

Moeslein v Tong

2022 NY Slip Op 33623(U)

October 20, 2022

Supreme Court, New York County

Docket Number: Index No. 450744/2021

Judge: Frank P. Nervo

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This opinion is uncorrected and not selected for official publication.

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

PRESENT: HON. FRANK P. NERVO PART 04

Justice

-----X

EMILIE MOESLEIN,

Plaintiff,

- v -

FRANCIS TONG, REVEL TRANSIT INC.

Defendant.

-----X

INDEX NO. 450744/2021

MOTION DATE 06/21/2022

MOTION SEQ. NO. 002

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99

were read on this motion to/for REARGUMENT/RECONSIDERATION.

Plaintiff moves for reargument contending that the Court's prior decision denying a stay of arbitration failed to consider claims asserted against co-defendant Tong. Defendant Tong joins in plaintiff's request. Defendant Revel Transit opposes contending that the Court's denial was proper.

The purpose of reargument is to provide "a party an opportunity to establish that the court overlooked or misapprehended relevant facts or misapplied principles of law" (*Foley v. Roche*, 68 AD2d 558, 567 [1st Dept 1979]); see CPLR § 222I[d][2]). "Its purpose is not to serve as a vehicle to permit the unsuccessful party to argue once again the very questions previously decided" (*id.*). Nor is reargument a proper forum to present arguments different from

those originally asserted (*William P. Pahl Equip. Corp. v. Kassis*, 182 AD2d 22 [1st Dept 1992] *lv. dismissed in part and denied in part* 80 NY2d 1005 [1992]).

Where claims are inextricably intertwined, they generally should be heard in the same forum (*see e.g. Young v. Jaffe*, 282 AD2d 450 [2d Dept 2001]). Here, however, the claims are not inextricably intertwined (*see e.g. All Metro Health Care Services, Inc., v. Edwards*, 884 NYS2d 648 [Sup. Ct. NY County 2009] [Marcy S. Friedman, J.]). Although plaintiff alleges injuries from a single accident, plaintiff's claims against each defendant are factually and legally distinct, and do not require single-forum adjudication. Plaintiff alleges, in essence, that defendant Tong caused her accident by negligently opening a car door. As against defendant Revel, plaintiff alleges, *inter alia*, that faulty brake maintenance caused her accident. Put simply, the determination of either issue is not dispositive on the other - i.e. a finding that brakes were improperly maintained by Revel Transit does not preclude a finding of liability against Tong and vice versa. Having assented to the arbitration agreement with Revel Transit, plaintiff is bound to arbitrate her claims against defendant Revel Transit.

Assuming, *arguendo*, that the claims were inextricably interwoven, “where arbitrable and nonarbitrable claims are inextricably interwoven, the proper course is to stay judicial proceedings pending completion of the arbitration” (*County Glass & Metal Installers, Inc. v. Pavarini McGovern, LLC*, 65 AD3d 940 [1st Dept 2009] [internal quotation omitted]; *see also Brennan v. A.G. Becker, Inc.*, 127 AD2d 951 [3d Dept 1987] finding the Court could properly sever nonarbitrable causes of action from arbitral causes of action), and not, as plaintiff argues, stay arbitration pending judicial proceedings.

Accordingly, it is

ORDERED that leave to reargue is granted; and it is further

ORDERED that upon reargument the motion is granted to the extent of directing that plaintiff’s claims against defendant Francis Tong be severed and continue and further directing that plaintiff’s claims against defendant Revel Transit proceed to arbitration; and it is further

ORDERED that the Clerk of the Court shall mark the Court’s record to indicate that this matter is actively pending as against defendant Tong; and it further

ORDERED that counsel for plaintiff and defendant Tong shall confer and, within 20 days of this decision and order, file a proposed preliminary conference order via NYSCEF with courtesy copy to chambers ([SFC-Part4-Clerk@nycourts.gov](#) or 80 Centre Street Courtroom 327 New York, NY 10013).

Preliminary conference order forms are available on the Court’s website.

Where agreement cannot be reached regarding discovery contained in the proposed preliminary conference order, counsel shall file, contemporaneously with the proposed order, a single joint letter outlining the dispute and the parties’ respective positions as to same. Failure to timely submit a proposed preliminary conference order or letter, as above, shall result in the Court issuing an order *sua sponte*, shall constitute waiver of any objection to same, and may result in the imposition of sanctions against the parties or counsel, in the Court’s discretion.

THIS CONSTITUTES THE DECISION AND ORDER OF THE COURT.

10/20/2022
DATE



HON. FRANK P. NERVO
J.S.C.

CHECK ONE:

CASE DISPOSED
 GRANTED DENIED

NON-FINAL DISPOSITION
 GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE