STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. **SUPERIOR COURT**

[Filed: March 26, 2019]

ROBERT ESTRELLA, as the Executor of the Estate of Armando Damiani and the Executor of the Estate of Lillian Estrella, *Plaintiff,*	:	
v.	:	**C.A. No. PC-2017-5227**
MICHAEL DAMIANI, NAVIGANT CREDIT UNION, STEVEN DAMIANI, RICHARD A. RANONE and JANNEY MONTGOMERY SCOTT LLC, *Defendants.*	:	

DECISION

STERN, J. Defendant, Steven Damiani (Steven), moves this Court for an order determining those issues which are arbitrable and those that are nonarbitrable, severing the arbitrable issues, or, alternatively, staying this judicial proceeding in its entirety pending the outcome of arbitration between Janney Montgomery Scott LLC (Janney) and Armando Damiani (Mandy). Advancing similar arguments, Defendants, Janney and Richard A. Ranone (Ranone), move this Court for an *in limine* order excluding evidence concerning (1) the validity of Mandy's account with Janney (Janney Account) and (2) the validity of two disputed Transfer on Death forms (TODs). The Plaintiff, Robert Estrella (Estrella), in his capacity as Executor of Lillian Estrella's (Lillian) Estate and Mandy's Estate, has objected to the Defendants' motions.

I

Facts and Travel

On January 8, 2018, Estrella filed his First Amended Complaint (Amended Complaint) in his executory capacity. The Amended Complaint asserts various claims including the following:

> Count XI: Declaratory Judgment (Both Estates v. Steven, Ranone, and Janney);
> Count XII: Conversion (Both Estates v. Steven, Ranone, and Janney);
> Count XIII: Tortious Interference with Inheritance (Lillian's Estate v. Steven, Ranone, and Janney);
> Count XIV: Civil Conspiracy (Both Estates v. Steven, Ranone, and Janney);
> Count XV: Violation of R.I. Gen. Laws § 9-1-2 (Both Estates v. Steven, Ranone, and Janney);
> Count XVI: Breach of Fiduciary Duty (Mandy's Estate v. Ranone and Janney);
> Count XVII: Violation of R.I. Gen. Laws § 6-13.1-5.2 (Mandy's Estate v. Ranone and Janney); and
> Count XVIII: Constructive Trust (Both Estates v. Steven).

Janney and Ranone moved to compel arbitration of Estrella's claims based on an arbitration clause (2016 Clause) contained in the Janney "onboarding" paperwork, which purported to transfer into the Janney Account some of Mandy's assets previously held with a different financial institution. Pl.'s Ex. A at 1. Janney and Ranone argued that because Estrella's claims were subject to the 2016 Clause, this case needed to be dismissed or, at the very least, stayed pending arbitration. *Id.* at 12 ("The FAA requires that where issues before the court are arbitrable, the court shall stay the trial of the action but the court may dismiss, rather than stay, a case when all of the issues before the court are arbitrable."). Estrella opposed the motion, arguing the 2016 Clause was unenforceable because the onboarding paperwork was the product of an unconscionable procedure. Pl.'s Ex. B at 6. Estrella also argued that even if arbitration

were appropriate as to Janney, a stay should not issue because he had asserted some nonarbitrable claims. *Id.* at 12.

Before this Court issued a decision or held a hearing on the conscionability of the bargaining process, Janney and Ranone discovered a separate, 2009 arbitration agreement (2009 Agreement) entered between Mandy and Janney. Pl.'s Ex. C at 14. Based on the 2009 Agreement, Janney and Ranone again moved to compel arbitration (irrespective of the validity of the onboarding paperwork) and argued that the remainder of the case needed to be dismissed or stayed. Estrella again opposed the motion. Pl.'s Opp'n to Defs.' Mot. Dismiss and Compel Arbitration. On May 1, 2018, Judge Silverstein issued a bench decision in which he did not grant Janney and Ranone's request for a stay,[1] denied the request to compel Ranone's claims to arbitration, and ordered Estrella's claims against Janney to arbitration. Order ¶¶ 1-3, May 8, 2018. Since Judge Silverstein's ruling, the Parties have conducted and completed discovery and a trial date certain has been scheduled for March 5, 2019, less than a month from the time a hearing was held on the Defendants' present motions.

