Satterfield v VStock Transfer, LLC
2019 NY Slip Op 31761(U)
June 20, 2019
Supreme Court, New York County
Docket Number: 650311/2019
Judge: Andrea Masley
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 48

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BRENT SATTERFIELD,

Plaintiff,

- v -

VSTOCK TRANSFER, LLC, AMERICA 2030 CAPITAL, LLC (A/K/A BENTLEY ROTHSCHILD CAPITAL LTD CORP.), BENTLEY ROTHSCHILD CAPITAL LTD CORP., AMERICA 2030 CAPITAL, LIMITED, BENTLEY ROTHSCHILD FINANCIAL, LLC, BENTLEY ROTHSCHILD INVESTMENTS, XYZ CORPORATION 1 - 10, VAL SKLAROV,

Defendants.

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INDEX NO. 650311/2019

MOTION DATE _____

MOTION SEQ. NO. 004

DECISION + ORDER ON MOTION[1]

The following e-filed documents, listed by NYSCEF document number (Motion 004) 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 80, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 132

were read on this motion to/for STAY.

On January 16, 2019, plaintiff Brent Satterfield initiated this action against VStock Transfer, LLC (VStock), a stock transfer agent which currently holds the shares of nonparty Co-Diagnostics, Inc. (CODX) at issue here, with a summons with notice, wherein plaintiff alleged:

> "This is an action for injunctive relief. Due to a fraudulent scheme perpetrated against him, Plaintiff was induced to pledge restricted shares of . . . Co-Diagnostics, Inc. . . . . as security for a loan to be advanced by . . . America 2030 Capital, LLC . . . . or its affiliates. The loan was fractionally funded (less than $100,000) and repaid in full many times over when America 2030 previously, and wrongfully, sold half of the Shares pledged to it by Plaintiff and pocketed the proceeds. Plaintiff seeks injunctive relief preventing VStock from allowing the second half of these Shares to be sold, transferred, assigned, encumbered, or

[1] This decision was delayed by the imprecision of the parties. While plaintiff's imprecision was acceptable in the early stages of this action due to the urgency of the matter, it cannot be excused now. Both parties fail to distinguish one entity from another with identical names. The parties are urged to be precise forthwith. Likewise, the parties failure to file documents in ECF caused additional delays.

> otherwise disposed of, which will otherwise become unrestricted on January 17, 2019, and will be sold by the fraudsters who victimized Plaintiff, rendering any further judgment by this Court without practical effect." (NYSCEF Doc. No. [NYSCEF Doc.] 1).

Though not filed under Article 75 of the CPLR, this case was originally framed as one in support of arbitration, the forum being in either New York or Nevis-St. Kitts. To preserve the status quo, the court issued a preliminary injunction enjoining VStock from releasing the remaining CODX shares in its possession. (NYSCEF Doc. 47.) However, plaintiff has since filed a complaint in which he seeks damages, only, and mentions nothing of arbitration. (NYSCEF Doc. 11.)

Now before the court is plaintiff's motion sequence number 04, brought by OSC, to enjoin defendants America 2030 Capital, LLC (America 2030) and Bentley Rothschild Capital Ltd. Corp.[2] (collectively, Defendants) from proceeding with an arbitration in Nevis-St. Kitts for defamation allegedly caused by plaintiff filing this action. (NYSCEF Doc. 59.)[3] Also before the court is plaintiff's motion sequence number 03 for contempt against Defendants for violating prior court orders by selling CODX shares after the court issued a TRO enjoining such sales. (NYSCEF Doc. 48.) Defendants have made

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[2] Defendants claim that Bentley Rothschild Capital Ltd. Corp. is incorrectly named and unknown to defendants. (NYSCEF Doc. 92 at n 1.) The court notes that in the March 13, 2019 complaint, plaintiff added defendants America 2030 Capital Limited, Bentley Rothschild Financial LLC, Bentley Rothschild Investments, XYZ Corporation (1-10 fictitious names) and Val Sklarov to the caption. (NYSCEF Doc. 130; *see also* NYSCEF Doc. 144, Notice to County Clerk – Amendment to Caption.)

