SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 48

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NIGEL JOHN ECCLES, LESLEY JAYNE ROSS ECCLES, THOMAS GORDON GRIFFITHS, ROBAT JONES, CHRIS STAFFORD, ASKEK AHMED, ANDREW ALLAN, ALEXANDRA AMOS, JEANNICE ANGELA, KEN BERMAN, ALEX BIRD, DUNCAN BLAIR, CAMERON BOAL, EHI BORHA, JESSE BOSKOFF, GEORGE BOUGH, MICHAEL BRANCHINI, DANIEL BROWN, KELLI BUCHAN, CHARLENE BURNS, WILLIAM CARROLL, DAVE CAVINO, SHREE CHOWKWALE, CORAL HOUSE SERVICES LIMITED, CHRIS CORBELLINI, JIM CROFT, CYRUS DAVID, DAVIDSON FAMILY REVOCABLE TRUST, JAMES DOIG, RYAN DONER, KEVIN DORREN, PAYOM DOUSTI, CARL EKMAN, RYAN FABER, JASON FARIA, VICTORIA FARQUHAR, RORY FITZPATRICK, ADRIAN ESTRADA GENAO, MITCHELL GILLESPIE, ALAN GOLDSHER, WILL GREEN, MELANIE GRIER, JUSTIN HANKE, RYAN HANSEN, PETER HENDERSON, MATTHEW HEVIA, ANDREW HEYWOOD, STEVEN HOLMES, JUSTIN M. HUME, GREGORY HUMPHREYS, F RESIDUAL LLC,TIM JACKSON, CORY JEZ, THANYALUK JIRAPECH-UMPAI, DEVASHISH KANDPAL, MICHAEL KANE, ALAN KARAMEHMEDOVIC, MARCUS KELMAN, DAVID KERR, GALINA KHO, DYLAN KIDDER, SARAH KILLARNEY-RYAN, ALLAN KILPATRICK, ALI KING, STEVEN KING, DAVID KNAPP, MIKE KUCHERA, ANGELA ROMANO KUO, JESSE LAMBERT, DIOMIRA LAWRENCE, JOHN LIGHTBODY, FRANK LOCASCIO, ANDY LOVE, KRISTEN LU, GARY MA, KEVIN MACPHERSON, MAX MANDERS, JOHN MANGAN, SUNJAY MATHEWS, CAROLINE MCDOWALL, JULIE MCELRATH, KEVIN MCFLYNN, EILEEN MCLAREN, MARTIN MCNICKLE, DAN MELINGER, ANDREW MELLICKER, RAYNA MENGEL, MATT MILLEN, JOSH MOELIS, VINCE MONICAL, JEN MORDUE, EILIDH MORRISON, SIMON MURDOCH, ANDERS MURPHY, MATTHEW MUSICO, JAMES NEWBERY, OWEN O'DONNELL, XAVIER OLIVER-DUOCASTELLA, MARK PETERS, MICHAEL PETERSON, RICHARD MELMON TRUST, THOMAS RICHARDS, SHAWN RINKENBAUGH, IAN RITCHIE, JUSTINE SACCO, NICHOLAS SHARP, SCOTT SHAY, JAKE SILVER, KEITH STERLING, DAVID STESS, JOHN SUTHERLAND, WARRICK TAYLOR, STUART TONNER, JOHN VENIZELOS, KYLE WACHTEL, LYNNE WALLACE, WALLEYE INVESTMENTS, LLC,BRENDAN WATERS, SKYE WELCH, MICHAEL WILLIAMS AND PHYLLIS L. JONES, AS PERSONAL REPRESENTATIVES OF THE ESTATE OF MARK WILLIAMS, DECEASED, ROSS WILSON, KRISTIAN WOODSEND, KRIS YOUNG, ALEXANDER ZELVIN, DAN SPIEGEL, ROBERT DEL

