

<b>Fuller v Uber Tech. Inc.</b>
2020 NY Slip Op 33188(U)
September 25, 2020
Supreme Court, New York County
Docket Number: 150289/2020
Judge: Paul A. Goetz
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**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

PRESENT: HON. PAUL A. GOETZ PART IAS MOTION 47EFM

*Justice*

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TIM FULLER,

Plaintiff,

- v -

UBER TECHNOLOGIES INC., JOEL ACOSTA, BRYCE  
WILLIAMSON, AND APEX SYSTEMS, LLC,

Defendants.

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INDEX NO.	150289/2020
MOTION DATE	
MOTION SEQ. NO.	001, 002
<b>DECISION + ORDER ON MOTION</b>	

The following e-filed documents, listed by NYSCEF document number (Motion 001) 9-25, 27-30 were read on this motion to/for COMPEL ARBITRATION.

Plaintiff Tim Fuller commenced this action against defendants Apex Systems, LLC, a national staffing agency, its client, Uber Technologies, and two of Uber’s employees, for negligence, gender discrimination, sexual harassment, retaliation, hostile work environment, aiding and abetting and assault under the New York State Human Rights Law and the New York City Human Rights Law. Plaintiff alleges that he was subject to offensive discriminatory comments and terminated from his job at Uber Eats after reporting the sexual harassment of his co-workers. In motion #001, defendant Apex moves pursuant to CPLR 7503(a) and the Federal Arbitration Act (FAA), 9 U.S.C. Sec. 1 et. seq., to compel arbitration of the claims asserted against it pursuant to its employment contract with plaintiff. In motion #002, defendant Uber and its employee defendant Bryce Williamson also move to compel arbitration of the claims asserted against them. The motions are consolidated for purposes of this decision.

Defendants argue that the claims fall within the broad arbitration provision in plaintiff’s employment contract with Apex, which provides that the parties agreed “to arbitrate any dispute

arising out of or related to [Fuller's] employment . . . .[including] disputes regarding the employment relationship, any city, state, county or federal wage-hour law, compensation, breaks, and rest periods, training, termination, or harassment, and any claims arising out of law protecting trade secrets, the Americans with Disabilities Act, Age Discrimination in Employment Act, Family Medical Leave Act, Fair Labor Standards Act, Employment Retirement Income Security Act, Genetic Information Non-discrimination Act, Title VII of the Civil Rights Act of 1964, state statutes addressing the same or similar subject matters . . . ." Affidavit of Michele McCauley sworn to on June 8, 2020, Exh. 2, Dispute Resolution Agreement, para. 1. Plaintiff signed the dispute resolution agreement in connection with his hire by Apex on March 29, 2019, and his temporary assignment to Apex's client, Uber Technologies, Inc., pursuant to the Contract Employee Agreement. McCauley Aff., Exh. 1, Contract Employee Agreement. Although plaintiff had the ability to opt-out of the dispute resolution agreement either by not signing it or notifying Apex of his desire to opt-out pursuant to Section 8 of the dispute resolution agreement, plaintiff chose to sign the agreement. McCauley Aff., para. 6.

As an initial matter, the FAA is applicable to the dispute resolution agreement as it was signed in connection with plaintiff's hire by Apex, a national staffing agency, and therefore concerns transactions affecting interstate commerce. *See Cusimano v. Schnurr*, 26 N.Y.3d 391 (2015) (stating that FAA applies to contracts affecting interstate commerce and interpreting this broadly to hold that FAA is applicable to contracts executed by family members, all located in New York concerning their ownership and operation of real estate in New York); *Zendon v. Grandison Mgmt.*, 18-CV-4545, 2018 WL 6427636, at \*3, n. 1 (E.D.N.Y. Dec. 7, 2018) (applying FAA to employment contracting with multi-state staffing agency). The FAA requires courts to enforce valid arbitration agreements. *Monarch Consulting, Inc. v. Nat'l Union Fire Ins.*, 26 N.Y.3d

659, 665 (2016). Under the FAA, a court petitioned to compel arbitration is limited to addressing certain threshold questions, including, as relevant here, whether the claims are covered under the arbitration agreement between the parties. *JLM Indus. V. Stolt-Nielsen*, 387 F.3d 163, 169 (2d Cir. 2004); *see also* CPLR 7503 (“[w]here there is no substantial question whether a valid agreement was made or complied with . . . the court shall direct the parties to arbitrate.”).

Plaintiff’s primary argument for avoiding arbitration is that his dispute resolution agreement with Apex has a carve out for sexual harassment claims, and thus these claims are not subject to arbitration. However, the exception that plaintiff refers to in the agreement merely provides that “[c]laims of sexual harassment or retaliation for reporting sexual harassment are excluded from coverage of this Agreement, to the extent required by applicable law.” McCauley Aff., Exh. 2, para. 1(c). Plaintiff argues that the applicable law is New York law and that under CPLR 7515, contract provisions requiring the mandatory arbitration of sexual harassment claims are prohibited. However, as discussed above, the FAA is applicable here and it preempts any inconsistent state law. Thus, CPLR 7515 cannot block Apex from enforcing its arbitration agreement with plaintiff to arbitrate his sexual harassment claims. *Latif v. Morgan Stanley & Co.*, 18-CV-11528, 2019 WL 2610985, at \*3 (S.D.N.Y. June 26, 2019).

Plaintiff also argues that defendants Uber and Williamson cannot compel arbitration because they are not signatories to the dispute resolution agreement. Of course an obligation to arbitrate can be based only on consent and, thus, as a general matter, only signatories to a contract are bound by and are entitled to enforce a contract’s arbitration clause. *Sokol Holdings, Inc. v. BNB Munai Inc.*, 542 F.3d 354, 358 (2d Cir. 2008). However, under principles of estoppel, a non-signatory to an arbitration agreement may compel a signatory to arbitrate a dispute where the relationship between the parties, the contracts they signed and the issues raised among them

demonstrates that the issues that the non-signatory is seeking to resolve in arbitration are intertwined with the agreement. *Id.* (internal quotations and citations omitted). Further, the relationship between the parties must indicate that the signatory either intended the agreement to apply to the non-signatory or that it would be inequitable for the signatory to refuse to arbitrate on the ground that it did not have an agreement to arbitrate with the non-signatory. *Id.* at 361.

As discussed above, the dispute that the Uber defendants seek to resolve is clearly related to and covered by the dispute resolution agreement. While the dispute resolution agreement was executed by Apex, as plaintiff's employer, it is clear based on the employment contract that plaintiff would be performing work for Uber, which is designated as Apex's client in the employment contract. McCauley Aff., Exh. 1, para. 26. Indeed, in plaintiff's complaint, he does not distinguish between the defendants, treating them all as employers for purposes of his claims. Under these circumstances, it would be inequitable to allow plaintiff to avoid arbitrating his employment related claims against the Uber defendants simply because they are not signatories to the dispute resolution agreement. *See Ragone v. Atlantic Video at Manhattan Center*, 595 F.3d 115, 127 (2d Cir. 2010) (non-signatory could compel arbitration of Title VII sexual harassment claims where plaintiff understood non-signatory to be her co-employer).

Under the FAA, a court must stay proceedings after all claims have been referred to arbitration. *Katz v. Cellco P'ship*, 794 F.3d 341, 344 (2d Cir. 2015); *see also* CPLR 7503 (a judicial order compelling arbitration operates as a stay of the pending action). Accordingly, it is

ORDERED that the motions to compel arbitration are granted; and it is further

ORDERED that the action is stayed pending arbitration.

9/25/20  
DATE

  
PAUL A. GOETZ, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE