

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

-----X
KATHLEEN R. GLYNN,

Petitioner,

-against-

MICHAEL F. MOORE,

Respondent.
-----X

**VERIFIED PETITION OF
KATHLEEN R. GLYNN IN
SUPPORT OF APPLICATION
TO COMPEL RESPONDENT
MICHAEL MOORE
TO ARBITRATE**

INTRODUCTION

1. This is a special proceeding brought pursuant to Article 75 of the CPLR for an order to compel arbitration, directing the respondent to comply with

a. The parties’ written agreement, as part of the 2014 agreement settling their Michigan divorce action, to engage in binding arbitration to flesh out the terms of an important provision of their property settlement; and

b. The parties’ 2018 written agreement naming retired New York State Supreme Court Justice Saralee Evans as the substitute arbitrator and specifying that the arbitration hearing would be conducted at her Manhattan law office beginning on February 15, 2018.

2. *This proceeding is brought because respondent, Michael F. Moore, realizing that he and his misconduct were exposed and looking for a “do-over,” has simply walked away from the ongoing arbitration process – the latest tack in his four-year effort to prevent petitioner from obtaining the benefit of a bargain between the parties in which petitioner signed over essentially all of her interest in the fruits of the parties’ joint efforts as film-makers and documentarians during a marriage of more than two decades, in exchange for a promise of future revenue-sharing by respondent.*

3. CPLR §7501 provides:

A written agreement to submit any controversy thereafter arising or any existing controversy to arbitration is enforceable without regard to the justiciable character of the controversy and confers jurisdiction on the courts of the state to enforce it and to enter judgment on an award. In determining any matter arising under this article, the court shall not consider whether the claim with respect to which arbitration is sought is tenable, or otherwise pass upon the merits of the dispute.

4. CPLR §7503(a) provides, in pertinent part:

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 7502¹, the court *shall* direct the parties to arbitrate. Where any such question is raised, it shall be tried *forthwith* in said court.

(Emphasis added.)

5. Mr. Moore is the well-known writer, director and star of numerous documentary films, several of which are among the most financially successful documentary films ever made; two documentary TV series; and a one-man Broadway show, as well as the author of eight books.

6. The petitioner, Kathleen R. Glynn (“Kathleen”) is an award-winning film and television producer who, until the parties’ divorce in 2014 after 23 years of marriage, was Mr. Moore’s business partner of over 25 years. She was a driving force in the making of many of those films and other ventures in which Mr. Moore was the featured personality, dating back to their first

1

CPLR 7502(b) provides that a proceeding to compel arbitration is time-barred if the claim as to which arbitration is sought is itself time-barred, which is not the case here, as Michigan’s limitations period with respect to contract claims, like New York’s is six years. M.C.L.A §600.5807.

big success, *Roger and Me* (1989), in which Mr. Moore sought to interview General Motors CEO Roger Smith about the plant closures that devastated their home town, Flint, Michigan. In addition, Kathleen was, *inter alia*, the producer of the Academy Award-winning *Bowling for Columbine* (2002), which examined America's gun culture in the wake of the Columbine High School massacre; the producer of *Fahrenheit 9/11* (2004), the highest-grossing documentary film of all time, in which Mr. Moore examined the actions of the George W. Bush Administration, including the invasion of Iraq, in the wake of the September 11, 2001 terrorist attacks and the coverage of those actions by the U.S. news media; executive producer of *Sicko* (2007), in which Mr. Moore critiqued the U.S. health-care system; and executive producer of *Capitalism: A Love Story* (2009), in which Mr. Moore examined the U.S. financial crisis of 2008-2009 and offered a scathing critique of the contemporary U.S. economy.

7. Mr. Moore now resides and works primarily in New York County. Kathleen continues to reside in Michigan.

**THE SETTLEMENT AGREEMENT: WHAT KATHLEEN
GAVE UP AND WHAT SHE WAS SUPPOSED TO GET IN RETURN**

8. On July 18, 2014, the parties entered into a Confidential Settlement Agreement (the "Settlement Agreement"), resolving the marital issues between them, subject to the outcome of binding arbitration on certain issues relating to the division of property. A pivotal term of their settlement agreement was that Kathleen would surrender essentially all of her very valuable economic rights in the creative work that both of the parties created and performed during their decades-long marriage and before, in exchange for a 4% share (to be paid quarterly) of Mr. Moore's gross receipts (with limited, specified exceptions) attributable to (a) Mr. Moore's work over the five

years following the Settlement Agreement and (b) the parties' past creative works. *The parties agreed that the terms of the foregoing would be fleshed out in a supplemental agreement (the "Separate Contract"), whose terms would be decided by an arbitrator if the parties were unable to reach agreement on them quickly.*