[3] Defendants improperly cross-moved to compel the Nevis arbitration. (NYSCEF Doc. 92 and (Tr. 5:14-18 [not filed in NYSCEF].) By cross moving, defendants unfairly short served plaintiff without court authorization. (See e.g. (*Block v Nelson*, 71 AD2d 509 [1st Dept 1979]).

several appearances before this court, and requested affirmative relief from this court,[4] including their May 20, 2019 motion to dismiss challenging the court's jurisdiction. (NYSCEF Doc.175, motion sequence number 08.) Accordingly, the court addresses motion sequence number 04 only and holds sequence number 03 in abeyance until there is a determination on jurisdiction.

Plaintiff also filed motion sequence number 06 on March 15, 2019 to amend motion 04 to add America 2030 Capital Limited and Bentley Rothschild Financial LLC (collectively, Nevis Defendants) and Bentley Rothschild Investments, XYZ Corporation (1-10 fictitious names) and Val Sklarov to the court's TRO (NYSCEF Doc. 133) consistent with the complaint filed on March 13, 2019. (NYSCEF Doc. 130). On March 8, 2019, the court signed the OSC and directed service on the new defendants consistent with the CPLR. (NYSCEF Doc. 143). As of now, there are no affidavits of service filed with the court demonstrating that the Nevis Defendants were so served. Accordingly, this decision and order is directed to those entities that have been served with process.

Plaintiff is an inventor of a rapid DNA test used in the medical and agricultural industries and a founder of CODX to exploit his invention; CODX is one of several start-up companies plaintiff had been involved in. (NYSCEF Doc. 130, Complaint ¶ 5;

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[4] In motion sequence number 07, America 2030 seeks a preliminary injunction enjoining plaintiff from contacting financial institutions doing business with Defendants. (NYSCEF Doc. 153.) The court rejected Defendants' improper cross motion to plaintiff's OSC. (3/13/19 Transcript [Tr.] 5:14-16 [not submitted in NYSCEF]; NYSCEF Doc. 91, Notice of Cross Motion.) On April 26, 2019, the court also denied Defendants' motion to dismiss for failure to serve a complaint and granted plaintiff's cross motion to excuse the late service of his complaint. (NYSCEF Doc. 173, decision on motion sequence number 05.)

NYSCEF Doc. 164, Satterfield Aff of Direct Testimony, April 19, 2019 [4/19/19 Aff] at ¶¶ 5, 6.) Plaintiff is an officer and director of CODX, and its Chief Technology Officer. (*Id.*) CODX is traded on the NASDAQ, having gone public on July 12, 2017. (4/19/19 Aff at ¶ 7.) Plaintiff received 2.3 million restricted shares of CODX as part of the public offering. (*Id.*) The restriction arises from SEC Rule 144 (17 CFR § 230.144), which restricts the sale of certain shares held by particular shareholders, such as insiders, as to amount, manner, and timing. The restriction on half of plaintiff's shares was to expire in December 2018. (NYSCEF Doc. 60, Satterfield Aff, February 9, 2019 [2/9/19 Aff] at ¶ 17.)

This action arises from the Master Loan Agreement (MLA), providing for a $1.5 million "Non-Recourse Title Transfer Loan" from America 2030, executed by plaintiff, the borrower, on March 30, 2018 and Val Sklarov, as managing member of America 2030,[5] on April 2, 2018. (NYSCEF Doc. 61, MLA at §§ 2.1[a], 3.1.) Most significant to this decision, the MLA provides for AAA arbitration in New York applying New York law. (*Id.* at § 8.) The parties defined "arbitral disputes" to include "the existence, validity,