II

Discussion

A

Steven's Motion to Sever and/or Stay

Steven's argument is essentially this: the claims against Ranone and Steven are substantively identical to those against Janney—issues referable to arbitration—therefore, this Court must stay the trial until the arbitration is complete. His argument, entirely grounded in the

[1] The issue of whether declining to grant affirmative relief, such as here where Judge Silverstein declined to issue a stay, is a nuanced question; however, it is one not controlling to this Court's analysis.

Federal Arbitration Act (FAA), *see* 9 U.S.C. § 3 (1947), is misguided on two fronts: (1) Steven does not have standing to apply for a § 3 stay because he is not a party to the 2009 Agreement; and (2) the Mandy-Steven and Lillian-Steven claims—though based on the same legal theories and underlying facts as those contained in the Mandy-Janney claims—are not based on issues "referable to arbitration under an arbitration agreement."

Section 3 of the FAA, upon which Steven relies, provides in full:

> "If any suit or proceeding be brought in any of the courts of the United States upon any issue referable to arbitration under an agreement in writing for such arbitration, the court in which such suit is pending, upon being satisfied that the issue involved in such suit or proceeding is referable to arbitration under such an agreement, shall on application of one of the parties stay the trial of the action until such arbitration has been had in accordance with the terms of the agreement, providing the applicant for the stay is not in default in proceeding with such arbitration." 9 U.S.C. § 3.

The purpose of this provision, often referred to as the "mandatory stay," "is to guarantee that a party who has secured the agreement of another to arbitrate rather than litigate a dispute will reap the full benefits of its bargain." *Mendez v. Puerto Rican Int'l Cos., Inc.*, 553 F.3d 709, 711 (3d Cir. 2009).

1

Mandatory Stay

a

Whether a Nonparty can Apply for a § 3 Stay

A majority of courts, including the Massachusetts Appellate Court, have held that because the mandatory stay is only intended to benefit the contracting parties, nonparties to an arbitration agreement are not entitled to apply for a § 3 stay. *Id.*; *IDS Life Ins. Co. v. SunAmerica, Inc.*, 103 F.3d 524, 529 (7th Cir. 1996) (Posner, C.J.) ("Although not expressly so

limited, section 3 assumes and the case law holds that the movant for a stay, in order to be entitled to a stay under the [FAA], must be a party to the agreement to arbitrate, as must be the person sought to be stayed."); *Citrus Mktg. Bd. of Israel v. J. Lauritzen A/S*, 943 F.2d 220, 224 (2d Cir. 1991); ("We have construed section 3 not to authorize a stay at the behest of such a nonparty."); *Ross v. Health and Ret. Props. Trust*, 703 N.E.2d 734, 739 (Mass. App. Ct. 1998). *But see Waste Mgmt., Inc. v. Residuos Industriales Multiquim, S.A. de C.V.*, 372 F.3d 339, 342 (5th Cir. 2004) (opining that nonparties should be allowed to invoke § 3 in limited circumstances). "That is because a party who has not agreed to arbitrate will normally have a right to a court's decision about the merits of its dispute . . . ." *Cf. First Options of Chicago, Inc. v. Kaplan*, 514 U.S. 938, 942 (1995). The final phrase of the statute—"providing the applicant for the stay is not in default in proceeding with such arbitration"—supports the majority position because it contemplates that the litigant applying for the stay would also be a party to the arbitration. Adopting the majority view, Steven, as a nonparty not subject to the 2009 Agreement, has no right to invoke § 3 for a stay.

b

Whether the Claims Against Steven Involve "Issues Referable to Arbitration"

