IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

VANESSA RODRIGUEZ,	§	
	§	
Plaintiff,	§	
	§	
v.	§	**EP-16-CV-00041-FM**
	§	
XEROX BUSINESS SERVICES, LLC, THE HON COMPANY and JONES LANG LASALLE INC.,	§	
	§	
	§	
Defendants.	§	

ORDER GRANTING IN PART AND DENYING IN PART DEFENDANT'S MOTION TO ABATE AND COMPEL ARBITRATION

On this day the court considered "Defendant's Motion to Abate and Compel Arbitration and Brief in Support Thereof" ("Motion") [ECF No. 62], filed October 28, 2016 by Defendant Xerox Business Services, LLC ("XBS"); "Defendant The Hon Company's Response to Defendant Xerox Business Services, LLC's Motion to Abate and Compel Arbitration" ("Hon's Response") [ECF No. 65], filed November 3, 2016 by The Hon Company LLC ("Hon"); and "Plaintiff's Response in Opposition to Defendant Xerox Business Services LLC's Motion to Compel Arbitration and Brief in Support Thereof (Doc. 62)" ("Plaintiff's Response") [ECF No. 78], filed January 17, 2017 by Vanessa Rodriguez ("Plaintiff").

After considering the Motion, Hon's Response, Plaintiff's Response, and the applicable law, the Motion is **GRANTED IN PART AND DENIED IN PART**.

I. BACKGROUND

On July 13, 2015, Plaintiff was hired by XBS.[1] On July 10, 2015, prior to starting her job at XBS, Plaintiff electronically signed the "Agreement to be Bound by the Xerox Business Services Dispute

[1] Mot., Ex. A, at 2, "Declaration of Kerri Odle," ("Declaration"), at 1 ¶ 4, ECF 62-1, filed Oct. 28, 2016.

Resolution Plan and Rules ("DRP")" (the "Agreement").[2] The Agreement provides that Plaintiff must bring all "personal injury" claims arising out of her employment before an arbitrator, not the courts.[3] It further provides that the "[a]rbitrator, and not any federal, state, or local court or agency shall have the exclusive authority" to resolve any question regarding the "interpretation, applicability, enforceability, or formation of this Agreement including but not limited to any claim that all or part of this Agreement is void or voidable."[4] The Agreement binds the parties to the Dispute Resolution Plan ("DRP"), a separate document that details the dispute resolution procedure agreed to by the parties.[5]

This matter concerns a claim for personal injuries arising out of an incident that occurred on XBS' premises.[6] Plaintiff alleges that on August 26, 2015, before she began her shift working for XBS, she sat down on a chair at XBS' on-site cafeteria. The chair broke, causing her to fall.[7] She claims to have suffered several injuries due to the fall.[8] Consequently, she is asserting claims against XBS for premises liability and for negligence.[9]

Plaintiff also named Jones Lang Lasalle, Inc. ("Jones") as a defendant. She alleges that Jones served as XBS' representative for inspection and maintenance of equipment, including the chair.[10] She

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[2] Mot., Ex. A, at 9.

[3] *Id*.

[4] *Id*.

[5] *Id*.

[6] "Plaintiff's Complaint of May 21, 2016," ("Complaint") at 2 ¶ 5, ECF No. 28, filed June 2, 2016.

[7] *Id*.

[8] *Id*.

[9] *Id*. at 2–3.

[10] *Id*. at 4 ¶ 11.

asserts that Jones was negligent in performing this duty, proximately causing her injuries.[11] Finally, she asserts a products liability claim against Hon, the company that produced the chair.[12]

II. PARTIES' ARGUMENTS

XBS moves to dismiss the Complaint and compel arbitration pursuant to the Agreement executed by Plaintiff and XBS on July 10, 2015.[13] XBS argues that the Agreement stipulates that Plaintiff must "arbitrate all claims and disputes" arising out of her employment, including claims for "negligence, gross negligence, personal injury or death."[14] XBS maintains that the Agreement and the overarching employment contract are valid and binding, and that, pursuant to the Agreement, "gateway" issues such as the validity of the Agreement itself are to be decided by the arbitrator, not by this court.[15] XBS further argues that the Federal Arbitration Act ("FAA") favors enforcement of arbitration agreements.[16] Accordingly, XBS alleges that Plaintiff must bring her claims through arbitration.[17] In the alternative, XBS seeks severance of the claims that Plaintiff raises against it, compelling only those claims to arbitration.[18]

Plaintiff opposes the Motion on the grounds that XBS has failed to proffer original copies of the employment agreement, violating the Federal Rules of Evidence.[19] Plaintiff alleges that, as a

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[11] *Id.*

[12] Compl. 3–4 ¶ 9.

[13] Mot. 1.

[14] *Id.*

[15] *Id.* at 3.

[16] *Id.* at 2.

[17] *Id.* at 10.

[18] *Id.* at 10–11.

[19] Plaintiff's Resp. 3–4.

consequence, there is "no admissible evidence submitted by [XBS] that shows [XBS] and Plaintiff entered into a valid and enforceable agreement to arbitrate."[20] Plaintiff appears to concede that, where a valid and binding arbitration agreement stipulates that "gateway" issues such as arbitrability are to go to an arbitrator, the district court must abide by the terms of the agreement and decline to interpret the arbitrability of a claim.[21] She argues, however, that the FAA does not apply to this case, and that consequently this court need not compel arbitration.[22] The crux of her argument against application of the FAA rests on her conclusion that Defendant cannot connect her claim to any "transaction involving commerce," which, she alleges, is required for the FAA to apply.[23] Finally, Plaintiff asserts that her claims against Jones and Hon cannot be compelled to arbitration, as these defendants are not parties to the Agreement.[24]

Hon's Response argues that Hon, as a non-signatory to the Agreement, cannot be compelled to arbitrate.[25] Hon explains that no legal doctrine applies to override this fact and require them to arbitrate.[26]

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[20] *Id*. at 4.

[21] *Id*. at 6–7 ("To be clear, Plaintiff vigorously disputes the existence of a valid and enforceable agreement to arbitrate between the vigorously disputes the existence of valid and enforceable agreement to arbitrate between the parties, but it appears that pursuant to *Rent-A-Center* and other similar decisions, so long as the FAA applies, such 'gateway' issues regarding arbitrability are to be decided by the arbitrator in this case because the delegation provisions delegate to the arbitrator the gateway questions of whether the arbitration agreement is valid and enforceable.") (emphasis in original).

[22] *Id*. 7–11.

[23] *Id*. at 7.

[24] *Id*. 11–12.

[25] Hon's Resp. 3.

[26] *Id*. at 2–3.

III. APPLICABLE LAW

In adjudicating a motion to compel arbitration pursuant to the FAA, courts undertake a two-part inquiry. First, the court must determine whether the parties agreed to arbitrate the dispute in question. This involves two considerations: first, whether there is a valid agreement to arbitrate between the parties, and second, whether the subject dispute falls within the scope of that arbitration agreement.[27] In determining whether the dispute falls within the arbitration agreement, courts should apply "ordinary state-law principles that govern the formation of contracts."[28] Second, the court must consider whether "legal constraints external to the parties' agreement foreclosed the arbitration of those claims."[29] In addition, courts are to "bear in mind the strong federal policy favoring arbitration and resolve any ambiguity as to the availability of arbitration in favor of arbitration."[30]

IV. DISCUSSION

A. Whether the Parties Have a Valid Agreement to Arbitrate

The court applies state law to determine whether the parties have agreed to arbitrate the dispute in question.[31] Under the Texas General Arbitration Act ("TGAA"), a "written agreement to arbitrate is valid and enforceable if the agreement is to arbitrate a controversy that (1) exists at the time of the agreement" or "(2) arises between the parties after the date of the agreement."[32] Such an agreement may

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[27] *Webb v. Investacorp., Inc.*, 89 F.3d 252, 258 (5th Cir. 1996) (citations omitted).

[28] *Id*. (quoting *First Options of Chicago, Inc. v. Kaplan*, 514 U.S. 938, 944 (1995)).

[29] *Id*. (quoting *Mitsubishi Motors Corp. v. Soler Chrysler–Plymouth, Inc.*, 473 U.S. 614, 628 (1985)).