[5] The "America 2030" involved in this action appears to be incorporated in Colorado. (NYSCEF Doc. 15 at 18 [*see* stamp next to Sklarov's signature on MLA].) However, the court notes that in a civil action in the U.S. District Court for the Northern District of Georgia, "America 2030 Capital Limited" is incorporated in Hong Kong and the United Kingdom while America 2030 Capital Limited and America 2030 Capital, LLC are incorporated in Colorado (collectively, 2030 America Defendants). (NYSCEF Doc. 122, Consent Order), but on the Arbitration Agreemen,t America Limited Capital Limited appears to be a Nevis corporation. As there is considerable confusion as to which, if any, of the America 2030 Defendants hold the CODX shares, the court wishes to clarify that it is the court's intention to maintain the status quo as to the shares that are the subject of the MLA, regardless of which America 2030 Defendant or their affiliates, assigns, and/or associates and/or any and all officers, directors, managing members, shareholders, mangers of any title and/or employees thereof hold the shares at issue.

interpretation, performance, breach, termination thereof, or any dispute regarding noncontractual obligation arising out of or relating to it." (*Id.* at § 8.1.) "The award shall be final and legally binding on the Parties and shall be subject to enforcement in any courts having jurisdiction over the Parties." (*Id.*)

An April 3, 2018 addendum increases the amount of the loan to $3.5 million and reassigns voting rights to plaintiff. (NYSCEF Doc 62, at pp. 1-2, §§ I, II [d].) A November 30, 2018 addendum amends the MLA to assign the loan to America 2030 Capital Limited, a Nevis corporation, and identifies Bentley Rothschild Capital Limited of Nevis as a second assignee which is also in possession of shares of CODX held by VStock "awaiting 6 month time frame for removal of restriction legend as a result of its acceptance of transfer of shares to it." (NYSCEF Doc. 62 at p. 3, § I [e]; *see also id.* at § I [c], [d].) The arbitration provision was also amended to provide for arbitration of the "existence, validity, interpretation and resolution" of the agreement in St Kitts & Nevis with the law of the United States governing. (*Id.* at p. 4, § I [a].) There is also a May 29, 2018 addendum clarifying that plaintiff's pledge of 2,269,795 shares was not intended to establish defendants as "affiliates" of plaintiff as exemplified by "reassigning voting rights back to [plaintiff]," thus avoiding SEC Rule 140. (*Id.* at pp. 9-10.)

The closing was set for December 15, 2018. (2/9/19 Aff at ¶ 18; NYSCEF Doc. 63, Closing Agreement.) On December 26, 2018, plaintiff received a disbursement of $66,709. (2/9/19 Aff at ¶ 20.) On December 27, 2018, Sklarov issued a "margin call." (NYSCEF Doc. 102.)

Defendants sold through Bank of New York 10,760 shares on December 13, 2018; 28,800 shares on December 14, 2018, before plaintiff signed the MLA; and

continued selling until a total of 905,926 shares were sold by January 22, 2019, 37,315 of which were sold on January 18, 2019, the same day that this court issued the VStock TRO. (4/19/19 Aff at ¶ 60.) 70,321 were sold on January 22, 2019, after the court had issued the TRO enjoining Defendants. (*Id.*; *see also* NYSCEF Doc. 41.) Meanwhile, the CODX price, which was at a high of $5.28 on June 5, 2018, dropped from $2.1509 on December 13, 2108 to $1.0824 on January 22, 2019. (*See* https://finance.yahoo.com/quote/CODX?p=CODX&.tsrc=fin-srch-v1 [submitted by Defendants but not filed in NYSCEF].)