Even assuming a party has the statutory right to apply for a § 3 stay, a court must still determine whether the "issue" involved in the lawsuit is "referable to arbitration under an agreement in writing for such arbitration." Though courts have not had great occasion to consider this language, Chief Judge Posner, writing for the Seventh Circuit, explained that the word "issue" as used in § 3 was intended to enable a party who had contracted for arbitration to seek a stay where only one of the issues in the litigation—and not the entire claim—is subject to an arbitration agreement. *IDS Life Ins. Co.*, 103 F.3d at 529. Section 3 was never intended to

extend a benefit to a nonparty subject to nonarbitrable claims; this is so even where claims against a nonparty are "substantively" and "materially identical' to arbitrable claims. *Id.* Chief Judge Posner reasoned that looking only to the word "issue" would be to ignore the phrase "referable to arbitration under an agreement in writing for such arbitration," and, more fundamentally, a test of substantive identity of issues would be unworkable in the modern, commercial world where identical form contracts are the norm. *Id.*

The Seventh Circuit's interpretation is consistent with our Supreme Court's principles of statutory interpretation; namely, that a court should not adopt "an interpretation [that] would ignore" statutory requirements. *Martone v. Johnston Sch. Comm.*, 824 A.2d 426, 432 (R.I. 2003); *Barber v. Vose*, 682 A.2d 908, 917 (R.I. 1996) ("[I]t is not the function of this Court to rewrite the statute by judicial interpretation, nor is it legal for those charged with the responsibility of implementing the statute to subvert its directives . . . ."). Further, the Seventh Circuit's interpretation best comports with the FAA's purpose: "although the FAA reflects a liberal federal policy favoring arbitration agreements, its purpose is not to elevate such agreements above all other considerations. It makes arbitration agreements as enforceable as other contracts, but not more so." *Narragansett Elec. Co. v. Constellation Energy Commodities Grp., Inc.*, 563 F. Supp. 2d 325, 331 (D.R.I. 2008) (internal citations, quotation marks, and emphasis omitted). An interpretation, which looks to the language of an arbitration agreement itself—being careful not to blur the line between arbitrable and nonarbitrable claims—best promotes the balanced approach Congress strived to achieve. Therefore, not only is Steven not the appropriate party to request a § 3 stay, he is also mistaken in his position that the Mandy-Janney claims and the Mandy-Steven and Lillian-Steven claims involve the same "issues" for purposes of § 3.

2

Discretionary Stay

Even though a nonparty is not entitled to a mandatory stay under § 3, that does not *ipso facto* preclude a court from issuing a stay as a matter of discretion. The United States Supreme Court has noted that "at the district court's discretion, litigation may proceed against parties not subject to an arbitration agreement, even though claims against arbitrating parties have been stayed." *Narragansett Elec. Co.*, 563 F. Supp. 2d at 331 (citing *Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 20 n.23 (1983)); *WorldCrisa Corp. v. Armstrong*, 129 F.3d 71, 76 (2d Cir. 1997). The decision of whether to grant or deny a stay "'is one left to the district court (or to the state trial court under applicable state procedural rules) as a matter of discretion to control its docket.'" *Id.* (quoting *Moses H. Cone Mem'l Hosp.*, 460 U.S. at 20 n.23)); *see also Volkswagen of Am., Inc. v. Sud's of Peoria, Inc.*, 474 F.3d 966, 971 (7th Cir. 2007) (explaining that it is within a court's discretion whether to "stay the entire case . . . in cases involving both arbitrable and nonarbitrable issues"); *Am. Recovery Corp. v. Computerized Thermal Imaging, Inc.*, 96 F.3d 88, 97 (4th Cir. 1996) (same); *McCarthy v. Azure*, 22 F.3d 351 n. 15 (1st Cir. 1994) ("Of course, the district court in its discretion could stay litigation of nonarbitrable claims pending the outcome of an arbitration proceeding.").

The factors that bear on a trial court's discretionary inquiry include "'the risk of inconsistent rulings, the extent to which parties will be bound by the arbitrators' decision, and the prejudice that may result from delays.'" *Narragansett Elec. Co.*, 563 F. Supp. 2d at 331 (quoting *AgGrow Oils, L.L.C. v. Nat'l Union Fire Ins. Co. of Pittsburgh, PA*, 242 F.3d 777, 782-

83 (8th Cir. 2001)).[2] Courts are also concerned with whether principles of "judicial economy" favor a stay. *See, e.g., Allied Van Lines, Inc. v. Orth Van and Storage, Inc.*, No. 04 C 6004, 2005 WL 1563111, at *3 (N.D. Ill. June 3, 2005). Of course, "discretion" "denotes action taken 'in the light of reason as applied to all the facts and with a view to the rights of all the parties to the action while having regard for what is right and equitable under the circumstances and the law.'" *State v. Lead Indus. Ass'n, Inc.*, 69 A.3d 1304, 1309 (R.I. 2013) (citation omitted). Thus, the list of factors employed by other courts is neither binding nor exclusive.

