

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

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ANDREA TANTAROS, :
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 : Plaintiff, :
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 : - vs - :
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 : FOX NEWS NETWORK, LLC, ROGER :
 : AILES, WILLIAM SHINE, DIANNE BRANDI, :
 : IRENA BRIGANTI, and SUZANNE SCOTT, :
 :
 : Defendants. :
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Index No. 157054/2016

**MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT ROGER AILES' MOTION
TO COMPEL ARBITRATION**

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TABLE OF CONTENTS

	Page
PRELIMINARY STATEMENT	1
SUMMARY OF ARGUMENT	3
ARGUMENT	5
I. MS. TANTAROS’S ARBITRATION AGREEMENT REQUIRES ARBITRATION OF HER CLAIMS AGAINST MR. AILES AND THE OTHER INDIVIDUAL DEFENDANTS.....	5
CONCLUSION.....	8

TABLE OF AUTHORITIES

Page

Cases

Arrigo v. Blue Fish Commodities,
704 F. Supp. 2d 299 (S.D.N.Y. 2010).....6

Cicchetti v. Davis Selected Advisors,
No. 02 Civ. 10150, 2003 WL 22723015 (S.D.N.Y. Nov. 17, 2003)7, 8

DiBello v. Salkowitz,
772 N.Y.S.2d 663 (N.Y. App. Div. 2004)7

Hirschfield Productions, Inc. v. Mirvish,
630 N.Y.S.2d 726 (N.Y. App. Div. 1995), *aff'd*, 88 N.Y.2d 1054, 1056 (N.Y. 1996)6

Liberty Mgmt. & Constr. v. Fifth Ave. & Sixty-Sixth St. Corp.,
620 N.Y.S.2d 827 (N.Y. App. Div. 1995)4, 5

Marcus v. Frome,
275 F. Supp. 2d 496 (S.D.N.Y. 2003).....6

Merrill Lynch Int’l Fin., Inc. v. Donaldson,
895 N.Y.S.2d 698 (N.Y. Sup. Ct. 2010)6

Mosca v. Doctors Assocs.,
852 F. Supp. 152 (E.D.N.Y. 1993)6

Ragone v. Atl. Video at Manhattan Ctr.,
595 F.3d 115 (2d Cir. 2010).....5, 6, 7

Roby v. Corp. of Lloyd’s,
996 F.2d 1353 (2d Cir. 1993).....6

Thomas v. Pub. Storage, Inc.,
957 F. Supp. 2d 496 (S.D.N.Y. 2013).....5

Tong v. S.A.C. Capital Mgmt., LLC,
835 N.Y.S.2d 881 (N.Y. App. Div. 2007)5

Statutes

N.Y. C.P.L.R. § 7503(a)5

Defendant Roger Ailes, by and through his undersigned counsel, hereby moves to compel arbitration of Plaintiff Andrea Tantaros's Complaint in accordance with the arbitration provision in her Employment Agreement. Although Mr. Ailes files this motion separately to make clear his position with respect to Ms. Tantaros's many false allegations about him, he seeks the same relief that all other Defendants (the "Fox News Defendants") are seeking in their concurrently-filed motion to compel arbitration.

PRELIMINARY STATEMENT

This case clearly belongs in arbitration. Ms. Tantaros has sued her employer and several current and former officers and employees based on events she alleges occurred in the workplace, and she previously signed an Employment Agreement requiring arbitration of all such disputes. Indeed, there is already a *pending* arbitration between Ms. Tantaros and Defendant Fox News related to her other breaches of her Employment Agreement.

Knowing this case belongs in arbitration, Ms. Tantaros nevertheless filed this lawsuit, using the legal process to issue what is essentially a press release garbed in legalese, a lawyers' house of cards built on lies and half-truths, many aimed at Mr. Ailes. From the first page of her Complaint, Ms. Tantaros reverts to tabloid fodder, smearing Mr. Ailes based on no findings of any court or body of competent jurisdiction, and certainly not on her own experience, since she was never harassed by Mr. Ailes. As the Fox News Defendants' brief makes clear, not once did Ms. Tantaros ever complain that Mr. Ailes had sexually harassed her, much less that she had been retaliated against as a result. In fact, until this lawsuit, she has expressed only gratitude to Mr. Ailes, including in her April 2016 book, *Tied Up in Knots: How Getting What We Wanted Made Women Miserable*, in which, directly after acknowledging her family, she wholeheartedly thanks Mr. Ailes: "I'd like to thank Roger Ailes for seeing in me, early on, the sociopolitical tour-de-force I've become, and for creating a mega successful platform in Fox News to showcase

that passion, much to the dismay of the far left.” (Calamari Aff. Ex. A at 3505.) And only a matter of weeks before going on leave, Ms. Tantaros was enjoying the hospitality of the Ailes family as if she were the family friend she pretended to be.

