SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SUFFOLK, COMMERCIAL DIVISION

MAUREEN FRITCH,

Plaintiff,

v.

IGOR BRON, RITA BRON, RICHARD SAJIUN, SAJIUN ELECTRIC, INC., JOSEPH FUSCO, G & G ELECTRIC SUPPLY CO. INC., CRISTINA CIOBANU, HOWARD LINDSAY, INTAKE ELECTRICAL CONTRACTING CORP., YELENA PLYUMYANSKAYA, ARKADIY BERDICHEVSKIY, SERGEJS BERLEVS, ROMAN BODNARCHUK, IBNY MANAGEMENT INC., 2264 65TH STREET PROPERTIES, LLC & JOHN DOE "1" THROUGH JOHN DOE "1000"

Defendants.

Index No. 605622/2021

Honorable Elizabeth Emerson
Part 44

Motion Sequence No. 9

Oral Argument Requested

DEFENDANT SAJIUN AND SAJIUN ELECTRIC'S MEMORANDUM OF LAW IN OPPOSITION TO PLAINTIFF'S MOTION TO COMPEL ARBITRATION AND IN SUPPORT OF THEIR CROSS-MOTION FOR SANCTIONS

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Defendants Richard Sajiun and Sajiun Electric, Inc. (the "Sajiun Defendants") submit this memorandum of law in opposition to plaintiff Maureen Fritch's motion to compel arbitration with respect to these defendants and in support of their cross-motion for an award of attorney's fees as a sanction against plaintiff.[1]

PRELIMINARY STATEMENT

Fritch's motion to compel arbitration is premised on an arbitration agreement in the EEC Operating Agreement signed by her and defendant Igor Bron. That Agreement requires those two parties to arbitrate disputes between them related to their company E Electrical Contracting LLC (EEC). Richard Sajiun and his company Sajiun Electric are nonsignatories: they are not members of EEC and never signed that particular agreement or any other contract with Fritch with an arbitration clause. She does not dispute that material fact. *See* MTC at 3 (conceding it is "irrefutable" that the Sajiun Defendants are "*not* signatories"). Since arbitration entails relinquishment of a party's right of access to the judicial system and other legal and constitutional rights, in the absence of that party's agreement to arbitrate, arbitration is not legally enforceable and cannot be lawfully compelled and imposed on a noncontracting party who never knowingly and voluntarily relinquished his legal rights.

Fritch tries to get around this fundamental rule by claiming – without any basis – that for purposes of this analysis the nonsignatories Sajiun and Sajiun Electric are legally indistinguishable from Igor Bron, who is a signatory. Trying to shoehorn the facts of this case where they do not fit, she argues that Sajiun Electric is a sham company that abused the corporate form and was an "alter ego" of Bron and that both Sajiun Electric and Sajiun somehow

[1] This brief in opposition is accompanied by the Affidavit of Richard Sajiun, sworn to January 18, 2022 and the Affidavit of Igor Bron, sworn to January 19, 2022. Plaintiff's memorandum of law is cited herein as "MTC," and the supporting counsel affirmation filed by plaintiff's lawyer is cited herein as "Brown MTC Affirm."

took advantage of and "benefitted" from the EEC Operating Agreement containing the arbitration clause – even though they were never members of EEC and never participated in or directly benefitted from EEC. Fritch's contentions are knowingly false fabrications and are entirely unsupported and unsupportable.

In truth, Sajiun Electric has been in business for over 50 years, and was established in 1965 – decades before EEC, Fritch and Bron started work in the industry. Fritch offers not a shred of evidence to support her false claim that Sajiun Electric is a sham company or in any way abused the corporate form – which is not only untrue but libelous. Her claim that Bron is a principal of and "secret partner" with Sajiun in Sajiun Electric is again completely unsupported and is malicious and knowingly false. There is no basis to discredit the sworn testimony of Bron and Sajiun attesting that Sajiun at all times relevant is and has been the sole 100% owner of Sajiun Electric and that Sajiun Electric is a duly incorporated New York corporation that has its own corporate structure, payroll, and books and records that are separate from and have never been commingled with Bron or any business entity owned or controlled by Bron. Sajiun Aff. ¶¶ 2-6; Bron Aff. ¶¶ 2-6.

