

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION**

KROMA MAKEUP EU, LLC,

Plaintiff,

v.

Case No: 6:14-cv-1551-Orl-40GJK

BOLDFACE LICENSING +
BRANDING, INC., et al.,

Defendants.

ORDER

This cause comes before the Court on Defendants', Kim Kardashian, Kourtney Kardashian, and Khloe Kardashian, Motion to Stay Proceedings Pending Appeal as to Counts III, IV, and V of the Complaint and Memorandum of Law (Doc. 78), filed November 10, 2015. Plaintiff responded in opposition on November 25, 2015 (Doc. 84). Upon consideration, the Court grants Defendants' motion to stay.

Defendants have filed an interlocutory appeal from the Court's November 9, 2015 Order denying their motion to compel the arbitration of Counts III, IV, and V of the Complaint. Defendants submit that they have a colorable basis for appeal and therefore request the Court to stay Counts III, IV, and V pending the outcome of their appeal.

Consistent with strong federal policy favoring the resolution of disputes through arbitration whenever permitted, the Federal Arbitration Act authorizes immediate appeal from an order denying a party's motion to compel arbitration. 9 U.S.C. § 16(a)(1). The Eleventh Circuit advises that district courts should stay the litigation when a party appeals from an order denying a motion to compel arbitration so long as the appeal is not frivolous. *Blinco v. Green Tree Servicing, LLC*, 366 F.3d 1249, 1252 (11th Cir. 2004) (per curiam);

see also *Bahena v. Am. Voyager Indem. Ins. Co.*, No. 8:07-cv-1057-T-24 MSS, 2008 WL 874851, at *1 (M.D. Fla. Mar. 27, 2008). An appeal is not frivolous where “there is some possible validity” to the arguments raised by the appellant. *Baron v. Best Buy Co., Inc.*, 79 F. Supp. 2d 1350, 1354 (S.D. Fla. 1999) (emphasis omitted). Conversely, an appeal is frivolous where there is no legal or factual basis to support the appellant’s position or the appeal is sought for some improper purpose. *In re Friedman’s, Inc.*, No. 05-40129, 2007 WL 7647111, at *1 (Bankr. S.D. Ga. June 26, 2007).

In this case, Defendants appeal the Court’s determination that Defendants cannot compel the arbitration of Counts III, IV, and V under an arbitration agreement contained in a contract to which Defendants are not signatories. The Court concluded that the basis of Plaintiff’s claims against Defendants were insufficient to invoke the doctrine of equitable estoppel as an exception to the general rule that non-signatories cannot compel arbitration under an agreement to which they are not parties. However, Defendants differ, arguing both in this Court and on appeal that Plaintiff’s standing to sue necessarily arises out of the contract at issue. (See Doc. 78, pp. 6–9). While the Court disagrees that this fact alone warrants application of equitable estoppel to compel arbitration, the Court does not find the argument wholly without merit. The Court similarly does not find, based on the current record, that Defendants pursue their appeal for an improper purpose.

Accordingly, it is **ORDERED AND ADJUDGED** as follows:

1. Defendants’ Motion to Stay Proceedings Pending Appeal as to Counts III, IV, and V of the Complaint (Doc. 78) is **GRANTED**. Counts III, IV, and V of the Complaint are **STAYED** pending resolution of Defendants’ appeal. Kroma Makeup EU, LLC, Kim Kardashian, Kourtney Kardashian, and Khloe

Kardashian are **DIRECTED** to file a joint status report advising the Court on the status of the appeal, which shall be filed with this Court on March 8, 2016 and every sixty (60) days thereafter until the appellate proceedings have concluded.

2. The parties' Joint Motion for Enlargement of Time to File Dispositive and *Daubert* Motions (Doc. 85) is **DENIED AS MOOT**. The Court will issue new deadlines, if necessary, upon the resolution of Defendants' appeal.

DONE AND ORDERED in Orlando, Florida on December 1, 2015.



PAUL G. BYRON
UNITED STATES DISTRICT JUDGE

Copies furnished to:

Counsel of Record
Unrepresented Parties