DISTRICT COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. CROIX

BARRY MIXON-SILLIE, **Plaintiff,** **v.** **THE NORTH WEST COMPANY (INTERNATIONAL), INC.,** **Defendant.**	**1:23-cv-00048-WAL-EAH**

TO: Lee J. Rohn, Esq.
Kyle R. Waldner, Esq.

ORDER

THIS MATTER comes before the Court on the Motion to Compel Arbitration filed by Defendant, the North West Company International, Inc. ("NWCI"). Dkt. No. 2. Plaintiff Barry Mixon-Sillie did not oppose the motion, and the time for filing an opposition has expired. For the reasons that follow, the Court will grant the motion.

BACKGROUND

Mixon-Sillie filed a complaint in the Superior Court of the Virgin Islands on October 2, 2023 alleging race and color discrimination claims under the Civil Rights Act of the Virgin Islands, as well as claims for misrepresentation, fraud, and breach of the duty of good faith and fair dealing. Dkt. No. 1-1. The complaint described how Mixon-Sillie, a black male, moved to the Virgin Islands to become Assistant Store Manager[1] on St. Croix with a promise of becoming manager once the person in that position vacated it. *Id.* ¶¶ 4-7. Despite working as

[1] The Complaint did not set forth the name of the store on St. Croix where Mixon-Sillie became Assistant Manager. Given other allegations in the Complaint, the store involved was Cost-U-Less. Dkt. No. 1-1, ¶ 24.

both Assistant Manager and Acting Manager, he was informed that NWCI chose someone "more qualified" for the Manager position to start in June 2022; the position was not posted and he was not interviewed. *Id.* ¶¶ 16, 22, 36, 43, 44. There were no black store managers in the United States or the Caribbean Division. *Id.* ¶46. In August 2023, he was informed that because sales were down, his position was being eliminated. *Id*. ¶ 56. He was given a severance offer that did not include relocation costs; he seeks money damages. *Id.* ¶ 63.

On November 3, 2023, NWCI removed the case to district court based on diversity jurisdiction. Dkt. No. 1. Shortly thereafter, NWCI filed the instant Motion to Compel Arbitration (the "Motion"), Dkt. No. 2, with a memorandum in support, Dkt. No. 3. In its memorandum, NWCI relies on a Declaration of Amanda Sutton, its Vice President, Legal & Corporate Secretary, who avers that NWCI is the direct parent company of Cost-U-Less. Dkt. No. 3-1 at 1. On August 31, 2020, Cost-U-Less hired Mixon Sillie to work at its store on St. Croix; on that day, he executed a Dispute Resolution Agreement (the "Agreement"), which Sutton attached to her Declaration. *Id*. ¶¶ 4, 5 & Dkt. No. 3-1 at 3 (Agreement).

The Agreement states, in pertinent part:

> I [Barry Mixon-Sillie] recognize that differences may arise between [Cost-U-Less (CUL)] and me in relation to my application for employment. Both CUL and I agree to resolve any claims, disputes or controversies arising out of or relating to my application or candidacy for employment or the terms and conditions of any offer of employment, any employment with the company, and any suspension or termination of employment exclusively by final and binding arbitration before a neutral arbitrator pursuant to the American Arbitration Association's Employment Arbitration Rules and Mediation Procedures, a copy of which is available at www.adr.org or from CUL. This agreement extends to such disputes with or claims against CUL, U.S.V.I., Inc., CUL Inc. and any of their owners, parents, subsidiaries, affiliated and related entities as intended third party beneficiaries

> to this agreement. By way of example only, some of the types of claims subject to final and binding arbitration include claims for an alleged wrongful decision not to hire me; claims for discrimination or harassment on the basis [of] age, race, religion, disability, national origin or other basis prohibited by state, federal, or territorial law such as the Civil Rights Acts . . . , Title VII, The Equal Employment Opportunity Act, the Equal Pay Act, the Fair Labor Standards Act, . . . and Titles 10 and 24 of the Virgin Islands Code; or claims for breach of any employment agreement or promises; or. . . any other tort matters. It is up to the arbitrator to decide whether a claim, dispute or controversy is subject to arbitration.

Id. at 2-3 (quoting Dkt. No. 3-1 at 3).

