UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

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MOHIT RANDHAWA aka HARPAL SINGH; SHANNON CALLNET PVT LTD,

Plaintiffs,

v.

SKYLUX INC., INTERACTIVE INTELLIGENCE, INC., MUJEEB PUZHAKKARAILLATH, SKYLUX TELELINK PVT LTD; and DOES 1 through 20, inclusive,

Defendants.
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NO. CIV. 2:09-2304 WBS KJN

MEMORANDUM AND ORDER RE: MOTIONS FOR SANCTIONS, TO STAY, AND TO DISMISS AND RECONSIDERATION OF ORDER COMPELLING ARBITRATION

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Plaintiffs Mohit Randhawa aka Harpal Singh ("Randhawa") and Shannon Callnet Pvt. Ltd. ("Shannon Callnet") filed this action against defendants Skylux, Inc. ("Skylux"), Interactive Intelligence, Inc. ("Interactive"), Mujeeb Puzhakkaraillath ("Puzhakkaraillath"), and Skylux Telelink Pvt. Ltd. ("STPL") alleging state law claims arising from contracts for an India-based calling center and software. Shannon Callnet now moves for

sanctions against Interactive for failure to submit to arbitration following the court's March 4, 2010 Order compelling arbitration and to stay the action pending arbitration of its claims against Interactive. (Docket No. 88.) Interactive moves to dismiss the claims against it in the Fourth Amended Complaint ("FAC") pursuant to Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim upon which relief can be granted. (Docket No. 91.) Skylux, Puzhakkaraillath, and STPL (collectively "Skylux defendants") move to dismiss the claims against them pursuant to Rule 12(b)(3) for improper venue and 12(b)(6) for failure to state a claim upon which relief can be granted. (Docket No. 90.) The court also reconsiders sua sponte its Order compelling arbitration.

I. Reconsideration of Order Compelling Arbitration

Shannon Callnet's motion for sanctions arises from a disagreement over the court's March 4, 2010 Order granting Interactive's motion to compel arbitration pursuant to the Federal Arbitration Act ("FAA"), 9 U.S.C. § 4. In its Order compelling arbitration, the court did not specify the proper venue for such arbitration. On September 1, 2010, Interactive requested that Shannon Callnet submit to arbitration in Chicago, Illinois, as specified in the License Agreement ("agreement"), and stated Interactive's intent to petition the Northern District of Illinois to compel arbitration unless Shannon Callnet complied with the request. (Aboudi Decl. ¶ 2, Ex. A (Docket No. 88).) Shannon Callnet, on the other hand, requested that Interactive submit to arbitration in the Eastern District of California because Interactive successfully moved to compel arbitration in

this district. (Id. ¶ 3, Ex. B.)

At the time of entering its Order of March 4, 2010, compelling arbitration, the court was aware that the agreement called for arbitration in Chicago, but the court was unaware that the Ninth Circuit has interpreted 9 U.S.C. § 4 as limiting courts to ordering arbitration within the court's district. Cont'l Grain Co. v. Dant & Russell, 118 F.2d 967, 968-69 (9th Cir. 1941); see also Sovak v. Chugai Pharm. Co., 280 F.3d 1266, 1271 n.1 (9th Cir. 2002) (expressing no view as to whether the district court properly compelled arbitration outside of its district because the issue was not raised and comparing the Ninth Circuit position in Continental Grain with a Fifth Circuit holding in Dupuy-Busching General Agency v. Ambassador Insurance Company, 524 F.2d 1275, 1276-78 (5th Cir. 1975)); Ansari v. Qwest Commc'ns Corp., 414 F.3d 1214, 1218-19 (10th Cir. 2005) (discussing the split among circuits).

In their briefing on the motion to compel arbitration, neither party cited to Continental Grain or its progeny, nor did they bring to the court's attention the fact that under Ninth Circuit law it lacked the authority to enforce an agreement to arbitrate outside the state of California. Admittedly, it would have been simple for the court through its own independent research to discover the Continental Grain doctrine, and the court was remiss in not doing so. Had the court been aware of the doctrine, it would not have entered its Order.