This separate brief by Mr. Ailes is being submitted for three reasons. *First*, Ms. Tantaros likely will argue that the arbitration authorities cited by the Fox News Defendants do not apply to Mr. Ailes, because he personally did not sign her Employment Agreement. The same is true for the other individuals being sued and represented by Fox. But controlling law makes clear that the arbitration clause covers them, as it does Mr. Ailes. Were it otherwise, every plaintiff could evade arbitration clauses simply by suing employees and owners in their individual capacity. Every relevant authority has rejected this argument.

Second, Ms. Tantaros’s Complaint, while clothed in legalese, is full of lies and half-truths. The individuals Ms. Tantaros has sued are among the most talented, loyal and honorable men and women in television. Each of them has held their jobs for twenty years or more, with no prior evidence of any wrongdoing or harassment of anyone. That Ms. Tantaros thinks nothing of falsely attacking their reputations is shameful. If this opportunistic fight of hers is with Mr. Ailes—as it certainly appears to be—she should leave them out of it.

Finally, taking words and patching them together, and taking quotes out of context, with an ellipsis here and there, and twisting them to manufacture bad blood, is a cheap shot, not a legal claim. Television is a visual medium; comments about appearance are common because people watch television, they do not merely listen to it. If any defendants ever commented on how Ms. Tantaros looked, it likely was because Ms. Tantaros plastered pictures of herself in a bikini all over the internet (actually nearly nude), and many people at Fox News were shocked and perplexed by this; there was certainly talk. Similarly, Ms. Tantaros claims that Mr. Ailes

confided in her supposed verbal jabs against one of the rising stars at Fox News, Kimberly Guilfoyle. The descriptions need not be repeated; whatever words Ms. Tantaros chooses to string together in an unverified pleading, the allegations are absurd not only because Mr. Ailes would never confide in Ms. Tantaros, but because, as Ms. Tantaros knows, the truth is that Roger Ailes considers Ms. Guilfoyle one of the brightest stars at Fox with a future as promising as any Fox News anchor. Yes, he thinks more highly of her than of Ms. Tantaros, which is reflected in all the things Ms. Tantaros rants about in her Complaint—promotions, air time, and the like. But that is not, as Ms. Tantaros would have it, because she was the victim of any harassment. It is because audiences prefer Ms. Guilfoyle to her.

SUMMARY OF ARGUMENT

The reasons this case must be submitted to arbitration are simple. Fox News entered into a three-year Employment Agreement with Ms. Tantaros, and the Agreement contains a broad and unambiguous arbitration provision stating, in pertinent part, that:

Any controversy, claim or dispute arising out of or relating to this Agreement or your employment shall be brought before a mutually selected three-member arbitration panel and held in New York City in accordance with the rules of the American Arbitration Association then in effect. . . . Such arbitration, all filings, evidence and testimony connected with the arbitration, and all relevant allegations and events leading up to the arbitration, shall be held in strict confidence. . . . Breach of confidentiality by any party shall be considered to be a material breach of this Agreement.

(Garland Aff. Ex. A)¹ The Agreement also contains a provision requiring Ms. Tantaros to receive approval from Fox News before writing and publishing books. Her Complaint never

¹ This exhibit was filed in support of the Fox News Defendants' concurrently filed motion to compel arbitration. Mr. Ailes incorporates by reference all documents attached thereto.

mentions her arbitration agreement, never mentions the existing arbitration between her and Fox News, and never attempts to explain how these allegations could be exempted from her obligation to arbitrate.

