

Matter of Xanadu Capital, LLC v Concierge Auctions, LLC
2026 NY Slip Op 31418(U)
March 26, 2026
Supreme Court, New York County
Docket Number: Index No. 655331/2025
Judge: Verna L. Saunders
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. VERNA L. SAUNDERS, JSC PART 36

Justice

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INDEX NO. 655331/2025

In the matter of the application for An Order Staying Arbitration
between XANADU CAPITAL, LLC and MICHAEL MA,
Petitioners,

MOTION SEQ. NO. 001

- v -

DECISION + ORDER ON MOTION

CONCIERGE AUCTIONS, LLC,
Respondent.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30

were read on this motion to/for

DECLARATORY JUDGMENT

In this special proceeding, petitioners move the court, pursuant to CPLR 7503, for an order permanently staying respondent's Demand for Arbitration against petitioner Michael Ma ("Ma"), individually and to stay any arbitration proceedings commenced by respondent against petitioners.1 Ma is a member of petitioner XANADU CAPITAL, LLC ("Xanadu"), a company formed purposively for identifying, locating, and purchasing real estate investment opportunities. Respondent is a multi-state licensed auctioneer whose principal business consists of conducting auctions of real property, including online auctions. Petitioners allege that Xanadu, after entering into a series of transactions with respondent for various properties located nationwide, received an invitation from Torin Shur, respondent's Vice-President of its Private Client Program, to participate in auctions as an "Initial Bidder."2 Ultimately, an agreement was reached regarding the initial bidder invitation. Petitioners assert that, pursuant to this arrangement, Xanadu was offered a fee of \$40,000.00 for serving as an Initial Bidder in respondent's auctions, which was payable whether Xanadu was the winning bidder or not (NYSCEF Doc. No. 6, guarantor bidder agreement). Petitioners also claim that respondent offered a bid incentive credit of one percent (1%) against its commission sale to Xanadu to serve as the Initial Bidder.3

According to petitioners, Ma requested, and respondent provided a Due Diligence package for a property at 43 Old Beach Road, Newport, Rhode Island (the, "Property") which, unbeknownst to him, contained several misleading and material misrepresentations about the Property's history and price. As relevant here, Ma asserts that he placed a bid for the Property using respondent's "E-Signature" program, typing XANADU CAPITAL, LLC in the only line provided by the E-sign document to place a company's name. He also typed his individual

1 This court temporarily restrained respondent from proceeding to arbitration against Ma in his individual capacity.
2 An "Initial Bidder" sets the initial market price for the property at the auction.
3 Petitioner set forth that prior to the transaction at issue, Xanadu sought to enter into six (6) bids with respondent as the Initial Bidder, essentially setting the initial market price for the properties to allow for competitive bidding, and also deposited funds from Xanadu's bank account into respondent's escrow agents whenever a bid was made.

name, "Michael Ma and/or Approved Assignee" as bidder. Thereafter, petitioners contend that the seller provided a revised diligence folder containing material changes, to wit; deeded access arrangements and valuation context, which rendered the information in the initial Due Diligence package previously provided to Ma, which served to induce Ma to submit his bid, meaningless. The revised package purportedly also included information about the bedroom and fireplace counts, which were overstated in the initial Due Diligence package, and about the property taxes, which were significantly higher than what was previously disclosed, state petitioners. They also posit that after a property inspection report disclosed that the Property had issues such as roofing defects, non-functional radiant heat, and active basement moisture, which affected the Property's actual value, Xanadu sought to withdraw its bid and requested, via a telephone call, that the bid be withdrawn prior to the closing of the auction. They claim that respondent refused to let Xanadu withdraw or modify the bid despite the fact that substantial misstatements had been identified which materially affected the value of the bid before the auction closed.

