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

SHAWN C. CARTER, S. CARTER ENTERPRISES, MARCY MEDIA HOLDINGS, LLC and MARCY MEDIA, LLC, *Petitioners*, -against- ICONIX BRAND GROUP, INC. and ICON DE HOLDINGS, LLC, *Respondents*.	Index No.: _____ Commercial Division Part __ **CPLR § 7503(b) PETITION TO STAY ARBITRATION**

Petitioners Shawn C. Carter, S. Carter Enterprises, Marcy Media Holdings, LLC and Marcy Media, LLC, by their attorneys Quinn Emanuel Urquhart & Sullivan, LLC, allege as follows in support of their Petition pursuant to Article 75 of the New York Civil Practice Law and Rules ("CPLR") for an order: (1) issuing a temporary restraining order, restraining Respondents Iconix Brand Group, Inc. ("Iconix") and Icon DE Holdings, LLC ("Icon DE," and together with Iconix, the "Respondents") from proceeding with their claims against Petitioners in an arbitration currently pending before the American Arbitration Association (the "AAA"), Case No. 01-18-0003-6487 (the "Arbitration"), pending resolution of this application; and (2) granting Petitioners' request for a preliminary and permanent injunction, staying the Arbitration.

NATURE OF THE PROCEEDINGS

1. This proceeding seeks a preliminary and permanent stay of an ongoing arbitration before the AAA on the grounds that it is void as against public policy.

2. Mr. Carter is the celebrated rap artist known worldwide as JAY-Z. He is also one of the most successful African-American male entrepreneurs in history. This dispute centers on

one of his businesses, which was named after the Marcy Houses, a housing project in Brooklyn with predominantly black residents where Mr. Carter grew up.

3. Iconix is a publicly traded corporation that seeks to profit by licensing brands built by others, such as Mr. Carter. Facing serious financial distress, with its stock now trading at pennies on the dollar, Iconix has engaged in a series of desperate litigation gambits of which this is merely the latest installment. Currently pending in the Southern District of New York is a blunderbuss action Iconix brought against Mr. Carter's apparel-related businesses, other parties and even Mr. Carter personally, alleging trademark infringement and a host of other claims of dubious merit. Respondents separately commenced an arbitration against Petitioners on October 1, 2018, presumably seeking to put pressure on certain parties—who are also defendants in Iconix's trademark action—by suddenly demanding financial information about the businesses that they had not received in the ordinary course of performance.

4. After a preliminary conference with the AAA, Mr. Carter and his companies sought to choose an arbitrator pursuant to the parties' agreement. That is, Petitioners would consult a list of more than 200 prospective neutrals from a list of arbitrators who specialize in "Large and Complex Cases," each party would propose four potential arbitrators from that list to the AAA, who would also propose four additional names, and the parties would proceed to strike names in an orderly fashion.

5. When Mr. Carter began reviewing arbitrators on the AAA's Search Platform, however, he was confronted with a stark reality: he could not identify a single African-American arbitrator on the "Large and Complex Cases" roster, composed of hundreds of arbitrators, that had the background and experience to preside over the Arbitration.

6. When Mr. Carter confronted the AAA about its apparent lack of diverse arbitrators who had expertise in complex commercial law, the AAA was able to provide only three neutrals it identified as African-American: two men—one of whom was a partner at the law firm representing Iconix in this arbitration and thus had a glaringly obvious conflict of interest—and one woman. Thus, the AAA provided Petitioners with one choice for an arbitrator from Mr. Carter's protected class—which, of course, is no choice at all.

7. The AAA's lack of African-American arbitrators came as a surprise to Petitioners, in part because of the AAA's advertising touting its diversity. This blatant failure of the AAA to ensure a diverse slate of arbitrators is particularly shocking given the prevalence of mandatory arbitration provisions in commercial contracts across nearly all industries. It would stand to reason that prospective litigants—which undoubtedly include minority owned and operated businesses—expect there to be the possibility that the person who stands in the shoes of both judge and jury reflects the diverse population.

8. By virtue of the increasing prevalence of arbitrations in commercial contracts, arbitrators have gained unprecedented power to oversee and make decisions regarding significant business disputes. The AAA's arbitration procedures, and specifically its roster of neutrals for large and complex cases in New York, deprive Mr. Carter and his companies of the equal protection of the laws, equal access to public accommodations, and mislead consumers into believing that they will receive a fair and impartial adjudication.

