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SUPREME COURT OF NEW YORK, APPELLATE
DIVISION, FIRST DEPARTMENT

Men Women N.Y. Model Management, Inc., et al.,
Plaintiffs-Appellants-Respondents, v Elite Model
Management - New York LLC, et al., Defendants,
Sergio Leccese, Defendant-Respondent, Dana
Cooper, et al., Defendants-Respondents-Appellants.

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May 21, 2020, Entered May 21, 2020, Decided
THIS OPINION IS UNCORRECTED AND SUBJECT
TO REVISION BEFORE PUBLICATION IN THE
OFFICIAL REPORTS.

Quinn Emanuel Urquhart & Sullivan, LLP, New York
(Alex Spiro of counsel), for appellants-respondents.

Davis & Gilbert LLP, New York (David Fisher of
counsel), for Sergio Leccese, respondent.

Wrobel Markham LLP, New York (Daniel F. Markham
of counsel), for Dana Cooper, Heather Hughes and
Miguel Avalos, respondents.

Reppert Kelly & Vytell, LLC, New York (Christopher P.
Kelly of counsel), for James Tinnelly, Jennifer Rubinetti
Zafaranloo and Michael Bruno, respondents.

Acosta, P.J., Renwick, Webber, Gesmer, JJ.

Orders, Supreme Court, New York County (Melissa A.
Crane, J.), entered on or about November 8, 2019,
which, insofar as appealed from as limited by the
briefs, denied plaintiffs' motion for a preliminary
injunction as against defendant Sergio Leccese,
granted defendants Dana Cooper, Heather Hughes,

and Miguel Avalos's and defendants James Tinnelly,
Jennifer Rubinetti Zafaranloo, and Michael Bruno's (the
Model Manager Defendants) motions to vacate the
preliminary injunction prohibiting them from soliciting
plaintiffs' models or employees, and granted Leccese's
motion to vacate the temporary restraining order,
unanimously affirmed as to the Model Manager
Defendants' and Leccese's motions, and appeal
therefrom to the extent it denied plaintiffs' motion
dismissed, without costs, as moot. Appeal from order,
same court and Justice, entered August 26, 2019,
which granted plaintiffs' motion for the aforesaid
preliminary injunction against the Model Manager
Defendants, unanimously dismissed, without costs, as
abandoned.

Plaintiffs allege that their former employees, the Model
Manager Defendants and defendant Leccese, resigned
their employment as part of a conspiracy to steal talent
(employees and models) from plaintiffs, in violation of
the non-solicitation covenants in their employment
agreements. Defendants seek to vacate certain
provisional relief awarded to plaintiffs, on the ground
that plaintiffs failed to timely commence arbitrations, as
required by CPLR 7502(c) .

CPLR 7502(c) authorizes courts to award provisional
relief "in connection with an arbitration that is ... to be
commenced" where "the award to which the applicant
may be entitled may be rendered ineffectual without
such ... relief." However, the applicant is required to
commence arbitration within 30 days of receiving the
provisional relief, or else "the order granting such relief
shall expire and be null and void and costs, including
reasonable attorney's fees, awarded to the respondent"
(*id.*).

CPLR 7502(c) applies to the instant dispute
because the subject provisional relief was entered
in aid of arbitration. There is no independent cause
of action for injunctive relief (see *Talking [*2] Capital
LLC v Omanoff*, 169 AD3d 423 , 424 [1st Dept 2019]),
and it is undisputed that plaintiffs' underlying breach of
contract claim is subject to mandatory arbitration.

Although defendants' employment agreements also
provide for provisional injunctive relief, the purpose of
these provisions was not to create an independent right
to such relief regardless of whether plaintiffs'
underlying claims were ever actually arbitrated. Rather,
the purpose of the injunctive relief clause here was to

streamline the process of obtaining provisional relief in aid of arbitration by effectively conceding that the non-solicitation provisions were "reasonable and necessary" and that breach would result in "irreparable injury."

Plaintiffs failed to demonstrate good cause to extend the time in which to commence arbitrations. Even if substitution of counsel would constitute good cause under other circumstances, it does not constitute good cause here, where the substitution came after the subject deadline had already expired and defendants had already moved to vacate. Moreover, there is no evidence in the record, such as a sworn statement from prior counsel, to support plaintiffs' assertion that counsel believed that CPLR 7502(c) was not applicable. Nor is it clear that such a belief would have been reasonable.

In view of plaintiffs' release of Leccese from his non-solicitation obligations, we dismiss as moot the portion of this appeal related to the preliminary injunction against Leccese.

THIS CONSTITUTES THE DECISION AND ORDER
OF THE SUPREME COURT, APPELLATE DIVISION,
FIRST DEPARTMENT.

ENTERED: MAY 21, 2020

General Information

Topic(s)	Civil Procedure
Parties	Men Women N.Y. Model Management, Inc., et al., Plaintiffs-Appellants-Respondents, v Elite Model Management - New York LLC, et al., Defendants, Sergio Leccese, Defendant-Respondent, Dana Cooper, et al., Defendants-Respondents-Appellants.
Court	Appellate Division of the Supreme Court of New York, First Department