DISTRICT COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. CROIX

MARK BEHARRY, **Plaintiff,** **v.** **LIMETREE BAY TERMINALS, LLC d/b/a OCEAN POINT TERMINALS, LLC,** **Defendant.**	**1:24-cv-00010-WAL-EAH**

TO: Lee J. Rohn, Esq.
Robin P. Seila, Esq.
Stephanie L. Adler, Esq.

MEMORANDUM OPINION AND ORDER

THIS MATTER comes before the Court on the Motion to Stay Proceedings and Compel Arbitration filed by Defendant Limetree Bay Terminals, LLC d/b/a Ocean Point Terminals, LLC ("Terminals"). Dkt. No. 2. Plaintiff Mark Beharry has not opposed the motion, and the period for him to timely oppose it has expired. For the reasons that follow, the Court will grant the motion.

BACKGROUND

Beharry filed a complaint in the Superior Court of the Virgin Islands on April 18, 2024, Dkt. No. 1-2 at 1, alleging a claim under the Virgin Islands Wrongful Discharge Act, 24 V.I.C. § 76 ("WDA"), and a claim for Intentional and/or Negligent Infliction of Emotional Distress against his former employer, Limetree Bay Terminals, LLC d/b/a Ocean Point Terminals, LLC. Dkt. No. 1-2 at 6-9. The complaint described how Beharry, a Gas Turbine Control Specialist, attended an August 31, 2022 meeting where his supervisor began "ranting" to

employees that he did not trust Port Hamilton Refining & Transportation, LLLP ("PHRT"), and shared his personal thoughts about the company and its owners. Dkt. No. 1-2 at 6 ¶ 5. Prior to that time, Terminals employees had worked closely with PHRT employees on several tasks; following the August 21, 2022 "rant," no changes to any of the business practices concerning operations between Terminals and PHRT occurred. *Id*. ¶¶ 6-9. Consequently, PHRT and Terminals employees continued to provide information and services to each other. *Id*. ¶ 12.

In connection with his work, Beharry sent several emails to PHRT personnel. *Id.* ¶ 14. On October 19, 2022, he received a Notice of Suspension Pending Further Investigation that ordered him to report to Human Resources on October 21. *Id.* ¶ 15. On October 28, 2022, he was terminated "based on false allegations that [he] had violated specific instructions that all employees were told not to provide services or information to PHRT without prior approval from Ocean Point Terminals leadership." *Id.* ¶ 16. Beharry alleges that several of the emails that Terminals contended contained confidential information were "mere expressions of [his] personal opinions concerning salary ranges rather than derived from Ocean Point Terminals database and the September 17, 2022 email contained information that had been publicly posted by Ocean Point and was already available to PHRT." *Id.* ¶ 17. Beharry asserts he was wrongfully terminated, Terminals inflicted intentional and/or negligent emotional distress on him, and he sought damages. *Id*. at 8-9.

On May 15, 2024, Terminals removed the case to district court based on diversity jurisdiction. Dkt. No. 1.

On May 16, 2024, Terminals filed the instant Motion to Stay Proceedings and Compel Arbitration (the "Motion"), Dkt. No. 2, with a memorandum in support, Dkt. No. 3. In its memorandum, Terminals relied on a Declaration from Brian Dore, its Human Resources Manager, to provide additional background facts. Dkt. No. 3-1. Dore averred that Beharry was employed by Terminals from May 23, 2016 to October 28, 2022. *Id.* ¶ 3. On May 19, 2016, Beharry signed an Arbitration Agreement (the "Agreement") as a condition of his employment with Terminals, *id*. ¶ 4, which Dore attached to his Declaration, Dkt. No. 3-1 at 4-8.

Terminals argues that the Agreement provides for mandatory, binding arbitration as the sole means for Beharry to resolve "any and all disputes, claims or controversies" arising out of or relating to his employment. Dkt. No. 3 at 2. The pertinent provision states:

> Except for the claims set forth in the paragraph below,[1] you and the Company [Terminals] are required to arbitrate any and all disputes, claims, or controversies ("claim") that could be brought in a court that you or the Company may have against each other. . . . Claims covered by the Agreement include, but are not limited to those arising out of or relating to your employment . . . with the Company, including any claim that could have been presented to or could have been brought before any court. Claims covered by this Agreement for example include, but are not limited to, those relating to the following: . . . any territorial anti-discrimination and anti-harassment laws (such as, for example, the Virgin

[1] The excepted claims include claims for workers' compensation and unemployment compensation benefits, claims based on stock option plans and pension and welfare benefit plans, and federal claims not subject to binding arbitration such as under the Dodd-Frank Wall Street Reform Act. Dkt. No. 3-1 at 4, ¶ A.