NWCI points out that, in executing the Agreement, Plaintiff voluntarily and expressly accepted all of its contractual terms and conditions, including the arbitration provision. *Id.* at 3 (quoting Agreement stating that "[b]y signing below, I agree to be bound to this Agreement. I understand that I must arbitrate all claims as described herein, that I may not file a lawsuit in court and I am waiving my right to trial by jury on all claims encompassed by this agreement."). In addition, all of the claims in Mixon-Sillie's complaint fall squarely within the scope of the Agreement and must be resolved by binding arbitration. *Id.*

NCWI argues that the Federal Arbitration Act ("FAA") is applicable to commerce in the Virgin Islands even without resort to the U.S. Constitution's Commerce Clause, and the FAA and the American Arbitration Association ("AAA") Rules govern the Agreement, which provides an interstate nexus. *Id.* at 5-8. In addition, Mixon-Sillie entered into a valid Agreement, which he signed, and the Agreement clearly and unmistakably required arbitration of gateway questions such as its scope or validity, which were left to the arbitrator to resolve. *Id.* at 8-10. The Agreement encompassed all of Mixon-Sillie's claims, as it covered disputes that arose out of or were related to his employment with the company

and any termination of employment, including claims for discrimination and breach of any employment agreement or promises. *Id.* at 11-12. Further, the Agreement covered disputes between Plaintiff and Cost-U-Less, and also with NWCI as the parent and intended third party beneficiary to the Agreement. *Id.* at 12. Finally, even if the Court were to decide issues of contract validity, it would have to find that the Agreement was valid and enforceable, as Plaintiff signed it and it included mutual promises to arbitrate supported by consideration. *Id.* at 13. NWCI concludes that because the parties agreed to arbitrate Mixon-Sillie's employment claims, under FAA Section 4, the Court was required to issue an order compelling arbitration and staying the proceedings until arbitration concluded. *Id.*

NWCI filed the instant Motion on November 7, 2023. Dkt. No. 2. Mixon-Sillie did not file an opposition or request for an extension to file a response, and the time for him to do so has now expired. On November 8, 2023, the Court issued an Order setting an initial conference for December 19, 2023 and directing the parties to exchange initial discovery. Dkt. No. 4. On November 17, 2023, NWCI filed a motion to stay discovery, including the initial conference, pending a ruling on the Motion. Dkt. No. 5.

DISCUSSION

I. Standard of Review

As a threshold matter, when deciding a motion to compel arbitration, a court must first determine the applicable standard of review: whether it applies a motion to dismiss standard under Rule 12(b)(6) or a summary judgment standard under Rule 56. *See Berkelhammer v. ADP Totalsource Grp., Inc.*, 74 F.4th 115, 117 n.3 (3d Cir. 2023). The Circuit's test for

determining which standard applies is described in *Guidotti v. Legal Helpers Debt Resol., L.L.C.*, 716 F.3d 764 (3d Cir. 2013):

> [W]hen it is apparent, based on 'the face of a complaint, and documents relied upon in the complaint,' that certain of a party's claims 'are subject to an enforceable arbitration clause, a motion to compel arbitration should be considered under a Rule 12(b)(6) standard without discovery's delay.' But if the complaint and its supporting documents are unclear regarding the agreement to arbitrate, or if the plaintiff has responded to a motion to compel arbitration *with additional facts sufficient to place the agreement to arbitrate in issue*, then 'the parties should be entitled to discovery on the question of arbitrability before a court entertains further briefing on [the] question.'

Id. at 776 (citations omitted; emphasis added). The complaint did not mention the Agreement at all. NWCI provided a copy of the Agreement attached to its motion to compel, but did not discuss the standard of review.

Case law provides that, "[i]f a party attaches an authentic arbitration agreement to a Motion to Compel arbitration, the Court must apply the Rule 12(b)(6) standard 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, Plaintiff has not responded to the Motion to Compel, much less placed the agreement to arbitrate in issue. As a result, the Rule 12(b)(6) standard applies. *See Deardorff v. Cellular Sales of Knoxville, Inc.,* No.19-cv-2642, 2022 WL 407396, at *3 (E.D. Pa. Feb. 9, 2022).

II. Applicable Law

A. The Federal Arbitration Act

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). Because arbitration agreements are on an "equal footing" with other contracts, "they may be invalidated by generally applicable contract defenses, such as fraud, duress or unconscionability." *Rent-A-Center, West, Inc. v. Jackson*, 561 U.S. 63, 67-68 (2010) (internal quotation marks omitted). "[A] court may submit to arbitration only those disputes . . . that the parties have agreed to submit." *Granite Rock Co. v. Int'l Bhd. of Teamsters*, 561 U.S. 287, 302 (2010) (internal quotation marks omitted).

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).

A party to a valid and enforceable arbitration agreement is entitled to a stay of federal court proceedings pending arbitration and 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) ("[T]he 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).

B. Gateway Arbitrability Issues: The Delegation Clause

Given that "arbitration is a matter of contract," courts must enforce such contracts "according to their terms." *Henry Schein, Inc. v. Archer & White Sales, Inc.,* 139 S. Ct. 524, 529 (2019). Some arbitration agreements—like the one here—contain "delegation provisions" that delegate resolution of any gateway disputes relating to the applicability of the Agreement to the arbitrator.

