IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

20/20 COMMUNICATIONS, INC.	§	
	§	
VS.	§	Civil No. 4:16-CV-810-Y
	§	
RANDALL BLEVINS, ET AL.	§	

ORDER DENYING MOTION FOR PRELIMINARY INJUNCTION

Plaintiff 20/20 Communications, Inc. ("20/20"), filed this lawsuit to prevent Defendants from attempting to arbitrate their FLSA claims against 20/20 as a class. 20/20 contends that class arbitrations are prohibited under the Mutual Arbitration Agreement ("MMA"),[1] which Defendants undisputedly entered into as part of their employment contract with 20/20.

Before the Court is 20/20's motion for the Court to enter a preliminary injunction. See Fed. R. Civ. P. 65. 20/20 asks the Court to enjoin Defendants from (1) arbitrating their FLSA claims against 20/20 as a class, and (2) asking an arbitrator to determine whether class arbitrations are permissible under the MMA. For the following reasons, 20/20's motion is DENIED (doc. 5).

I. Legal Standard

To be entitled to a preliminary injunction, the applicant must show that (1) there is a substantial likelihood that it will

[1] Paragraph 6 of the MMA provides the following: "In this spirit, the parties agree that this Agreement prohibits the arbitrator from consolidating the claims of others into one proceeding, to the maximum extent permitted by law. This means that an arbitrator will hear only individual claims and does not have authority to fashion a proceeding as a class or collective action or to award relief to a group of employees in one proceeding, to the maximum extent permitted by law." See ECF No. 6, p. 12, ¶ 6.

prevail on the merits of its claims, (2) there is a substantial threat that it will suffer irreparable injury if the injunction is not granted, (3) its threatened injury outweighs the threatened harm to the party whom it seeks to enjoin, and (4) granting the preliminary injunction will not disserve the public interest. *Bluefield Water Ass'n, Inc. v. City of Starkville, Miss.*, 577 F.3d 250, 252-53 (5th Cir. 2009)(quoting *Lake Charles Diesel, Inc. v. Gen. Motors Corp*., 328 F.3d 192, 195-96 (5th Cir. 2003)).

II. Analysis

In its original complaint, 20/20 seeks a declaratory judgment that (1) the Court must decide whether class arbitration is permissible under the MMA, and (2) Defendants are precluded from arbitrating their claims as a class. See 28 U.S.C. § 2201. 20/20 also brings an action to compel Defendants to arbitrate their claims individually in accordance with the MMA. See 9 U.S.C. § 4.

20/20's ability to prevail on all of its claims turns on whether the parties, under the MMA, agreed to submit the issue of arbitrability to the arbitrator. If so, then the availability of class arbitration under the MMA is a question for the arbitrator instead of the Court. *See Robinson v. J&K Admin. Mgmt. Servs., Inc.*, 817 F.3d 193, 197 (5th Cir. 2016).

"Just as the arbitrability of the merits of a dispute depends on whether the parties agreed to arbitrate that dispute, so the question of 'who has the primary power to decide arbitrability' turns upon what the parties agreed about that matter." *First Options of Chi., Inc. v. Kaplan*, 514 U.S. 938, 943, 115 S.Ct. 1920,

131 L.Ed.2d 985 (1995). When a party asserts than an arbitration agreement contains a delegation clause, the court asks (1) whether the parties entered into a valid arbitration agreement, and if so (2) whether the agreement contains a valid delegation clause. *Reyna v. Int'l. Bank of Commerce*, 839 F.3d 373, 377 (5th Cir. 2016)(citing *Kubala v. Supreme Production Services, Inc.*, 830 F.3d 199, 201-02 (5th Cir. 2016)). A delegation clause is a provision in an arbitration agreement that "transfer[s] power to decide threshold questions of arbitrability to the arbitrator." *Id*. at 378 (citation omitted).

Defendants assert that the MMA contains a valid delegation clause.[2] After review of the pleadings and relevant case law, the Court agrees. In paragraph 7, the parties agree that the arbitrator will hear and resolve any disagreement between them concerning the **formation** or **meaning** of the MMA. These matters are specifically referred to in the MMA as "arbitrability issues." See ECF No. 6, p. 12, ¶ 7.

20/20 argues that paragraph 7 is distinguishable and more narrow than most delegation clauses which have been found by the Fifth Circuit to delegate power to the arbitrator to decide arbitrability. Assuming without deciding that the instant delegation clause is distinguishable, the Court nevertheless concludes that its language shows that the parties contemplated that certain arbitratbility issues would be decided by the arbitrator. The Court concludes that it is plausible and not

[2] With respect to the instant motion, the parties do not dispute that they entered into a valid arbitration agreement.

wholly groundless that paragraph 7 covers the parties' dispute, that is, whether class arbitrations are permissible under the MMA. The Court also concludes that it is likewise plausible that paragraph 7, when read in the context of the entire MMA, does not cover the parties' dispute. However, under the law of this circuit, whenever the scope of an arbitration clause is fairly debatable or reasonably in doubt, the court should decide the question of construction in favor of arbitration. *Complaint of Hornbeck Offshore (1984) Corp.*, 981 F.2d 752, 755 (5th Cir. 1993)(citations omitted).

Moreover, the parties expressly agreed that the arbitrator will administer the National Rules for the Resolution of Employment Disputes of the American Arbitration Association ("AAA"). See ECF No. 6, p. 12, ¶ 4. The Fifth Circuit has held that the adoption of the AAA rules presents clear and unmistakable evidence that the parties agreed to arbitrate arbitrability. See *Cooper v. WestEnd Capital Mgmt., L.L.C.*, 832 F.3d 534, 546 (5th Cir. 2016). The Court acknowledges that the parties' adoption of the AAA rules is limited. Nonetheless, the Court concludes that the degree and **meaning** of that limitation clearly falls within the arbitrator's province under paragraph 7.

III. Conclusion

For the forgoing reasons and the reasons stated in Defendants' response, the Court concludes that 20/20 has failed to show that there is a substantial likelihood that it will prevail on the merits of its claims. Because 20/20 has failed to establish all of the requirements for issuing a preliminary injunction, its motion

is DENIED (doc. 5).[3] For the same reasons, 20/20's motion for the Court to reconsider its November 15, 2016 order denying 20/20's motion for a temporary restraining order is DENIED (doc. 42).

SIGNED February 7, 2017.

Terry R. Means

TERRY R. MEANS
UNITED STATES DISTRICT JUDGE

[3] Because the Court concludes that 20/20 has failed to carry its burden of showing a substantial likelihood of success on the merits, the Court need not address the remaining three factors. See *DFW Metro Line Servs. v. Sw. Bell Tel. Co.*, 901 F.2d 1267, 1269 (5th Cir. 1990).