9. As part of the overall settlement scheme, Kathleen agreed to surrender her 50% titled interest in Dog Eat Dog Films, Inc. ("Dog Eat Dog"), the parties' primary production company for their films and other ventures, and all other interest she might have, as a divorcing spouse or otherwise, in Dog Eat Dog (including its "assets, copyrights, royalties, residuals and other interests") and in various other business entities through which the parties had worked (except that Kathleen retained rights in what the parties described as Dog Eat Dog's "archives"). *Id.* at 7-9. In addition, Kathleen agreed to resign as an officer and/or director of Dog Eat Dog (*id.* at 7) *and to waive any claim to spousal support from Michael (id.* at 2).

10. As shown below, while Mr. Moore received the full benefit of *his* bargain over four years ago (Kathleen having transferred and/or waived her aforementioned economic rights essentially upon signing the agreement), **Mr. Moore flagrantly, intentionally and shamelessly acted in bad faith to deprive Kathleen of hers.** His dishonorable intentions became clear from the outset. For example, in purported fulfillment of his obligations to Kathleen for the seven-month period from June 1, 2014 through December 31, 2014, Mr. Moore tendered two checks to Kathleen totaling a meager **\$541** – with little or no documentation showing or even purporting to show the total gross receipts on which those payments were based – implying that his gross receipts during

that seven-month period were just \$13,525.²

11. In Paragraph 4(A) of the Settlement Agreement, Mr. Moore agreed, *inter alia*:

[C]ommencing June 1, 2014 and ending May 31, 2019, Moore will pay Glynn periodic property settlement payments as follows:

1. Four (4%) percent of all amounts paid to either Mr. Moore, his loan out corporations [–] currently Eat Dog Films Inc. (DEDF) or any other entertainment-related companies which replace or are in addition to DEDF [–] [f]or his services as generated by new projects consisting of documentary films, fiction films, books, Broadway productions, series, shows and specials on television or other media transmissions [“New Projects”]. This shall include payments from “old business” royalties and residuals. . . .

6. The parties will execute a Separate Contract (Contract) which will include and describe, in greater detail, the contractual provisions regarding these property settlement payments by Moore to Glynn the detailed terms of which will not be inconsistent with paragraph 4A above with concept and execution details to be prepared by their respective entertainment lawyers, business valuers and CPAs in a form to be agreed upon by the parties. . . .

b. *If the parties have not agreed on the terms and language of the Contract within thirty (30) days of entry of Judgment, they will submit their disputes to a mutually agreeable binding arbitrator who is an experienced entertainment attorney (Entertainment Attorney Arbitrator). Within sixty days of Judgment[,] the Entertainment Attorney Arbitrator shall issue a written opinion.*

Id. at 3-5.³ (Emphasis added.)

² Incredibly, on his personal tax returns, Mr. Moore reported total income of *negative* \$350,862 in 2014 and total income of *negative* \$221,025 in 2016, the most recent year made available to Kathleen.

³ In deference to the confidentiality provisions of the Settlement Agreement, we are not including the Settlement as an exhibit, instead quoting only from the relevant portion.

**MR. MOORE'S STALLING TACTICS HAVE
HAVE PREVENTED RESOLUTION OF
THE TERMS OF THE SEPARATE CONTRACT**

12. The parties did *not* reach agreement within 30 days after the judgment of divorce was granted on the terms of the Separate Contract fleshing out the terms of the Settlement Agreement concerning the “periodic property settlement payments” to be made by Mr. Moore to Kathleen. Accordingly, pursuant to the terms of the Settlement Agreement, Robert Feldstein, Esq., who was designated in the Settlement Agreement to serve as arbitrator for other issues not pertinent here, selected M. Kenneth Suddleson, Esq, an entertainment-law attorney based in Los Angeles, to serve as the Entertainment Attorney Arbitrator. The parties entered into an agreement with Mr. Suddleson dated July 21, 2015 (the “First Arbitration Agreement”), a copy of which is annexed hereto as **Exhibit A**.