In motion sequence number 01, filed by OSC on January 17, 2019 at 1:39 p.m., plaintiff moved for an injunction preventing VStock from selling, transferring, assigning, encumbering or otherwise disposing of any shares of CODX. (NYSCEF Doc. 11.) The court signed the TRO enjoining VStock but directed additional service of the TRO on America 2030 because its interest in trading CODX would be affected by the TRO against VStock. Accordingly, the preliminary injunction against VStock was served with supporting papers at the office of America 2030 on January 18, 2019 at 2:38 p.m. by hand delivery to Shalonda M. White, a secretary. (NYSCEF Doc. 26.) It was also served by Federal Express (tracking no. 774250478926) on January 22, 2019 at 9:42 a.m. (NYSCEF Doc. 75.) VStock did not appear on the return date and did not oppose the motion for a preliminary injunction which was granted on the record at argument on January 23, 2019; however, counsel for Defendants were present and thus aware of the TRO granted against VSTOCK. (NYSCEF Doc. 161, Tr. at 2:8-24.) A written order issued February 4, 2019. (NYSCEF Doc. 47.)

On January 18, 2019, plaintiff filed an amended summons with notice adding Defendants. (NYSCEF Docs. 19, 20.) Simultaneously, plaintiff filed motion sequence number 02 by OSC for a TRO enjoining Defendants from selling, transferring, assigning, encumbering or otherwise disposing of any shares of CODX. (NYSCEF Doc. 41.) Consistent with the court's rules, on January 18, 2019 at 1:53 p.m., plaintiff's counsel notified America 2030 by email and stated that plaintiff would be seeking a TRO enjoining Defendants from selling shares of CODX. (NYSCEF Doc. 35.) At 3:23 p.m. the same day, Steven Roberts, Esq. responded by leaving a voicemail for plaintiff's counsel, admitting receipt of plaintiff's email notice. (*See* NYSCEF Doc. 90.) In addition, plaintiff provides documentary evidence of the relationship between Defendants and Roberts who gave an opinion letter on behalf of Defendants, dated January 18, 2019, identifying the seller of the CODX shares as Bentley Rothschild Financial, LLC, which includes the Seller's Representative Letter signed by Sklarov on behalf of Bentley Rothschild Financial LLC to VStock requesting that VStock lift the trading restriction on the CODX shares. (NYSCEF Doc. 65.)[6]

The court signed motion sequence number 02 with the TRO and directed service consistent with the CPLR. The TRO with the amended Summons with Notice was hand

[6] In addition to the Seller's Representative Letter signed by Sklarov and Robert's letter, the letter to VStock consists of a cover letter signed by Elizaveta Lata, "Director & Secretary" of Bentley Rothschild Financial, LLC, directing VStock to expedite and authorizing a rush fee; a document entitled "Transfer Instruction Form", dated January 18, 2019, listing Bentley Rothschild Financial Inc. as current shareholder, and Bentley Rothschild Capital Limited as the recipient of 1,134,897 shares; a document entitled "Statement of Account" for Bentley Rothschild Financial LLC, as of July 19, 2018, with a balance of 1,134,897 CODX shares as a "restricted book balance;" and a credit card authorization signed by Sklarov on October 30, 2018, listing America 2030 Capital LLC as the shareholder of the CODX shares.

delivered to Defendants on January 22, 2019 at 2:40 p.m. (NYSCEF Docs. 27, 28.) The TRO against America 2030 was also sent by Federal Express (tracking no. 77423882493) to America 2030 at a Georgia address and delivered there on January 23, 2019 at 3:03 p.m. (NYSCEF Doc. 76.) It was also returnable on January 23, 2019. Defendants' counsel was present with the court granted the motion for a preliminary injunction on the record. (NYSCEF Doc. 112.)

On January 18, 2019, America 2030 Capital Limited, Nevis, issued plaintiff a notice of default. (NYSCEF Doc. 103.) Specifically, Sklarov listed plaintiff's failure to comply with the December 27, 2018 margin call. In addition, Sklarov asserts that plaintiff violated the MLA when he tendered CODX shares in April 2018 which were restricted.

