SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: Part 55

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YEHUDA FULDA,

Plaintiff,

Index No. 160692/2015

-against-

DECISION/ORDER

HOTWIRE, INC. and STARHOTELS INTERNATIONAL CORPORATION,

Defendants,

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HON. CYNTHIA S. KERN, J.S.C.

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion:

Papers	Numbered
Notice of Motion and Affidavits Annexed.....	1, 2
Affirmations in Opposition.....	3
Reply Affidavits.....	4
Exhibits.....	5

Plaintiff Yehuda Fulda commenced the instant action seeking damages for false representations allegedly made by defendants Hotwire, Inc. ("Hotwire") and Starhotels International Corporation ("Starhotels") in connection with his booking of hotel rooms through Hotwire's "Hot Rate" service. Defendant Hotwire moves for an Order pursuant to CPLR § 7503 compelling arbitration or, in the alternative, for an Order pursuant to CPLR § 3012(d) extending its time to appear and plead. Defendant Starhotels separately moves for an Order pursuant to CPLR § 7503 compelling arbitration or, in the alternative, for an Order pursuant to CPLR § 3012(d) extending its time to appear and plead. The motions are consolidated for disposition and are resolved as set forth below.

The relevant facts are as follows. On or about April 15, 2015, plaintiff booked a hotel room through Hotwire's "Hot Rate" service, which allows a customer to book a discounted hotel room by

displaying the hotel's price and star rating and a list of amenities offered by the hotel, allegedly written and managed by the hotel itself, without disclosing the name of the hotel. The listing for the hotel room plaintiff booked stated that the hotel offered self-service laundry. After paying for and reserving the hotel room, plaintiff learned that the room was located in The Michelangelo Hotel, which is owned and operated by Starhotels. Plaintiff contacted The Michelangelo Hotel and was informed that the Michelangelo Hotel did not offer self-service laundry. After contacting Hotwire's customer service to inform it that The Michelangelo Hotel did not offer self-service laundry, plaintiff received a refund. On or about May 4, 2015, plaintiff again booked a hotel room in a hotel advertising self-service laundry through Hotwire's "Hot Rate" service. This room was also located in The Michelangelo Hotel, which did not offer self-service laundry. On or about May 5, 2015, after again contacting Hotwire's customer service to inform it that the listing incorrectly stated that The Michelangelo Hotel offered self-service laundry, plaintiff booked another hotel room in a hotel advertising self-service laundry through the "Hot Rate" service. Once again, plaintiff discovered that this room was located in The Michelangelo Hotel, which did not offer self-service laundry.

Each of the three times plaintiff booked a hotel room through Hotwire's "Hot Rate" service, he electronically accepted Hotwire's "Terms of Use," which contains the following arbitration provision:

> You agree to give us an opportunity to resolve any disputes or claims relating in any way to the Website, any dealings with our customer service agents, any services or products provided, any representations made by us, or our Privacy Policy ("Claims") by contacting Hotwire Customer Support...If we are not able to resolve your Claims within 60 days, you may seek relief through arbitration or in small claims court, as set forth below.

> Any and all Claims will be resolved by binding arbitration, rather than in court, except you may assert Claims on an individual basis in small claims court if they qualify. This includes any Claims you assert against us, our subsidiaries, travel suppliers or any companies offering products or services through us (which are beneficiaries of this arbitration agreement).

The arbitration provision also states that "[t]he Federal Arbitration Act and federal arbitration law apply to this agreement."

On a motion to compel arbitration, "[i]f the court concludes that the parties made a valid agreement to arbitrate, that the dispute sought to be arbitrated falls within its scope, and that there has been compliance with any agreed on conditions precedent to arbitration, judicial inquiry is at an end (absent any issue as to bar by limitation of time) and the parties should be directed to proceed to arbitration." *Matter of County of Rockland*, 51 N.Y.2d 1, 8 (1980). The same standard applies in deciding a motion to compel arbitration under the Federal Arbitration Act ("FAA"). In deciding whether to compel arbitration under the FAA, the Court must decide (1) whether a valid agreement to arbitrate exists and, if so, (2) whether the dispute falls within the scope of the arbitration clause. *See Verizon N.Y. Inc. v. Broadview Networks*, 5 Misc. 3d 346 (Sup. Ct. N.Y. County 2004).

In the present case, the court grants the motions of defendants Hotwire and Starhotels to compel arbitration on the ground that Hotwire's "Terms of Use," agreed to by plaintiff with each booking, contains a valid agreement to arbitrate and the instant dispute falls within the scope of the arbitration provision. Hotwire's "Terms of Use" contains a valid agreement to arbitrate as it provides that any and all claims relating to Hotwire's website, customer service, services or products, representations or privacy policy must be resolved through arbitration, including claims against companies offering services or products through Hotwire. Plaintiff's dispute with Hotwire and Starhotels clearly falls within the scope of the arbitration provision as the dispute involves

plaintiff's use of Hotwire's website to book hotel rooms in The Michelangelo Hotel and plaintiff's interactions with Hotwire's customer service.

Plaintiff's assertion that defendants' motions should be denied on the ground that, each time he booked a hotel room, plaintiff was fraudulently induced to accept Hotwire's "Terms of Use" by the allegedly false representations that The Michelangelo Hotel offered self-service laundry, and thus that the agreements, including their arbitration provisions, are invalid in their entirety, is without merit. Under both New York and federal law, an agreement to arbitrate is valid "even if the substantive portions of the contract were induced by fraud." *Weinrott v. Carp*, 32 N.Y.2d 190, 198, 298 N.E.2d 42, 47 (1973); *see also Buckeye Check Cashing, Inc. v. Cardegna*, 546 U.S. 440, 445-46 (2006) ("[A]n arbitration provision is severable from the remainder of the contract" even where the arbitrator later finds that the contract is void). The issue of whether the substantive portions of a contract were induced by fraud "must be determined by the arbitrator." *See Matter of National Union Fire Ins. Co. of Pittsburgh, Pa. v. St. Barnabas Community Enterprises, Inc.*, 48 A.D.3d 248, 249 (1st Dept 2008). However, "if the alleged fraud was part of a grand scheme that permeated the entire contract, including the arbitration provision, the arbitration provision should fall with the rest of the contract." *Weinrott*, 32 N.Y.2d at 197. Mere conclusory allegations that the alleged fraud was part of a grand scheme permeating the entire contract will not suffice to invalidate an arbitration provision. *See Stellmack Air Conditioning & Refrigeration Corp. v. Contractors Management Systems of NH Inc.*, 293 A.D.2d 956, 957 (3rd Dept 2002); *Cologne Reinsurance Co. of America v. Southern Underwriters, Inc.*, 218 A.D.2d 680, 681 (2nd Dept 1995).

In the present case, the arbitration provision contained in Hotwire's "Terms of Use" is valid even if plaintiff was induced to enter into any or all of the agreements containing the arbitration

provision by fraud. As plaintiff does not specifically claim that he was fraudulently induced to agree to the arbitration provisions, the issue of whether plaintiff was fraudulently induced to enter into any or all of the agreements must be determined by the arbitrator. Further, plaintiff fails to proffer any evidence that the alleged misrepresentations regarding the availability of self-service laundry at The Michelangelo Hotel were part of a grand scheme of fraud permeating the entirety of the agreements, including their arbitration provisions.

Accordingly, defendants' motions to compel arbitration are granted and the parties are directed to proceed to arbitration. As defendants' motions to compel arbitration are granted, this action is hereby dismissed. This constitutes the decision and order of the court.

Dated: 2/1/16

Enter: _____
J.S.C.

CYNTHIA S. KERN
J.S.C.