

**Ruiz v Revel Tr. Inc.**

2022 NY Slip Op 32977(U)

September 1, 2022

Supreme Court, Kings County

Docket Number: Index No. 527084/2019

Judge: Richard J. Montelione

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This opinion is uncorrected and not selected for official publication.

At IAS Part 99 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse located at 360 Adams Street, Brooklyn, Brooklyn, NY 11201, on the \_\_\_ day of \_\_\_\_\_ 2022.

**SEP 01 2022**

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS: PART 99

-----X  
JOHN RUIZ,

Plaintiff,

-against-

REVEL TRANSIT INC.; B. WILHELM & CO., LLC,  
WILHELMS HOUSEWARES; SHOV WING WANG; and  
CONGREGATION KHAL TORAS CHAIM INC. d/b/a CONG  
VIZNITZ D'KHAL TORAS CHAIM d/b/a, YESHIVAS  
AHAVAS ISRAEL; and YESHIVATH VIZNITZ D'KHAL  
TORATH CHAIM INC.,

Defendants.

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The following papers were read on this motion pursuant to CPLR 2219(a):

**DECISION/ORDER**

Index No.: 527084/2019  
Motion Date: 8/3/2022  
Motion Cal. No.:  
Mot. Seq. 1&2

<u>Papers</u>	NYSCEF DOC. #
Plaintiff's Notice of Motion dated March 6, 2020, a) Striking the Sixth (waiver of plaintiff's right to a trial by jury) and Ninth Affirmative Defenses (binding arbitration) alleged in Defendant, Revel Transit Inc's, Answer dated February 7, 2020; staying any arbitration demanded by Defendant, Revel Transit, Inc., Attorney Affirmation of Jeffrey B. Manca, Esq., affirmed on March 17, 2020; Exhibits A-J.....	17-28
Defendant Revel Transit, Inc.'s motion dated July 24, 2020: 1) Granting Defendant's Cross-Motion to Compel Arbitration in its entirety; and 2) For such other relief this Honorable Court deems just and necessary; Affidavit of Paul Suhey, duly sworn on July 22, 2020; Exhibits A-L; Attorney Affirmation in opposition to plaintiff's motion and support of defendant Revel Transit, Inc.'s cross-motion, affirmed on July 24, 2020; Exhibits A-H.....	30-52
Defendants Congregation Khal Toras Chaim Inc. D/B/A Cong Viznitz D'khal Toras Chaim D/B/A Yeshivas Ahavas Israel; and Yeshivath Viznitz D'khal Torath Chaim Inc.'s opposition to defendant's cross-motion by way of attorney affirmation of Steven F. Granville, Esq., affirmed on August 24, 2020, in.....	66

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MONTELIONE, RICHARD J., J.

This action was commenced by filing a summons and complaint on December 11, 2019, which alleges personal injuries as a result of a motor vehicle accident on September 27, 2019, involving a moped rented from defendant Revel Transit, Inc. Plaintiff moves to strike the sixth and ninth affirmative defenses asserting respectively waiver of a jury trial and binding arbitration under its rental agreement. Defendant Revel Transit, Inc. cross-moves to compel arbitration and stay the proceedings pending confirmation of an arbiter's award. Defendants Congregation Khal Toras Chaim Inc. D/B/A Cong Viznitz D'khal Toras Chaim D/B/A Yeshivas Ahavas Israel and Yeshivath Viznitz D'khal Torath Chaim Inc. assert that to direct arbitration would be the equivalent of severance which they oppose.

The court finds no issue of fact that the terms of the rental agreement of the moped included an arbitration clause. The allegations that the moped was not properly maintained is directly related to the issue of liability and causation regarding this accident. *See Weiss v. Nath*, 97 A.D.3d 661, 663, 949 N.Y.S.2d 81, 84, 2012 N.Y. Slip Op. 05513, 2012 WL 2816700 (AD 2<sup>nd</sup> Dept 2012):

“ [W]here 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’ ” (*Anderson St. Realty Corp. v. New Rochelle Revitalization, LLC*, 78 A.D.3d 972, 975, 913 N.Y.S.2d 114, quoting 4-24 N.Y. Practice Guide: Business and Commercial § 24.09[4]). However, courts have the power to sever arbitrable causes of action from nonarbitrable causes of action where judicial economy would not be served by their consolidation, and where there is no danger of inconsistent rulings by the arbitrator and the court, or where there is no potential that the determination of the arbitrable causes of action would dispose of or significantly limit the issues involved in the nonarbitrable causes of action (*see American Intl. Group, Inc. v. Greenberg*, 60 A.D.3d 483, 484, 875 N.Y.S.2d 39; *Matter of City of Schenectady [Schenectady Patrolmen's Benevolent Assn.]*, 138 A.D.2d 882, 526 N.Y.S.2d 259).