9. When a contract violates New York law, New York courts do not hesitate to invalidate that contract provision as void as against public policy, notwithstanding the fact that the parties willingly agreed to the provision. The AAA's failure to provide a venire of arbitrators that includes more than a token number of African-Americans renders the arbitration provision

in the contract void as against public policy. Accordingly, Petitioners seek a preliminary injunction staying the pending arbitration under CPLR 7503(b) for a minimum of ninety days, so that Petitioners may work with AAA to include sufficient African-American arbitrators from which the parties may choose.

10. Further, in light of the November 30, 2018 deadline for the selection of arbitrators in the Arbitration, Petitioners request a temporary stay while this Court considers this application for a permanent stay.

11. Should the parties and the AAA be unable to remedy the serious deficiencies identified above in the 90-day time period, Petitioners request that the Court issue a permanent stay of the arbitration on the ground that the arbitration clause is void as against public policy.

PARTIES

12. Petitioner Shawn C. Carter, a/k/a JAY-Z, is an individual residing in Los Angeles, California.

13. Petitioner S. Carter Enterprises is a Delaware limited liability company with an address at 1411 Broadway, New York, New York 10018.

14. Petitioner Marcy Media Holdings, LLC ("Marcy Holdings") is a Delaware limited liability company with an address at 1411 Broadway, New York 10018.

15. Petitioner Marcy Holdings, LLC is a Delaware limited liability company with an address at 1411 Broadway, New York 10018.

16. Respondent Iconix Brand Group, Inc. is a Delaware corporation with an address at 1450 Broadway, New York, New York.

17. Respondent Icon DE Holdings, LLC is a Delaware Limited Liability Company with an address at 1450 Broadway, New York, New York, and is a wholly-owned subsidiary of Iconix.

JURISDICTION AND VENUE

18. This Court has jurisdiction over this Petition pursuant to CPLR § 7503(b).

19. Venue is proper in this County pursuant to CPLR § 7502(a). The Arbitration, which this Petition seeks to stay, is currently pending in New York.

FACTUAL BACKGROUND

A. Mr. Carter And His Successful Ventures

20. Mr. Carter is a world-renowned musical artist and one of the most successful African-American entrepreneurs, professionally known as JAY-Z.

21. Mr. Carter is African-American and was born in Brooklyn, New York. He was raised in the Marcy Houses, a public housing complex with a majority of black residents, in the Bedford-Stuyvesant neighborhood of Brooklyn.

22. After achieving international acclaim for his music, winning dozens of awards, and becoming a household name, Mr. Carter sought to expand his professional dossier by launching several highly recognized and profitable apparel brands, including Rocawear and, after 2008, Roc Nation, which is managed and developed by Roc Nation LLC ("RN LLC").

23. The Rocawear fashion brand was created in 1999. Prior to Rocawear's acquisition by Iconix in 2007, the brand had become a huge success for clothing, footwear, fragrances, and fashion accessories.

B. The Underlying Dispute Before AAA

24. Respondent Iconix is a brand-management company that owns and licenses a portfolio of consumer brands. On March 6, 2007, Iconix entered into an Asset Purchase Agreement ("APA"), and purchased the clothing brand Rocawear and a clearly defined set of related trademarks.

25. The parties also entered into a Membership Interest Purchase Agreement ("MIPA"), pursuant to which Mr. Carter sold Iconix a minority membership interest in Marcy Holdings.

26. Years later, certain disputes arose between the parties over a series of transactions, leading Mr. Carter, S. Carter Enterprises, Roc Nation Apparel Group, LLC, Iconix, and Icon DE Holdings to enter into a Master Settlement Agreement ("MSA") on July 6, 2015.

27. Both the MIPA and the MSA mandate arbitration of disputes arising out of or relating to the agreements. The arbitration provisions require that the arbitration shall be administered by AAA in accordance with the Commercial Arbitration Rules of AAA. Any arbitration shall take place in New York, New York, and is governed by New York law.

28. On October 1, 2018, the Respondents filed a Demand for Arbitration against Petitioners with the AAA, alleging breaches of certain obligations under the MSA and the Marcy Holdings Operating Agreement.

C. AAA Fails To Provide Diverse Neutral Arbitrator Candidates

29. According to the arbitration provisions in the MSA and MIPA, "[t]here shall be three arbitrators, unless the Parties are able to agree on a single arbitrator." If the parties cannot agree, the AAA's commercial panel, in accordance with its Commercial Arbitration Rules, shall appoint a panel of three arbitrators.