Here, Steven contends primarily that the first factor—risk of inconsistent rulings—weighs in favor of issuing a stay because the Mandy-Janney claims are arbitrable and the Mandy-Steven and Lillian-Steven claims are identical, save for the named defendant. Such interdependence and overlap of issues, according to Steven, necessitates a stay of Estrella's Mandy-Steven and Lillian-Steven claims. While this Court is well aware that the risk of inconsistent rulings is an important consideration, this Court finds persuasive Estrella's proposal that there are ways to minimize the overlap in a subsequent arbitration proceeding. For example, arbitration by Mandy's Estate against Janney could be limited to enforcing a judgment obtained against Ranone under principles of *respondeat superior* and other theories of vicarious liability. In such a case, the issues before the arbitrator would actually be very different and unlikely to

[2] The *Narragansett* court states "[t]he primary exception to the exercise of this discretion arises when a partial stay risks 'inconsistent rulings' because the pending arbitration is 'likely to resolve issues material to [the] lawsuit.'" 563 F. Supp. 2d at 331 (citing *AgGrow Oils, L.L.C.*, 242 F.3d at 783). This would appear to suggest that a partial stay is mandatory when inconsistent rulings might result. However, it is clear that such was not the intention of the *Narragansett* court. The court goes on to discuss the various *discretionary* factors a court considers in determining whether to issue a stay of nonarbitrable claims in the event of potentially inconsistent rulings. Further, the *AgGrow Oils, L.L.C.* case itself, the persuasive precedent relied upon by the *Narragansett* court, states "[i]n a complex, multi-party dispute . . . issues such as the risk of inconsistent rulings, the extent to which parties will be bound by the arbitrators' decision, and the prejudice that may result from delays must be weighed in determining whether to grant a ***discretionary stay*** . . . ." 242 F.3d at 783 (emphasis added).

touch upon the issues presented here. Steven has not responded to these arguments. Finally, the possibility of inconsistent rulings is par for the course when it comes to parallel litigation: '"Congress in passing the [FAA]"' sought to enforce private agreements to arbitrate '"even if the result is 'piecemeal' litigation."' *See Narragansett Elec. Co.*, 563 F. Supp. 2d at 331 (quoting *Dean Witter Reynolds, Inc. v. Byrd*, 470 U.S. 213, 221 (1985)).

Furthermore, other courts have prioritized a litigant's constitutional right to his or her day in court over considerations of overlapping substantive issues. *See Anderson v. Evangelical Lutheran Good Samaritan Soc'y*, 308 F. Supp. 3d 1011, 1017-18 (N.D. Iowa 2018); *Portland Gen. Elec. Co. v. Liberty Mut. Ins. Co.*, No. 3:16-cv-00495-HZ, 2016 WL 4059658, at *7 (D. Or. July 27, 2016), *vacated and remanded on other grounds*; *DSMC, Inc. v. Convera Corp.*, 273 F. Supp. 2d 14, 31 (D.D.C. 2002). Estrella's action commenced in October of 2017, almost a year-and-a-half ago, and delaying any further would unnecessarily prejudice Estrella because it would deny him (and those he represents) the right to seek this Court's assistance in recovering funds which, as alleged by Estrella, were wrongfully taken. There is no comparable prejudice to Steven for having to defend against claims like any other litigant.[3] Considerations of prejudice weigh in favor of denying a stay.

