

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DYLAN 140 LLC,

Plaintiff,

-against-

HECTOR J. FIGUEROA, et al.,

Defendants.

19-cv-02897 (LAK)

MEMORANDUM AND ORDER TEMPORARILY STAYING ARBITRATION

LEWIS A. KAPLAN, *District Judge.*

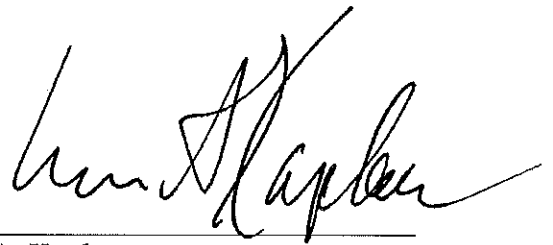
The parties to this ERISA action dispute whether Plaintiff owes contributions to certain union benefit funds for a worker claimed by Plaintiff to have been a non-union employee. Plaintiff commenced the action on April 1, 2019, seeking a declaratory judgment that it was not required to make the contributions in question. Defendants, taking the position that the parties' dispute is subject to arbitration, responded to the Complaint by filing a motion to dismiss the action or, alternatively, to stay these proceedings pending arbitration. (*See* Dkt. 9.) Although Defendants stipulated to a briefing schedule by which their motion will not be fully submitted until June (*see* Dkt. 12), Defendants also went ahead and demanded arbitration, informing Plaintiff and the Court on May 1, 2019, at a case management conference held before Magistrate Judge Debra Freeman, that an arbitration has now been scheduled for May 17, 2019. Upon learning of this, Plaintiff requested a temporary stay of the May 17 arbitration, so as to preserve the *status quo* while Defendants' motion to dismiss was being briefed and to allow that motion to be decided on its merits. Judge Freeman then set an expedited schedule for Plaintiff to file a written motion for a temporary stay, and that motion has now been fully submitted. (*See* Dkts. 15, 16, 17.)

Courts in this district have routinely issued restraining orders to stay arbitration proceedings on a temporary basis, in the type of circumstance presented here. *See, e.g., Unique Woodworking, Inc. v. New York City District Council of Carpenters' Pension Fund*, No. 07cv1951 (WCC), 2007 WL 4267632, at *1 (S.D.N.Y. Nov. 30, 2007) (in dispute over union fringe benefit contributions, reciting that court had issued a temporary stay of arbitration pending the court's determination, on the merits, of whether the matter was subject to arbitration); *see also Rafferty v. Xinhua Fin. Ltd.*, No. 11cv113 (CM), 2011 WL 335312, at *3 (S.D.N.Y. Jan. 31, 2011) (noting that court had issued a temporary restraining order staying arbitration, pending determination by the court of arbitrability of dispute and issue of whether right to arbitrate had been waived); *Credit Suisse First Boston, LLC v. Groves*, 333 F. Supp. 2d 229, 230 (S.D.N.Y. 2004) (noting that court had issued temporary restraining order, staying competing arbitrations pending court's decision on appropriate forum for arbitration).

Here, Plaintiff requests that arbitration be stayed only until the Court has had an opportunity to determine whether Plaintiff is required to arbitrate or may instead have its claim decided by this Court. Defendants' motion to dismiss, in which the sole issue in dispute is whether Plaintiff's claim is subject to arbitration, cannot be resolved prior to the date of the now-scheduled arbitration. It would be unfair and harmful to Plaintiff's potential right to litigate here, if the Court were to allow arbitration to proceed on May 17 and thereafter determine that Plaintiff's claim was properly before this Court. Further, Defendants will not be prejudiced by a temporary stay that would last only until the Court has had the opportunity to determine whether the parties' dispute should, in fact, be arbitrated. Accordingly, Plaintiff's motion for a temporary stay of arbitration (Dkt. 15) is hereby granted, pending the Court's resolution of Defendant's motion to dismiss or further order of the Court.

SO ORDERED.

Dated: May 14, 2019

A handwritten signature in black ink, appearing to read "Lewis A. Kaplan", written in a cursive style. The signature is positioned above a horizontal line.

Lewis A. Kaplan
United States District Judge