

United States Court of Appeals  
For the First Circuit

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No. 22-1430

BRYAN O'BRIEN, PAWEENIT BURANAVORAKUL  
Plaintiffs - Appellants,

v.

PRETI, FLAHERTY, BELIVEAU & PACHIOS LLP;  
JOHN SULLIVAN; MIKE LANE; PAM LORING  
Defendants - Appellees.

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Before  
Lynch, Kayatta, and Gelpí,  
Circuit Judges.

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**JUDGMENT**

Entered: December 29, 2022

Pro se plaintiffs-appellants Bryan O'Brien and Paweenit Buranavorakul appeal from the district court's dismissal of their amended complaint. Appellants request: (1) that O'Brien's claims be remanded to the district court with instructions to stay the claims pending arbitration; and (2) that Buranavorakul's single claim be remanded to state court. With respect to O'Brien's claims, appellants have abandoned any argument that the claims are not subject to arbitration. See United States v. Zannino, 895 F.2d 1, 17 (1st Cir. 1990) ("[I]ssues adverted to in a perfunctory manner, unaccompanied by some effort at developed argumentation, are deemed waived."); see also Awuah v. Coverall N. Am., Inc., 554 F.3d 7, 11 (1st Cir. 2009) (discussing American Arbitration Association Rule 7(a)).

After careful de novo review of the record and the parties' submissions, including each and every one of the arguments set out in appellants' opening brief, we affirm the dismissal, substantially for the reasons set forth by the district court in its April 29, 2022, electronic order. See Next Step Med. Co. v. Johnson & Johnson Int'l, 619 F.3d 67, 71 (1st Cir. 2010) ("[A] district court can, in its discretion, choose to dismiss the law suit, if all claims asserted in the case are found arbitrable."); United States v. Rodriguez-Pacheco, 475 F.3d 434, 441-42 (1st Cir. 2007) (discussing "limited exception[s]" to stare decisis doctrine recognized in this circuit); see also Senra v. Town of Smithfield, 715 F.3d 34, 41 (1st Cir. 2013) ("[T]he termination of the foundational federal claim does not divest the district court of power to exercise supplemental jurisdiction, but, rather, sets the stage for an exercise of the court's informed discretion.") (quoting Roche v. John Hancock Mut. Life Ins. Co., 81 F.3d 249, 256-57 (1st Cir. 1996)); Garcia-Catalan v. United States, 734 F.3d 100, 102 (1st Cir. 2013) (applying de novo review to a dismissal for failure to state a claim and "accept[ing] the truth of all well-pleaded facts and draw[ing] all reasonable inferences therefrom in the pleader's favor"); Woods v. Wells Fargo Bank, N.A., 733 F.3d 349, 357 (1st Cir. 2013) (general principles applicable to fraud claim under Massachusetts law ); Sparkle Hill, Inc. v. Interstate Mat Corp., 788 F.3d 25, 30 (1st Cir. 2015) (explaining that this court "do[es] not consider arguments for reversing a decision of a district court when the argument is not raised in a party's opening brief," particularly where "the opening brief presents no argument at all challenging [the] express grounds upon which the district court prominently relied in entering judgment").

Affirmed. See 1st. Cir. R. 27.0(c).

By the Court:

Maria R. Hamilton, Clerk

cc:

Bryan O'Brien III  
Paweenit Buranavorakul  
Matthew A. Porter  
Matthew C. Chambers

**United States District Court  
District of Massachusetts (Boston)  
CIVIL DOCKET FOR CASE#: 1:22-cv-10340-RGS**

Judge Richard G. Stearns: ELECTRONIC ORDER entered granting 5 Motion to Dismiss.

Plaintiff Bryan O'Brien worked as a full-time associate at defendant law firm Preti, Flaherty, Beliveau & Pachios LLP (Preti) from November of 2017 until October 31, 2018. As in the virtually identical lawsuit he filed against Preti in January of 2021, O'Brien alleges wrongful termination (and additional claims regarding salary, benefits, and performance expectations). The court dismissed the earlier suit finding that O'Briens claims fell "squarely within the parties' agreement to arbitrate disputes arising out of O'Brien's employment relationship with Preti." *O'Brien v. Preti Flaherty Beliveau and Pachios, LLP*, 21-cv-10057, Dkt #12. After the dismissal, O'Brien filed a demand for arbitration with the American Arbitration Association.

This court's disposition of O'Brien's lawsuit was affirmed by the First Circuit Court of Appeals on January 26, 2022 ("After careful de novo review of the record and the parties' submissions, including each and every one of the arguments set out in O'Brien's opening brief we affirm the dismissal, substantially for the reasons set forth by the district court....") *O'Brien v. Preti Flaherty Beliveau and Pachios, LLP*, 21-1564 at 1 (1st Cir. Jan. 26, 2022). The First Circuit also found that O'Brien had "abandoned any claim that the matter is not subject to arbitration." *Id.*

According to Preti, the mediation/arbitration process has begun. This litigation, asserting claims under Mass. Gen. Laws ch. 151B, was initially filed in the Suffolk County Superior Court on August 31, 2020, O'Brien amended the Complaint to add his wife, Paweenit Buranavorakul, "a citizen of Thailand, domiciled in Bangkok", see Am. Compl.

3 (Dkt #1-2 at 71), as a plaintiff, and two Preti lawyers (the managing partner and the co-chair of the business law practice group), and Preti's director of human resources as defendants. Also, O'Brien added discrimination claims under § 4572 of the Maine Human Rights Act, various claims under the Family and Medical Leave Act (FMLA), 29 U.S.C. § 2601 et seq., and a count for vacation pay under the Massachusetts and Maine Wage Laws. Preti removed the case to this court and now moves to dismiss the Complaint in its entirety.

This case will be DISMISSED. This court and the First Circuit have previously found that O'Briens claims arising from his employment at Preti are subject to the parties' compulsory arbitration agreement. See also Revised Offer Letter (Dkt # 6-1) 11. Accordingly, these claims must be submitted to mediation/arbitration the "exclusive procedure" agreed to by the parties. *See Howsam v. Dean Witter Reynolds, Inc.*, 537 U.S. 79, 84 (2002) ("Procedural questions which grow out of the dispute and bear on its final disposition are presumptively not for the judge, but for an arbitrator, to decide.... So, too, the presumption is that the arbitrator should decide allegation[s] of waiver, delay, or a like defense to arbitrability."); *Kristian v. Comcast Corp.*, 446 F.3d 25, 44 (1st Cir. 2006) ("[T]he merits of the dispute... are for the arbitrator.... Affirmative defenses often involve factual questions that do touch on the merits of a case.")

The remaining misrepresentation/fraudulent inducement claim, brought by O'Briens wife, Paweenit Buranavorakul, is based on statements that Preti is alleged to have made during O'Brien's recruitment by the firm regarding the date his healthcare benefits would begin; Preti's professed offers of "opportunities for [O'Brien's] personal and professional development, experience and career advancement", and assurances about the fairness of its employee evaluation process. Pl.s' Opp'n at 10. None of these statements gives rise to a cognizable third-party claim by Buranavorakul. Moreover, Buranavorakul was not a resident of Massachusetts when these statements were made (nor are they alleged to have been made in Massachusetts). See Am. Compl. 218-238 (Dkt #1-2 at 92-94). Consequently, even if actionable, this court has no jurisdiction over Buranavorakul's claim.

(Zierk, Marsha) (Entered: 04/29/2022)