

Fitzpatrick v Revel Tr. Inc.

2024 NY Slip Op 32263(U)

July 1, 2024

Supreme Court, New York County

Docket Number: Index No. 452931/2022

Judge: Mary V. Rosado

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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. MARY V. ROSADO PART 33M

Justice

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INDEX NO. 452931/2022

PHELAN FITZPATRICK

MOTION DATE 05/25/2024

Plaintiff,

MOTION SEQ. NO. 001

- v -

REVEL TRANSIT INCORPORATED,

DECISION + ORDER ON MOTION

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120

were read on this motion to/for COMPEL ARBITRATION

Upon the foregoing documents, Defendant Revel Transit Incorporated's ("Defendant") motion to compel Plaintiff Phelan Fitzpatrick ("Plaintiff") to participate in binding arbitration is granted. Plaintiff's cross-motion seeking to stay the arbitration is denied.

I. Background

This is an action for personal injuries allegedly sustained by Plaintiff when he crashed while using an allegedly defective electronic moped owned by Defendant (NYSCEF Doc. 1). The accident allegedly happened on June 24, 2020 (id. at ¶ 21). On March 15, 2021, after filing its Answer with counterclaims, Defendant served Plaintiff with a demand for arbitration (NYSCEF Doc. 5). Defendant filed the instant motion seeking to compel arbitration on August 16, 2023 (NYSCEF Doc. 80).

Defendant cites to the terms and conditions which Plaintiff agreed to in order to utilize the Revel application ("App") and the terms of the rental agreement Plaintiff agreed in order to use the electronic moped (NYSCEF Docs. 86-87). Records indicated that Plaintiff created an account

with Revel on June 22, 2020, two days prior to his alleged accident. In creating his account, Plaintiff agreed to accept the Terms of Use to utilize Revel's mopeds. Plaintiff was also required to upload an image of his driver's license and accept the terms of a rental agreement. Data related to Plaintiff's Revel account shows Plaintiff accepted the Terms of Use and the terms of the Rental Agreement on June 22, 2020, both of which contained arbitration clauses.

In support of Defendant's motion to compel arbitration, Defendant cites to New York's strong public policy favoring arbitration, a plethora of other decisions enforcing Defendant's arbitration provision in analogous circumstances, and argues arbitration is appropriate since Plaintiff expressly agreed to arbitrate claims including personal injuries.

Plaintiff cross-moves to stay and to vacate the arbitration. Plaintiff argues the arbitration provisions are barred because New York law prohibits mandatory arbitration clauses in contracts for the sale of consumer goods. Plaintiff argues General Business Law 399-C is not preempted by the Federal Arbitration Act because the contract between Plaintiff and Defendant does not implicate interstate commerce. Plaintiff also argues that there was no agreement to arbitrate between the parties because the clickwrap agreements were insufficient to put Plaintiff on notice of the arbitration clauses. Plaintiff also argues that the language in the arbitration clauses were not clear or explicit to a reasonably prudent consumer, thereby precluding enforcement.

In reply, Defendant argues the contract does affect interstate commerce and therefore General Business Law 399-C is preempted. This is because through a single App, Revel members are able to access mopeds in multiple cities and multiple states and utilize GPS maps and tracking. The distribution of the mopeds involved import from China by various companies, and then leasing those mopeds from the various importing companies. Defendant also argues that Plaintiff was on inquiry notice of the clear and explicit arbitration clauses which Defendant seeks to enforce. This

is because Plaintiff clicked “I agree” and was on notice of the existence of additional contract terms to which he was agreeing.

II. Discussion

The very same issues raised here by the parties have been squarely addressed by the First Department in *Weissman v. Revel Transit*, 217 A.D.3d 430 (1st Dept 2023) which also involved a plaintiff who was injured on a Revel moped and was compelled to arbitrate his claims. In that case, the First Department found that the arbitration clause and terms of use were clear and explicit. The First Department likewise held that because plaintiff was “required to affirmatively click a box on the screen acknowledging his awareness and agreement to the terms of service” that the plaintiff was on inquiry notice of the arbitration clause (*id.*). Therefore, Plaintiff’s clickwrap argument is unavailing and contradictory to the First Department’s ruling.

Plaintiff’s General Business Law 399-C argument is also unavailing, as the terms of condition and rental use agreement implicate interstate commerce (*Diamond Waterproofing Sys., Inc. v 55 Liberty Owners Corp.*, 4 NY3d 247, 252 [2005]). Being constrained by the First Department’s ruling in *Weismann*, the Court is compelled to grant Revel’s motion and compel arbitration.

ORDERED that defendant’s motion to compel arbitration and to stay this action is granted; and it is further

ORDERED that plaintiff Phelan Fitzpatrick shall arbitrate his claims against defendant Revel Transit Incorporated in accordance with the terms and conditions and rental agreement; and it is further

ORDERED that all proceedings in this action are hereby stayed, except for an application to vacate or modify said stay; and it is further

ORDERED that either party may make an application by order to show cause to vacate or modify this stay upon the final determination of the arbitration; and it is further

ORDERED that Plaintiff's cross motion is denied; and it is further

ORDERED that within ten days of entry, counsel for Defendant shall serve a copy of this decision and order, with notice of entry, on all parties via NYSCEF; and it is further

ORDERED that the Clerk of the Court is directed to enter judgment accordingly.

This constitutes the Decision and Order of the Court.

7/1/2024
DATE

Mary V Rosado Jsc
HON. MARY V. ROSADO, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION		
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED	<input type="checkbox"/>	OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER		
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE