SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SUFFOLK

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MAUREEN FRITCH,

Plaintiff,

- against –

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.

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Index No. 605622/2021

(Emerson, J.
Motion Sequence No. 10)

PLAINTIFF'S MEMORANDUM OF LAW IN SUPPORT OF MOTION TO COMPEL

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I. PRELIMINARY STATEMENT

EEC and Sajiun Electric are in the same line of business and secretly share the same common co-owner in Mr. Bron. Before, during and after the Amended Operating Agreement was signed by Mrs. Fritch and Mr. Bron on September 26th, 2016, Mr. Bron was secretly a principal of Sajiun Electric and partners with Mr. Sajiun. Mr. Sajiun had full knowledge of the Amended Operating Agreement and this unique dynamic. In fact, Mr. Bron is still Sajiun Electric to this very day, to the point that he appeared before this Court remotely as Sajiun Electric on August 18th, 2021. There are five limited exceptions to CPLR Article 75 which permit the Court to compel a non-signatory to arbitration and three of them easily apply herein: 1) alter-ego/piercing the corporate veil; 2) estoppel; and 3) agency. It makes no sense **not** to compel Mr. Sajiun and Sajiun Electric to the Arbitration when it is exceedingly likely that joint and several liability will attach thereafter regardless of the "aiding and abetting" claims.[1] Mr. Bron and Mr. Sajiun are partners and Mr. Bron is a principal of Sajiun Electric. Where liability is found for Mr. Bron, it will be found for Mr. Sajiun and Sajiun Electric.

II. FACTUAL BACKGROUND

For a complete statement of the facts necessary to decide this motion, this Court is respectfully referred to the Affirmation of Austin S. Brown and the Exhibits attached thereto. As to the stay requested herein, which is related to partial consolidation, the Court should refer to pending Motion Sequence No. 4.

[1]This investigation is ongoing and new facts are now known which were not when the Verified Complaint was filed. Mrs. Fritch will simply seek to Amend the Verified Complaint to add joint and several liability, *inter alia*, based on new facts discovered if need be. In sum, as of March 31st, 2021, Mrs. Fritch and the undersigned knew this was flagrant fraudulent inducement, we did not know Mr. Bron was *literally* a partner to Mr. Sajiun and principal of Sajiun Electric.

III. ARGUMENT

A. CPLR §7503 MOTION TO COMPEL ARBITRATION

> CPLR §7503 states as follows: "(a) Application to compel arbitration; stay of action. A party aggrieved by the failure of another to arbitrate may apply for an order compelling arbitration. Where there is no substantial question whether a valid agreement was made or complied with, and the claim sought to be arbitrated is not barred by limitation under subdivision (b) of section 7502, the court shall direct the parties to arbitrate. Where any such question is raised, it shall be tried forthwith in said court. If an issue claimed to be arbitrable is involved in an action pending in a court having jurisdiction to hear a motion to compel arbitration, the application shall be made by motion in that action. If the application is granted, the order shall operate to stay a pending or subsequent action, or so much of it as is referable to arbitration."

It is irrefutable that Mrs. Fritch and Mr. Bron are signatories to the Amended Operating Agreement which contains an arbitration provision (Exhibit 2). It is also irrefutable that Mr. Sajiun and Sajiun Electric are **not** signatories to the Amended Operating Agreement. Normally, this would bar a Motion to Compel pursuant to CPLR §7503. However, CPLR §7503 does not stand alone. There is ample authority giving this Court the power to compel Mr. Sajiun and Sajiun Electric as non-signatories to the Arbitration.

B. MR. BRON & MR. SAJIUN ARE PARTNERS & MR. BRON IS A PRINCIPAL OF SAJIUN ELECTRIC

A "silent partnership [or ownership interest]" is an inherently unlawful arrangement whereby the parties involved are partners/owners/principals to insiders, but to outsiders no extrinsic evidence of any such arrangement is revealed. In fact, the "silent partnership [or ownership interest]" can even be silent in whole or in part; for example:

1. As is the case with Sajiun Electric, one principal can be disclosed to the general public (Mr. Sajiun) and the other concealed (Mr. Bron); or

2. As is the case with Defendant INTAKE ELECTRICAL CONTRACTING CORP., the true principals (Mr. Bron/Mr. Sajiun) can be concealed entirely from the general public

with the supposed owners (Sajiun Electric's CRISTINA CIOBANU and EEC's HOWARD LINDSAY) being nothing more than a proxy.[2]

3. As is the case with Mrs. Bron, there are many interests in her name directly related to EEC and Sajiun Electric, but she is a nurse with virtually no construction experience, she is simply a proxy (*see* Exhibit 4 at the Memorandum of Law in Support of Attachment).