In ordering arbitration, it was the court's intention to enforce the agreement of the parties. The parties did not simply agree to arbitrate; they agreed to arbitrate in Chicago.

The agreed upon forum is not severable from the agreement to arbitrate. Each is just as much a part of the agreement as the other. The court will not order the parties to arbitrate in Chicago, because it lacks the power to do so. And the court will not order arbitration in California, because that would be inconsistent with the very agreement the court was trying to enforce.[1]

A court may reconsider its own prior order provided that it has not been divested of jurisdiction over it. United States v. Smith, 389 F.3d 944, 949 (9th Cir. 2004). Of course, it does not look good for the court to sua sponte reverse its earlier decision because of its own mistake. However, as Chief Judge Chambers once so eloquently stated, "In reversing my position, there is no way I can make myself 'look good.' But my commission says I was appointed during good behavior. It says nothing about being appointed to 'look good.'" Burge v. United States, 342 F.2d 408, 415 (9th Cir. 1965) (Chambers, J., concurring).

Accordingly, upon reconsideration, the court will set aside its previous order and deny Interactive's motion to compel arbitration. The court will thus deny Shannon Callnet's motion

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[1] The court recognizes that other courts in this circuit have ordered arbitration in their districts despite contractually-designated venues. See, e.g., Bencharsky v. Cottman Transmission Sys., LLC, 625 F. Supp. 2d 872, 883-84 (N.D. Cal. 2008); Sullivan v. Gen. Steel Domestic Sales, No. 3:07-CV-00604, 2008 WL 2414045, at *5-6 (D. Nev. June 11, 2008); Veliz v. Cintas Corp., No. 03-01180, 2005 WL 1048699, at *6-7 (N.D. Cal. May 4, 2005); Homestake Lead Co. of Mo. v. Doe Run Res. Corp., 282 F. Supp. 2d 1131, 1143-44 (N.D. Cal. 2003). For the reasons stated, however, the court declines to so order in this case.

for sanctions as moot.

II. Stay or Dismissal

The FAA prescribes that when an issue referable to arbitration is brought before the court, the court "shall on application of one of the parties stay the trial of the action until such arbitration has been had in accordance with the terms of the agreement, providing the applicant for the stay is not in default in proceeding with such arbitration." 9 U.S.C. § 3. This is so, even when the court lacks the power to compel arbitration; it is the existence of the agreement to arbitrate which requires the court to stay proceedings until arbitration has been completed.

In the Ninth Circuit, however, § 3 is not mandatory and, alternatively, district courts may order dismissal "when all claims are barred by an arbitration clause." Sparling v. Hoffman Const. Co., 864 F.2d 635, 638 (9th Cir. 1988); see also Choice Hotels Int'l, Inc. v. BSR Tropicana Resort, Inc., 252 F.3d 707, 709-10 (4th Cir. 2001) ("Notwithstanding the terms of § 3, however, dismissal is a proper remedy when all of the issues presented in a lawsuit are arbitrable."); Green v. Ameritech Corp., 200 F.3d 967, 973 (6th Cir. 2000) ("The weight of authority clearly supports dismissal of the case when *all* of the issues raised in the district court must be submitted to arbitration." (emphasis in original)); Alford v. Dean Witter Reynolds, Inc., 975 F.2d 1161, 1164 (5th Cir. 1992) (holding that § 3 "was not intended to limit dismissal of a case in the proper circumstances"). But see Precision Press, Inc. v. MLP U.S.A., Inc., 620 F. Supp. 2d 981, 995 (N.D. Iowa 2009) (discussing the

split among circuits and collecting cases).

Dismissal is discretionary, and Interactive has provided no persuasive reason for the court to dismiss instead of stay the claims against it.[2] To the contrary, in light of the parties' dispute over the place of arbitration in this case, it is not entirely clear that the arbitration will ever be had. Under the circumstances, the court would rather keep jurisdiction over the case than dismiss it on the assumption that the dispute will go away. Accordingly, the court will grant Shannon Callnet's motion to stay the claims against Interactive and deny Interactive's motion to dismiss.