America 2030 Capital Limited (Nevis) and Bentley Rothschild Capital Limited (Nevis) initiated arbitration in Nevis. The application, signed by Sklarov and dated January 20, 2019, is stamped "The Arbitrator received January 21, 2019." (NYSCEF Doc. 66.) In the application, claimants object to plaintiff's filing of this action as an interference with their ability to dispose of the securities but fail to assert what relief is sought. Though Defendants deny "awareness" of the TROs until January 22, 2019, (NYSCEF Doc. 71, Defendants' memo of law at p. 2), Claimants reference this action in the Nevis arbitration application dated January 20, 2019. (NYSCEF Doc. 66.)

Defendants' demand for a complaint is dated January 24, 2019. (NYSCEF Doc. 108.)

On February 8, 2019, plaintiff filed motion 03 for contempt. (NYSCEF Doc. 48.)

Another Nevis arbitration application is stamped "The Arbitrator received February 4, 2019" with America 2030 Capital Limited (Nevis) and Bentley Rothschild Capital Limited (Nevis) as claimants 1 and 2 respectively, and Sklarov as claimant 3. This application, dated February 2, 2019, is executed three times by Sklarov, individually, and as operations manager of claimants 1 and 2. (NYSCEF Doc. 68.) The claimants allege plaintiff's defamation of the claimants arising from statements in documents filed in this action. (NYSCEF Doc. 66.)

On February 11, 2019, Salman Ravala, Esq. filed a notice of appearance which states that he is designated to accept service of pleadings and papers in this litigation for defendants America 2030 and Bentley Rothschild Capital Ltd. Corp. (NYSCEF Doc. 70.)[7]

On February 11, 2019, plaintiff filed motion 04 by OSC, seeking to stay the arbitration in Nevis as amended by 06. (NYSCEF Doc. 59, 143.)

On March 4, 2019, Defendants filed a cross motion pursuant to CPLR 7503 (a) to compel arbitration and dismissing or otherwise denying plaintiff's OSC, motion 04, to stay arbitrations filed February 10, 2019. (NYSCEF Doc. 91.)

On March 7, 2019, Defendants filed motion sequence number 05 to dismiss the action for failure to serve a complaint. (NYSCEF Doc. 105.) Plaintiff cross-moved for time to serve. (NYSCEF Doc. 129.)

[7] On April 2, 2019, a notice of substitution was also filed, but Bentley Rothschild Ltd. Corp. is crossed out. (NYSCEF Doc. 160.)

On March 13, 2019, the court heard argument on the pending OSCs and directed expedited discovery and a hearing on contempt and whether the second arbitration provision was permeated with fraud.[8]

On March 20, 2019, Sklarov wrote to Dolphin Financial explaining that America 2030 is a UK entity, and thus, not subject to this court's order. (Plaintiff's 6B at the April 22, 2019 hearing, email from Skarov to Dolphin Financial [not filed in NYSCEF].)

Plaintiff filed a complaint dated March 13, 2019 alleging (1) fraud against Sklarov; (2) aiding and abetting fraud against Sklarov defendants;[9] (3) conversion; (4) conspiracy to commit fraud and conversion against Sklarov and the Sklarov Corporate Defendants; (5) injunction against VStock to transfer the remaining shares to plaintiff; and (6) unjust enrichment against Sklarov and the Sklarov defendants. Plaintiff seeks to pierce the corporate veils and damages against Sklarov and his business entities.

Discussion

Certainly, arbitration is favored over litigation, especially where the arbitration provision is broad, as it is here. (*Matter of Weinrott (Carp)*, 32 NY2d 190 [1973] [for

[8] As to the contempt motion, the court found that issues of fact abounded as to when Sklarov signed an arbitration application. (March 13, 2019, Tr. 13:17-22.) Sklarov's testimony was also needed regarding defendant Bentley Rothschild Capital Ltd. Corp, for which Sklarov is listed as CEO (NYSCEF Doc. 85) and maybe deeply involved in this complex transaction. Of concern, Sklarov, in an affidavit before this court, disavows knowing Bentley Rothschild Ltd. Corp. (NYSCEF Doc. 104 at ¶ 3.) In addition, the court requested Sklarov's testimony on his letter to VStock asking for the removal of the restriction. (Tr. 14:21-24). Specifically, the court invited Sklarov to testify as to what he knew about the court's TROs and when he knew of them.