This Action is unique, in any normal case proving such a "silent partnership [or ownership interest]" would be virtually impossible because any Defendant who is willing to engage in such an arrangement in the first instance: 1) Has taken steps to cover their tracks; 2) Would scoff at discovery demands and destroy evidence in response to same; and 3) Then hide behind attorneys and point to contracts as written. Here, while Defendants have already taken steps to cover their tracks, Mrs. Fritch did not give Defendants the opportunity to scoff at a discovery demand. Instead, Mrs. Fritch investigated Defendants before commencing this Action, so the evidence presented herein comes right from Defendants, much of which was never supposed to see the light of day.

Now, Defendants will likely point to general rules of law, minor technicalities and cherry-pick which facts to address, spin, or remain silent on, when the true question at the crux of this Action has never been answered: **Is Mr. Bron a partner to Mr. Sajiun and/or a principal in Sajiun Electric?** Mr. Bron and Mr. Sajiun have every opportunity in Opposition herein and other motions previously submitted to this Court to answer this very simple question. The fact that Mr. Bron and Mr. Sajiun have consistently remained silent on this very important issue, even in Opposition to Attachment (Motion Sequence No. 3) for example, speaks volumes as to the strength of the evidence presented by Mrs. Fritch. The Record establishes with overwhelming evidence that Mr. Bron is and was Sajiun Electric and partners with Mr. Sajiun at all pertinent times herein

[2]A review of INTAKE ELECTRICAL CONTRACTING CORP.'s operating agreement reveals that it is made-up of old EEC operating agreements which literally still contain Mrs. Fritch's name therein (Verified Complaint at Exhibit 11).

through several admissions from before and after the Amended Operating Agreement was signed (Exhibit 3) and the evidence itself (Exhibits 4-5).

C. COMPELLING A NON-SIGNATORY TO ARBITRATION

Mr. Bron and Mr. Sajiun of Sajiun Electric used Mr. Bron of EEC to strip Mrs. Fritch's equity in EEC which stems directly from the Amended Operating Agreement. Every single time Mr. Bron diverted assets from EEC to Sajiun Electric, he was being compensated elsewhere by Mr. Sajiun and Sajiun Electric (i.e. Exhibit 4), so while Mrs. Fritch absorbed 51% of the damage, the harm to Mr. Bron was *de minimis*. Given these unique facts, this Court can easily compel Mr. Sajiun and Sajiun Electric to the Arbitration. Non-signatories to an agreement to arbitrate can be compelled to arbitration pursuant to CPLR §7503 in limited circumstances:

> "While CPLR §7501 requires that an agreement to arbitrate be in writing, this Court has recognized in certain limited circumstances the need to impute the intent to arbitrate to a nonsignatory (*see, e.g., Crawford v. Merrill Lynch, Pierce, Fenner & Smith,* 35 N.Y.2d 291, 361 N.Y.S.2d 140, 319 N.E.2d 408; *Hendler & Murray v. Lambert,* 67 N.Y.2d 831, 501 N.Y.S.2d 645, 492 N.E.2d 773)."
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> TNS Holdings, Inc. v. MKI Sec. Corp., 92 N.Y.2d 335, 339, 703 N.E.2d 749, 751 (1998).
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> Under the law as it stands now, there are five such limited exceptions:
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> > "This Court has recognized a number of theories under which nonsignatories may be bound to the arbitration agreements of others. Those theories arise out of common law principles of contract and agency law. Accordingly, we have recognized five theories for binding nonsignatories to arbitration agreements: 1) incorporation by reference; 2) assumption; 3) agency; 4) veil-piercing/alter ego; and 5) estoppel."
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> Thomson-CSF, S.A. v. Am. Arb. Ass'n, 64 F.3d 773, 776 (2d Cir. 1995).

Out of the five exceptions, Mrs. Fritch will focus on three: 1) Veil-piercing/alter ego; 2) Estoppel; and 3) Agency.[3] Mr. Bron and Mr. Sajiun are partners in Sajiun Electric, which is in the

[3]Partnership is a powerful form of agency (Bennett Dairy v. Putney, 46 A.D.2d 1010, 1010, 362 N.Y.S.2d 93, 93–94 (4th Dep't 1974).

exact same line of business as EEC, and they benefited from an improper arrangement to the detriment of Mrs. Fritch. Where Mr. Bron is held liable, so too will Mr. Sajiun and Sajiun Electric. It makes no sense **not** to compel Mr. Sajiun and Sajiun Electric to the Arbitration.

