

<b>Survivornet, Inc. v McKenna</b>
2026 NY Slip Op 31834(U)
April 27, 2026
Supreme Court, New York County
Docket Number: Index No. 655737/2025
Judge: Phaedra F. Perry-Bond
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. PHAEDRA F. PERRY-BOND PART 35

Justice

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SURVIVORNET, INC.

Plaintiff,

- v -

PAUL MCKENNA,

Defendant.

-----X

INDEX NO. 655737/2025

MOTION DATE 10/22/2025

MOTION SEQ. NO. 003

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 003) 19, 20, 21, 22, 23, 34, 35, 36, 37, 38

were read on this motion to/for DISMISS

Upon the foregoing documents, Defendant’s motion to compel Plaintiff to submit its claim for damages to arbitration and staying Plaintiff’s claims for injunctive relief pending the outcome of the arbitration is granted.<sup>1</sup>

Plaintiff is a company that provides resources, education, and support to cancer and rare disease patients, the patients’ families, and health care practitioners. Plaintiff formerly employed Defendant. On January 1, 2024, the parties entered an employment agreement which contained non-compete and non-solicitation clauses, as well as a prohibition on the use of Plaintiff’s proprietary information. According to those clauses, Defendant allegedly agreed to avoid providing similar services to another “entity that competes with Plaintiff in the field of digital advertising for cancer, oncology, or rare medications, treatments or products” for a period of 12 months after leaving employment with Plaintiff.

<sup>1</sup> Defendant also moved to dismiss but that branch of the motion was resolved pursuant to the parties’ stipulation (see NYSCEF Doc. 28).

Defendant was allegedly terminated for cause on January 20, 2025. Allegedly, Plaintiff learned Defendant breached his non-compete clause on February 2025 when he became employed by MedLive as a Vice President of Business Development. MedLive allegedly provides similar online resources to the cancer and rare disease community, and Defendant has allegedly diverted business from Plaintiff. Now, Plaintiff sues Defendant for breach of contract and injunctive relief. Defendant responds with this motion seeking to compel arbitration. Plaintiff opposes and argues that because Defendant allegedly breached the employment agreement, he should not be able to seek to enforce the arbitration agreement contained within the broader employment agreement. Defendant's motion is granted.

The arbitration agreement, found in ¶ 16 of the parties' employment agreement, states:

“Other than a claimed violation by Employee of the provisions in Sections 7-10 above, which may be addressed by a request for equitable and injunctive relief in applicable courts having jurisdiction thereof (“Injunctive Relief Exception”), any dispute or controversy arising out of or relating to this Agreement, and/or related to Employee's employment, that could otherwise be resolved by a court shall be resolved through arbitration in accordance with the Employment Arbitration Rules and Mediation Procedures of the American Arbitration Association, in which neither class nor collective proceedings will be permitted...Except for the Injunctive Relief Exception, Employee and the Company give up and waive any right to resolve a controversy through any other means, and the right to sue in court in connection with claims related to this agreement and/or Employee's employment with the Company. This waiver of the right to sue in court includes, for example, claims based on federal statutes such as Title VII of the Civil Rights Act of 1964 and the Fair Labor Standards Act and claims based on statutes, common law causes of action and concerning compensation. If there is more than one dispute between Employee and the Company, all such disputes may be heard in a single proceeding.”

New York public policy favors enforcement of contracts for arbitration (*Cooper v Bruckner*, 21 A.D.3d 758 [1st Dept 2005]). Neither party disputes that the arbitration agreement is valid, nor is there any dispute that arbitration clause encompasses the monetary claims brought in this dispute. Since the parties agreed that the AAA rules govern, “questions concerning the

scope and validity of the arbitration agreement, including issues of arbitrability, are reserved for the arbitrators” (*Badme v Aecom*, 244 AD3d 403, 403 [1st Dept 2025]; *Anima Group, LLC v Emerald Expositions, LLC*, [1st Dept 2021]; *Flintlock Const. Services, LLC v Weiss*, 122 AD3d 51, 54 [1st Dept 2014]). Because the parties agreed that the existence, scope or validity of the arbitration agreement is an issue for the arbitrator to decide, the Court’s inquiry into the validity of the agreement must end there (*see also Life Receivables Trust v Goshawk Syndicate 102 at Lloyd’s*, 66 AD3d 495, 496 [1st Dept 2009], *affd* 14 NY3d 850 [2010], *cert denied* 562 U.S. 962 [2010]). Therefore, Defendant’s motion to compel arbitration of Plaintiff’s damages claims is granted.

Defendant’s motion to stay litigation of the claims for injunctive relief pending outcome of the arbitration is also granted. Where “arbitrable and nonarbitrable claims are inextricably interwoven, the proper course is to stay judicial proceedings pending completion of the arbitration, particularly where ... the determination of issues in arbitration may well dispose of nonarbitrable matters” (*see Protostorm, Inc. v Foley & Lardner LLP*, 193 AD3d 486, 487 [1st Dept 2021] quoting *Cohen v Ark Asset Holdings*, 268 AD2d 285, 286 [1st Dept 2000]). Here, the damages and injunctive relief claims all stem from the same alleged breach of contract and have identical factual underpinnings. If, in arbitration, it is determined that there was no breach, or that Plaintiff is not entitled to any damages, those findings may very well be dispositive of Plaintiff’s request for injunctive relief. There is insufficient basis, therefore, to duplicate efforts of the parties, and potentially risk inconsistent findings between this Court and the arbitral tribunal (*see County Glass & Metal Installers, Inc. v Pavarini McGovern, LLC*, 65 AD3d 940 [1st Dept 2009]). Therefore, the motion to stay litigation of the non-arbitrable claims is granted (*see also O’Sullivan v Jacaranda Club, LLC*, 224 AD3d 629, 630 [1st Dept 2024]).

Accordingly, it is hereby,

ORDERED that Defendant’s motion to dismiss is moot pursuant to the parties’ stipulation (see NYSCEF Doc. 28); and it is further

ORDERED that Defendant’s motion to compel arbitration of Plaintiff’s damages claims and to stay litigation of Plaintiff’s claims for injunctive relief pending the outcome of arbitration is granted; and it is further

ORDERED that Plaintiff is required to submit its claim for damages for alleged breach of contract to arbitration before the American Arbitration Association, and this matter is stayed pending the outcome of that arbitration; and it is further

ORDERED that the Clerk of the Court shall mark this matter stayed, and either party may vacate or modify the stay via order to show cause or via so-ordered stipulation; and it is further

ORDERED that within ten days of entry, counsel for Defendant shall serve a copy of this Decision and Order, with notice of entry, on Plaintiff via NYSCEF.

This constitutes the Decision and Order of the Court.

4/27/26  
DATE

  
HON. PHAEDRA F. PERRY-BOND, J.S.C.

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