Although she pretends her Employment Agreement is irrelevant here, Ms. Tantaros's Complaint rests on events arising out of or related to her employment at Fox News, alleging expressly that her supposed harassment "affected a term, condition, and the privileges of her employment" and that she was retaliated against as an employee of Fox News. She alleges fanciful conspiracies, all related to her employment, including not only the claim that she was harassed by Mr. Ailes and retaliated against for resisting harassment, but also that Fox News operated sham accounts to post negative comments about her (*Id.* ¶¶ 6(vi), 48); and that Fox News tried to "set [her] up" multiple times—setting up an interview "to create a false storyline that Tantaros was difficult to work with, and to paint her as a sex object rather than as a serious journalist," (*Id.* ¶ 37). Her perceived affronts by Fox News employees run the gamut, including that she was told, "nobody likes you," (*Id.* ¶ 29), that Headline and Global News "obsessively tweeted" a link to an offensive interview of her, and tagged all Fox News talent to demean her (*Id.* ¶ 39); and that she wasn't provided the personal assistant she was owed (*Id.* ¶ 46). Finally, she projects her baseless paranoia on the Paul Weiss firm, alleging that Paul, Weiss ceased questioning Fox News employees out of fear that the interviews are being bugged (*Id.* ¶ 10(c)).

Mr. Ailes hardly stands alone in the Complaint but, unlike many of Mr. Tantaros's other targets, this is the first time she has been anything other than warm and friendly to both Mr. Ailes and his wife. To be clear, Mr. Ailes categorically denies her false and libelous allegations of harassment and retaliation, and views this case as a desperate attempt to sell books and speeches and otherwise raise money.

ARGUMENT

As addressed in the concurrently-filed brief by the Fox News Defendants, the only appropriate forum for Ms. Tantaros’s false allegations is arbitration. Her Employment Agreement is crystal clear, and “[w]here there is no substantial question whether a valid agreement was made or complied with . . . the court shall direct the parties to arbitrate.” *Liberty Mgmt. & Constr. v. Fifth Ave. & Sixty–Sixth St. Corp.*, 620 N.Y.S.2d 827, 829 (N.Y. App. Div. 1995) (quoting N.Y. C.P.L.R. § 7503(a)). The “judicial inquiry ends once it is determined that a valid agreement to arbitrate exists and that the matter in controversy falls within the scope of the agreement” *Id.* at 831; *Tong v. S.A.C. Capital Mgmt., LLC*, 835 N.Y.S.2d 881, 886 (N.Y. App. Div. 2007).

Ms. Tantaros’s allegations will be proven false in whatever forum they are litigated, but her agreement to litigate them in arbitration must be enforced.

I. MS. TANTAROS’S ARBITRATION AGREEMENT REQUIRES ARBITRATION OF HER CLAIMS AGAINST MR. AILES AND THE OTHER INDIVIDUAL DEFENDANTS

Ms. Tantaros’s Employment Agreement plainly establishes that claims arising out of or relating to Ms. Tantaros’s employment at Fox News belong in arbitration. Under New York law, this includes claims brought pursuant to New York State and City Human Rights Laws. *Tong*, 835 N.Y.S.2d at 886-87 (arbitration provision covering “any dispute or controversy arising out of or relating to [employment] agreement, interpretation thereof, and/or the employment relationship” applied to the plaintiff’s harassment and retaliation claims under NYSHRL and NYCHRL, as well as the plaintiff’s common law claims); *see also Thomas v. Pub. Storage, Inc.*, 957 F. Supp. 2d 496, 497-98, 500 (S.D.N.Y. 2013) (arbitration provision covering claims “arising out of the employment relationship” applied to plaintiff’s sex discrimination and retaliation claims under NYSHRL, NYCHRL, and Title VII); *Ragone v. Atl. Video at Manhattan*

Ctr., 595 F.3d 115, 117, 128 (2d Cir. 2010) (arbitration provision enforced as to claims of sexual harassment and retaliation claims under NYSHRL, NYCHRL, and Title VII, including as to non-signatory television sports network factually intertwined in dispute).