ALTER-EGO/VEIL-PIERCING/BAD FAITH

The rule in TNS Holdings, Inc. v. MKI Sec. Corp., 92 N.Y.2d 335, 339, 703 N.E.2d 749, 751 (1998) is set forth as follows:

> "(1) A corporation that is related to, but not itself, a party to an agreement containing an arbitration clause cannot be compelled to arbitrate a dispute rising from an alleged breach of that agreement, absent a showing of abuse of the corporate form. Although arbitration is favored as a matter of public policy, equally important is the policy that seeks to avoid the unintentional waiver of the benefits and safeguards which a court of law may provide in resolving disputes. While CPLR 7501 requires that an agreement to arbitrate be in writing, in certain limited circumstances it is necessary to impute the intent to arbitrate to a nonsignatory, such as when the corporate signatory of the agreement was dominated by an "alter ego" of the signatory as to the transaction attacked and such domination was the instrument of fraud or otherwise resulted in wrongful or inequitable consequences. Evidence of domination alone does not suffice without an additional showing that it led to inequity, fraud or malfeasance."
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> TNS Holdings, Inc. v. MKI Sec. Corp., 92 N.Y.2d 335, 703 N.E.2d 749 (1998).

In *TNS Holdings, Inc. v. MKI Sec. Corp.*, the Court of Appeals found there was **no** basis to compel arbitration and reasoned as follows: "Under these circumstances, it cannot be said that MKI has perverted "the privilege [of doing] business in a corporate form" (*Berkey v Third Ave. Ry. Co.,* 244 NY 84, 95) and was the "alter ego" of Batchnotice for the purpose of committing some wrongful act or avoiding its obligations. As a result, we cannot impute to MKI an agreement to arbitrate." However, here, it is the exact opposite. Mrs. Fritch has shown with overwhelming evidence: 1) The substantial abuse of the corporate form beyond that of "alter ego" liability; and 2) There are millions of dollars of benefits belonging to Mrs. Fritch under the Amended Operating Agreement (51% of her equity in EEC) being diverted to Mr. Sajiun and Sajiun Electric by Mr.

Bron through several corporations all of which are dominated and controlled by Mr. Bron and Mr. Sajiun.

Similarly, in BML Properties Ltd. v. China Const. America, Inc., No. 657550/2017, 2019 WL 316718, at *7 (N.Y. Sup. Ct. Jan. 24, 2019), the Court found as follows:

> "Because BML Properties neither intended to be bound by the arbitration clause **nor received any benefits from Amendment No. 9**, the cases cited by Defendants where non-signatories were bound are all distinguishable. . . In sum, Defendants failed to produce evidence of BML Properties' intent to be bound by the arbitration clause **or furnish a basis for imputing such intention to it**. Accordingly, I find that the arbitration clause is inapplicable and deny Defendants' motion to compel arbitration. See *Paramount Leasehold, L.P. v. 43rd Street Deli, Inc.*, 136 A.D.3d 563, 567 (1st Dept. 2016) (finding that courts cannot "order a party to submit to arbitration 'absent evidence of that party's unequivocal intent to arbitrate the relevant dispute.' ") (citation omitted)" (emphasis added).

Once again, this Action is the exact opposite of *BML Properties Ltd. v. China Const. America, Inc.*, because Mrs. Fritch has established that Mr. Sajiun and Sajiun Electric received massive benefits from the Amended Operating Agreement and there is a basis for imputing the intention to be bound (as explained in the "agency" section below, how can it be argued that Mr. Bron does not have the authority to bind Sajiun Electric? Defendants have yet to even supply this Court or Mrs. Fritch with an unredacted copy of the Sajiun Electric Operating Agreement). As argued in the Memorandum of Law in Support of Attachment (Exhibit 4): Mr. Bron, Mr. Sajiun and Sajiun Electric have abused the corporate form (including EEC through no fault of Mrs. Fritch) in every, way shape and form and have acted in extreme bad faith resulting in wrongful and inequitable consequences.