Just as ludicrous is Fritch's claim that Sajiun and his company "benefitted" from the EEC operating agreement containing the arbitration clause. Fritch's argument in this respect is incoherent: She cannot even articulate how the EEC Operating Agreement signed by Fritch and Bron concerning EEC, a company owned only by Fritch and Bron, in any conceivable way benefitted Sajiun or his company, much less how Sajiun supposedly knowingly accepted the "benefit" of the terms of the EEC operating agreement.

Fritch thus brought this motion in open defiance of long-settled law and basic legal principles, which she and her counsel must have known since they do not and cannot offer a

viable theory to compel arbitration and they have zero evidence in support. Her motion must therefore be denied and the Sajiun Defendants are entitled to their attorney's fees as a sanction.

ARGUMENT

I. ARBITRATION CANNOT BE COMPELLED BECAUSE SAJIUN AND SAJIUN ELECTRIC ARE NOT SIGNATORIES TO THE ARBITRATION AGREEMENT AND DID NOT BENEFIT FROM THE EEC OPERATING AGREEMENT

The law does not permit compelling arbitration with respect to Sajiun and Sajiun Electric because they never agreed to arbitrate with Fritch in any respect. "Arbitration is a matter of contract, grounded in agreement of the parties. As a consequence, notwithstanding the public policy favoring arbitration, nonsignatories are generally not subject to arbitration agreements." *Belzberg v. Verus Invs. Holdings Inc.*, 21 N.Y.3d 626, 630 (2013).

The only exceptions to this general rule are situations in which a nonsignatory is estopped from avoiding arbitration because the nonsignatory either joined in or assumed the arbitration agreement or otherwise benefitted from it such that estoppel is appropriate based on "(1) incorporation by reference; (2) assumption; (3) agency; (4) veil-piercing/alter ego; and (5) estoppel." *Kramer Levin Naftalis & Frankel LLP v. Cornell*, No. 653381/2016, 2016 WL 11067269, at *4 (Sup. Ct. N.Y. Cty. July 14, 2016). Fritch's invocation of alter ego, estoppel and agency is baseless and frivolous.

A. No Grounds Exist For Alter Ego/Veil-Piercing

In seeking to compel the Sajiun Defendants as nonsignatories to arbitrate under the alter ego theory, Fritch "bear[s] a heavy burden of showing that the corporation was dominated as to the transaction attacked and that such domination was the instrument of fraud or otherwise resulted in wrongful or inequitable consequence." *TNS Holdings, Inc. v. MKI Sec. Corp.*, 92 N.Y.2d 335, 339 (1998). "Interrelatedness, standing alone, is not enough to subject a non-signatory to arbitration." *Grozinsky v. Kenwood Commons LLC*, No. 650950/2020, 2021 WL

371494, at *5 (Sup. Ct. N.Y. Cty. Feb. 03, 2021). Instead, in "determining whether an entity is the alter ego of another corporation, courts consider several factors, including: (1) the existence of corporate formalities; (2) overlap in ownership, directors and personnel; (3) inadequate capitalization; (4) common office space, address and telephone numbers; (5) whether the related corporation deals with the allegedly dominated corporation at arms length; (6) whether the corporations are treated as independent profit centers; and (7) the amount of business discretion displayed by the allegedly dominated corporation." *Tellium, Inc. v. Corning Inc.*, No. 03 CIV. 8487 (NRB), 2004 WL 307238, at *7 (S.D.N.Y. Feb. 13, 2004).

Those seven factors all refute Fritch's alter ego/veil-piercing theory. To start, as attested by Sajiun and Bron, Sajiun Electric is a long-standing, venerable and duly incorporated New York business, owned and controlled by Sajiun; Bron has no ownership interest in or control over Sajiun Electric, which precludes any finding that Sajiun Electric is a sham company and alter ego of Bron or some Bron entity. Sajiun Aff. ¶¶ 2-6; Bron Aff. ¶¶ 2-6.