To this Court, given the facts of this case, the most important consideration in determining whether to issue a stay is judicial economy and timeliness; courts have not

[3] Steven does attempt to argue that he may be subject to "duplicate liability"; however, courts are well-equipped to deal with situations where a party attempts to obtain "multiple forms of relief for the same injury." *Cf. Graff v. Motta*, 695 A.2d 486, 491 (R.I. 1997) (quoting *Calimlin v. Foreign Car Ctr., Inc.*, 467 N.E.2d 443, 448 (1984) (stating that "where the same acts cause the same injury under more than one theory . . . duplicative damage recoveries will not be permitted")). Therefore, it appears judicial remedies are available to prevent the potential duplication Steven prophesizes.

responded favorably to litigants moving for a stay at the eleventh hour when the arbitration remains in its infancy:

> "[J]udicial economy will not be served by granting a stay. It is unclear how long the arbitration proceeding will take to complete. Postponing the resolution of the issues raised in this case for some indefinite time does not comport with the efficient and timely judicial resolution of matters before the federal courts. Allowing a case to languish for years on this Court's docket would not serve the interest of this Court or the parties involved." *DSMC, Inc.*, 273 F. Supp. 2d at 31; *Portland Gen. Elec. Co.*, 2016 WL 4059658, at *7 (holding the same where the pending arbitration was still at the beginning stages and a panel of arbitrators had not been compiled).

Here, Steven quite literally could not have waited longer to move for a stay of the nonarbitrable claims against him. He was an active participant in this litigation, asking this Court to, among other requests, render a decision with respect to a preliminary injunction that cost a great deal of judicial time and resources. He also utilized broad discovery tools available under the Rhode Island Rules of Civil Procedure by propounding written discovery, taking depositions, and filing dispositive and *in limine* motions. Steven took advantage of the traditional methods and means of conducting discovery and, in so doing, allowed this case to "languish" on this Court's docket going on two years before requesting a stay. *DSMC, Inc*, 273 F. Supp. 2d at 31. Thus far, Steven has not offered a satisfactory reason for the postponement, leaving this Court to conclude that his impetus to ask for a stay was a last-ditch effort to avoid a jury trial at all costs. Moreover, the arbitration proceeding against Janney is not only in its infancy—the arbitration proceeding has not even been filed. As in *DSMC, Inc*, the fact that the Mandy-Janney arbitration remains in its early stages militates against a stay, which would extend the ultimate resolution of some of Estrella's claims with no end in sight. *Id.* While Steven has attempted to attribute to Estrella the delay in arbitration, Steven is equally as responsible for failing to move for a stay at

an earlier time and actively litigating this case. Steven could and should have asked for a stay when Janney and Ranone did so back in May.

In light of the foregoing considerations, principally judicial economy and the potential prejudice to Estrella, this Court denies Steven's request for a discretionary stay to the extent his motion can be construed as asking for one. Moreover, as should be made clear by this Court's discussion in § II(A)(1)(b), *supra*, the claims against Steven do not involve "issues" that are "referable to arbitration under an agreement in writing for such arbitration"; therefore, this Court likewise denies Steven's motion to sever.

B

Janney and Ranone's Motion to Exclude Evidence at Trial

Much like Steven's motion, Janney and Ranone assert that the validity of the Janney Account and the TODs are issues that have been compelled to arbitration and are, therefore, not properly before this Court. Janney and Ranone assert, in the alternative, that even if the Janney Account and the TODs are relevant to this proceeding, the evidence should nevertheless be excluded because of the potential undue prejudice, propensity to waste this Court's time, and possible jury confusion. As should be clear from the foregoing analysis of Steven's motion, the issues in this judicial proceeding are not "referable to arbitration under an agreement in writing for such arbitration."[4] *Supra* § II(A)(1)(b). Therefore, Janney and Ranone are mistaken in their

[4] This Court notes that in support of their earlier motion to compel claims against Ranone to arbitration, Janney and Ranone already argued to this Court about the identity of issues between Estrella's claims against Janney and those against Ranone. *See* Pl.'s Ex. F at 2 ("The claims made against each of the Defendants are identical and arise from the exact same set of facts and circumstances."). They argued that "it would make little sense for it to agree to arbitrate if employees could be sued separately without regard to the arbitration clause." Judge Silverstein, in denying the motion to compel as to claims against Ranone, cited *Constantino v. Frechette*, 897 N.E.2d 1262, 1266 (Mass. App. Ct. 2008), which states that "if [an employer] had wanted to bring its employees within the ambit of the [arbitration] agreement, it could easily have achieved

conclusion that this Court has no jurisdiction over the issues vis-à-vis Estrella's claims against Ranone.