Estoppel

Due to extensive evidence of extreme bad faith and abuse of the corporate form, TNS Holdings, Inc. v. MKI Sec. Corp., 92 N.Y.2d 335, 703 N.E.2d 749 (1998) is more appropriate for this Action whether that be compelling Sajiun Electric alone or with Mr. Sajiun. However, piercing

the corporate veil or alter ego liability is not required: "Contrary to respondents' assumption, a non-signatory to an arbitration agreement may be compelled to arbitrate regardless of any piercing of the corporate veil. Indeed, the non-signatory need not even be a shareholder of a corporate party to an arbitration agreement. In Thomson–the Second Circuit described two different estoppel theories, each a sufficient basis for compelling arbitration between signatories and nonsignatories to an agreement. Under the first, a nonsignatory to an agreement containing an arbitration clause may be compelled to arbitrate with a signatory where the nonsignatory knowingly accepts benefits directly derived from the agreement." Hartford Fire Ins. Co. v. The Evergreen Org., Inc., 410 F. Supp. 2d 180, 186 (S.D.N.Y. 2006).

This Action is clearly analogous to In re SSL Int'l, PLC, 44 A.D.3d 429, 430, 843 N.Y.S.2d 264, 265 (1st Dep't 2007):

> "The court's determination to compel arbitration was appropriate. Respondent made a sufficient evidentiary showing that appellants **exploited the 1997 license agreement** between respondent and Silipos, Inc., by marketing products that utilized technology covered by the license agreement. Accordingly, respondent established that appellants, non-signatories to the license agreement, were estopped from seeking to avoid an arbitration provision contained in the license agreement since they derived direct benefits from said agreement (*see HRH Construction LLC v. Metropolitan Transp. Auth.,* 33 A.D.3d 568, 569, 823 N.Y.S.2d 140 [2006]; *see also Deloitte Noraudit A/S v. Deloitte Haskins & Sells, U.S.,* 9 F.3d 1060, 1064 [2d Cir.1993]). Appellants, by not coming forward with any evidence contesting respondent's position, failed to carry their burden of showing sufficient facts to establish justification for the stay (*see Matter of AIU Ins. Co. v. Cabreja,* 301 A.D.2d 448, 449, 754 N.Y.S.2d 253 [2003])" (emphasis added).

Mr. Sajiun and Sajiun Electric's use of Mr. Bron to exploit his relationship with Mrs. Fritch in EEC, which relationship stems directly from the Amended Operating Agreement, is virtually undeniable. Mr. Sajiun and Sajiun Electric had full knowledge of the Amended Operating Agreement as established by common sense, industry standards and the evidence:

1. As a matter of common sense, Mr. Sajiun is the President of Sajiun Electric, and as shown by Exhibit 3, Mr. Sajiun is Mr. Bron's longtime friend and partner and Mr. Bron is a principal of Sajiun Electric;

2. As shown by industry standard, EEC is a Union Contractor and Sajiun Electric is not. Union Contractors (EEC) know without a doubt that they cannot be affiliated with Non-Union Contractors (Sajiun Electric);

3. As shown by Exhibit 4, corporate entities are used by Mr. Sajiun and Sajiun Electric to compensate Mr. Bron and Defendants and conceal unlawful business operations to avoid direct contact;

4. As shown by Exhibit 5, Sajiun Electric routinely communicated with Mr. Bron and Defendants (and vice versa) through personal email avoiding the use of EEC emails;

5. As shown by Exhibits 4 and 5, individuals such as Mrs. Bron are also used by Defendants as a proxy to avoid directly compensating Mr. Bron and Defendants; and

6. Lastly, as a matter of common sense, Mrs. Fritch has alleged a multimillion-dollar fraudulent invoicing and kickback scheme which stripped her equity in EEC, EEC is now virtually insolvent and Mr. Bron is shopping for $5 Million plus beachfront mansion in Florida (*see* Exhibit 4 at Memorandum of Law in Support of Renewal).

Mrs. Fritch has established with overwhelming evidence that Mr. Sajiun and Sajiun Electric knowingly derived substantial benefits from the Amended Operating Agreement. Mr. Sajiun and Sajiun Electric knew exactly what was going on with this scheme:

> "Under the estoppel theory, a company "knowingly exploiting [an] agreement [with an arbitration clause can be] estopped from avoiding arbitration despite having never signed the agreement." *Id.* at 778. Guided by "[o]rdinary principles of contract and agency," we have concluded that where a company "knowingly accepted the benefits" of an agreement with an arbitration clause, even without signing the agreement, that company may be bound by the arbitration clause. *Deloitte Noraudit A/S v. Deloitte Haskins & Sells, U.S.,* 9 F.3d 1060, 1064 (2d Cir.1993)"
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> MAG Portfolio Consult, GMBH v. Merlin Biomed Grp. LLC, 268 F.3d 58, 61 (2d Cir. 2001).
>
> . . .
>
> "A nonsignatory to an agreement containing an arbitration clause that has knowingly received direct benefits under the agreement will be equitably estopped from avoiding the agreement's obligation to arbitrate (*see MAG Portfolio Consultant, GMBH v Merlin Biomed Group LLC*, 268 F3d 58, 61 [2d Cir 2001])."