Fritch has no basis to contest these controlling facts. She presents no evidence that Sajiun Electric (1) lacks corporate formalities; (2) has an overlap in ownership, directors and personnel with Bron or some Bron entity; (3) suffers from inadequate capitalization; (4) has office space, an address or a telephone number in common with Bron or a Bron entity; (5) dominated Bron or a Bron entity or was dominated by Bron or a Bron entity as opposed to engaging in arms-length dealings; (6) was not treated as an independent profit center apart from Bron or a Bron entity; and (7) displayed no business discretion in its own interests as opposed to the interests of Bron or a Bron entity. In the absence of such a showing, arbitration cannot be compelled on this exception. *See, e.g., Phoenix Companies, Inc. v. Abrahamsen*, No. 05CIV.4894(WHP), 2006 WL 2847812, at *7 (S.D.N.Y. Sept. 28, 2006) (denying motion to

compel nonsignatory to arbitrate where "there is virtually no evidence" of "a disregard of corporate formalities"); *Ayco Co., L.P. v. Becker*, No. 1:10-CV-0834 GTS/RFT, 2011 WL 3651027, at *4 (N.D.N.Y. Aug. 18, 2011) (denying motion to compel nonsignatory to arbitrate where movant offered "no support for his (conclusory) assertion that [nonsignatory] is operated by Plaintiff's employees," did "not establish the type of day-to-day control that is required to disregard [nonsignatory's] distinct identity," and offered no support for the conclusory assertion "that [nonsignatory] is undercapitalized" or "intermingling of funds, an absence of corporate formalities, and/or payment or guarantee of [nonsignatory's] debts by the dominating entity").

Fritch does not even address these seven factors, which is enough to deny her motion. *MidOil USA, LLC v. Astra Project Fin. Pty Ltd.*, No. 12 CIV. 8484 PAC KNF, 2013 WL 4400825, at *4 (S.D.N.Y. Aug. 15, 2013), *aff'd*, 594 F. App'x 48 (2d Cir. 2015) (holding that movant "fails to address many of the factors to be considered," offering no showing or even allegations as to whether the alleged sham entity was "undercapitalized; ceased to continue existing as a separate entity; failed to observe corporate formalities by, for example, failing to keep books and records or hold board meetings; that [nonsignatory] lacked business discretion; that [alleged alter ego] paid or guaranteed its debts; or that the entities intermingled corporate property").

Instead of offering any alleged evidence pertaining to any of these factors, Fritch just relies on her own say-so that Bron is a "secret" principal and partner in Sajiun Electric. *See* MTC at 3-4 and 6-7. But this is nothing more than *ipse dixit*. She has no valid evidence to support these claims and makes no showing other than offering her convoluted and wholly speculative "conspiracy theories" about payments that have nothing to do with EEC or EEC jobs

that were made by Sajiun Electric to Bron through his consultant entities (or other companies that Fritch baselessly alleges Bron had a "secret" interest in, like FCZ). *See* MTC at 3-4.

Such make-believe claims based on nothing but sparse and disparate snippets of documents that are given unwieldy, unlikely and self-serving readings by Fritch are nowhere near enough to meet her "heavy burden" on this claim. Monetary transactions between Bron and Sajiun Electric and the fact that some EEC personnel worked at times for Sajiun Electric are insufficient grounds for an alter-ego finding because such circumstances indicate only "interrelatedness," which is "not enough" as a matter of law. *Grozinsky,* 2021 WL 371494, at *5. Even were it true (contrary to reality) that Bron had an ownership interest in Sajiun Electric, that too is insufficient "interrelatedness." Just because one party to an arbitration agreement has done business with or even had an ownership interest in another entity, that does not subject that separate business entity to the arbitration agreement.