30. In an administrative conference call with the parties, the parties agreed to a process for selecting arbitrators proposed by AAA. Pursuant to that process, if the parties could not mutually agree on a single arbitrator, Petitioners and the Respondents would each submit four names from the AAA's "Large and Complex Cases" roster—a narrower subset of the AAA's National Roster. Then, the AAA would add four names, and send that larger list to the

parties, who would have the ability to strike a maximum of four names. The parties agreed to use the AAA's Arbitrator Search Platform to select an arbitrator, and the AAA provided search tips for using that platform, which provides access to the AAA's entire National Roster of Arbitrators.

31. Using the AAA Search Platform in accordance with AAA's search tips, Petitioners' counsel searched potential arbitrators. In doing so, Petitioners' counsel reviewed more than 200 potential arbitrators in the New York area from the Large and Complex Cases roster. Of these potential arbitrators, Petitioners' counsel were unable to identify a single African-American arbitrator with the necessary qualifications to oversee the Arbitration.

32. After Petitioners raised their concerns with the AAA, noting that Mr. Carter is black, and asked the AAA to provide the names of "neutrals of color," AAA responded by providing the names of six individuals it described as arbitrators "of color." Of those six candidates, one appears to be Asian-American, another South Asian and a third Latino. Only three of the proposed neutrals are African-American—two men, and one woman. Worse yet, one of the African-American men suggested is a partner at the law firm that represents Iconix *in the underlying Arbitration*, Blank Rome, creating a blindingly obvious conflict of interest. Presently, Petitioners cannot determine whether the only two proposed African-American candidates have conflicts that would similarly disqualify them. Moreover, using the AAA's search tips, Petitioners were unable to identify whether all of these individuals actually belong to AAA's Large and Complex Cases Roster.

33. Rather than address Petitioners' concern that they were never given an adequate choice of arbitrators, the AAA presented Petitioners with an ultimatum: either Petitioners make selections from the existing sample they reviewed (plus the individuals the AAA identified in

response to Petitioners' concerns), or the AAA would make selections for Petitioners. The following day, the AAA did just that. Implicitly recognizing the legitimacy of Petitioners' complaint, the AAA included the lone African-American man and woman in the list of twelve individuals it sent to the parties.

34. By providing names for only two African-American neutrals, and failing to indicate whether either candidate was included in the AAA's Large and Complex Cases Roster, the AAA failed to give Petitioners a true choice of suitable arbitrators who possessed the necessary experience to oversee the Arbitration.

35. Now, AAA insists that Petitioners select from the list of twelve arbitrator candidates. Indeed, AAA has imposed a deadline of November 30, 2018 for the parties to strike up to four of the twelve candidates. As the AAA warned, "[i]f the list of arbitrators is not returned by the date specified," they will proceed to appoint an arbitrator without ever giving Petitioners a meaningful and representative choice.

D. The Lack Of Diverse Arbitrators

36. AAA's website highlights its purported commitment to ensuring that its arbitrators come from diverse backgrounds, "recogniz[ing] the importance and contribution of a diverse work force, a diverse Roster of Neutrals, a diverse Board, and commit to respect and increase diversity in all [its] endeavors." In fact, the AAA devotes a page on its website to its "shared commitment to diversity." It lists as its mission "to promote the inclusion of those individuals who historically have been excluded from meaningful and active participation in the alternative dispute resolution (ADR) field."

37. In reality, the AAA lacks a meaningful number of African-American arbitrators available for large, complex commercial disputes.

38. The AAA states on its website that "[t]he AAA Roster is composed of 24% women ***and*** minorities, and this figure is increasing." American Arbitration Association, *Roster Diversity & Inclusion*, https://www.adr.org/RosterDiversity (emphasis added). A further breakdown by area of dispute reveals even less diversity in certain areas: commercial cases have only 17 percent "diverse" arbitrators—which refers to both women *and* minorities, without specifying the number of African-American arbitrators—while insurance and construction law "diversity" falls to just 10 percent, which again includes both women and minorities.

39. As AAA's own assistant General Counsel has recognized, "[t]here is no question that the ADR community is lacking in diversity," which the AAA attributes to "a lack or perceived lack of access for diverse candidates, failure by arbitral organizations to reach out to diverse candidates, and an arbitrator selection process that relies upon users to select neutrals to serve on their cases." Sasha A. Carbone & Jeffrey T. Zaino, *Increasing Diversity Among Arbitrators, A Guideline to What the New Arbitrator and ADR Community Should Be Doing to Achieve This Goal*.

40. By any measure, the AAA has failed to ensure that Petitioners have sufficient access to African-American neutral decision makers who are qualified to preside over complex commercial cases.