> Islands Wrongful Discharge Act or the Virgin Islands Civil Rights Act); or any other federal, territorial, or local law, ordinance or regulation, or based on any public policy, contract, tort, or common law or any claim for costs, fees or other expenses or relief including attorney's fees. This Agreement is governed by the Federal Arbitration Act, to the maximum extent permitted by applicable federal law.

Dkt. No. 3-1, Ex. A, ¶ A (entitled "The Mutual Agreement to Arbitrate").

Terminals pointed out another provision of the Agreement, directly above Beharry's signature, printed in bold caps, where Beharry acknowledged he was entering into a binding agreement and thereby waived any right to proceed with an action in federal, state, or territorial court:

> **I KNOWINGLY AND FREELY AGREE TO THIS MUTUAL AGREEMENT TO ARBITRATE CLAIMS, WHICH OTHERWISE COULD HAVE BEEN BROUGHT IN COURT. I AFFIRM THAT I HAVE HAD SUFFICIENT TIME TO READ AND UNDERSTAND THE TERMS OF THIS AGREEMENT AND THAT I HAVE BEEN ADVISED OF MY RIGHT TO SEEK LEGAL COUNSEL REGARDING THE MEANING AND EFFECT OF THIS AGREEMENT PRIOR TO SIGNING. I UNDERSTAND THAT THE AGREEMENT REQUIRES THAT CLAIMS COVERED BY THE AGREEMENT ARE TO BE SUBMITTED TO ARBITRATION PURSUANT TO THE AGREEMENT RATHER [THAN] TO A JUDGE OR JURY IN COURT. BY ISSUANCE OF THIS AGREEMENT, THE COMPANY AGREES TO BE BOUND TO ITS TERMS WITHOUT ANY REQUIREMENT TO SIGN THIS AGREEMENT.**

Dkt. No. 3-1 at 8.

Terminals contends that despite executing the Agreement, Beharry commenced this action alleging WDA and intentional/negligent infliction of emotional distress claims which fall squarely within the purview of claims covered by the Agreement. Dkt. No. 3 at 3. Because the Agreement is binding, valid and enforceable and requires all disputes arising out of Beharry's employment to be arbitrated, the Court should stay the litigation and permit the

submission of the claims in the complaint to arbitration. *Id*. at 3-4. Terminals then sets out the legal standard for the motion, and asserts that (1) Beharry's objections, if any, as to the existence, scope or validity of the Agreement are to be decided by an arbitrator; (2) the Agreement is a valid agreement to arbitrate; and (3) Beharry's claims are within the scope of the Agreement. *Id.* at 5-7.

On May 30, 2024, Attorney Robin P. Seila filed a notice of appearance on behalf of Beharry. Dkt. No. 5. However, Beharry filed no opposition or other response to the Motion to Stay and Compel Arbitration.

DISCUSSION

If a party attaches an "authentic arbitration agreement to a Motion to Compel arbitration, the Court must apply the Rule 12(b)(6) standard [when deciding the motion] unless the plaintiff responds to a motion to compel arbitration with additional facts sufficient to place the agreement to arbitrate in issue." *Parker v. Briad Wenco, LLC*, No. 18-cv-04860, 2019 WL 2521537, at *2 (E.D. Pa. May 14, 2019) (internal quotation marks omitted). Here, Terminals attached a document that has all of the earmarks of an authentic arbitration agreement to its Motion to Compel Arbitration, and Beharry failed to respond to the motion at all, much less challenging the authenticity of the Agreement or with "additional facts to place the agreement to arbitrate in issue." *Id.* As a result, the Rule 12(b)(6) standard applies. Under Rule 12(b)(6), the test is "whether, under any 'plausible' reading of the pleadings, the plaintiff would be entitled to relief." *Guidotti v. Legal Helpers Debt Resolution, LLC*, 716 F.3d

764, 772 (3d Cir. 2013); *see Bell Atlantic Corp. v. Twombly,* 550 U.S. 544, 570 (2007). Accordingly, when applying the Rule 12(b)(6) standard to a motion to compel arbitration, "courts should examine whether there can be no reading of the Complaint that could rightly relieve Plaintiff of the arbitration provision." *Lawson v. City of Phila.*, No. 18-cv-1912, 2019 WL 934976, at *6 (E.D. Pa. Feb. 25, 2019).

The Federal Arbitration Act ("FAA") provides that "[a] written provision . . . to settle by arbitration a controversy . . . 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. That statute places arbitration agreements "upon the same footing as other contracts, . . . [making] arbitration agreements as enforceable as other contracts." *White v. Samsung Elecs. Am., Inc.*, 61 F.4th 334, 338–39 (3d Cir. 2023) (internal quotation marks omitted). As a result, "a court must hold a party to its arbitration contract just as the court would to any other kind." *Morgan v. Sundance, Inc.*, __ U.S. __, 142 S. Ct. 1708, 1713 (2022). Thus, in deciding whether a party may be compelled to arbitrate under the FAA, a court must consider "(1) whether there is a valid agreement to arbitrate between the parties and, if so, (2) whether the merits-based dispute in question falls within the scope of the agreement." *Flintkote Co. v. Aviva PLC*, 769 F.3d 215, 220 (3d Cir. 2014) (internal quotation marks omitted).