In addition, where, as here, the company being challenged as a sham is undeniably a legitimate business entity engaged in legitimate business – Sajiun Electric has operated for almost 60 years as a reputable electric contractor across two generations of the Sajiun family (Sajiun Aff. ¶¶ 3, 6) – the Court cannot infer that the company is a sham on such a non-showing made by Fritch based on wild conjecture and disparate and meaningless documents. *Grozinsky,* 2021 WL 371494, at *5 (holding that "Petitioner did not meet his burden of showing that Non-Signatory Respondents may be compelled to arbitrate under the alter-ego theory" where the "Court [] cannot make an inference of abuse as to [challenged companies] as they were formed for legal purposes or are engaged in legitimate business"); *see also Narravula v. Perosphere Techs., Inc.*, 71 Misc. 3d 1227(A), 146 N.Y.S.3d 465, at *4 (Sup. Ct. Albany Cty. May 27, 2021) (denying motion to compel nonsignatories to arbitrate under alter ego theory where movant

"[did] not come forward with admissible proof establishing that [nonsignatories], through their [alleged] domination [of challenged company], abused the privilege of doing business in the corporate form"); *Application of Belleggingsmaatschappij, Wolfje, B.V., v. Thermo Ecotek Europe Holdings, B.V.*, No. 108755/00, 2000 WL 35576046, at *2 (Sup. Ct. N.Y. Cty. Aug. 30, 2000) (holding that "[s]ince Thermo has not otherwise even attempted to demonstrate that WBV is the mere alter ego of Valka and Tuma so as to warrant piercing the corporate veil, it may not assert an arbitration claim against these two non-signatories of the Formation Agreement").

B. Estoppel Based on Direct Benefits Does Not Apply

Under the "direct benefits theory of estoppel, a nonsignatory may be compelled to arbitrate where the nonsignatory 'knowingly exploits' the benefits of an agreement containing an arbitration clause, and receives benefits flowing directly from the agreement." *Belzberg*, 21 N.Y.3d at 631. The "benefits must be direct, and the party seeking to compel arbitration must demonstrate that the party seeking to avoid arbitration relies on the terms of the agreement containing the arbitration provision in pursuing its claim." *Arboleda v. White Glove Enter. Corp.*, 179 A.D.3d 632, 633 (2d Dep't 2020). Again, Fritch bears a "heavy burden under the theory of estoppel." *Grozinsky,* 2021 WL 371494, at *5 (citing *Matter of Rural Media Group, Inc. v. Yraola*, 137 A.D.3d 489, 491 (1st Dep't 2016)). Courts "have limited the application of the direct benefits doctrine to situations in which a nonsignatory has obtained a real and tangible benefit from the relevant agreement by either taking affirmative steps to exploit a benefit from a contract by bringing an action of their own based upon the language of the contract or through the enjoyment of monetary benefits of a contract by taking over performance thereunder." *Kramer Levin*, 2016 WL 11067269, at *4 (citing *HRH Constr. LLC v. MTA*, 33 A.D.3d 568, 569 (1st Dep't 2006)).

On the other hand, "[w]here the benefits are merely 'indirect,' a nonsignatory cannot be compelled to arbitrate a claim. A benefit is indirect where the nonsignatory exploits the contractual relation of the parties, but not the agreement itself." *Belzberg*, 21 N.Y.3d at 631. In distinguishing between whether a benefit is direct or indirect, the "guiding principle is whether the benefit gained by the nonsignatory is one that can be traced directly to the agreement containing the arbitration clause. The mere existence of an agreement with attendant circumstances that prove advantageous to the nonsignatory would not constitute the type of direct benefits justifying compelling arbitration by a nonparty to the underlying contract." *Id*. at 633. That is to say, there is no "direct benefit" "absent the nonsignatory's reliance on the agreement itself for the derived benefit." *Id*. at 633-34. Another court described this distinction as: "benefits are direct when specifically contemplated by the relevant parties; and benefits are indirect when the parties to the agreement with the arbitration clause would not have originally contemplated the non-signatory's eventual benefit." *Boroditskiy v. Eur. Specialties LLC*, 314 F. Supp. 3d 487, 495 (S.D.N.Y. 2018).

Fritch's refrain of a "secret partnership" between Bron and Sajiun does not come anywhere near to satisfying her "heavy burden" of showing that the Sajiun Defendants obtained a direct benefit from the EEC Operating Agreement such that it is fair to hold them to the arbitration clause in that agreement. Nowhere does Fritch even allege, much less show – because it is palpably untrue – that Sajiun or his company received "a real and tangible benefit from [the EEC Operating Agreement] by either taking affirmative steps to exploit a benefit from [that] contract by bringing an action of their own based upon the language of the contract or through the enjoyment of monetary benefits of [that] contract by taking over performance thereunder." *Kramer Levin*, 2016 WL 11067269, at *4. The Sajiun Defendants have not

invoked the EEC Operating Agreement in any respect and have in no way "taken over performance" under that agreement or otherwise received any direct benefit that could have been within the contemplation of Fritch and Bron as the contracting parties.