In addition to seeking a stay of the claims against Interactive under the FAA, Shannon Callnet has moved to stay the entire action. The Skylux defendants did not file an opposition or statement of non-opposition to Shannon Callnet's motion and did not address the issue at the hearing. Interactive has not stated a position as to staying the claims against the other defendants.

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[2] Interactive makes a passing argument that Shannon Callnet's failure to commence arbitration in the seven months following the Court's Order constitutes default in proceeding with the arbitration: "Shannon Callnet has failed to commence arbitration for over 7 months and therefore is clearly in default in proceeding with arbitration." (Interactive's Opp'n Mem. 2:28-3:1-2.) Finding that Shannon Callnet is in statutory default would preclude it from obtaining a stay pending arbitration pursuant to 9 U.S.C. § 3 or an order compelling arbitration pursuant to 9 U.S.C. § 4. Sink v. Aden Enterprises, Inc., 352 F.3d 1197, 1201 (9th Cir. 2003). Considering that the Order did not specify the proper venue and that the court now denies the motion to compel arbitration, the court will not find statutory default based on the failure to commence arbitration following the Order. Nonetheless, the court may later vacate the initial stay if a party is found to be in default in proceeding with the arbitration. Id. at 1199.

When an action includes arbitrable and non-arbitrable claims, a district court has discretion to stay or proceed with the non-arbitrable claims. Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp., 460 U.S. 1, 21 n.23 (1983); U.S. for the Use & Benefit of Newton v. Neumann Caribbean Int'l, Ltd., 750 F.2d 1422, 1426-27 (9th Cir. 1985). "In deciding whether to stay non-arbitrable claims, a court considers economy and efficiency, the similarity of the issues of law and fact to those that will be considered during arbitration, and the potential for inconsistent findings absent a stay." Wolf v. Langemeier, No. 2:09-CV-03086 GEB EFB, 2010 WL 3341823, at *8 (E.D. Cal. Aug. 24, 2010) (internal quotation marks omitted).

Randhawa's and Shannon Callnet's eight claims against all four defendants largely arise from the alleged inadequacy of the Interactive software and licenses that STPL bought for the calling center. (FAC ¶¶ 18-19, 22 (Docket No. 86).) The FAC also alleges that STPL was an agent for Interactive in resale and vending. (Id. ¶ 21.) The arbitrable claims against Interactive and non-arbitrable claims against the Skylux defendants sufficiently overlap in law and fact to suggest that the rest of the claims should be stayed. To the extent arbitration proceedings may find Interactive liable for the Unfair Competition Law claim based on an STPL-agency theory (id. ¶¶ 54, 56), proceeding with the claims runs the risk of inconsistent findings. Accordingly, the court will grant Shannon's Callnet's motion to stay the claims against the Skylux defendants and thus deny the Skylux defendants' motion to dismiss.

IT IS THEREFORE ORDERED that:

(1) Upon reconsideration sua sponte, Interactive's motion to compel arbitration be, and the same hereby is, DENIED;

(2) Shannon Callnet's motion for sanctions against Interactive be, and the same hereby is, DENIED;

(3) Shannon Callnet's motion to stay the action be, and the same hereby is, GRANTED;

(4) The motions of Interactive, Skylux, Puzhakkaraillath, and STPL to dismiss the claims against them be, and the same hereby are, DENIED;

(5) Upon completion of or default in proceeding with the arbitration, Shannon Callnet and Interactive will inform the court and file appropriate documents for the completion or continuation of this action; and

(6) This case is set for Status Conference at 2 p.m., on March 28, 2011. No later than two weeks before the conference, the parties shall file a joint status report setting forth the status of the arbitration, if any, and suggesting a schedule for further proceedings in this court.

DATED: October 15, 2010

WILLIAM B. SHUBB
UNITED STATES DISTRICT JUDGE