> HRH Const. LLC v. Metro. Transp. Auth., 33 A.D.3d 568, 569, 823 N.Y.S.2d 140 (1st Dep't 2006).

With Mr. Bron orchestrating the fraudulent invoicing and kickback scheme, and Mrs. Fritch being the only other owner of EEC, Mr. Sajiun and Sajiun Electric's intent was to use Mr. Bron to strip Mrs. Fritch of her equity in EEC, which stems directly from the Amended Operating Agreement. Estoppel easily applies herein.

Agency/Partnership

The "agency" exception is set forth as follows: "Traditional principles of agency law may bind a nonsignatory to an arbitration agreement. *See Interbras Cayman Co. v. Orient Victory Shipping Co., S.A.,* 663 F.2d 4, 6–7 (2d Cir.1981); *A/S Custodia,* 503 F.2d at 320; *Fisser,* 282 F.2d at 233–38; *Keystone Shipping,* 782 F.Supp. at 31–32." Thomson-CSF, S.A. v. Am. Arb. Ass'n, 64 F.3d 773, 777 (2d Cir. 1995). It is irrefutable that under the law of agency that an agent can bind its principal (whether that be an individual or company):

> "A partner is the agent of the partnership and his acts may be adopted and enforced by the partnership as its own (Partnership Law, section 20), and an undisclosed principal may sue on the contract of the agent (Kelly A.B. Co. v. Barber A.P., 211 N.Y. 68, 70, 105 N.E. 88, 89; Alpert v. G.R.E. Construction Corporation, 222 App.Div. 60, 225 N.Y.S. 327; Navarre Hotel and Importation Company v. American Appraisal Co., 156 App.Div. 795, 142 N.Y.S. 89)."
>
> Bennett Dairy v. Putney, 46 A.D.2d 1010, 1010, 362 N.Y.S.2d 93, 93–94 (4th Dep't 1974).

Agency and partnership go hand-in-hand: Mr. Bron, as Mr. Sajiun's partner, can bind Mr. Sajiun as a non-signatory, and Mr. Bron, as principal of Sajiun Electric, can bind Sajiun Electric as a non-signatory to be compelled to submit to arbitration under the Amended Operating Agreement. These arguments regarding agency are heavily buttressed by the Alter-Ego/Veil-Piercing/Bad Faith and Estoppel exception sections argued above.

IV. CONCLUSION

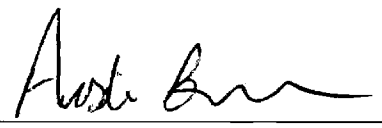
Mrs. Fritch has endured much hardship in this Action to date. The general rules do not apply to this Action because of the nature of Mrs. Fritch's allegations, and more importantly what she can prove. There is no case analogous to this Action under New York law.

This Motion to Compel is quite simple because of the extreme facts and circumstances as established by overwhelming evidence. Regardless of which of the five exceptions applies, Mr. Sajiun and Sajiun Electric should be compelled to the Arbitration with Mrs. Fritch and Mr. Bron.

For the foregoing reasons, Mrs. Fritch respectfully requests that this Court issue an Order: 1) Granting this Motion to Compel; 2) Granting the Motion to Consolidate (Motion Sequence No. 4) and staying all related actions thereafter pending the Arbitration (except for the Appeal); and 3) For such other further relief as is found just and equitable.

Dated: White Plains, New York
December 23, 2021

WELBY, BRADY & GREENBLATT, LLP

By: 

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CERTIFICATION OF
WORD COUNT SPECIFICATIONS

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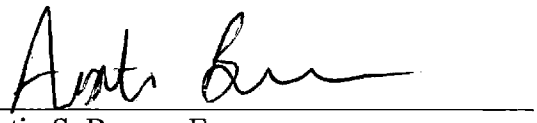
Dated: White Plains, New York
December 23, 2021

WELBY, BRADY & GREENBLATT, LLP

By: 

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