INDEX NO. 651223/2020

MOTION DATE --

MOTION SEQ. NO. 024

DECISION + ORDER ON MOTION

PAPA, BRETT WOLTZ, THOMAS SMYTHE, NEIL HARRIS, JAMES ANDREWS, MARTIN SCOTT, JEREMY PIPPIN, VARUN SUDHAKAR, HUGH COLE-BAKER, EOIN MURPHY, ANDREW MURRAY, DREW SPENCER, and PAWEL WITEK,

Plaintiffs,

- v -

SHAMROCK CAPITAL ADVISORS, LLC, SHAMROCK CAPITAL GROWTH FUND III, LP, SHAMROCK FANDUEL CO-INVEST LLC, SHAMROCK FANDUEL CO-INVEST II, LP, KKR & CO., INC., FAN INVESTOR LIMITED, FAN INVESTORS L.P., MICHAEL LASALLE, EDWARD OBERWAGER, ANDREW CLELAND, MATTHEW KING, CARL VOGEL, DAVID NATHANSON, FASTBALL HOLDINGS LLC, FASTBALL PARENT 1 INC., FASTBALL PARENT 2 INC., PANDACO, INC., FANDUEL INC., and FANDUEL GROUP, INC.,

Defendants.

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HON. ANDREA MASLEY:

The following e-filed documents, listed by NYSCEF document number (Motion 024) 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742

were read on this motion to/for INJUNCTION/RESTRAINING ORDER.

This dispute arises out of the July 2018 merger between nonparties FanDuel Ltd. (FDL), an online fantasy sports company, and Paddy Power Betfair plc, a publicly traded sports betting company, the result of which allegedly divested plaintiffs of their interests in FDL without compensation.[1] (NYSCEF Doc. No. [NYSCEF] 1, Complaint.)

In this 2020 action, on March 31, 2025, defendants served a demand to commence arbitration with plaintiff Nigel John Eccles pursuant to a November 17, 2017

[1] The court appreciates the parties' patience while the court untangled this procedural thicket.

Separation Agreement and Release executed by defendant FanDuel Inc. (FDI)[2] and Eccles (Separation Agreement). (NYSCEF 696, Demand for Arbitration.)

In motion 024, Eccles[3] moves pursuant to CPLR 2201,[4] 6301, 7503(b) for a TRO,[5] preliminary and permanent[6] injunction enjoining defendants FDI, Fan Investors Limited, Fan Investors L.P., Shamrock Capital Growth Fund III, LP, Shamrock FanDuel Co-Invest LLC, and Shamrock FanDuel Co-Invest II, LP (collectively, Claimants) from proceeding with the arbitration they commenced against Eccles in New York to enforce a no cooperation provision in the Separation Agreement seeking indemnification of any damages Eccles' fellow plaintiffs recover from KKR and Shamrock in this action and

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[2] FDL ran its online fantasy sports contest platform in the United States through FDI, its U.S. subsidiary. (NYSCEF 694, Eccles aff ¶ 4.)

[3] Eccles is the co-founder of FDL and former CEO as well as a former common shareholder and plaintiff here. (NYSCEF 694, Eccles aff ¶¶ 2, 3.) Eccles was also employed by FDI. (*Id*. ¶ 5.)

[4] CPLR 2201 does not apply to Eccles' request seeking a stay of another proceeding; Eccles is not seeking to stay this action. (*See* Patrick M. Connors, Prac Commentaries, McKinney's Cons Laws of NY, CPLR C2201:2 "Stay" of Case Pending in Other Court?")

[5] The TRO was denied because the disputes in the two actions were different.

