litigation for no payment of damages or attorney’s fees.” *Id.* at ¶ 72.

It is ultimately up to the AAA to determine the scope of the arbitrable claims and any inextricably-interwoven claims must be stayed pending completion of the arbitration as “the determination of issues in arbitration may well dispose of non arbitrable matters.” *Protostorm, Inc. v. Foley & Lardner, LLP*, 193 A.D.3d 486 (1st Dept. 2021).

The Court has considered the parties’ remaining contentions and finds them to be unavailing.


Accordingly, it is hereby

ORDERED that Defendants’ motion to stay this action pending resolution of the arbitration and to compel Plaintiff Rabbani to litigate his claim in arbitration before the AAA is GRANTED; and it is further

ORDERED that the parties shall file a joint status letter on or before February 20, 2026 advising the Court on the status of the arbitration proceeding, or, in the alternative, file a joint letter within seven (7) days of the issuance of a decision by the AAA in the pending arbitration; and it is further

ORDERED that the Clerk of the Court mark this action, and all current deadlines, as stayed.

The foregoing constitutes the Decision and Order of the Court.

<u>10/2/2025</u> DATE	 ANAR R. PATEL, A.J.S.C.			
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION
APPLICATION:	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART
CHECK IF APPROPRIATE:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	OTHER
	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	REFERENCE
			<input type="checkbox"/>	DENIED
			<input type="checkbox"/>	SUBMIT ORDER
			<input type="checkbox"/>	FIDUCIARY APPOINTMENT