Fritch nowhere describes, much less shows with admissible evidence, how Sajiun or his company supposedly benefitted from the EEC Operating Agreement itself. *See* MTC at 8-10. While Fritch speculates that the Sajiun Defendants are implicated in Bron's alleged diversion of company opportunities away from EEC, that does not turn on the Sajiun parties taking advantage of or benefitting from the terms of the EEC Operating Agreement itself; no term in that agreement was invoked, used or exploited by the Sajiun parties in any way, much less to attain some alleged (unproven and nonexistent) "benefit." Under *Belzberg*, Fritch's diversion allegation is not sufficient as a matter of law for estoppel because, while that allegation may (at best for Fritch) implicate EEC and the EEC contractual relationship, it does *not* entail any exploitation of "the agreement itself." *Belzberg*, 21 N.Y.3d at 631. No term of the EEC Operating Agreement was taken advantage of by the Sajiun Defendants; and Fritch nowhere even cites to any such term that could even conceivably have been used or exploited by them.

Fritch mistakenly relies on *In re SSL Int'l PLC*, 44 A.D.3d 429, 430 (1st Dep't 2007) (MTC at 8). But that decision predates the Court of Appeals decision in *Belzberg*. More importantly, estoppel was applied in *SSL* because the nonsignatory exploited the license agreement containing the arbitration agreement by using technology governed by the terms of that agreement and that was made available to the nonsignatory only by virtue of the terms of that agreement. That operative fact has no analogue in the present case. Unlike *SSL*, the Sajiun Defendants received no direct benefit as a result of or made available to them by the EEC Operating Agreement. Asserting in conclusory fashion, as Fritch does, that the Sajiun parties

benefitted from jobs that were allegedly "diverted" from EEC has nothing to do with the terms of the EEC operating agreement itself; rather, this alleged "benefit" – had it in fact occurred – can only be "indirect" in that there was no "reliance" by the Sajiun parties on the EEC operating agreement in allegedly attaining the "derived benefit" of a contracted job awarded by a third party. *Belzberg*, 21 N.Y.3d at 633-34.

C. No Agency Relationship Exists

The whole of Fritch's agency argument is contained in her conclusory assertion that Bron is an agent of and therefore can bind Sajiun and Sajiun Electric. MTC at 10. She provides no showing of an actual agency relationship. Instead, she conclusorily asserts Bron is a "secret partner" with Sajiun in Sajiun Electric, which she pretends to "support" with other conclusory claims that Sajiun and Bron concealed this arrangement by using "proxies" to hide payments from Sajiun to Bron. She also cites an "information and belief" claim by Joseph Fusco that Bron is a "principal" of Sajiun Electric (Brown MTC Aff ¶ 22, Ex. 3), which of course is not admissible evidence since it is admittedly not based on personal knowledge but only speculation or opinion/belief. Fritch's self-serving say-so, based on non-admissible speculation, is legally insufficient to impute an arbitration agreement to a nonsignatory.

In considering whether a nonsignatory can be bound by an arbitration agreement, courts have "cautioned that conclusory allegations of a general agency relationship between a signatory and non-signatory do not suffice to compel . . . unwilling non-signatories to arbitrate under that theory." *Masefield AG v. Colonial Oil Indus., Inc.*, No. 05 CIV. 2231 (PKL), 2005 WL 911770, at *5 (S.D.N.Y. Apr. 18, 2005). "[M]utual benefits derived from affiliation . . . [are] insufficient to bind a non-signatory on agency principles to an arbitration agreement signed by an affiliate." *Phoenix Companies, Inc.*, 2006 WL 2847812, at *6. Instead, a "full showing of agency

supported by an accepted theory of agency or contract law is required, and generalized allegations of affiliation are insufficient." *Masefield AG*, 2005 WL 911770, at *5.