[6] In the absence of any briefing on the permanent injunction, it is denied. Moreover, the court cannot issue a permanent injunction as there is no cause of action in this litigation that would support such relief; this case is not about the Agreement. "An application for a permanent injunction is an equitable request that is appropriate only upon a showing of threatened irreparable injury, the lack of an adequate remedy at law, and a balancing of equities in the movant's favor." (*Chiapperini v Gander Mtn. Co., Inc.,* 48 Misc 3d 865, 883 [Sup Ct, Monroe County 2014] [citations omitted].) "An injunction is a remedy, a form of relief that may be granted against a defendant when its proponent establishes the merits of its substantive cause of action against that defendant. Although it is permissible to plead a cause of action for a permanent injunction, ... permanent injunctive relief is, at its core, a remedy that is dependent on the merits of the substantive claims asserted." (*Weinreb v 37 Apartments Corp.*, 97 AD3d 54, 59 [1st Dept 2012] [internal quotation marks and citation omitted].)

"ordering Eccles to sever his claims from the Eccles litigation and cease all assistance of any kind with the Eccles litigation." (NYSCEF 696, Arbitration Demand at 12.)

> "A preliminary injunction may be granted in any action where it appears that the defendant threatens or is about to do, or is doing or procuring or suffering to be done, an act in violation of the plaintiff's rights respecting the subject of the action, and tending to render the judgment ineffectual." (CPLR 6301.)

To obtain a preliminary injunction, a movant must establish: "(1) a likelihood of ultimate success on the merits; (2) the prospect of irreparable injury if the provisional relief is withheld; and (3) a balance of equities tipping in the moving party's favor." (*Doe v Axelrod*, 73 NY2d 748, 750 [1988] [citation omitted].)

The contract at issue, the Separation Agreement, is between Eccles and FDI. (NYSCEF 691, Separation Agreement.) Claimants assert that the Separation Agreement bars Eccles from assisting the other plaintiffs in this case with whom he has been litigating since 2018. (NYSCEF 696, Arbitration Demand.) The Separation Agreement provides:

> "14. No Cooperation. Executive agrees that Executive will not knowingly encourage, counsel, or assist any attorneys or their clients in the presentation or prosecution of any disputes, differences, grievances, claims, charges, or complaints by any third party against any of the Company Releasees, unless under a subpoena or other court order to do so or as related directly to the ADEA waiver in this Agreement. Executive agrees both to immediately notify the Company upon receipt of any such subpoena or court order, and to furnish, within three (3) business days of its receipt, a copy of such subpoena or other court order. If approached by anyone for counsel or assistance in the presentation or prosecution of any disputes, differences, grievances, claims, charges, or complaints against any of the Company Releasees, Executive shall state no more than that Executive cannot provide counsel or assistance." (NYSCEF 691, Separation Agreement.)

It also provides for arbitration and states:

> "20. THE PARTIES AGREE THAT ANY AND ALL DISPUTES ARISING OUT OF THE TERMS OF THIS AGREEMENT, THEIR INTERPRETATION, AND ANY OF THE MATTERS HEREIN RELEASED, SHALL BE SUBJECT TO ARBITRATION

> IN NEW YORK COUNTY, BEFORE THE JUDICIAL ARBITRATION AND MEDIATION SERVICE ('JAMS') UNDER ITS COMPREHENSIVE ARBITRATION RULES ('JAMS RULES') AND NEW YORK LAW. THE ARBITRATOR MAY GRANT INJUNCTIONS AND OTHER RELIEF IN SUCH DISPUTES. THE ARBITRATOR SHALL ADMINISTER AND CONDUCT ANY ARBITRATION IN ACCORDANCE WITH NEW YORK LAW, AND THE ARBITRATOR SHALL APPLY SUBSTANTIVE AND PROCEDURAL NEW YORK LAW TO ANY DISPUTE OR CLAIM, WITHOUT REFERENCE TO ANY CONFLICT -OF-LAW PROVISIONS OF ANY JURISDICTION. TO THE EXTENT THAT THE JAMS RULES CONFLICT WITH NEW YORK LAW, NEW YORK LAW SHALL TAKE PRECEDENCE." (*Id*.)