13. As contemplated in the parties’ agreement with Mr. Suddleson, he first attempted to assist the parties to reach an agreement through mediation, which was conducted by telephone. The combined mediation and arbitration with Mr. Suddleson did not proceed at anything like the pace envisioned in the Settlement Agreement. Instead, the process dragged on. Months turned into years, due, in large measure, to foot-dragging by Mr. Moore, who had no financial incentive to complete the process speedily and frequently took the position that he was too busy to commit time to sessions with Mr. Suddleson.

**THE PARTIES AGREE TO ENGAGE
RETIRED SUPREME COURT JUSTICE
SARALEE EVANS – PROPOSED BY MR. MOORE –
TO REPLACE MR. SUDDLESON AS ARBITRATOR**

14. So great were the delay and Kathleen’s desire to move the arbitration to a conclusion that she engaged Bonnie E.Rabin, a New York attorney, to work as co-counsel with her

then-matrimonial attorney, Thomas Plunkett, Esq., to achieve a speedy completion of the arbitration process. Ms. Rabin became Kathleen's lead counsel following Mr. Plunkett's death in 2017.

15. Because Mr. Suddleson was incapacitated for an extended time as a result of a serious automobile accident, and because it was not clear when or if Mr. Suddleson would be able to resume his duties at Entertainment Attorney Arbitrator, the parties agreed to choose a replacement for Mr. Suddleson and that the arbitration proceeding would take place in New York City.

16. Ms. Rabin provided to Mr. Moore's counsel, Michigan-based attorney Candyce Abbatt, the names of five New York City-based attorneys as potential replacements for Mr. Suddleson. Ms. Abbatt rejected all five. Instead, based on her own research, Ms. Abbatt proposed retaining retired Manhattan Supreme Court Justice Saralee Evans, a well respected jurist who has spent more than 20 years on the bench. Eager to speed the process along, Kathleen and her counsel agreed to the appointment of Justice Evans. Counsel for both parties understood that Justice Evans, a longtime Justice whose experience included presiding in a matrimonial part, did not have a specific background in entertainment law, but nonetheless agreed to her retention as the new Entertainment Attorney Arbitrator, who would decide the terms of the Separate Contract.

17. As noted above, the parties agreed that the arbitration proceedings would take place at Justice Evans's Manhattan law office starting on February 15, 2018. They subsequently scheduled three days of arbitration proceedings, on February 15, 16 and 17, 2018. The parties' agreement was reduced to writing in a written agreement with Justice Evans signed by the parties on February 15, 2018 (the "Second Arbitration Agreement," a copy of which is annexed hereto at **Exhibit B**). Paragraph 5 of the Second Arbitration Agreement specified that

Pursuant to the provisions of [Michigan's Domestic Relations Arbitration Act], the Arbitrator is hereby conferred with jurisdiction

to decide the following issue in lieu of a trial by the court: the terms, and language in the drafting of the Separate Contract provided for in Sections 4(A), 9(5), 9(7) and 9(8) of the Confidential Settlement Agreement.

18. At the arbitration hearing, Kathleen and her two expert witnesses gave their direct testimony and were cross-examined by Mr. Moore's counsel. Kathleen rested her direct case on the second day, February 16, 2018. Mr. Moore began his direct case that day, presenting the testimony of the first of two non-party witnesses he called on his behalf, who was also cross-examined by Kathleen's counsel that day. On the third day, February 17, 2018, the second of Mr. Moore's non-party witnesses testified and was cross-examined by Kathleen's counsel. That same day, Mr. Moore began his direct testimony and testified up until the time at which the parties had agreed to adjourn that day (a Saturday), at which point his counsel indicated that his direct was almost finished.

19. At the end of that third day, the parties, counsel and Justice Evans discussed when they would resume, but Mr. Moore and his counsel stated that they were unable to commit to a resumption date at that time, and that it could not be for several months (May or June 2018) due to work commitments of Mr. Moore's. So, the arbitration proceeding was adjourned *sine die*.

MR. MOORE ABANDONS THE ARBITRATION

20. On March 30, 2018, Ms. Abbatt wrote to Justice Evans, stating that the letter (the "March 30 Letter") was "intended to serve as Mr. Moore's Motion to Close Proofs in Arbitration." In her letter, Ms. Abbatt, without citing any legal authority in support of her request, asked Justice Evans to declare the arbitration proceeding at an end and decide the matter based on the proofs submitted to date and written argument. *In other words, Ms Abbatt was proposing that the matter be decided on a record that included all or most of Mr. Moore's contemplated direct*

testimony, but no cross-examination of Mr. Moore and no rebuttal by Kathleen. A copy of the March 30 Letter is annexed hereto as **Exhibit C**.

