SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS, PART 73

Index No.: 503903/2024
Motion Date:
Mot. Seq. No.: 1

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RICARDO MARTINEZ, individually and on behalf of all others similarly situated,

Plaintiff,

-against-

DECISION/ORDER

EQUINOX HOLDINGS, INC.,

Defendant.

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The following papers, which are e-filed with NYCEF as items 3-12, were read on this motion:

Defendant Equinox Holdings, Inc. ("Equinox") moves for an order, pursuant to CPLR 7503, compelling plaintiff Ricardo Martinez to arbitrate all the claims set forth in his complaint on an individual basis, staying this action pending the completion of arbitration, and granting all such other relief as the Court deems just and proper.

Background:

In this putative class action, the plaintiff Ricardo Martinez, on behalf of himself and others similarly situated, seeks damages under the New York Health Club Services Act ("HCSA"), which governs contracts for health club services. The HSCA provides: "[n]o contract for services shall require payment by the person receiving service or the use of the facilities of a total amount in excess of three thousand six hundred dollars per annum" (N.Y. Gen. Bus. Law ("NYGBL") § 623(1)). This statutory cap equates to no more than $300 per month for twelve months. Plaintiff claims that he is a member of Defendant Equinox's gyms in New York and has been paying in excess of $3,600 per year since at least 2021. Under NYGBL § 628, individuals damaged by a violation of the statute are permitted to bring a private right of action for recovery of damages.

Defendant Equinox now seeks to compel arbitration of plaintiff's claim based on the arbitration provisions contained in Plaintiff's Membership Agreement (see NYSCEF Doc. No.

6). Paragraph 7 of the Agreement, entitled "ARBITRATION AGREEMENT AND CLASS ACTION WAIVER", in relevant part, provides:

> 7.2 Arbitration: You agree to submit any and all Disputes (as defined in Section 7.4) **to binding arbitration pursuant to the Federal Arbitration Act (Title 9 of the United States Code), which will govern the interpretation and enforcement of this Arbitration Agreement**). Arbitration will be before either (1) JAMS (formerly known as Judicial Arbitration and Mediation Services), http://www.jamsadr.com, or (2) the American Arbitration Association (AAA), http://www.adr.org. If you initiate arbitration, you may choose between these two arbitration forums; if Equinox initiates arbitration, it will have the choice as between these two arbitration forums. YOU AND EQUINOX AGREE THAT, EXCEPT AS PROVIDED IN SECTION 7.4, ANY AND ALL DISPUTES WHICH ARISE AFTER YOU ENTER INTO THIS AGREEMENT WILL BE RESOLVED EXCLUSIVELY AND FINALLY BY BINDING ARBITRATION RATHER THAN IN COURT BY A JUDGE OR JURY, IN ACCORDANCE WITH THIS ARBITRATION AGREEMENT (*emphasis added*).
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> 7.3 Class Action Waiver: You agree that the arbitration of any Dispute will be conducted on an individual, not a class-wide, basis, and that no arbitration proceeding may be consolidated with any other arbitration or other legal proceeding involving Equinox or any other person. You further agree that you, and anyone asserting a claim through you, will not be a class representative, class member, or otherwise participate in a class, representative, or consolidated proceeding against Equinox, and that the arbitrator of any Dispute between you and Equinox may not consolidate more than one person's claims, and may not otherwise preside over any form of a class or representative proceeding or claim (such as a class action, representative action, consolidated action or private attorney general action). If the foregoing class action waiver (Class Action Waiver) or any portion thereof is found to be invalid, illegal, unenforceable, unconscionable, void or voidable, then the Arbitration Agreement will be unenforceable, and the Dispute will be decided by a court of competent jurisdiction. Any claim that all or part of the Class Action Waiver is invalid, illegal, unenforceable, unconscionable, void or voidable may be determined only by a court of competent jurisdiction and not by an arbitrator.
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> 7.4 Subject to the following exclusions, Dispute means any dispute, claim, or controversy between you and Equinox regarding any aspect of your relationship with Equinox, whether based in contract, statute, regulation, ordinance, tort (including without

