IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ERIK DIMATTEI,	:	
Plaintiff,	:	**CIVIL ACTION**
	:	
v.	:	
	:	
DISKIN MOTORS, INC. d/b/a CAROUSEL HYUNDAI,	:	**No. 16-5183**
Defendant.	:	

MEMORANDUM

PRATTER, J. APRIL 6, 2017

Diskin Motors, Inc., d/b/a Carousel Hyundai, has moved to dismiss Erik Dimattei's Complaint pursuant to Federal Rule of Civil Procedure 12(b)(1) and, in the alternative, pursuant to Federal Rule of Civil Procedure 12(b)(6). For the reasons set forth below, the Court finds a lack of subject matter jurisdiction and will invoke Rule 12(b)(1) to dismiss the Complaint.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

Mr. Dimattei is a former employee of Carousel Hyundai, where he worked as an automotive detailer. He alleges that he worked full-time hours, but was paid per car. According to the Complaint, Carousel Hyundai paid him $50 per car and assumed that he spent five hours on each car, without regard to the number of hours it would actually take for Mr. Dimattei to complete a single car's detailing job.

On or about June 11, 2015, Mr. Dimattei was diagnosed with a stress fracture of his left tibia, rendering him unable to work. Mr. Dimattei alleges that he discussed taking medical leave with his manager, Philip DiGuiseppe, to accommodate his injury, but that the request was denied. He instead exercised his short term disability insurance policy and stayed home for

approximately nine weeks. After his physician cleared him to return to work on August 10, 2015, he returned to Carousel Hyundai, where Mr. Dimattei alleges he was told that he was no longer needed.

Mr. Dimattei brings claims under the Americans With Disabilities Act, 42 U.S.C. § 12101 *et seq.* (Count I), the Pennsylvania Human Relations Act, 43 Pa. Const. Stat. Ann. § 951 *et seq.* (Count II), the Family Medical Leave Act, 29 U.S.C. § 2601 *et seq.* (Count III, IV, V), and the Pennsylvania Wage Payment and Collection Law, 43 P.S. § 260 *et seq.* (Count VI). Carousel Hyundai filed a motion to dismiss the complaint under Federal Rule of Civil Procedure 12(b)(1), arguing that the dispute was subject to a valid arbitration agreement. In the alternative, Carousel Hyundai argues that the Complaint fails to state a claim upon which relief can be granted.

LEGAL STANDARD[1]

Federal Rule of Civil Procedure 12(b)(1) provides that a court may dismiss a complaint for lack of subject matter jurisdiction over a case. It is the plaintiff's burden to prove subject matter jurisdiction. *See Gibbs v. Buck*, 307 U.S. 66, 72 (1939); *Mortensen v. First Federal*

[1] The Third Circuit Court of Appeals has suggested in an unpublished decision that Rule 12(b)(1) is not the proper vehicle to raise an arbitration issue because a motion to compel arbitration raises a defense to the merits and not jurisdiction, see *Liberty Mut. Fire Ins. Co. v. Yoder*, 112 Fed.App'x. 826, 828 (3d. Cir. 2004) (unpublished). Absent clear and binding precedent, however, judges in this District have allowed such motions to proceed. *See Jones v. Judge Tech. Servs. Inc.*, No. CIV.A. 11-6910, 2014 WL 3887733, at *8 (E.D. Pa. Aug. 7, 2014) (dismissing claims, pursuant to Rule 12(b)(1), of those plaintiffs' who were subject to an arbitration agreement); *Allstate Ins. Co. v. Masco Corp.*, No. CIV.A. 06-3183, 2008 WL 183651, at *2 (E.D. Pa. Jan. 22, 2008) ("Where parties have agreed to submit claims to arbitration under a valid and enforceable arbitration clause or agreement, dismissal for lack of subject matter jurisdiction under Rule 12(b)(1) is proper."); *Bro Tech Corp. v. European Bank for Reconstruction & Dev.*, No. CIV.A. 00-2160, 2000 WL 1751094, at *7 (E.D. Pa. Nov. 29, 2000) ("Because all of the Plaintiffs' claims are controlled by the arbitration clauses, this Court does not have subject matter jurisdiction over this dispute."); *c.f. Giordano v. Pep Boys, Manny, Moe & Jack, Inc.*, No. CIV. A. 99-1281, 2000 WL 298923, at *2 (E.D. Pa. Mar. 15, 2000) ("[W]hen all of the claims in a case are arbitrable, a court may dismiss the action instead of staying it. . . . Such a dismissal is discretionary, however, and not jurisdictional. It follows that Federal Rule of Civil Procedure 12(b)(1) is an inappropriate basis for dismissal." (internal citation omitted)).