That court notes that all the decisions provided by defendant Revel Transit, Inc. in support of a stay involve two parties to the arbitration agreement and do not involve, as present in this action, multiple defendants.<sup>1</sup> Here, Revel Transit, Inc. cross claims against co-defendants and certain of

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<sup>1</sup> Decision and Order of Judge Frank P. Nervo in the Gina Vergel v. Revel Transit Incorporated case, New York County Supreme Court, Index No. 150020/2021, entered on May 11, 2021; Decision and Order of Judge Paul A. Goetz in the Erick Das Chagas v. Revel Transit Incorporated case, New York County Supreme Court, Index No. 150197/2021, entered on June 16, 2021; Decision and Order of Judge Frank P. Nervo in the Jessica Long v. Revel Transit Incorporated case, New York County Supreme Court, Index No. 150413/2021, entered on June 16, 2021;

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the co-defendants cross claim against Revel Transit, Inc. The complaint alleges negligence by Revel Transit, Inc. in maintaining the moped and Revel Transit, Inc. cross-claims against other co-defendants alleging their negligence who likewise cross-claim against Revel Transit, Inc. Unlike the multiparty defendants in *Neesemann v Mt. Sinai W.*, 198 AD3d 484, 486, 156 NYS3d 161, 162-63, 2021 NY Slip Op 05633, 2021 WL 4778362 [1st Dept 2021] where the court allowed the continuation of the proceedings, even though two parties agreed to arbitration, because the causes of action involving the parties not subject to arbitration *were not factually intertwined*, here the issue of maintenance of the moped is directly related to the vehicular accident and the negligence of the other co-defendants. If the causes of action involving the defendants were not intertwined, the court would be mandated to sever the parties not subject to arbitration from the action. *See Weiss v. Nath*, 97 A.D.3d 661, 663.

Defendant Revel Transit, Inc. is entitled to compel arbitration even when there is a multi-party action involving other defendants. *See Neesemann v Mt. Sinai W.*, 198 AD3d 484, 486:

Finally, plaintiff failed to show that she will be prejudiced by having to litigate the claims in different fora at the risk of conflicting verdicts. 'The mere fact that plaintiffs named additional defendants, who are not signatories to the arbitration agreement, does not foreclose [a defendant's] right to enforce arbitration' (*Minogue v. Malhan*, 178 A.D.3d 447, 448, 114 N.Y.S.3d 62 [1st Dept. 2019]). The court properly exercised its discretion in finding that numerous co-defendants had treated decedent at separate and distinct times and those claims were not so intertwined with her claims against Kindred as to result in prejudice and/or to warrant a stay of all proceedings (*id.*).

Based on the foregoing, it is

ORDERED that plaintiff's motion to strike the sixth (waiver of plaintiff's right to a trial by jury) and ninth affirmative defenses (binding arbitration) and to stay arbitration is DENIED; and it is further

ORDERED that defendant Revel Transit, Inc.'s cross-motion to Compel Arbitration is GRANTED and plaintiff and defendant Revel Transit, Inc. are to file the necessary paperwork to

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Decision and Order of Judge W. Franc Perry In the Matter of the Application of Lezer Weiss v. Revel Transit Incorporated action, New York County Supreme Court, Index No. 651018/2021, entered on July 9, 2021; Decision and Order of The Honorable Frank Nervo in the Emelie Moeslein v. Revel Transit Inc., case, New York County Supreme Court, Index No. 450744/2021, dated May 26, 2022; Troy Harrison v. Revel Transit Inc., case, Kings County Supreme Court, Index No. 519046/2020, dated February 7, 2022; Benjamin Weissman v. Revel Transit Inc., case, New York County Supreme Court, Index No. 152136/2021, dated February 25, 2022; and Afadikwei Reyes v. Revel Transit Inc., case, Kings County Supreme Court, Index No. 515810/2020, dated March 30, 2022.

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commence arbitration proceedings within 30 days of entry of this order or failing to do so shall result in its waiver of arbitration; and it is further

ORDERED that this matter is STAYED pending a determination by this court of an application seeking to confirm or set aside the award of the assigned arbitrator; and it is further

ORDERED that any party may move the court to lift the stay in the event of any delay in seeking a determination through arbitration and/or confirmation or to set aside the decision of the assigned arbitrator; and it is further

ORDERED that all other requests for relief are DENIED.

This constitutes the decision and order of the Court.



Hon. Richard J. Montelione