It is of no moment that Ms. Tantaros sued both her employer, Fox News, and also several current and former Fox News officers and employees. Under New York law, non-signatory employees and agents are entitled to enforce an arbitration agreement between a fellow employee and their mutual employer (here, Defendant Fox News). Indeed, New York courts have held emphatically that the “attempt to distinguish officer and directors from the corporation they represent for the purposes of evading an arbitration provision is contrary to the established policy of this State.” *Hirschfield Productions, Inc. v. Mirvish*, 630 N.Y.S.2d 726, 728 (N.Y. App. Div. 1995), *aff’d*, 88 N.Y.2d 1054, 1056 (N.Y. 1996); *see also Roby v. Corp. of Lloyd’s*, 996 F.2d 1353 (2d Cir. 1993); *Marcus v. Frome*, 275 F. Supp. 2d 496 (S.D.N.Y. 2003) (Koeltl, J.); *Mosca v. Doctors Assocs.*, 852 F. Supp. 152, 155 (E.D.N.Y. 1993) (Johnson, J.) (dismissing action in favor of arbitration, holding that it “will not permit Plaintiffs to avoid arbitration simply by naming individual agents of the party to the arbitration clause and suing them in their individual capacity.”); *Arrigo v. Blue Fish Commodities*, 704 F. Supp. 2d 299, 303, 305 (S.D.N.Y. 2010) (Marrero, J.) (holding that, even if the CEO “is not a party to the [arbitration agreement], it nevertheless protects him from the instant suit,” because “[c]ourts in this and other circuits consistently have held that employees or disclosed agents of an entity that is a party to an arbitration agreement are protected by that agreement.”).

Moreover, “signatories to an arbitration agreement can be compelled to arbitrate their claims with a non-signatory where ‘a careful review of the relationship among the parties, the contracts they signed . . . , and the issues that had arisen among them discloses that the issues the

nonsignatory is seeking to resolve in arbitration are intertwined with the agreement that the estopped party has signed.” *Merrill Lynch Int’l Fin., Inc. v. Donaldson*, 895 N.Y.S.2d 698 (N.Y. Sup. Ct. 2010); *see also Ragone*, 595 F.3d at 126-127 (holding that “a non-signatory to an arbitration agreement may compel a signatory to that agreement to arbitrate a dispute where a careful review of ‘the relationship among the parties, the contracts they signed . . . , and the issues that had arisen’ among them discloses that ‘the issues the nonsignatory is seeking to resolve in arbitration are intertwined with the agreement that the estopped party has signed.’”). Courts have applied this principle to compel arbitration of employment-related claims brought under the NYSHLR and NYCHRL, and for tortious interference against non-signatories. In *DiBello v. Salkowitz*, 772 N.Y.S.2d 663 (N.Y. App. Div. 2004), a former announcer on a New York City radio station sued his former employer (Clear Channel) and supervisor (Salkowitz) after his contract was not renewed, pleading discrimination claims under NYSHRL and NYCHRL and for tortious interference. *Id.* at 231. The Supreme Court, Appellate Division, affirmed the order granting the defendants’ motion to compel arbitration, holding that, “given the employment-related nature of the claims, Salkowitz, as an agent of Clear Channel, is entitled to demand arbitration of the claims no less than Clear Channel is entitled to demand arbitration of the claims against it.” *Id.* at 232 (internal citation omitted).

In *Ragone*, the plaintiff alleged under the NYSHLR and NYCHRL that a signatory to an arbitration agreement (employer AVI) and a non-signatory (co-employer ESPN) and supervisors “subjected [Ragone] to persistent and continuous sexual advancements and harassment.” *Ragone*, 595 F.3d at 128. The court held that ESPN as a non-signatory co-employer could compel the arbitration of the claims against it because “the subject matter of the dispute between Ragone and AVI [wa]s factually intertwined with the dispute between Ragone and ESPN.” *Id.*

Similarly in *Cicchetti v. Davis Selected Advisors*, No. 02 Civ. 10150, 2003 WL 22723015 (S.D.N.Y. Nov. 17, 2003), the court held that an employee who brought sexual harassment claims under the NYSHLR and NYCHRL against a former employer (DSA) and her former supervisor (Zamot) had to arbitrate her claims against Zamot—a non-signatory—because her “claims against DSA and Zamot involve[d] the very same issues and circumstances” *Id.* at *1, 9.

Tantaros’s complaint alleges harassment and retaliation by employees of Fox News acting in their capacity as employees of Fox News. The subject matter of the dispute between Ms. Tantaros and Fox News is factually intertwined with the dispute between Ms. Tantaros and Mr. Ailes. Ms. Tantaros’s ploy of filing in the Supreme Court of New York to justify her shameless publicity campaign should not be countenanced. All applicable law requires that the Complaint be compelled to arbitration.

CONCLUSION

For the foregoing reasons, Mr. Ailes’ Motion to compel arbitration and stay all judicial proceedings should be granted in all respects.

Dated: August 29, 2016

Respectfully submitted,



By: _____

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