It is undisputed that Eccles has collaborated with the other plaintiffs in this action against defendants since 2018, sharing counsel and litigation strategy. On July 9, 2018, Eccles joined other common shareholders to initiate litigation in Scotland to stop the merger at issue here. (NYSCEF 384, Second Amended Complaint ¶¶ 394-396.) The merger deal closed on July 10, 2018. (*Id*. ¶ 399.) The shareholders moved to abandon the Scottish action when the company removed the shareholders from the company register; the motion was unopposed. (*Id*. ¶ 408.) On February 25, 2020, Eccles and over 100 other plaintiffs initiated *Eccles v Shamrock Capital Advisors LLC*, No. 651223/2020 (Sup Ct, NY County) against defendants "based on the consideration the plaintiffs received for their common shares when FanDuel was acquired by PaddyPower Betfair plc in July 2018." (NYSCEF 696, Arbitration Demand ¶ 31.) The court granted defendants' motion to dismiss in part. (NYSCEF 204, Decision and Order.) However, in October 2022, the Appellate Division, First Department, dismissed the action. (*Eccles v Shamrock Capital Advisors, LLC*, 209 AD3d 486 [1st Dept 2022], *revd*, 42 NY3d 321 [2024].) Meanwhile, in March 2023, Eccles and the same plaintiffs initiated a second action against the same defendants. (*Eccles v Shamrock Capital Advisors LLC*, No. 651623/2023 [Sup Ct, NY County].) Plaintiffs withdrew that action after a year of

litigation. (NYSCEF 696, Arbitration Demand ¶¶ 31-32.) In 2024, the Court of Appeals held that Scots law applies in this case based on the internal affairs doctrine, that plaintiffs pleaded claims for breach of fiduciary duty under Scots law, and remanded the case to this court. *(Eccles v Shamrock Capital Advisors, LLC*, 42 NY3d 321 [May 23, 2024]; NYSCEF 373, Remittitur.)

Claimants challenge whether this court has the authority to consider this motion since the FAA and the Separation Agreement provide that the arbitrator decides issues including arbitrability and whether to issue a preliminary injunction. (NYSCEF 691, Agreement ¶ 20.) However, there is one exception to this rule: whether defendants waived arbitration with their litigation conduct. (*Cusimano v Schnurr*, 26 NY3d 391, 400 [2015].) The exception is designed "to prevent forum shopping… when the party seeking arbitration had already participated in litigation on the dispute." (*Bell v Cendant Corp.,* 293 F3d 563, 569 [2d Cir 2002] [internal quotation marks and citations omitted] [emphasis in original].) The term "dispute" refers to the dispute in the arbitration as compared to the dispute in the litigation. Generally, where the claimant has litigated the dispute for some time, and later decides to trigger an arbitration provision to resolve the same dispute in arbitration instead of litigation, the exception applies. (*Cusimano v Schnurr*, 26 NY3d at 400 [one year of litigation before seeking arbitration].) Here, the arbitration dispute and the dispute in this action differ: whether Eccles violated the Separation Agreement versus whether plaintiffs were divested of their interests in FDL without compensation. Accordingly, the arbitrator would rightfully decide this motion if the litigation and the arbitration were about the same dispute. (*Bell v Cendant Corp.,* 293 F3d 563, 569 [2d Cir 2002].) However, they are not, and thus CPLR 7503, where

the court assesses whether a dispute should be resolved in litigation or in arbitration, does not apply.

The problem here is that the parties confuse waiver in the arbitration context with Eccles' defense of waiver to Claimants' breach of contract claim. In the arbitration context, the waiver applies to the forum for resolution of the dispute; the dispute is resolved by either litigation or arbitration. Here, Eccles asserts a defense of waiver to Claimants having a claim for breach of contract at all because they failed to assert it since 2018. If Eccles is successful on this affirmative defense, or his other defenses to breach of the Separation Agreement, the claim fails;[7] the claim would not be resolved in this proceeding instead; it would be dismissed by the arbitrator.