Petitioners articulate that despite their effort to withdraw the bid, respondent's counsel sent a demand letter wherein it stated that Xanadu's initial bid was the winning bid and that Ma should make payment to respondent. Petitioners argue that insofar as Ma acted in his capacity as a member of Xanadu in placing the bid, and that funds for the transaction at issue were forwarded from Xanadu's bank account, Ma is not a party to the arbitration agreement between Xanadu and respondent. As such, the arbitration proceeding initiated by respondent, naming Ma as a party, should be stayed, argue petitioners. Lastly, petitioners contend that to the extent respondent provided a Due Diligence package that contained false and misleading information, and petitioners were justified in relying on said representations, respondent's actions constitute fraud in the inducement, and thus, the contract containing the arbitration provisions is void (NYSCEF Doc. No. 1, *petition*). In support of the application, petitioners append a copy of the Bidder Agreement, petitioners' initial bid package, wire transfer records, respondent's Universal Bidder Terms and Conditions, and respondent's demand letter (NYSCEF Doc. Nos. 4-9).

Respondent opposes and cross-petitions the court for an order dismissing the petition, or in the alternative, vacating the restraint on arbitration previously granted. Respondent asserts that, contrary to petitioners' contentions, Ma unambiguously entered into a valid agreement to arbitrate with respondent. According to respondent, Ma signed the Universal Bidder Agreement, Guarantor Bidder Agreement, and the Bidder Registration form in his individual capacity as the bidder. Respondent insists that nowhere in the Universal Bidder Agreement, which contains the relevant arbitration clause, did Ma indicate that he signed on behalf of Xanadu or any other entity. Therefore, any contention that the signatory to the Universal Bidder Agreement, the Guarantor Bidder Agreement, and/or the Bidder Registration is ambiguous and, thus, that there is a need to rely on parol evidence, is not supported by the documentary evidence, claims respondent.

Turning now to petitioners' fraud claim, respondent argues that same cannot serve as a basis to stay arbitration. As relevant here, respondent contends that, to the extent the fraud claim relates to the Guarantor Bidder Agreement that Ma signed on May 31, 2025, and not the Universal Bidder Agreement signed earlier on April 26, 2025, which contains the arbitration clause at issue, the fraud claim is a red herring and therefore unavailing. Respondent posits that Ma may only assert such a fraud claim as a defense or counterclaim in the arbitration. Ma signed

two substantially similar prior versions of the Universal Bidder Agreement in September and November of 2024, respectively, in connection with earlier auctions months before any purported fraudulent inducement in May 2025, claims respondent, and as is the case here, none of those earlier signed agreements made mention of Xanadu either.

Concerning the preliminary injunction, respondent argues that petitioners have failed to establish immediate and irreparable injury and therefore, the TRO should be vacated. It also contends that petitioners' allegations of harm are compensable and thus, not irreparable (NYSCEF Doc. No. 27, *opposition and cross-petition*).

In reply and in opposition to the cross-petition, petitioners assert that the cross-petition is actually an improper motion to reargue/renew and should be dismissed. They insist that Ma, individually, is not a proper party to any arbitration agreement, and that compelling him to submit to an arbitration would constitute irreparable harm as it would strip him of both the protections of the corporate form that he seeks to rely upon, and of his right to a full and fair trial on the merits.

Next, they argue that, insofar as the Universal Bidder Terms and Conditions incorporates numerous other documents by reference, those documents are part of the contract at issue. To the extent parol evidence is needed to decipher whether there was a "meeting of the minds" regarding the formation of a contract by Ma in his personal capacity, as opposed to his role as a member of Xanadu, such extrinsic evidence should be considered. They further add that any such ambiguities must be construed against respondent, the drafting party. Petitioners insist that the proof, taken together, indicates that petitioners sought to specify that Xanadu was the proper party to the agreement herein. Lastly, petitioners reiterate that respondent perpetrated fraud by providing materially false information in the "due diligence report," and inducing Xanadu to serve as Initial Bidder for the auction at issue (NYSCEF Doc. No. 30, *reply and opposition to cross-petition*).