> limitation fraud, misrepresentation, fraudulent inducement, negligence, gross negligence or reckless behavior), or any other legal, statutory or equitable theory, and includes without limitation the validity, enforceability or scope of this Agreement (**except for the scope, enforceability and interpretation of the Arbitration Agreement and Class Action Waiver**). However "dispute" **will not** include (1) personal injury claims or claims for lost, stolen, or damaged property; (2) claims that all or part of the Class Action Waiver is invalid, unenforceable, unconscionable, void or voidable; and (3) any claim for public injunctive relief, i.e., injunctive relief that has the primary purpose and effect of prohibiting alleged unlawful acts that threaten future injury to the general public. Such claims may be determined only by a court of competent jurisdiction and not by an arbitrator.
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> 7.5 Arbitration Procedures and Location: Either you or Equinox may initiate arbitration proceedings. Arbitration will be conducted before a single arbitrator. If you or Equinox initiate arbitration, you and we have a choice of doing so before JAMS or the AAA: (1) For arbitration before JAMS, the JAMS Comprehensive Arbitration Rules & Procedures and the JAMS Recommended Arbitration Discovery Protocols for Domestic, Commercial Cases will apply. The JAMS rules are available at http://www.jamsadr.com or by calling 1-800-352-5267. (2) Which particular rules apply in AAA arbitration will depend on how much money is at issue. For less than $75,000, the -Related Disputes/Consumer Arbitration Rules will apply; for at http://www.adr.org or by calling 1-800-778-7879. If required for the enforceability of the Arbitration Agreement under the Federal Arbitration Act, Equinox will pay all arbit costs and expenses. If not, those costs will be paid as specified in the above-referenced rules. You and Equinox both agree to bring the arbitration in New York City, New York. As set forth in Section 8.5 below, the arbitrator will apply New York law.

In opposition to the motion, plaintiff maintains that accepting plaintiff's allegations as true, the Membership Agreement is void and unenforceable under NYGBL § 627, which provides, in relevant part that: "[a]ny contract for services which does not comply with the applicable provisions of this article shall be void and unenforceable as contrary to public policy." Plaintiff argues that if the entire Membership Agreement is void and unenforceable, the arbitration provisions are likewise void and unenforceable.

Plaintiff further maintains that pursuant to Paragraph 7.4 of the Membership Agreement, this Court, and not an arbitrator, must decide whether the Membership Agreement is enforceable and whether plaintiff's claims fall within the scope of the arbitrations provision contained therein. The language of paragraph 7.4 that plaintiff maintains supports this proposition, in relevant part, provides:

> Dispute means any dispute, claim, or controversy between you and Equinox regarding any aspect of your relationship with Equinox, whether based on contract, statute, regulation, ordinance, tort… or any other legal, statutory or equitable theory, and includes without limitation the validity, enforceability or scope of this Agreement (**except for the scope, enforceability and interpretation of the Arbitration Agreement and Class Action Waiver**) (emphasis added).

Discussion:

There is no merit to plaintiff's contention that if the Membership Agreement is found to be void and unenforceable, the Court must go on to find that the arbitration provisions contained in the Membership Agreement are also unenforceable. There is an abundance of authority that Courts must treat arbitration provisions governed by the Federal Arbitration Act as severable from the contract in which they appear, and enforce them according to their terms unless they are found to be unenforceable (*Granite Rock Co. v. Teamsters,* 561 U.S. 287, 301, 130 S.Ct. 2847, 177 L.Ed.2d 567 [2010]; *see Nitro–Lift Technologies, L.L.C.*, 568 U.S. at ——, 133 S.Ct. at 503; *Rent–A–Center, West, Inc.,* 561 U.S. at 71, 130 S.Ct. 2772; *Buckeye Check Cashing, Inc.,* 546 U.S. at 445, 126 S.Ct. 1204; *Monarch Consulting, Inc. v. Nat'l Union Fire Ins. Co. of Pittsburgh, PA*, 26 N.Y.3d 659, 675, 47 N.E.3d 463, 474; *Episcopal Health Services, Inc. v. Kurron Shares of America, Inc.*, 3 A.D.3d 495, 939 N.Y.S.2d 853). Paragraph 7.2 of the Membership Agreement states that Federal Arbitration Act (Title 9 of the United States Code) will govern the interpretation and enforcement of the Arbitration Agreement contained in the Membership Agreement. Thus, the Court's only concern on this motion is whether the parties made a valid and enforceable agreement to arbitrate, not whether the contract between the parties is unenforceable (*see, Wagner Acquisition Corp. v. Giove*, 250 A.D.2d 857, 857–58, 673 N.Y.S.2d 455, 456 [citations omitted].