21. In support of Mr. Moore's "motion," Ms. Abbatt listed numerous purported grievances, including "Failure of the Arbitrator to properly control the proceeding," "Exceeding your authority as Arbitrator," "Failure to follow Michigan Law as required by the Agreement," "Spontaneous instigation of mediation/settlement negotiations in the middle or arbitration proceedings," "Inappropriate comments during the proceedings" and "Failure to follow proper procedures." Mr. Moore provided no authority whatsoever in support of the bizarre relief requested.

22. Kathleen's counsel responded in a letter dated April 30, 2018 (the "April 30 Letter." A copy of the April 30 Letter is annexed hereto as **Exhibit D**.

23. In a telephone conference in or about May, 2018 that included Justice Evans and counsel for both parties, Ms. Abbatt refused to participate in the selection of dates for the completion of the arbitration proceeding and terminated the conversation abruptly.

24. In a letter dated June 8, 2018, (the "June 8 Ruling"), Justice Evans wrote to counsel for the parties advising them of her denial of Mr. Moore's purported motion:

On March 30, 2018, counsel for Mr. Moore submitted a letter to me, "[i]ntended to serve as Mr. Moore's Motion to Close or Terminate Proofs in Arbitration." Although so denominated, it is in improper form and is not recognizable as a motion. Moreover, it comes prior to her client's cross examination and before the close of testimony. Consequently, it is counsel's untimely and meritless application. After reading and considering counsel's "motion" and Ms. Glynn's response to it, the relief that is sought is denied in every respect.

(Emphasis added.) A copy of the June 8 Ruling is annexed hereto as **Exhibit E**.

25. Mr. Moore decided that it was time to shop for another forum. On July 18,

2018, he moved, in Michigan's Circuit Court for Antrim County – the court by which the parties were divorced– for an order (as pertinent here)

a. Modifying the Settlement Agreement so as to strike Paragraph 4(A) thereof, providing for the periodic property settlement payments by Mr. Moore to Kathleen and for arbitration to establish the terms of the Separate Contract governing those payments⁴; or, in the alternative,

b. Appointing an “Alternative Michigan Arbitrator” or delegating the appointment of a new arbitrator to Mr. Feldstein, the attorney and arbitrator who named the previous Entertainment Attorney Arbitrator, Mr. Suddleson.

26. Mr. Moore's brief in support of his motion cited no legal authority – Michigan or otherwise – supporting the requested relief. Nor did it acknowledge Paragraph 9 of the parties' Consent Judgment of Divorce dated July 22, 2014 (the “Divorce Judgment”), which specified that

The Court will retain jurisdiction of this action *to enforce, but not to modify, alter or change* the executory provisions of this Judgment of Divorce, the Settlement Agreement and the Separate Contract and to enforce or vacate any arbitration awards made pursuant to the confidential arbitration provisions of the Confidential Settlement Agreement and the Separate Contract pursuant to Michigan law.

A copy of the Divorce Judgment is annexed hereto as **Exhibit F**.

27. *As demonstrated above, Mr. Moore, apparently unhappy with the way the arbitration proceeding in front of Justice Evans were going, is refusing to complete the arbitration proceeding provided for in the Settlement Agreement and in the Second Arbitration*

⁴ In the text of the motion papers, Mr. Moore appears to ask only that the arbitration provision be struck. But the proposed order included in Mr. Moore's moving papers would strike Paragraph 4(A) – which provides for the periodic property settlement payments – in its entirety.

Agreement.

28. In light of all of the foregoing, and of the severe prejudice that Kathleen continues to suffer from Michael's foot-dragging and now outright obstruction, Kathleen respectfully requests that this Court issue an order pursuant to CPLR 7503(a) compelling Mr. Moore to resume the arbitration proceeding in front of Justice Evans to determine the terms of the Separate Contract not later than 30 days after the date of such order, and to continue day-to-day until said arbitration proceeding is completed, except to the extent that an adjournment is granted by Justice Evans.



COHEN RABIN STINE SCHUMANN LLP

By: Bonnie E. Rabin

Attorneys for Petitioner

11 Times Square, 10th Floor

New York, NY 10036

