

Santillan v Gentle Touch Lasers
2017 NY Slip Op 32898(U)
May 19, 2017
Supreme Court, Westchester County
Docket Number: 60082/2016
Judge: Charles D. Wood
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To commence the statutory time period for appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER**

-----X
MARIA SANTILLAN,

Plaintiff,

-against-

DECISION & ORDER

**Index No.: 60082/2016
Sequence No. 1**

**GENTLE TOUCH LASERS, GENTLE TOUCH
LASERS INC., EFRAIN AGUILAR d/b/a GENTLE
TOUCH LASERS, and MARIA SKAFF a/k/a
MARI SKAFF,**

Defendant.

-----X

WOOD, J.

The following documents were read in connection with defendants' motion:

- Defendants' Notice of Motion, Memorandum of Law, Counsel's Affirmation, Exhibits.
- Plaintiff's Counsel's Affirmation in Opposition, Exhibits.
- Defendant's Counsel's Affirmation.

Plaintiff alleges that the last of three laser hair removal treatments performed by defendants on July 23, 2013, was performed in a negligent and careless manner causing her injury.

By their motion, defendants seek to have the complaint dismissed, or in the alternative, defendants request that the court enter an order compelling arbitration of plaintiff's claims.

The crux of the dispute is that prior to receiving any services from defendants, on April 17, 2013, plaintiff signed a release form containing an arbitration agreement (“the “Agreement”) which read in pertinent part:

“I understand and agree that any dispute concerning medical malpractice will be determine by arbitration, the term medical malpractice interpreted broadly and shall include any and all claims in tort, contract, lack of informed consent, or other legal theories which in any way pertain to claims or unnecessary, unauthorized, improper, negligent, or incompetent rendering of medical treatment.

I understand that I am giving up my rights to bring a lawsuit or to resort to any court process except as NY law provides for judicial review of arbitration proceedings. By signing this Agreement, I agree to resolve all disputes by arbitration rather than through the court.

I understand and agree that this Arbitration agreement binds me and anyone else who may have a right to assert a claim on my behalf or make a claim as a result of injury to me. I also understand that if I sign this Agreement on Behalf of someone else, I am binding to this Agreement.”

Arbitration is favored in New York State as a means of resolving disputes, and courts should interfere as little as possible with agreements to arbitrate. It is well-settled that “a party will not be compelled to arbitrate and, in effect, give up the right to resort to the courts, absent evidence which affirmatively establishes that the parties expressly agreed to arbitrate their disputes” (Shah v Monpat Const., Inc., 65 AD3d 541, 543 [2d Dept 2009]).

A written agreement that is clear and unambiguous as a matter of law must be enforced according to the plain meaning of its terms (Maroney v Hawkins, 50 AD3d 862, 863 [2d Dept 2008]). “[W]here parties enter into an agreement and, in one of its provisions, promise that any dispute arising out of or in connection with it shall be settled by arbitration, any controversy which arises between them and is within the compass of the provision must go to arbitration. The use of the phrase “any dispute arising out of this agreement” is a broad provision which compels

submission of all issues arising under the agreement to arbitration” (Giahn v Giahn, 290 AD2d 483, 483–84, [2d Dept 2002]). Moreover, any “ambiguity in the wording” of an agreement “must be construed against the drafter” (Quality King Distributors, Inc. v E & M ESR, 36 AD3d 780, 783 [2d Dept 2007]).

Applying simple principles of contract interpretation, the court directs the parties to arbitrate, as there is no substantial question whether a valid agreement to arbitrate was made. The Agreement contains an expansive clause which explicitly lists that the term “medical malpractice” shall be interpreted broadly and includes all claims in tort and contract and other legal theories including negligence or incompetent rendering of medical treatment. It includes the claims at issue here.

Therefore, the Agreement shall be honored, as it affirmatively establishes that the parties clearly, explicitly, and unequivocally agreed to arbitrate the dispute, and the issue sought to be submitted to arbitration falls within the scope of the agreement (God's Battalion of Prayer Pentecostal Church, Inc. v Miele Associates, LLP, 10 AD3d 671 (2d Dept. 2004), (Frankel v Citicorp Ins. Servs., Inc., 80 AD3d 280, 284 [2d Dept 2010]).

For these reasons, the court compels plaintiff to arbitrate her claim.

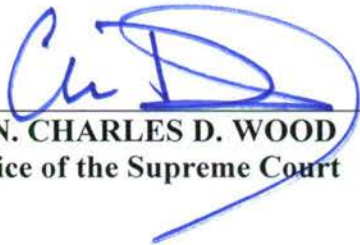
Now, based upon the foregoing it is hereby

ORDERED, that Defendants' motion is granted to the extent that this action is hereby stayed, and plaintiff is directed forthwith to proceed to arbitration in accordance with the Arbitration Rules of the American Arbitration Association; and it is further

ORDERED, that Defendants shall serve a copy of this order with notice of entry upon plaintiff within twenty (20) days of entry thereof and file proof of service on NYSCEF within five (5) days of service, in accordance with the protocols of NYSCEF; and it is further

All matters not herein mentioned are denied. This constitutes the decision and order of the court.

Dated: May 19 , 2017
White Plains, New York



HON. CHARLES D. WOOD
Justice of the Supreme Court

To: All Parties by NYSCEF
AMERICAN ARBITRATION ASSOCIATION
120 Broadway, 11th Floor
New York, New York 10271