The Court will join others in this District who have allowed Rule 12(b)(1) motions in this context. The Court concludes that a valid arbitration agreement exists in this case and therefore dismisses Mr. Dimattei's Complaint for lack of subject matter jurisdiction. As a result, the Court need not address whether the Complaint properly pleads its claims through the Rule 12(b)(6) inquiry.

Savings & Loan Ass'n., 549 F.2d 884, 891 (3d Cir. 1977) ("[T]he plaintiff will have the burden of proof that jurisdiction does in fact exist.").

A challenge to subject matter jurisdiction may be facial or factual. In a factual challenge, the court may consider evidence outside the pleadings. *Jones*, 2014 WL 3887733, at *2 (citing *Gould Electronics Inc. v. United States*, 220 F.3d 169, 176 (3d Cir. 2000)). In a Rule 12(b)(1) motion, "Defendant questions the existence of subject matter jurisdiction in fact, and there is, therefore, no presumptive truthfulness attached to the Plaintiffs' allegations." *Bro Tech Corp.*, 2000 WL 1751094, at *2.

DISCUSSION

Carousel Hyundai moves to dismiss Mr. Dimattei's complaint on the grounds that a valid arbitration agreement precludes the Court's subject matter jurisdiction.[2] The Federal Arbitration Act, 9 U.S.C. § 1 *et seq.* ("FAA") governs arbitration agreements. It provides that written agreements to submit to arbitration "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. Under the FAA, "[a] party aggrieved by the . . . refusal of another to arbitrate under a written agreement for arbitration may petition any United States district court . . . for an order directing that such arbitration proceed in the manner provided for in such agreement." 9 U.S.C. § 4. To compel arbitration under the FAA, a court must conclude that two conditions are met: (1) the parties entered into a valid agreement to arbitrate, and (2) the plaintiff's claims fall within the scope of

[2] Carousel Hyundai did not request a stay of the litigation pending arbitration, for which the FAA provides a clear rule. The FAA provides that when an action is referable to arbitration, the court "shall on application of one of the parties stay the trial of the action until such arbitration has been had in accordance with the terms of the agreement." 9 U.S.C. § 3. The Third Circuit Court of Appeals has held that "the plain language of § 3 affords a district court no discretion to dismiss a case where one of the parties applies for a stay pending arbitration." *Lloyd v. HOVENSA, LLC.*, 369 F.3d 263, 269 (3d Cir. 2004). The Court will dismiss Mr. Dimattei's claims here in lieu of imposing a stay because neither party has requested one. *See Jones*, 2014 WL 3887733, at *8 n.5 (dismissing claims where neither party requested a stay).

that arbitration agreement. *See John Hancock Mut. Life Ins. Co. v. Olick*, 151 F.3d 132, 137 (3d Cir. 1998); *Allstate Ins. Co.*, 2008 WL 183651, at *2. District courts need only to engage in a "limited review" to ensure that the dispute is arbitrable, and "in conducting th[at] limited review, the court must apply ordinary contractual principles, with a healthy regard for the strong federal policy in favor of arbitration." *Olick*, 151 F.3d at 137. "The presumption in favor of arbitration applies to the second question but probably does not apply to the first question." *Century Indem. Co. v. Certain Underwriters at Lloyd's, London*, 584 F.3d 513, 527 (3d Cir. 2009).

Carousel Hyundai argues that both requirements are satisfied here, and the Court agrees. The arbitration agreement, which Mr. Dimattei and Carousel Hyundai signed on October 18, 2013 (well before Mr. Dimattei left Carousel Hyundai for medical reasons) states, in relevant part:

> Employer and Employee have determined that they would prefer to arbitrate any dispute arising between them, instead of going to court before a judge or jury. Employer and Employee therefore mutually agree that any Dispute between them (including any dispute involving an employee or agent of Employer) shall be submitted to binding arbitration. Employer and Employee mutually agree to waive any right to present any dispute between them to a court, to a judge, or to a jury. For purposes of this Agreement the term "Dispute" means any claim, dispute, difference, or controversy, whether or not related to or arising out of the employment relationship, and including any claim, dispute, difference, or controversy (i) arising under any federal, state or local statute or ordinance (including claims of discrimination or harassment); (ii) based on any common-law rule or practice, including breach of contract or fraud; (iii) involving the validity or interpretation of this Agreement, or (iv) any other claim, dispute, difference, or controversy whatsoever. . . .
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> . . . [T]he Agreement shall be governed by the Federal Arbitration Act, 9 U.S.C. §§ 1–16. This Agreement shall survive any termination of employment.

Ex. B (Carousel Arbitration Agreement).