E. AAA's Violations

41. Because of the AAA's failure to represent Petitioners by providing African-American neutrals with experience in large and complex cases, the AAA violates (1) the Equal Protection Clause of the New York State Constitution, article 1, § 11 because it discriminates against litigants based on their race by failing to provide diverse and representative arbitrators; (2) the New York State Human Rights Law § 296(2)(a), the New York State Civil Rights Law §

40, and the New York City Human Rights Law pursuant to N.Y.C. Admin. Code §8-107 because the AAA is a place of public accommodation that fails to provide equal access to litigants of color; and (3) the New York Deceptive Practices Act, N.Y. G.B.L. § 349 because the AAA misleads prospective litigants into believing that it engages with a critical mass of diverse arbitrators, when in reality, Mr. Carter was presented with only three African-American arbitrators to preside over his arbitration.

42. Because the AAA has violated these constitutional and statutory protections under the circumstances present here, the arbitration clause is void as against public policy.

CAUSE OF ACTION

43. Petitioners repeats and re-alleges paragraphs 1 through 42 hereof, as if fully set forth herein.

44. Petitioners seek (1) a temporary restraining order pursuant to CPLR 7503(2), restraining the Respondents from proceeding with their claims against Petitioners in the ongoing Arbitration pending resolution of this application; and (2) a preliminary and permanent injunction, staying the Arbitration.

45. As discussed in the accompanying Memorandum of Law in support of Petitioners' Order to Show Cause, Petitioners fully satisfy the standard for a temporary restraining order and/or injunctive relief. Petitioners' likelihood of success is great because the Arbitration Clause is void as against public policy because (i) New York law has a public policy against racial discrimination that is violated under the circumstances present here; (ii) the AAA's procedures and lack of African-American arbitrators as applied in this instance violates the Equal Protection Clause of the New York State Constitution, the New York State Human Rights Law § 296(2)(a), the New York State Civil Rights Law § 40, and the New York City

Human Rights Law promulgated under N.Y.C. Admin. Code § 8-107, and (iii) the AAA's advertising of diverse arbitrators on its website is misleading to potential African-American business owners and prospective litigants and violates the New York Deceptive Practices Act. Absent a stay, Petitioners will suffer irreparable harm by being forced to participate in the ongoing Arbitration even though the arbitration provision is void as against public policy. Further, Petitioners' claims risk being mooted if they are forced to arbitrate their claims pursuant to unconstitutional procedures. The prejudice to Respondents of granting Petitioners' request for relief does not outweigh the severe prejudice Petitioners would encounter by having to arbitrate their claims pursuant to a void arbitration clause and subject to policies that violate New York constitutional and statutory law.

46. Likewise, Petitioners fully satisfy the standard for a permanent injunction. New York law recognizes that a party should not have to arbitrate pursuant to an invalid arbitration clause. The Petitioners are threatened with being drawn into an arbitration that engages in prejudicial practices in this instance because of the lack of African American arbitrator candidates who have the necessary background and experience to decide large and complex commercial matters. Petitioners have no adequate remedy at law because only injunctive relief will serve to prohibit the Arbitration from proceeding. Serious and irreparable harm will befall Petitioners by being forced to participate in the Arbitration even though the arbitration provision is void as against public policy. Finally, the equities are balanced in Petitioners' favor: Petitioners, specifically Mr. Carter, stand at risk of suffering a violation of equal protection rights and Petitioners should not be forced to arbitrate under procedures that violate New York constitutional and statutory law.

47. No previous application has been made to this or to any other court for the relief sought herein and no other provisional remedy has been sought in this or any other Court.

PRAYER FOR RELIEF

WHEREFORE, Petitioners respectfully requests an Order from his Court:

A. Issuing a temporary restraining order, restraining Respondents from proceeding with their claims against Petitioners in the Arbitration until this request for preliminary injunctive relief is resolved;

B. Granting Petitioners' request for a preliminary injunction, staying the Arbitration pending resolution for a period of ninety days from this application so that the parties may work with the AAA to include sufficient African-American candidates who are qualified to adjudicate complex commercial cases;

C. Permanently staying the Arbitration; and

D. Granting such other and further relief as this Court deems just and proper.

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QUINN EMANUEL URQUHART &
SULLIVAN, LLP

By: */s/ Alex Spiro*
Alex Spiro
NY State Bar No. 4656542
alexspiro@quinnemanuel.com
Andrew J. Rossman
NY State Bar No. 2561751
andrewrossman@quinnemanuel.com
Ellyde R. Thompson
NY State Bar No. 4729687
ellydethompson@quinnemanuel.com

51 Madison Avenue, 22nd Floor
New York, New York 10010-1601
(212) 849-7000

Attorneys for Petitioners