[9] In the complaint, plaintiff defines America 2030, America 2030 Capital, Limited, Bentley Rothschild Capital Ltd. Corp., Bentley Rothschild Investments, collectively as the "Sklarov Corporate Defendants" and with Sklarov, the "Sklarov Defendants."

discussion of language evidencing scope of arbitration clauses].) New York's "CPLR arbitration provisions (CPLR 7501 *et seq.*) evidence a legislative intent to encourage arbitration," and serve as the basis for the strong federal policy favoring arbitration in the cases relied upon by defendants. (*Id.* at 199.) Accordingly, the only issue reserved for the court is whether the parties have agreed to arbitration. (*Matter of Kennelly v Mobius Realty Holdings LLC*, 33 AD3d 380 [1st Dept 2006] [petitioner challenged signature on arbitration agreement; court must decide threshold issue of whether the parties have a valid arbitration agreement].)

Here, plaintiff argues that the MLA and its amendments are permeated with fraud, and thus, he has not agreed to arbitration. "To demonstrate that fraud permeated the entire contract, it must be established that the agreement was not the result of an arm's length negotiation, or the arbitration clause was inserted into the contract to accomplish a fraudulent scheme" (*Markowits v Friedman*, 144 AD3d 993, 997 [2d Dept 2016] [internal quotation marks and citation omitted].) Here, plaintiff alleges both. However, "where a party to a contract containing an arbitration agreement or clause, with knowledge of alleged fraud or misrepresentation affecting the contract, affirms the validity of the contract by accepting the benefit of a material provision thereof or by taking or participating in an action or proceeding to enforce a claim or right existing by virtue of the contract, he is precluded from avoiding the arbitration agreement or clause on the basis of the alleged fraud or misrepresentation." (*Housekeeper v Lourie*, 39 AD2d 280, 282-283 [1st Dept 1972] [citations omitted].) Under these circumstances, while the agreement can be challenged as fraudulent, it must be challenged in arbitration.

Plaintiff does not deny he executed the MLA and received $60,000 pursuant to it. Plaintiff also asserts red flags, that may evidence fraud or misrepresentations. (4/19/19 Aff at ¶¶10, 15, 19, 26, 28, 34, 35.) The question is whether these flags were enough to give plaintiff knowledge of fraud and misrepresentation affecting the MLA or the addendums. If so, plaintiff could not avoid the arbitration provision and whether the MLA, the addendums, or the arbitration provision are permeated with fraud would be arbitrable. (*Housekeeper v Lourie*, 39 AD2d at 283.) The question is which arbitrator, New York or Nevis.

Defendants assert that the November 30, 2018 addendum puts the arbitration in Nevis. Plaintiff objects that he did not agree to the Nevis arbitration because the November 30, 2018 addendum and its arbitration provision are also permeated with fraud. Plaintiff may challenge his agreement to one arbitration provision even if he agreed to a prior arbitration provision. (*See Kennelly*, 33 AD3d 380 [defendant agreed to two prior agreements but specifically objected to third agreement].) The question is whether plaintiff accepted the $60,000 knowing that the MLA, the addendums or both were affected by fraud or misrepresentation.

The virtues of arbitration are speed and finality. (*Matter of Weinrott (Carp)*, 32 NY2d at 198.) Here, an immediate hearing to determine whether the arbitration proceeds in Nevis or New York furthered those purposes. (*See Oberlander v Fine Care*, 108 AD2d 798 [2d Dept 1985] [an evidentiary hearing is necessary to resolve the issue of whether the entire agreement including the arbitration provision is permeated with fraud].) Accordingly, the court held a hearing on April 22 and 24, 2019 at which plaintiff testified and submitted documentary proof to support his claim that the

November 2018 addendum, specifically the Nevis arbitration clause, was permeated by fraud. Defendants' attorney was present, but failed to present any evidence on the issue.