The Court concludes that the agreement is valid under the FAA. Generally, "[a]greements to arbitrate employment disputes, whether based on federal or state

statutory claims, are enforceable under the Federal Arbitration Act." *Caparra v. Maggiano's Inc.*, No. CV 14-05722, 2015 WL 5144030, at *3 (E.D. Pa. Sept. 1, 2015) (quoting *Hudyka v. Sunoco, Inc.*, 474 F. Supp. 2d 712, 715 (E.D. Pa. 2007)). To determine whether there is a valid arbitration agreement under the FAA, a court must look to the relevant state law on formation of contracts. *Blair v. Scott Specialty Gases*, 283 F.3d 595, 603 (3d Cir. 2002). In Pennsylvania, "the court must 'look to: (1) whether both parties manifested an intention to be bound by the agreement; (2) whether the terms of the agreement are sufficiently definite to be enforced; and (3) whether there was consideration.'" *Id.* (quoting *ATACS Corp. v. Trans World Communications, Inc.*, 155 F.3d 659, 666 (3d Cir.1998).

There is no dispute between the parties that the first element has been met. With respect to the second element, Carousel Hyundai argues that the terms of the agreement are sufficiently definite because "they define the matters to be arbitrated, namely all matters between the parties, and specifically including claims arising under any federal or state statute." Def. Br. at 7. Mr. Dimattei, on the other hand, contends that the agreement is not sufficiently explicit because it does not detail the particular claims—for instance, claims under the Americans with Disabilities Act—to which the right to litigate is being waived. In support, Mr. Dimattei cites a line of case law in the context of collective bargaining agreements holding, *inter alia*, "that an agreement to arbitrate statutory antidiscrimination claims be 'explicitly stated.'" *14 Penn Plaza LLC v. Pyett*, 556 U.S. 247, 258 (2009) (distinguishing and narrowing the *Gardner–Denver* line of cases and concluding that the criticism of using arbitration to vindicate statutory rights

present in that line of cases "rested on a misconceived view of arbitration that this Court has since abandoned").

The arbitration agreement at issue here was not made as part of a collective bargaining agreement, and Mr. Dimattei does not point to any case law extending the explicitness requirement beyond the collective bargaining context. Indeed, the Supreme Court has distinguished individual agreements to arbitrate from agreements made through collective representation. *Gilmer v. Interstate/Johnson Lane Corp.*, 500 U.S. 20, 35 (1991) ("[B]ecause the arbitration in [the *Gardner-Denver* line of] cases occurred in the context of a collective-bargaining agreement, the claimants there were represented by their unions in the arbitration proceedings. An important concern therefore was the tension between collective representation and individual statutory rights, a concern not applicable to the present case."). Accordingly, the Court is unpersuaded by Mr. Dimattei's argument that the arbitration agreement lacked sufficient specificity.

Mr. Dimattei also argues—without citation to any case law in support—that the agreement "only purportedly compels arbitration on claims foreseeable [*sic*] brought by a Plaintiff." Pl. Br. at 8. In other words, Mr. Dimattei takes the positon that Carousel Hyundai would never conceivably bring claims against him where the arbitration agreement would then apply. There is no such limiting language in the agreement, however.

Furthermore, Mr. Dimattei's interpretation of consideration misses the mark. The Third Circuit Court of Appeals has held that "[w]hen both parties have agreed to be bound by arbitration, adequate consideration exists and the arbitration agreement should be enforced." *Blair*, 283 F.3d at 603. Here, both parties are plainly bound by the text of

the agreement to submit to arbitration: "Employer and Employee therefore mutually agree that any Dispute between them (including any dispute involving an employee or agent of Employer) shall be submitted to binding arbitration." Consequently, adequate consideration exists.

Having concluded that the arbitration agreement is valid, the Court turns to whether the dispute falls within the scope of the agreement. There is a "strong presumption in favor of arbitration, and doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration." *Great W. Mortg. Corp. v. Peacock*, 110 F.3d 222, 228 (3d Cir. 1997) (internal quotation marks omitted). The scope of the arbitration agreement here is broad. It covers "any dispute" arising under any federal, state, or local statute (including claims of discrimination) between Mr. Dimattei and Carousel Hyundai, and it survives termination of employment. Aside from generally asserting that the agreement is not sufficiently explicit, which the Court addressed above, Mr. Dimattei does not raise any argument that the dispute is outside the scope of the arbitration agreement. Given that the agreement satisfies the two conditions under the FAA, the Court grants Carousel Hyundai's motion to dismiss. An appropriate Order follows.

BY THE COURT:

S/Gene E.K. Pratter
GENE E.K. PRATTER
United States District Judge