UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

DOCTOR'S ASSOCIATES INC., Plaintiff,	:	CIVIL ACTION NO. 3:16-CV-446 (JCH)
v.	:	
INDER PAHWA, et al, Defendants.	:	DECEMBER 2, 2016

RULING ADOPTING, RATIFYING, AND AFFIRMING RECOMMENDED RULING (Doc. No. 54)

Plaintiff Doctor's Associates, Inc. ("DAI") filed this Petition to Compel Arbitration (Doc. No. 1) against defendants Inder Pahwa and Satinder Pahwa. The defendants filed a Motion to Dismiss, Abstain, or Transfer (Doc. No. 14). DAI filed a Motion for Injunction (Doc. No. 35). On November 3, 2016, Magistrate Judge Sarah A. L. Merriam issued a Recommended Ruling (Doc. No. 54) in favor of granting DAI's Petition to Compel Arbitration; denying the defendants' Motion to Dismiss, Abstain, or Transfer; and granting DAI's Motion for Injunction.

The Recommended Ruling is **affirmed, adopted, and ratified**.

The court reviews the recommended ruling de novo, but the court will not go into great detail regarding the reasons for granting and denying the Motions here, because the court finds that the Recommended Ruling has more than adequately and correctly addressed each Motion and the issues raised by the parties. The court makes the decision to affirm, adopt, and ratify the Recommended Ruling after considering all of the defendants' arguments raised in their Objection (Doc. No. 69), at oral argument, and in their original briefing before the Recommended Ruling.

In their Objection, the defendants note that the Recommended Ruling did not address certain matters, including (1) the "thorny" issues that would come up if the

defendants were forced to arbitrate against DAI's development agents, Patel and Letap, see Objection at 6–8, (2) whether DAI's development agents waived their right to demand arbitration, see id. at 8–9, (3) whether the defendants must arbitrate against the development agents directly, or must instead address any claims regarding the agents in arbitration against DAI, see id. at 13–14, and (4) whether the contract contains unenforceable exculpatory provisions, see id. at 14–15. It is unnecessary for this court to decide these issues, however, because the court agrees with the Recommended Ruling that the parties have delegated issues of arbitrability, such as these, to the arbitrator. See Recommended Ruling at 2; see also 2012 Franchise Agreement (Doc. No. 1-6) ¶ 10(f) ("Any disputes concerning the enforceability or scope of the arbitration clause shall be resolved pursuant to the Federal Arbitration Act."). The defendants have failed to offer a convincing argument that they did not delegate the issue of arbitrability to the arbitrator.

The court has considered the Fourth Circuit cases cited by the defendants in support of their argument that development agents, Patel and Letap, are indispensable parties, and finds these cases off-point. The defendants cite Home Buyers Warranty Corp. v. Hanna, 750 F.3d 427, 434–35 (4th Cir. 2014) as "finding absent party had interest in petition to compel arbitration where it also had a right to demand arbitration." See Objection at 11. Here, however, there is no reason to believe that the development agents have a right to demand arbitration. The defendants cite Owens–Illinois, Inc. v. Meade, 186 F.3d 435, 441 (4th Cir. 1999) as "holding non-diverse parties in underlying state action who were omitted from petition to compel arbitration but subject to same arbitration provision were necessary parties." See Objection at 11. Here, however, the

development agents are not parties to the franchise agreements. The court has similarly considered the defendants' argument that diversity jurisdiction is manufactured and found it to be unpersuasive. See Objection at 12–13. The defendants suggest that DAI and the development agents have 'colluded' to create diversity jurisdiction. See id. at 12–13. While a favorable result for DAI in this action may incidentally benefit the development agents, this benefit is not sufficient to show collusion. DAI seeks to enforce a contract between DAI and the defendants which benefits DAI, and to which the development agents are not parties. DAI is thus the proper plaintiff.[1] The court thus agrees with the Recommended Ruling in its reasoning and conclusion that the development agents are not indispensable parties, that diversity is not manufactured, and that diversity jurisdiction exists. See Recommended Ruling at 20.