Accordingly, this court assesses Eccles' motion for a preliminary injunction as it would any motion for a preliminary injunction to stay a related proceeding. (*See e.g. First Nat. Stores, Inc. v Yellowstone Shopping Ctr., Inc.*, 21 NY2d 630 [1968]; *Sarepa, S.A. v Pepsico, Inc.,* 225 AD2d 604 [2d Dept 1996]; *In re Adoption of Baby Girl S*., 181 Misc 2d 117 [Sur Ct, Westchester County 1999].) Eccles seeks a preliminary injunction to enjoin the arbitration which he asserts is an impermissible litigation tactic to separate

[7] Eccles disputes that his collaboration with plaintiffs breached the Separation Agreement beginning in 2018 because the parties agreed to release claims "up until and including the Effective Date of this Agreement" or November 25, 2017. (NYSCEF 694, Eccles, aff ¶ 7; NYSCEF 691, Separation Agreement ¶¶ 6, 7, 31.) However, this litigation challenges the July 2018 merger. (NYSCEF 1, Complaint; NYSCEF 384, Second Amended Complaint.) Further, the Separation Agreement's release provides that it is without prejudice to Eccles' shares in FDL. (NYSCEF 691, Separation Agreement ¶ 2.) Finally, Eccles challenges whether there was a breach since FDI paid him pursuant to the Separation Agreement which is conditioned on "fulfillment of all of its terms and conditions" all the while knowing that Eccles was collaborating with the shareholders. (NYSCEF 691, Separation Agreement 1; NYSCEF 694, Eccles aff ¶¶ 9, 10.)

Eccles from the other plaintiffs. (NYSCEF 694, Eccles aff ¶ 12.) As damages for breach of the Separation Agreement, Claimants seek to hold Eccles responsible for any damages plaintiffs recover from Claimants as well as an order directing Eccles to "cease all assistance of any kind" to plaintiffs. (NYSCEF 696, Arbitration Demand ¶ 52[b], [d].)[8] Eccles insists that the remedies sought in the arbitration necessarily turn him and the other plaintiffs into adversaries in this action. The court finds that, even if Eccles is likely to succeed on his defenses (waiver, statute of limitations, lack of standing for some claimants and challenging whether there was a breach at all) and the equities favor him, he has not established irreparable harm if the injunction is not granted.

Eccles argues that he will be irreparably harmed by arbitrating claims that are not arbitrable because his defenses are solid. That is not irreparable harm. To be clear, Eccles clearly consented to arbitration of the Separation Agreement. His reliance on *Fluxo-Cane Overseas Ltd. v Newedge USA, LLC*, 2008 NY Slip Op. 31669[U] at 3 [Sup Ct, NY County 2008], for the proposition that it is unfair to infer that a party agreed to arbitration, is misplaced since Eccles very clearly agreed to arbitration.[9] Eccles faces a

[8] Claimants also seek the following remedies in the arbitration: "a. declaring that Eccles breached his contractual obligations to Claimants under the Separation Agreement and Release; b. declaring that Eccles is liable to pay Claimants any costs they incurred that are attributable to claims brought by Recruited Plaintiffs; c. declaring that Eccles is liable to pay Claimants for any payments they may make to any such Recruited Plaintiffs following settlement or any judgment in the Eccles litigation; … e. ordering Eccles to disgorge any amounts paid to him under the Separation Agreement and Release; f. ordering Eccles to compensate Claimants for their legal fees and costs incurred in these arbitration proceedings; g. ordering Eccles pay pre-and post-award interest as required under New York law." (NYSCEF 696, Arbitration Demand at 11-12.)