Turning more specifically to Janney and Ranone's evidentiary-based arguments, this Court focuses its attention on Rule 403 of the Rhode Island Rules of Evidence, which provides, "[a]lthough relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." Our Supreme Court has stated that a "trial justice's discretion to exclude evidence under Rule 403 must be used sparingly . . . It is only when evidence is marginally relevant and enormously prejudicial that a trial justice must exclude it." *State v. DeJesus*, 947 A.2d 873, 883 (R.I. 2008).

Janney and Ranone have failed to meet their high burden. As explained herein, the ultimate issues in the nonarbitrable claims will not be decided by the arbitrator—only the issues in the claims against Janney will be decided by the arbitrator. Therefore, neither this Court nor the jury will be forced to make decisions knowing the ultimate issues are reserved for another forum. In fact, there is no reason for even informing the jury about the parallel arbitration against Janney. In terms of this Court's time and resources, the duplication of arguments in various fora is an inevitable and necessary consequence of parallel-track litigation—not a reason for excluding evidence under Rule 403. *See Narragansett Elec. Co.*, 563 F. Supp. 2d at 331 (quoting *Dean Witter Reynolds, Inc.*, 470 U.S. at 221) (discussing arbitration's tendency to produce "piecemeal' litigation").

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the desired result by an alternate drafting of the contract." It is apparent to this Court that Janney and Ranone's motion *in limine* is little more than a rehashing of the arguments it made in support of its motion to compel, only this time under the guise of a motion *in limine*.

Janney also argues that having key issues decided by the jury would run counter to the relief granted to it when this Court compelled claims against Janney to arbitration. However, the relief Judge Silverstein granted was quite narrow because of the language contained in the 2009 Agreement.[5] Judge Silverstein did not grant the motion to compel as to Ranone nor did he grant Janney and Ranone's motion to stay the remainder of the case. Admitting evidence of the validity of the TODs and the Janney Account against Ranone coalesces exactly with the relief Judge Silverstein granted. If this was not the outcome Janney had hoped for, it can, in the future, redraft its arbitration agreements to explicitly encompass actions against its agents. *See Constantino*, 897 N.E.2d at 1266 (suggesting the best remedy against "end-runs" that undercut a party's right to arbitrate claims against it is "alternate drafting of the contract").

Finally, Janney and Ranone's assertion that the jury is being put in a position potentially at odds with a later arbitration determination is the same "inconsistent rulings" argument Steven made: this Court has already addressed that concern at length. *Supra* § (II)(A)(2). Parallel litigation will always create a situation where one forum is faced with the prior decisions of another. Even if the Mandy-Janney arbitration had concluded first, this Court would have to address the arbitrator's earlier decisions in these judicial proceedings. Having failed to persuade this Court there is a basis for excluding evidence regarding the Janney Account and the TODs' validity, this Court denies Janney and Ranone's motion *in limine*.

[5] Janney could have taken its chances with the 2016 Clause and proceeded with the unconscionability hearing if it was so inclined. Janney made a strategic decision to use the 2009 Agreement instead.

III

Conclusion

For the reasons explained above, this Court denies Steven's motion to sever issues and/or stay this judicial proceeding pending the Mandy-Janney arbitration, as well as Janney and Ranone's motion for an *in limine* order excluding from trial evidence the validity of the Janney Account and the TODs. Counsel for the Plaintiff shall prepare and submit the appropriate Order for entry.

RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE:	Robert Estrella, as the Executor of the Estate of Armando Damiani and the Executor of the Estate of Lillian Estrella v. Michael Damiani, et al.
CASE NO:	PC-2017-5227
COURT:	Providence County Superior Court
DATE DECISION FILED:	March 26, 2019
JUSTICE/MAGISTRATE:	Stern, J.
ATTORNEYS:	
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