The defendants object that the Recommended Ruling did not discuss Bridge Fund Capital v. Fastbucks Fran. Corp., 622 F.3d 996 (9th Cir. 2010), in which the Ninth Circuit decided to use California law to determine that an arbitration clause was unconscionable, even though the parties had agreed to use Texas law. Bridge Fund is not on point, however, because the Bridge Fund contract did not explicitly assign

[1] The defendants argue that jurisdiction must be manufactured "[b]ecause the Ruling . . . apparently compels arbitration between the Pahwas and Patel and Letap." Objection at 12. This mischaracterizes the Recommended Ruling. The Recommended Ruling grants DAI's Petition to Compel Arbitration. See Recommended Ruling at 60. The Petition requests an order "directing the Pahwas to arbitrate their claims against DAI and its agent(s) . . . with DAI in the manner provided in the Agreements' arbitration clauses." Petition to Compel Arbitration at 3–4. The words "with DAI" clarify that the Petition only seeks to compel the defendants to arbitrate against DAI, although the Petition seeks to compel the defendants to assert, in this arbitration against DAI, claims regarding DAI's development agents. See id. at *4. DAI has confirmed this interpretation at oral argument. Furthermore, "the Agreements' arbitration clauses," which "provide[ ]" "the manner" in which the Petition seeks to compel arbitration, id. at *4, state that DAI's agents shall not be named as parties in arbitration, and that claims against DAI's agents must be resolved with DAI through arbitration. See 2012 Franchise Agreement ¶ 10(d). Thus, while the role of interpreting the franchise agreement lies with the arbitrator and it is possible that an arbitrator will interpret the franchise agreement in a manner that differs from a plain reading, it is inaccurate to describe the Recommended Ruling as compelling arbitration between the defendants and the development agents.

arbitrability to the arbitrator, as the contract here does. See 622 F.3d at 999, 1002. "The arbitrability of a particular dispute is a threshold issue to be decided by the courts, unless that issue is explicitly assigned to the arbitrator." Id. at 1000 (citation omitted). In this case, the franchise agreements include not only an arbitration requirement, paragraph 10(a), but also a separate requirement, in paragraph 10(f), stating that "[a]ny disputes concerning the enforceability or scope of the arbitration clause shall be resolved pursuant to the Federal Arbitration Act." 2012 Franchise Agreement ¶ 10(a,f).

In addition, the court notes that the Colorado River abstention analysis still weighs against abstention in this case, despite passage of approximately one month in the life of the California action since the Recommended Ruling. Of the Six Colorado River abstention factors, the court agrees with the Recommended Ruling that five weighed against abstaining and one was neutral at the time of the Recommended Ruling. See Recommended Ruling at 20–27. While two of the factors that weighed against abstaining—risk of piecemeal litigation and amount of progress in the state suit—may be somewhat affected by the passage of time and the hearing held in the state suit, the court does not find that the effect of any such progress on these two factors is sufficient to warrant abstention.

The Recommended Ruling (Doc. No. 54) is **affirmed, adopted, and ratified**. The Petition to Compel Arbitration (Doc. No. 1) is **granted**. The Motion to Dismiss, Abstain, or Transfer (Doc. No. 14) is **denied**. The Motion for Injunction (Doc. No. 35) is **granted**. The defendants have also filed a Motion for Judicial Notice (Doc. No. 52). The quotations discussed therein regarding minimal procedural unconscionability would not change this court's ruling on the Petition to Compel Arbitration; Motion to Dismiss,

Abstain, or Transfer; or Motion for Injunction. The Motion for Judicial Notice (Doc. No. 52) is thus **terminated as moot**.

SO ORDERED.

Dated at New Haven, Connecticut this 2nd day of December, 2016.

/s/ Janet C. Hall
Janet C. Hall
United States District Judge