[9] In *Fluxo-Cane Overseas Ltd.,* the court found that the parties agreed to arbitration and thus directed it to proceed. On a motion to renew, the court modified its decision and

similar conundrum as plaintiff did in *Guzman v The First Chinese Presbyt. Community Affairs Home Attendant Corp.,* 2020 NY Slip Op. 30096(U) (Sup Ct, NY County 2020), who was caught between choosing to join plaintiff's union's global wage and benefit arbitration and waiving all the procedural rights that are waived in arbitration, i.e. jury trial and appeal, versus plaintiff's class action for the same relief where such procedural protections are available. However, Guzman had not agreed to arbitration and the court had already denied a motion to compel arbitration. (*Id*.) Again, Guzman differs because Eccles agreed to arbitration. Here, the massive consequential damages that Claimants seek in the arbitration are contingent on plaintiffs' success in this litigation.[10] The risk of owing enormous damages does not constitute irreparable harm; when Eccles agreed to arbitration in 2017, he agreed to the arbitrator determining damages without limitation on the amount an arbitrator could award.

Much more concerning is the impact of the arbitration on this litigation if Eccles withdraws from this case after eight years during which he has effectively been the "face of the litigation." (NYSCEF 696, Arbitration Demand ¶ 37 ["At court proceedings and a settlement conference, Eccles has frequently been the only representative, or one of two representatives (in addition to his wife, Lesley Eccles), to appear on behalf of over 100 plaintiffs. He is—in name and practice—the face of the Eccles litigation."]) Indeed, Claimants warned this court by letter on March 31, 2025 that the arbitration "could

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directed arbitration of the guarantee too. (*Fluxo-cane Overseas Ltd. v Newedge USA, LLC*, 2009 NY Slip Op. 30235[U] [Sup Ct, NY County 2009].)

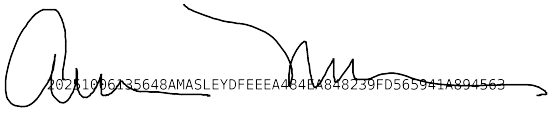
[10] If Claimants are successful in the arbitration, then Claimants pay no damages regardless of the outcome in this action. If Claimants succeed in this litigation, they pay no damages and Eccles pays no damages. If Claimants lose this litigation, and thus owe plaintiffs/shareholders damages, then Eccles would be required by the arbitration award to reimburse Claimants for their loss.

significantly affect this litigation." (NYSCEF 690, March 31, 2025 letter at 3.) "Picking off" a lead plaintiff in a class action, for example, is not unheard of and is permissible sometimes. (*Campbell-Ewald Co. v Gomez*, 577 US 153 [2016], *as rev* [Feb. 9, 2016] ["Is an unaccepted offer to satisfy the named plaintiff's individual claim sufficient to render a case moot when the complaint seeks relief on behalf of the plaintiff and a class of persons similarly situated?" no]; *Genesis Healthcare Corp. v Symczyk*, 569 US 66 [2013] [opposite result in collective action alleging violation of Fair Labor Standards Act] where defendants "picked off" lead plaintiff.) However, it is disruptive to this case as both parties concede. While the motion to stay the arbitration must be denied, the court grants Eccles' motion, in part, pursuant to CPLR 2201. This action will be stayed for 30 days, allowing the parties and court to assess the arbitration schedule and its impact on this case and to allow plaintiffs time to regroup in response to Eccles' decisions, if any.

Accordingly, it is

ORDERED that the motion for a preliminary injunction is denied; and it is further

ORDERED that this action is stayed for 30 days to November 3, 2025. A conference is scheduled for October 20, 2025 at 4 pm to reassess the stay.



10/6/2025
DATE

ANDREA MASLEY, J.S.C.

CHECK ONE:		**CASE DISPOSED**		[X]	**NON-FINAL DISPOSITION**		
	[ ]	**GRANTED**	[X] **DENIED**	[ ]	**GRANTED IN PART**	[ ]	**OTHER**
APPLICATION:	[ ]	**SETTLE ORDER**		[ ]	**SUBMIT ORDER**		
CHECK IF APPROPRIATE:	[ ]	**INCLUDES TRANSFER/REASSIGN**		[ ]	**FIDUCIARY APPOINTMENT**	[ ]	**REFERENCE**