IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

Sylvester Amuchie, Plaintiff, vs. Carmax Auto Superstores Inc., Defendant.	)	Civil Action No. 6:16-3074-TMC **ORDER**

Sylvester Amuchie ("Plaintiff"), filed a complaint alleging that Carmax Auto Superstores, Inc., ("Defendant") failed to rehire him due to race or natural origin discrimination in violation of 42 U.S.C. § 1981 and Title VII of the Civil Rights Acts of 1964. In accordance with 28 U.S.C. § 636(b)(1) and Local Civil Rule 73.02, D.S.C., this matter was referred to a magistrate judge for pretrial handling. On October 26, 2016, Defendant filed a motion to dismiss and to compel arbitration. (ECF No. 5). Before the court is the magistrate judge's Report and Recommendation ("Report"), recommending that the court grant Defendant's motion to dismiss and to compel arbitration. (ECF No. 12). Plaintiff filed objections on May 30, 2017 (ECF No. 15), and Defendant filed a response on June 13, 2017 (ECF No. 18).

The recommendation set forth in the Report has no presumptive weight and the responsibility to make a final determination in this matter remains with this court. *See Mathews v. Weber*, 423 U.S. 261, 270–71 (1976). The court is charged with making a de novo determination of those portions of the Reports to which specific objection is made, and the court may accept, reject, or modify, in whole or in part, the recommendation of the magistrate judge, or recommit the matter with instructions. 28 U.S.C. § 636(b)(1). However, the court need not conduct a de novo review when a party makes only "general and conclusory objections that do

not direct the court to a specific error in the magistrate's proposed findings and recommendations." *Orpiano v. Johnson*, 687 F.2d 44, 47 (4th Cir. 1982). In the absence of a timely filed, specific objection, the magistrate judge's conclusions are reviewed only for clear error. *See Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005).

I. Background/Procedural History

Plaintiff, a black male who immigrated to the United States from Nigeria, was employed by Defendant in a sales position from March 2003 until January 2014. Plaintiff resigned his employment, in good standing, in January 2014, and applied for employment with Defendant at a different location on March 3, 2014. Plaintiff was not rehired. He filed this action alleging discrimination pursuant to 42 U.S.C. § 1981 and Title VII of the Civil Rights Acts of 1964 on September 9, 2016. (ECF No. 1). Defendant filed a motion to dismiss the action and to compel arbitration. (ECF No. 5). On May 15, 2017, the magistrate judge recommended that the court grant Defendant's motion. (ECF No. 12). Plaintiff filed objections on May 30, 2017 (ECF No. 15), and Defendant filed a reply on June 13, 2017 (ECF No. 18).

II. Applicable Law

The Federal Arbitration Act ("FAA") embodies a federal policy favoring arbitration. *Drews Dist., Inc. v. Silicon Gaming Inc.*, 245 F.3d 347, 349 (4th Cir. 2001). Pursuant to the FAA, arbitration clauses in contracts involving interstate commerce "shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract." 9 U.S.C. § 2; *see also id* § 4 ("A party aggrieved by the alleged failure, neglect, or refusal of another to arbitrate under a written agreement for arbitration may petition any United States district court which, save for such agreement, would have jurisdiction under Title 28 . . . for an order directing that such arbitration proceed in the manner provided for in such

agreement."). "A district court therefore has no choice but to grant a motion to compel arbitration where a valid arbitration agreement exists and the issues in a case fall within its purview." *Adkins v. Labor Ready, Inc.*, 303 F.3d 496, 500 (4th Cir. 2002) (citation omitted). In a questionable case, a court should compel arbitration "unless it may be said with positive assurance that the arbitration [agreement] is not susceptible of an interpretation that covers the asserted dispute." *Peoples Sec. Life Ins. Co. v. Monumental Life Ins. Co.*, 867 F.2d 809, 812 (4th Cir. 1989) (quoting *United Steelworkers of Am. v. Warrior & Gulf Navigation Co.*, 363 U.S. 574, 582–83 (1960)).

However, "a party cannot be required to submit to arbitration any dispute which he has not agreed so to submit." *United Steelworkers*, 363 U.S. at 582; *see also Adkins*, 303 F.3d at 501 ("[E]ven though arbitration has a favored place, there still must be an underlying agreement between the parties to arbitrate." (internal quotation marks omitted)). "Whether a party agreed to arbitrate a particular dispute is a question of state law governing contract formation." *Adkins*, 303 F.3d at 501 (citing *First Options of Chi., Inc. v. Kaplan*, 514 U.S. 938, 944 (1995)); *see also Rota-McLarty v. Santander Consumer USA, Inc.*, 700 F.3d 690, 699 (4th Cir. 2012) ("The question of whether an enforceable arbitration agreement exists . . . is a matter of contract interpretation governed by state law."). "[G]enerally applicable contract defenses, such as fraud, duress, or unconscionablity, may be applied to invalidate arbitration agreements without contravening § 2" of the FAA. *Doctor's Assocs., Inc. v. Casarotto*, 517 U.S. 681, 687 (1996). "[T]he party resisting arbitration bears the burden of proving that the claims at issue are unsuitable for arbitration." *Green Tree Fin. Corp.–Ala. v. Randolph*, 531 U.S. 79, 91 (2000).

