IN THE STATE COURT OF DEKALB COUNTY
STATE OF GEORGIA

SOPHIA EVANS, Plaintiff, v. ALLA Y. ZEMLYAK, MD, and NYC MEDICAL PRACTICE, P.C. d/b/a GOALS PLASTIC SURGERY, Defendants.	)	CIVIL ACTION FILE NO. 23A01610

ORDER TO DISMISS DUE TO MANDATORY ARBITRATION

This matter came before the Court on Defendant NYC Medical Practice, P.C.'s Motion to Compel Arbitration and Dismiss. Also appearing before the Court were counsel for Plaintiff Sophia Evans and non-moving Defendant Dr. Alla Y. Zemlyak.

All parties agree that binding arbitration is the appropriate means to resolve these matters and assent to their participation. As there are no remaining trial issues for this Court to resolve, the Court must determine whether a stay or dismissal of these actions is appropriate. The Court having considered the same, all matters of record, applicable and controlling law, and being otherwise fully apprised, has determined that dismissal with prejudice is appropriate for all three cases.

Like the case before this Court, the Georgia Court of Appeals said in Simmons Co. v. Deutsche Fin. Servs. Corp, 243 Ga. App. 85, 90 (2000), "since all of the issues in the underlying suit were compelled to arbitration, there was nothing left for the trial court to resolve, and it was not error to dismiss the suit with prejudice rather than grant a stay." Admittedly, this case does not expressly state that it would be improper for the Court to do the opposite (i.e. to grant a stay instead). However, in support of that holding in the Simmons case, the Court cited Green v. Ameritech Corp., 200 F.3d 967 (6th Cir. 2000). In

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this latter case, the Sixth Circuit Court said,

> Although we understand that plaintiffs motion to compel arbitration must be granted, **we do not believe the proper course is to stay the action pending arbitration.** Given our ruling that all issues raised in this action are arbitrable and must be submitted to arbitration, retaining jurisdiction and staying the action will serve no purpose. Any post-arbitration remedies sought by the parties will not entail renewed consideration and adjudication of the merits of the controversy but would be circumscribed to a judicial review of the arbitrator's award in the limited manner prescribed by law.

Green v. Ameritech Corp., 200 F.3d 967,973 (2000)(emphasis added).

This Court agrees with the Sixth Circuit Court especially since there are other previous cases where the Georgia Court of Appeals has affirmed dismissals by the lower court as instructive. See, e.g., Samaca, LLC v. Cellaris Franchise, Inc., 345 Ga. App. 368, 373 (2018); LaSonde v. CitiFinancial Mortg. Co., 273 Ga. App. 113, 116 (2005); Moore & Moore Plumbing, Inc. v. Tri-South Contractors, Inc., 256 Ga. App. 58, 61 (2002).

At first blush, a dismissal with prejudice seems harsh as it would allegedly curtail Plaintiff's opportunity to petition this Court for any alleged improper ruling by the arbitrator. However, that is not the case. After all, even after the dismissal by this Court, "[t]he dismissal with prejudice has not effect on a subsequent challenge to the arbitration ruling, which would be a separate action." Simmons Co., 243 Ga. App. At 90.

Accordingly, IT IS HEREBY ORDERED this Court **COMPELS ARBITRATION of ALL PARTIES and DISMISSES** this case with prejudice for referral to arbitration.

So Ordered this 10th June day of ~~May~~, 2024.

Kimberly Alexander

Kimberly A. Alexander, Judge
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