"Agency is the fiduciary relation which results from the manifestation of consent by one person to another that the other shall act on his behalf and subject to his control, and consent by the other so to act." *Merrill Lynch Inv. Managers v. Optibase, Ltd.*, 337 F.3d 125, 130 (2d Cir. 2003). "Actual agency is created by written or spoken words or other conduct of the principal which, reasonably interpreted, causes the agent to believe that the principal desires him so to act on the principal's account." *Maung Ng We v. Merrill Lynch & Co.*, No. 99 CIV. 9687 (CSH), 2000 WL 1159835, at *4 (S.D.N.Y. Aug. 15, 2000). "[W]hether such an agency exists depends upon the actual interactions of the putative agent and principal and not on the perception a third party may have of the relationship." *Manchester Equipment Co., Inc. v. American Way and Moving Co., Inc.*, 60 F.Supp.2d 3, 8 (E.D.N.Y. 1999). To "establish actual agency a party must demonstrate the following elements: (1) there must be a manifestation by the principal that the agent shall act for him; (2) the agent must accept the undertaking; and (3) there must be an understanding between the parties that the principal is to be in control of the undertaking." *Maung Ng We.*, 2000 WL 1159835, at *4.

Here, Fritch makes no showing at all (i) that Sajiun authorized Bron to act as his or a Sajiun Electric agent for purposes of entering the EEC Operating Agreement or to agree to the arbitration clause; (ii) that Bron agreed to serve as agent; or (iii) that both agreed Sajiun is in control of Bron's decision to enter the EEC agreement. Her repeated conclusory claim that Bron was a partner in a formal but "secret" partnership with Sajiun is to no avail. That facially nonsensical (and untrue) claim is unsupported by any showing with admissible evidence that a formal partnership exists, much less that it existed at the time the EEC agreement was executed

in 2016 and for the purpose, at least in part, to contract with Fritch to become a "secret" member of EEC.

More to the point, she makes no showing that Bron executed the EEC agreement in his capacity as a "secret" agent of or "secret" partner with Sajiun such that Sajiun (as alleged principal) or the alleged "secret" partnership is really in control of Bron's role in the EEC undertaking. To conclude that is so, one would have to conclude based on evidence that the purpose of the alleged Bron/Sajiun agency/partnership was to covertly bind Sajiun and/or the alleged "partnership" to agreements with a third party, like Fritch, in order to illegally divert third-party corporate opportunities, even though there was no meeting of the minds with the third-party, who had no knowledge of the "secret" arrangement. That arrangement, if it existed, would mean that any payments Bron received from EEC would have to have been shared with his "secret" principal or "secret" partnership. But there is, again, no showing with admissible evidence to support that highly improbable, not to say ridiculous, claim. There is no evidence at all – because it is not true – that the Sajiun parties directly benefited from the EEC membership of their alleged "agent" Bron.

Courts have routinely rejected attempts to impose arbitration on a nonsignatory based on conclusory allegations of a secret or undisclosed agency status. *See e.g. D/S Norden A/S v. CHS de Paraguay, SRL*, No. 16 CV 2274-LTS, 2017 WL 473913, at *4 (S.D.N.Y. Feb. 3, 2017) (holding that "an undisclosed agency relationship" could not be shown through conclusory allegations that one "was acting as the agent for [the other] as an undisclosed principal" or "unelaborated assertions that [the nonsignatory] and [the affiliated signatory] 'agreed' to an agency relationship and that [the signatory] acted pursuant to the instructions and control of the [non-signatory affiliate]"). Fritch has no authority to the contrary; she cites not a single case

where arbitration was imposed on a nonsignatory based on the moving party's allegation of the existence of a secret, undisclosed agency or partnership.

Nor is Fritch's showing that some payments were made by Sajiun Electric to Bron or entities affiliated with him sufficient to establish agency for purposes of compelling non-signatories to arbitrate. Any such payment shows only that they are "affiliated" or have engaged in transactions in common. But courts have repeatedly held that "mutual benefits derived from affiliation . . . [are] insufficient to bind a non-signatory on agency principles to an arbitration agreement signed by an affiliate." *Phoenix Companies, Inc.*, 2006 WL 2847812, at *6; *Merrill Lynch Inv. Managers*, 337 F.3d at 130 (holding that an "affiliate relationship" and "mutual benefits derived from affiliation" were "insufficient to bind a non-signatory on agency principles to an arbitration agreement signed by an affiliate").

