Boerum v Charles
2022 NY Slip Op 32900(U)
August 19, 2022
Supreme Court, Kings County
Docket Number: No. 510368/20
Judge: Larry D. Martin
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At an IAS Term, Part 41 of the Supreme Court of the State of New York held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 1st day of June, 2022.

PRESENT: **Larry D. Martin, J.S.C.**

CHRISTOPHER BOERUM and LORAINE BOERUM,

Plaintiffs,

-against-

TERRY JEAN CHARLES, RASIER LLC, RASIER CA LLC, and "JOHN DOE," name being fictitious, identity presently unknown,

Defendants.

JORGE GUEVARA-SANCHEZ,

Plaintiff,

-against-

TERRY JEAN CHARLES, UBER TECHNOLOGIES, INC., RASIER-NY, LLC, CHRISTOPHER J. BOERUM, and JOHN DOE (name being fictitious and unknown),

Defendants.

No. 510368/20

DECISION & ORDER
Motion No. 002

This case arises from a three-car accident in January 2020. Plaintiff Jorge Guevara-Sanchez was a passenger ("Uber Passenger") in the vehicle driven by Defendant Tierry Jean Charles ("Uber Driver"), when another vehicle, operated by "John Doe," made an unsafe lane change, striking Uber Driver's vehicle causing it to hit Plaintiff Christopher Boerum's vehicle carrying his wife, Loraine Boerum (the "Boerums"). Doe fled the scene.

I.

In June 2020, Boerums brought the above-captioned action against Rasier LLC, Rasier CA LLC (alleged subsidiaries of Uber), Uber Driver, and John Doe alleging serious personal injuries.[1]

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1 *See* Summons & Compl., Doc. No. 1.

Charging the same, in January 2021, Uber Passenger sued Uber Technologies, Inc. and Rasier-NY, LLC (together, "Uber"), Uber Driver, Mr. Boerum, and John Doe also in this Court. *See Guevara-Sanchez v. Charles*, No. 500333/21 ("Uber Passenger Case"). In October 2021, Uber Passenger amended his Complaint to allege that, by function of having used the rider version of the Uber App (the "Rider App") to connect with Uber Driver, Uber is responsible for Uber Driver's negligence.[2]

Uber rebuts that Uber Passenger's claims were improperly brought in this Court since, when Uber Passenger created an account on the Rider App, Uber Passenger consented to its terms and conditions which included an arbitration clause ("Arbitration Agreement"). Thus, in January of this year, Uber sent Uber Passenger notice of intention to arbitrate.[3] *See* CPLR 7503(c) ("A party may serve upon another party a demand for arbitration or a notice of intention to arbitrate"). It is undisputed that Uber Passenger did not object within 20 days as required to stay arbitration. *Id.* ("An application to stay arbitration must be made by the party served within twenty days after service upon him of the notice or demand, or he shall be so precluded."). In February, after Uber Passenger refused to discontinue his suit, Uber filed and duly served a demand for arbitration with the American Arbitration Association ("AAA") (the "Demand").[4] AAA initiated arbitration within the month.[5]

After Uber Passenger Case was consolidated with this one,[6] in March, concerned that by engaging in discovery in this case, Uber risks waiving its right to arbitrate Uber Passenger's claims, Uber moved to compel arbitration of Uber Passenger's claims.[7] *See* CPLR 7503(a) ("A party aggrieved by the failure of another to arbitrate may apply for an order compelling arbitration."). Uber Passenger has not opposed, but the Boerums, though not alleged to be party to the Arbitration Agreement, object on the grounds that severance of Uber Passenger Case would prejudice them by delaying and requiring duplicative discovery.[8] Uber's application to compel arbitration of Uber Passenger's claims is now before this Court.

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2 *See* Uber Passenger Case, Amended Compl., Doc. No. 30.
3 *See* Ex. D, Notice of Intention to Arbitrate, Doc. No. 39.
4 *See* Ex. G, Doc. No. 42.
5 *See* Ex. H, Doc. No. 43.
6 *See* Consolidation Order, Doc. No. 32,
7 *See* Order to Show Cause, Doc. No. 44.
8 The Boerums also unavailingly argue that, by failing to raise this issue when Uber Driver moved to consolidate, *see* Motion No. 001, Doc. Nos. 21–29, *res judicata* bars raising it now. As a matter of law, the doctrine's application requires "a final disposition on the merits" in the prior suit. *Shelley v. Silvestre*, 66 AD3d 992, 993 (2d Dept 2009).

II.

Since Uber Passenger does not oppose Uber's application, and is, in any event, barred from objecting now under CPLR 7503(c), this Court addresses only the Boerums' argument against staying this case pending arbitration of Uber Passenger's claims. *See Matter of Steck (State Farm Ins. Co.)*, 89 NY2d 1082, 1084 (1996) ("CPLR 7503(c) requires a party . . . to move to stay such arbitration within 20 days of service of such demand, else he or she is precluded from objecting.").

At the outset, notably, arbitration "is a favored method of dispute resolution in New York." *New Brunswick Theological Seminary v. Van Dyke*, 184 AD3d 176, 178 (2d Dept 2020). Likewise, nationally. *See Nitro-Lift Techs., L.L.C. v. Howard*, 568 US 17, 20 (2012) (Federal Arbitration Act declares a national policy favoring arbitration); 9 USC § 2. Thus, as here, "[w]here there is no substantial question whether a valid agreement was made or complied with . . . the court shall direct the parties to arbitrate." CPLR 7503(a). "Once a valid arbitration agreement is identified, an arbitration should only be stayed 'when the sole matter sought to be submitted to arbitration is *clearly* beyond the arbitrator's power.'" *Protostorm, Inc. v. Foley & Lardner LLP*, 193 AD3d 486, 486 (1st Dept 2021) (quoting *Silverman v. Benmor Coats, Inc.*, 61 NY2d 299, 309 (1984) (emphasis added).

Moreover, as this Department has repeatedly held, "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 e.g., Lake Harbor Advisors, LLC v. Settle. Services Arb. and Mediation, Inc.*, 175 AD3d 479, 480 (2d Dept 2019); *Weiss v. Nath*, 97 AD3d 661, 663 (2d Dept 2012); *Anderson St. Realty Corp. v. New Rochelle Revitalization, LLC*, 78 AD3d 972, 975 (2d Dept 2010). Here, there is one event—a three-car accident—from which *all* the instant issues arise. It is therefore likely that the determination of issues in arbitration may well dispose of nonarbitrable matters the Boerums may litigate.

Nonetheless, the Boerums point to inapposite cases and CPLR provisions for the proposition that, due to being of advanced age—Christopher and Lorraine Boerum are 72 and 69 years old, respectively—staying this case pending arbitration would be prejudicial. *See, e.g.*, CPLR 3403(a)(4) ("Civil cases shall be tried in the order in which notes of issue have been filed, but the following shall be entitled to a preference . . . any action upon the application of a party who has reached the age of seventy years."). To the extent that support for the Boerums' argument exists, it has not been presented.

III.

Accordingly, it is hereby

ORDERED, Uber's motion to compel arbitration of Plaintiff, JORGE GUEVARA-SANCHEZ's claims against Defendants UBER TECHNOLOGIES, INC. and RASIER-NY, LLC is **granted**, which shall operate to **stay** this proceeding.

Dated: August 19, 2022
Brooklyn, New York

Hon. Larry D. Martin
Supreme Court of the State of New York

HON. LARRY MARTIN
JUSTICE OF THE SUPREME COURT