In the Fourth Circuit, a litigant can compel arbitration under the FAA if the litigant can demonstrate: "(1) the existence of a dispute between the parties; (2) a written agreement that

includes an arbitration provision which purports to cover the dispute; (3) the relationship of the transaction, which is evidenced by the agreement, to interstate and foreign commerce, and (4) the failure, neglect, or refusal of the defendant to arbitrate the dispute." *Whiteside v. Telltech Corp.*, 940 F.2d 99, 102 (4th Cir. 1991). Furthermore, the Fourth Circuit has repeatedly compelled arbitration where the arbitration clause applies to any dispute "arising from or related to" the agreement. *Long v. Silver*, 248 F. 3d 309, 316 (4th Cir. 2001); *Kvaerner ASA v. Bank of Tokyo-Mitsubishi, Ltd.*, 210 F.3d 262, 265–66 (4th Cir. 2000); *Am. Recovery Corp. v. Computerized Thermal Imaging, Inc.*, 96 F.3d 88, 93 (4th Cir. 1996).

III. Discussion

In his Report, the magistrate judge found that a valid arbitration agreement existed between Plaintiff and Defendant, that it covered the dispute between the parties, that interstate commerce is affected, and that Plaintiff has refused to arbitrate. (ECF No. 12 at 7) (citing *Adkins*, 303 F.3d at 500–01). The Report thus recommended that the court grant Defendant's motion to dismiss and to compel arbitration.

In his sole objection, Plaintiff merely repeats an argument from his response (ECF No. 7). He reasserts that there was no meeting of the minds and, therefore, no valid arbitration agreement between the parties and argues that the magistrate judge erred by finding that "absolutely no evidence has been presented by the plaintiff in support of this argument." (ECF No. 12 at 6; ECF No. 15 at 4). However, in his objection, Plaintiff fails to identify evidence supporting his argument. *See, e.g.*, *Nichols v. Colvin*, 100 F. Supp. 3d 487, 497 (E.D. Va. 2015) ("[A] mere restatement of the arguments raised in the summary judgment filings does not constitute an 'objection' for the purposes of district court review." (citing *Abou–Hussein v. Mabus*, No. 2:09–1988–RMG–BM, 2010 WL 4340935, at *1 (D.S.C. Oct. 28, 2010))).

As addressed by the magistrate judge, "the plaintiff contends that he was required to pre-agree to the DRA [Dispute Resolution Agreement] on page three of the application process, and the terms of the DRA were provided on page five." (ECF No. 12 at 5–6). Plaintiff provided no indication in his original response (ECF No. 7), but noted in his objections that the page numbers refer to Defendant's "Exhibit H" attached to the declaration of Kimberly Ross ("Ross"), entitled "Employment Application Summary."[1] (ECF No. 5-1 at 86–92). Ross is Vice President of Human Resources for Defendant. (ECF No. 12 at 1–2). Plaintiff's argument appears to suggest that the application summary depicts the application as it was shown to him on the screen as he filled it out. (ECF No. 15 at 6). He argues that he was forced to agree to the DRA (in order to advance to the next screen) before the terms of the agreement were provided on a later screen, although he provides no evidence to support that assertion. Evidence provided by Defendant supports otherwise.

Ross stated in her declaration, under penalty of perjury, 28 U.S.C. § 1746, that the "online application is a series of screens that present information or questions to applicants, who must view each screen and provide the required responses before advancing to the next screen." (ECF No. 5-1 at 3). She described the application process as follows:

> One screen informs the applicant, "If you wish to be considered for employment with CarMax, you must read and consent to the following agreement." The applicant must select the button with the word "Next" in order to proceed with the application process. A following screen presents the Dispute Resolution Agreement and instructs the applicant as follows: "Please indicate your consent to the CarMax Dispute Resolution Agreement by entering your first name, last name, Social Security number, and marking the button stating "Yes, I do consent."[2]

[1] Exhibit H was identified as "a true and correct copy of the questions and information presented to Plaintiff and a summary of Plaintiff's responses from his March 3, 3014 employment application." (ECF No. 5-1 at 4).
[2] According to Ross, the application has only requested the last four digits of the applicant's social security number since July 2009.

Id. at 4. As shown by Ross' Exhibit I,[3] the application required Plaintiff to progress through a series of screens setting forth the terms of the DRA ***after*** which Plaintiff entered his name to affirm consent to the terms. *Id*. at 7. The exhibit depicts how the DRA was broken up into parts and indicates that Plaintiff viewed each part. *Id*. at 94–95. According to Ross, Plaintiff would not have been able to complete or submit the March 2014 application without affirmatively marking that he read and consented to the Dispute Resolution Agreement. *Id*. at 4, 7. She stated:

> After viewing the screens with the [DRA provisions], Plaintiff entered his legal First Name as prompted ("Sylvester"), his legal Last Name ("Amuchie"), and marked the button "Yes, I do consent." Thereafter, Plaintiff continued through the application process and entered additional information about, among other things, his education and work history.

Id. at 7. Ross' exhibits support her declaration. *Id*. at 94–96. Even if the court were to accept Plaintiff's argument as true, Plaintiff does not address or contest the evidence showing that, while completing the application, he consented to the DRA *after* reading all of the provisions. As Defendant presented no evidence to the contrary, the court overrules the objection and adopts the Report.

IV. Conclusion

After a thorough review of the Report and the record in this case, the court adopts the magistrate judge's Report (ECF No. 12) and incorporates it herein. Accordingly, Defendant's motion to dismiss and to compel arbitration (ECF No. 5) is **GRANTED**. Plaintiff's complaint is hereby dismissed and the parties are ordered to submit the claim to arbitration in accordance with the employment arbitration agreement.

IT IS SO ORDERED.

[3] Ross identified Exhibit I as a true and correct copy of the business record maintained by CarMax of Plaintiff's review of and responses to the DRA screens during the application process. (ECF No. 5-1 at 4). "Exhibit I also shows [Plaintiff's] review and advancement through a progression of screens that set forth the terms of the [DRA]." *Id*. at 5.

s/Timothy M. Cain
United States District Judge

July 24, 2017
Anderson, South Carolina