Under CPLR 7503(b), a party opposing arbitration may stay arbitration solely "on the ground that a valid agreement was not made or has not been complied with or that the claim sought to be arbitrated is" time-barred.

Courts have "repeatedly recognized New York's long and strong public policy favoring arbitration" (*Stark v Molod Sptiz DeSantis & Stark, P.C.*, 9 NY3d 59, 66 [2007]). "Whether a dispute is arbitrable is generally an issue for the court to decide unless the parties clearly and unmistakably provide otherwise" (*Zachariou v Manios*, 68 AD3d 539, 891 [1st Dept 2009]).

"Generally, courts look to the basic elements of the offer and the acceptance to determine whether there is an objective meeting of the minds sufficient to give rise to a binding and enforceable contract" (*Wu v Uber Tech., Inc.*, 43 NY3d 288, 299 [2024]). "Because contract formation is governed by an objective rather than a subjective standard, there is no requirement that a party have correctly understood—or even reviewed—the terms presented by the offeror for their manifestation of acceptance to be effective. Instead, courts ask whether the offeree was put on inquiry notice of the contractual" (*id.*, at 299).

Here, petitioners have failed to convince the court that there was no meeting of the mind as to whether Ma entered into a valid agreement to arbitrate with respondent in his individual capacity. Notwithstanding all claims to the contrary, a review of the proof, to wit; Guarantor Bidder Agreement, the Bidder Registration, and the Universal Bidder Terms and Conditions reveals that in sum and substance, Ma indicated that he was placing the bid for the Property in his individual capacity. As such, the court finds that a valid agreement to arbitrate was executed (see *Strongbow Consulting Group LLC v PricewaterhouseCoopers LLP*, 195 AD3d 532, 532 [1st Dept 2021]), and all contentions about fraud go to the scope of the arbitration clause, not its existence or validity.

Courts have held that words such as “any dispute,” “relating to” and “arising under” indicate a broad arbitration clause (*Life Receivables Trust v Goshawk Syndicate 102 at Lloyd’s*, 66 AD3d 495, 498 [1st Dept 2009]). The broad arbitration agreement at issue here provides, in relevant part, that “[t]he parties agree to submit all controversies, disputes, claims and matters of difference arising out of or relating to these Terms and Conditions, including but not limited to its enforcement, scope and/or interpretation, exclusively to arbitration in New York, New York in accordance with the Commercial Arbitration Rules of the American Arbitration Association from time to time in effect”; thus, the language serves as a clear indication of the parties’ intent to delegate such issues to an arbitrator. All other arguments need not be addressed given the findings above. Accordingly, it is hereby

ORDERED that the application seeking an order permanently staying respondent’s Demand for Arbitration against Michael Ma is denied; and it is further

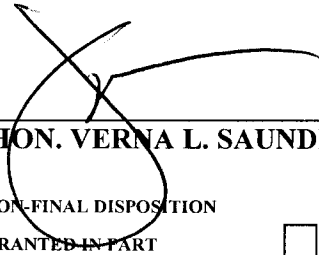
ORDERED that the temporary restraint on said arbitration proceeding is hereby vacated; and it is further

ORDERED that the cross-petition seeking an order dismissing the petition is granted; and it is further

ORDERED that, within twenty (20) days after this decision and order is uploaded to NYSCEF, counsel for respondent shall serve a copy of this decision and order, with notice of entry, upon petitioners.

This constitutes the decision and order of this court.

March 26, 2026



HON. VERNA L. SAUNDERS, JSC

CHECK ONE:	<input checked="" type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> DENIED	<input type="checkbox"/> NON-FINAL DISPOSITION	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> GRANTED	<input type="checkbox"/> DENIED	<input checked="" type="checkbox"/> GRANTED IN PART	<input type="checkbox"/> OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> SUBMIT ORDER	<input type="checkbox"/> REFERENCE
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/>