> The delegation provision is an agreement to arbitrate threshold issues concerning the arbitration agreement. We have recognized that parties can agree to arbitrate 'gateway' questions of 'arbitrability,' such as whether the parties have agreed to arbitrate or whether their agreement covers a particular controversy. This line of cases merely reflects the principle that arbitration is a matter of

> contract. An agreement to arbitrate a gateway issue is simply an additional, antecedent agreement the party seeking arbitration asks the federal court to enforce, and the FAA operates on this additional arbitration agreement just as it does on any other.

Rent-A-Center, West, Inc. v. Jackson, 561 U.S. 63, 69-70 (2010) (citations omitted). "Where such a clause is included, courts cannot decide threshold questions of arbitrability unless a party challenges the delegation clause specifically and the court concludes that the delegation clause is not enforceable." *Singh v. Uber Techs. Inc.*, 939 F.3d 210, 215 (3d Cir. 2019) (internal quotation marks and alterations omitted). To specifically challenge the clause, a party must at least reference the provision in its opposition to a motion to compel arbitration. *Rent-A-Center*, 561 U.S. at 72. Delegation of threshold arbitrability questions to the arbitrator is permitted "so long as the parties' agreement does so by clear and unmistakable' evidence." *Henry Schein,* 139 S. Ct. at 530 (internal quotation marks omitted).

III. Analysis

Here, Mixon Sillie has not responded to the Motion to Compel. Consequently, he does not challenge the formation of the Agreement, *see Rent-A-Center*, 561 U.S. at 68 (contracts "may be invalidated by generally applicable contract defenses, such as fraud, duress, or unconscionability."), or any aspect of the Agreement. The Court will nevertheless review the Agreement to assure itself that it applies.

Directly above the signature line, the Agreement set forth that Mixon Sillie "agrees to be bound to this Agreement. I understand that I must arbitrate all claims as described herein, that I may not file a lawsuit in court and that I am waiving my right to trial by jury on all

claims encompassed by this agreement." Dkt. No. 3-1 at 3. Under Virgin Islands law, the Agreement was a valid contract and Mixon-Sillie's signature was a clear manifestation of his assent, *Rivera*, 2021 WL 2228492, at *8. Where there is "no issue as to whether the parties mutually assented to [the arbitration agreement], we turn directly to the question of whether the delegation provision clearly and unmistakably commits questions related to arbitrability to the arbitrator." *Deardorff,* 2022 WL 407396, at *9 n.7 (citing *MZM Constr. Co., Inc. v. N.J. Bldg. Laborers Statewide Benefit Funds*, 974 F.3d 386, 401-02 (3d Cir. 2020)).

The Agreement provides that "[i]t is up to the arbitrator to decide whether a claim, dispute or controversy is subject to arbitration." Dkt. No. 3-1 at 3. This language compels the conclusion that the parties clearly and unmistakably delegated gateway issues of arbitrability to an arbitrator.[2] *See Shaw Grp., Inc. v. Triplefine Int'l Corp.*, 322 F.3d 115, 121 (2d Cir. 2003) (where the agreement is broadly worded to require the submission of "all disputes" to the arbitrator, the question of arbitrability inures to the arbitrator).

The Court therefore holds that Mixon-Sillie and NWCI, as the parent company of Cost-U-Less, clearly and unmistakably delegated arbitrability disputes to an arbitrator. And pursuant to the terms of the Agreement, the causes of action raised in the complaint—discrimination under the Civil Rights Act of the Virgin Islands, misrepresentation, fraud, and

[2] In addition, parties may "clearly and unmistakably" delegate arbitrability issues to an arbitrator by incorporating by reference the AAA rules. *See, e.g., Richardson v. Coverall N. Am., Inc.*, 811 F. App'x 100, 103 (3d Cir. 2020). The Agreement here incorporated such rules. Dkt. No. 3-1 at 3. This is one more indication that the parties delegated arbitrability issues to the arbitrator.

breach of the duty of good faith and fair dealing—were covered by the Agreement. Dkt. No. 3-1 at 3. The Court will therefore grant NCWI's Motion to Compel Arbitration. Pursuant to the FAA, 9 U.S.C. § 3, a party to a valid and enforceable arbitration agreement is entitled to a stay of federal court proceedings pending arbitration. *See In re Pharm Benefit Managers Antitrust Litig.*, 700 F.3d at 116. Because a stay of these proceedings in district court will now be in effect, the Court will deny as moot NWCI's Motion to Stay Discovery, Dkt. No. 5.

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

1. Defendant's Motion to Compel Arbitration, Dkt. No. 2, is **GRANTED**.
2. This action is **STAYED** pending the completion of arbitration proceedings.
3. Defendant's Motion to Stay Discovery, Dkt. No. 5, is **DENIED AS MOOT**.
3. The parties shall file a status report with the Court by **March 15, 2024** concerning the status of the arbitration proceedings.

ENTER:

Dated: November 29, 2023

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