Preliminary Injunction

Plaintiff seeks a preliminary injunction enjoining Defendants from participating in the Nevis arbitrations. A preliminary injunction is a "drastic remedy." (*Edgeworth Food Corp. v Stephenson*, 53 AD2d 588, 588 [1st Dept 1976].) Before a court may issue a preliminary injunction, the movant must establish (1) a likelihood of success on the merits of the action, (2) the danger of irreparable harm in the absence of a preliminary injunction, and (3) a balance of equities in favor of the moving party. (*Gliklad v Cherney*, 97 AD3d 401, 402 [1st Dept 2012] [citations omitted].)

Plaintiff testified that he is a bioengineer and experienced inventor, but financially naive. (4/19/19 Aff at ¶ 5.) When he decided to use his CODX shares as collateral for a loan of $500,000[10] to invest in business opportunities, pay down his home mortgage, and renovate his home, he did so without an attorney. (*Id.* at ¶¶ 6, 9.) This court has the authority to stay an arbitration where the underlying agreement or the arbitration provision is permeated with fraud. Plaintiff establishes with credible testimony a likelihood of success on the merits that the Nevis arbitration provision is permeated with fraud. (NYSCEF Doc. 186.) Documentary evidence corroborates that the MLA was amended to avoid the SEC's jurisdiction over the shares and transactions here which evidences a fraudulent scheme. (Plaintiff's exhibit 9, iMessage [not filed in NYSCEF].).

[10] While the amount of the loan on the cover of the MLA is $1.5 million, plaintiff offered documentary proof of Defendants' offers to increase the loan to $3.5 million and even $6 million. (4/19/19 Aff at ¶¶ 24, 25, 46.)

Although the shares were restricted, and the loan was to be secured by the shares, Defendants began selling the shares before the closing. Moreover, the MLA was for a $1.5 million loan, but plaintiff received only $60,000 yet Defendants assert that plaintiff defaulted first. Due to the expedited nature of the proceeding, the court confines its finding of success on the merits to the Nevis arbitration provision. The issue of whether the MLA and addendums are permeated with fraud must await the court's decision on the Defendants' motion to dismiss.[11] Until then, the court is constrained to assess success on the merits without making any findings of fact.

Plaintiff may be irreparably harmed if his CODX shares are transferred or removed from the jurisdiction. Money damages may not be calculable if the price of CODX shares is artificially depressed by the sale of a large number of shares. (*See* https://finance.yahoo.com/quote/CODX?p=CODX&.tsrc=fin-srch-v1.) Further, trading history evidences a thin market for CODX shares and volatile prices.

Finally, the balance of equities favors plaintiff because Defendants failed to identify any equities favoring them. Defendants' only argument in opposition to motion 04 is that the Nevis arbitration and the MLA arbitration provision preclude this court from exercising jurisdiction. (NYSCEF Doc. 92). In light of the MLA's New York arbitration provision, the court has authority to maintain the status quo. However, a court order directing the parties to arbitration before AAA must await the court's resolution of Defendants' motion to dismiss.

Accordingly, it is

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[11] The parties are not precluded from agreeing to proceed with AAA arbitration in New York as they agreed in the MLA.

ORDERED that motion 04 is granted and defendants America 2030 Capital, LLC, Bentley Rothschild Capital Ltd. Corp, and Val Sklarov are enjoined from participating in the Nevis arbitration until further order of this court; and it is further

ORDERED that plaintiff shall file an undertaking of $10,000; and it is further

ORDERED that the parties are directed to file trial exhibits and transcripts not already filed in ECF.

6/20/19
DATE

ANDREA MASLEY, J.S.C.

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