

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

HOLDBROOK PEDIATRIC DENTAL, LLC,

Plaintiff,

Civil No. 14-6115 (NLH/JS)

v.

ORDER

PRO COMPUTER SERVICE, LLC,

Defendant.

Before the Court is a renewed motion by Defendant Pro Computer Service, LLC (hereafter, "PCS") seeking dismissal of this action based on a mandatory arbitration clause purportedly contained in an agreement between the parties.

As this Court set out in its July 21, 2015 Opinion, the Third Circuit case Guidotti v. Legal Helpers Debt Resolution, 716 F.3d 764, 771 (3d Cir. 2013), outlines the standards of review which apply to an application to compel arbitration. The Third Circuit held that, "[w]here the affirmative defense of arbitrability of claims is apparent on the face or a complaint (or . . . documents relied upon in the complaint), 'the [Federal Arbitration Act] would favor resolving a motion to compel arbitration under a motion to dismiss standard without the inherent delay of discovery[.]'" Id. at 773-74 (internal citations omitted). However, when arbitrability is not apparent on the face of the complaint, then further development of the

factual record is necessary and the motion should be decided under the summary judgment standard. Id. at 774. Moreover, if the complaint and incorporated documents facially establish arbitrability but the non-moving party comes forward with enough evidence to question the parties' intentions concerning arbitration, the motion to compel arbitration should be decided under the summary judgment standard. Id.

Under either of these latter two scenarios, "a 'restricted inquiry into factual issues' will be necessary to properly evaluate whether there was a meeting of the minds on the agreement to arbitrate." Id. (internal citation omitted). The non-moving party "'must be given the opportunity to conduct limited discovery on the narrow issue concerning the validity' of the arbitration agreement[.]" Id. (internal citation omitted). After limited discovery, the party seeking to compel arbitration may file a renewed motion, which would be decided under the summary judgment standard. Id. at 776. If the Court concludes that summary judgment is not warranted, then it may proceed summarily to a trial on the issue of whether the parties reached an agreement to arbitrate. Id.

In PCS's first motion to compel arbitration, the Court could not conclude whether Holdbrook had reasonable notice of the "Terms and Conditions" of an agreement so as to have assented to the arbitration clause contained therein. As noted

above, if arbitrability is not apparent on the face of the complaint and documents attached thereto, then the Court should deny the motion to dismiss and provide the parties the opportunity to further develop the factual record. As such, the Court granted PCS leave to file a renewed motion after the parties completed limited discovery on issues concerning the arbitrability of this action. However, the Court expects and will require PCS to follow Guidotti and make a post-discovery application using the summary judgment standard.¹ PCS's renewed application is not made pursuant to the summary judgment standard, cites no Federal Rule of Civil Procedure or Local Rule, and is thus procedurally improper. Accordingly,

IT IS on this 21st day of June, 2016,

ORDERED that the motion [Doc. No. 17] of Defendant Pro Computer Service, LLC to "compel arbitration", be, and the same hereby is, DENIED WITHOUT PREJUDICE.

 s/ Noel L. Hillman
NOEL L. HILLMAN, U.S.D.J.

At Camden, New Jersey

¹ The only reference to a standard of review in PCS's brief is a title which states: "The Court does not have jurisdiction over the subject matter of Plaintiff's complaint[.]" (PCS's Br. at 4 [Doc. No. 17-1].) Presumably, then, PCS's application is made pursuant to Fed. R. Civ. P. 12(b)(1).