In *Phoenix Companies*, the showing included evidence that the signatory had authority from the nonsignatory to sell its products, represent itself as an affiliate and to contract with and to pay the other signatory to the arbitration agreement. But that was still insufficient as a matter of law to show agency for purposes of imposing arbitration because it showed nothing more than that the parties had a mutually beneficial affiliation but not that the signatory agreed to act for the nonsignatory and subject to its control. *Phoenix Companies*, 2006 WL 2847812, at *6; *see also Masefield AG*, 2005 WL 911770, at *5 (holding no agency was established sufficient to compel nonsignatory to arbitrate where the evidence showed that the signatory provided operational support and directed some payments to nonsignatory but there was no support for the conclusory claim that signatory "consented to act" at the direction of nonsignatory with respect to the contract containing the arbitration agreement).

Fritch's whole argument reduces to the claim that, because she asserts that Bron and Sajiun were co-conspirators in allegedly harming her, Bron's agreements can be imputed to Sajiun at the outset of this case irrespective of the fact that she has not proven and has offered no admissible proof establishing that the Sajiun parties (or Bron) are liable to her for any such conspiracy. *See, e.g.,* Brown MTC Affirm. ¶ 26 (conclusory accusation that Bron and Sajiun are the "chief wrongdoers here"). But the law does not allow saddling nonsignatories with agreements made by another party based solely on unproven and unsupported accusations of joint wrongdoing. Fritch has not and cannot make any showing with admissible evidence that Bron consented to act on behalf of the Sajiun parties with respect to the EEC contract and that the latter parties consented to control and to be bound by his actions in signing that contract. The agency exception, therefore, does not apply here as a matter of law.

II. THE SAJIUN DEFENDANTS ARE ENTITLED TO ATTORNEY'S FEES

As shown above, Fritch has no good faith basis for this motion. She ignored the settled and controlling law cited herein, in violation of her counsel's most basic professional duty of candor to cite controlling authority. And she produced no showing anywhere near sufficient to meet her heavy burden on her motion to compel. Worse, she brazenly proclaims that the "general rules" do not apply to her. MTC at 11. Flouting settled law, she arrogates to herself the right to smear a venerable and reputable business based on her wild allegations that are entirely unsupported and conclusory. Her conduct in bringing such an abysmally unsupported and unsupportable motion is contemptible.

The conclusion is, therefore, inescapable that she is knowingly making false and libelous claims. That is sanctionable conduct. She should be so sanctioned for bringing such an utterly meritless motion, which is just the most recent in a whole slew of meritless motions including

her prior multiple applications for attachment that are also devoid of any even arguable merit or good faith basis. Her intent to barrage Sajiun with a ceaseless stream of false and meritless legal claims to exert pressure on and to harass Bron is intolerable and violates Rule 130.1-1, which expressly permits sanctions for such motions "completely without merit" that are undertaken to "harass." 22 NYCCR 130.1-1.

Accordingly, the Sajiun Defendants should be awarded their attorney's fees incurred to date in defending this action, or at a minimum, the fees and costs incurred in responding to the current groundless motion to compel arbitration, in such amount to be set by the Court upon inquest.

CONCLUSION

For the foregoing reasons, plaintiff's motion to compel arbitration should be denied in its entirety and the Sajiun Defendants' cross-motion for an award of attorney's fees as a sanction should be granted, along with such other relief as may be just and proper.

Dated: New York, New York
January 20, 2022

GLENN AGRE BERGMAN & FUENTES LLP

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RULE 202.8-b CERTIFICATION

The undersigned counsel hereby certifies pursuant to 22 NYCRR 202.8-b that the foregoing document, exclusive of caption, table of contents, table of authorities, and signature block, has a word count of 4685 and complies with the word limit of this rule.

By: /s/ *Michael Paul Bowen*