Here, there is no question that the parties entered into a valid and enforceable agreement to arbitrate the claims being alleged in the action. The plain language of the arbitration provisions contained in the Membership Agreement evinces that the parties' intended to arbitrate "any dispute." Since plaintiff's claims fall squarely within the scope of the arbitration clause, plaintiff's motion to compel arbitration must be granted (*see Jeffries v. Ross*, 238 A.D.2d 288, 288, 657 N.Y.S.2d 29, 30; Sisters *of St. John the Baptist v. Phillips R. Geraghty Constructor, Inc.*, 67 N.Y.2d 997, 998, 502 N.Y.S.2d 997, 494 N.E.2d 102).

Further, since under paragraph 7.4, only issues pertaining the scope, enforceability and interpretation of the Arbitration Agreement and Class Action Waiver are for the Court, it will be up to the arbitrator, not the Court, to decide whether the Membership Agreement is enforceable.

The class action waiver provisions of the Membership Agreement are also valid and enforceable (*see* AT&T Mobility LLC v. Concepcion, 563 U.S. 333, 131 S. Ct. 1740, 179 L. Ed. 2d 742; *Lobel v. CCAP Auto Lease, Ltd.*, 74 Misc. 3d 1230(A), 164 N.Y.S.3d 807; *DirecTV, Inc. v. Imburgia*, 577 U.S. 52, 136 S. Ct. 467, 193 L. Ed. 2d 365).

The Court flatly rejects plaintiff's contention that in *Coinbase, Inc. v. Suski*, 44 S. Ct. 1186, 1194, 218 L. Ed. 2d 615 (2024), this Court must decide whether the Membership Agreement is enforceable. In *Coinbase*, the parties executed two contracts: the first contained an arbitration provision with a delegation clause, and the second contained a forum selection clause providing that all disputes related to that contract be decided in California courts (*Id.* at 1190-91). A delegation clause gives an arbitrator, as opposed to the Court, the authority to decide certain threshold issues, such as whether a dispute falls within the arbitration agreement, whether the parties agreed to arbitrate and whether the terms of the arbitration agreement are unconscionable. The defendant argued the delegation clause in the first contract "established the terms by which all subsequent disputes were to be resolved" (*Id.* at 1191). The plaintiffs maintained—and the Ninth Circuit held—that "the second contract's forum selection clause superseded that prior agreement" (*Id.*). The Supreme Court "granted certiorari to answer the question of who—a judge or an arbitrator—should decide whether a subsequent contract supersedes an earlier arbitration agreement that contains a delegation clause" (*Id.* at 1192). In answering this question and in affirming the holding of the Ninth Circuit, the *Coinbase* Court

simply held that under these unique circumstances "a court, not an arbitrator, must decide whether the parties' first agreement was superseded by their second" (*Id.* at 1195).

In the Court's view, the decision in *Coinbase* decision is a very narrow one and simply holds only that where "parties have agreed to two contracts—one sending threshold disputes to arbitration, and the other either explicitly or implicitly sending such disputes to the courts—a court must decide which contract governs" (*Id.* at 1194). Here, there is only one contract between the parties. The holding in *Coinbase* therefore does not apply. The *Coinbase* Court certainly did not hold, as plaintiff contends, the issue of whether a contract containing an arbitration clause is unenforceable is always for the Court.

The Court has considered the plaintiff's remaining augments in opposition and find them to be without merit.

For the above reasons, it is hereby

ORDRED that defendant Equinox' motion for an order pursuant to CPLR 7503 compelling plaintiff Ricardo Martinez to arbitrate his individual claims against Equinoz, as set forth in his complaint, and staying this action pending the completion of arbitration is **GRANTED.**

This constitutes the decision and order of the Court.

Dated: October 24, 2024

PETER P. SWEENEY, J.S.C.

Note: This signature was generated electronically pursuant to Administrative Order 86/20 dated April 20, 2020