The Third Circuit has held that "[t]he federal policy encouraging recourse to arbitration requires federal courts to look first to the relevant state law of contracts . . . in deciding whether an arbitration agreement is valid under the FAA." *Spinetti v. Serv. Corp. Int'l*,

324 F.3d 212, 214 (3d Cir. 2003). In this case, Paragraph E of the Agreement indicates that Virgin Islands law applies. Dkt. No. 3-1 at 7. Under Virgin Islands law, "arbitration is a matter of contract, and . . . courts should strive to . . . implement the intent of the parties." *Gov't of the V.I., Dep't of Ed. v. St. Thomas/St. John Educ. Adm'rs Ass'n, Local 101,* 67 V.I. 623, 638 (2017) (citations omitted); *see also Whyte v. Bockino,* 69 V.I. 749, 764 (2018) ("General principles of contract apply to arbitration contracts."). "In the Virgin Islands, a valid contract requires a 'bargain in which there is a mutual assent to the exchange, and consideration.'" *Valentin v. Grapetree Shores*, No. SX-11-CV-305, 2015 WL 13579631, at *3 (V.I. Super. Ct. June 30, 2015) (internal quotation marks omitted). "A party's signature on a contract is a clear manifestation of assent." *Rivera v. Sharp*, No. 08-cv-0020, 2021 WL 2228492, at *8 (D.V.I. June 1, 2021), *aff'd* No. 21-2254, 2022 WL 2712869 (3d Cir. July 13, 2022); *Gore v. Treasure Bay V.I. Corp.*, No. SX-17-051, 2019 WL 8883544, at *2 (V.I. Super. Ct. May 25, 2019) ("Objectively, a signature on a contract document is evidence that the contract was read, understood, and assented to by the signatory.").

A party to a valid and enforceable arbitration agreement is entitled to a stay of federal court proceedings pending arbitration as well as an order compelling such arbitration. *In re Pharm Benefit Managers Antitrust Litig.*, 700 F.3d 109, 116 (3d Cir. 2012); *Egan v. Regeneron Pharms. Inc.*, No. 22-CV-1981, 2023 WL 1997444, at *3 (D.N.J. Feb. 10, 2023) ("Therefore, the Court may compel a party to arbitrate where it failed to comply with an agreement to arbitrate, and to stay proceedings in any matter subject to arbitration.") (citing *Romanov v.*

Microsoft Corp., No. CV 21-03564, 2021 WL 3486938, at *3 (D.N.J. Aug. 9, 2021) and 9 U.S.C. §§ 2-4).

By not responding to the motion, Beharry has not asserted any argument that challenges the existence, scope, or validity of the Agreement,[2] its formation, or that it is somehow unenforceable. *See Rent-A-Center*, 561 U.S. at 68 (contracts "may be invalidated by generally applicable contract defenses, such as fraud, duress, or unconscionability."). Nor has he asserted that it does not apply to his WDA and intentional/negligent infliction of emotional distress claims, or that some terms of the Agreement are unclear or ambiguous. Given the clear language of the Agreement, Beharry's signature on the Agreement—evidence that he read it, understood it, and assented to it, *Gore,* 2019 WL 8883544, at *2—and his failure to interpose any objections to the motion to stay and compel arbitration, the Court concludes that there is "no reading of the Complaint that could rightly relieve Plaintiff of the arbitration provision." *Lawson*, 2019 WL 934976, at *6. Consequently, it will grant the motion to stay and compel arbitration. *In re Pharm Benefit Managers Antitrust Litig.*, 700 F.3d at 116.

Accordingly, it is hereby **ORDERED** that:

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[2] The Agreement also contains a valid delegation provision to arbitrate any threshold issues:

> The arbitrator, and not any federal, territorial or local court or agency, shall have exclusive authority to resolve any dispute relating to the interpretation, applicability, enforceability or formation of this Agreement including, but not limited to any claim that all or any part of this Agreement is void or voidable[.]

Dkt. No. 3-1 at 5. This language compels the conclusion that the parties clearly and unmistakably delegated any gateway issues of arbitrability to an arbitrator.

1. Defendant's Motion to Stay Proceedings and Compel Arbitration, Dkt. No. 2, is **GRANTED**.

2. This action is **STAYED** pending the completion of arbitration proceedings.

3. The parties shall file a status report with the Court by **December 16, 2024** concerning the status of the arbitration proceedings.

ENTER:

Dated: June 25, 2024

/s/ Emile A. Henderson III
EMILE A. HENDERSON III
U.S. MAGISTRATE JUDGE