[30] *PaineWebber Inc. v. Chase Manhattan Private Bank (Switzerland)*, 260 F.3d 453, 462 (5th Cir. 2001).

[31] *Banc One Acceptance Corp. v. Hill*, 367 F.3d 426, 429 (5th Cir. 2004) (citation omitted); *see also Will Drill Res., Inc. v. Samson res. Co.*, 352 F.3d 216, 218 (5th Cir. 2003).

[32] Tex. Civ. Prac. & Rem. Code Ann. § 171.001(a).

only be revoked on "ground[s] that exist[] at law or in equity for the revocation of a contract."[33] Plaintiff fails to cite any grounds for revocation of the contract. Moreover, there is no dispute as to whether the Agreement, if admitted, would meet state law requirements to be valid and binding.[34] Accordingly, the court will focus its analysis on whether the Agreement is admissible, proving the existence of a valid agreement to arbitrate.

Plaintiff argues that there is insufficient evidence to establish that the Agreement is authentic and binding. She "challenges the authenticity" of the Agreement,[35] as well as her signature thereon, and objects to the admission of the Agreement into evidence on the grounds that it is a copy and not an original.[36] She also alleges that the Agreement is unenforceable under § 171.002(c) of the TGAA because it was not signed by the parties' attorneys.[37] But the court rejects this last argument, as this provision of the TGAA was preempted by the FAA,[38] thereby eliminating this requirement.

As for Plaintiff's argument that XBS cannot prove the existence of a valid and binding arbitration agreement because the Agreement submitted is inadmissible under the best evidence rule, the issue is more complex. Federal Rule of Evidence 1002 ("Rule 1002") requires that a party seeking to

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[33] *Id*. § 171.001(b).

[34] *In re Capco Energy, Inc.*, 669 F.3d 274, 279–80 (5th Cir. 2012) (quoting *Copeland v. Alsobrook*, 3 S.W.3d 598, 604 (Tex.App. 1999) (citation omitted) (Under Texas law, a "binding contract requires '(1) an offer; (2) an acceptance in strict compliance with the terms of the offer; (3) a meeting of the minds; (4) each party's consent to the terms; and (5) execution and delivery of the contract with intent that it be mutual and binding.'").

[35] Resp. 3.

[36] *Id*. at 3–4.

[37] *Id*. at 11.

[38] *In re Nexion Health at Humble, Inc.*, 173 S.W.3d 67, 69 (Tex. 2005) (citing Tex. Civ. Prac. & Rem. Code § 171.002(a)(3), (c)) ("The [TGAA] interferes with the enforceability of the arbitration agreement by adding an additional requirement—the signature of a party's counsel—to arbitration agreements in personal injury cases . . . Thus, the [TGAA] is preempted by the FAA."); *See also Saturn Distribution Corp. v. Paramount Saturn, Ltd.*, 326 F.3d 684, 687 (5th Cir. 2003) ("the strong federal policy favoring arbitration preempts state laws that act to limit the availability of arbitration.") (citation omitted).

prove the "content" of a writing must produce the original.[39] Federal Rule of Evidence 1001 ("Rule 1001") includes in its definition of "original" any "printout–or other output readable by sight–if it accurately reflects the information" it contains.[40] Additionally, the "requirement of authentication or identification as a condition precedent is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims."[41] Federal Rule of Evidence ("Rule 901") further provides that "[t]estimony that an item is what it is claimed to be" by a "witness with knowledge" satisfies the requirement.[42] Indeed, the court "does not require conclusive proof of authenticity before allowing the admission of disputed evidence."[43] Moreover, the Federal Rules of Evidence do "not limit the type of evidence allowed to authenticate a document," but rather "merely require[] some evidence which is sufficient to support a finding that the evidence in question is what its proponent claims it to be."[44]

The Agreement is a printout of a digitally executed contract; accordingly, it qualifies as an "original" pursuant to Rule 1001.

> "An 'original' of a writing or recording means the writing or recording itself or any counterpart intended to have the same effect by the person who executed or issued it. *For electronically stored information*, *'original' means any printout – or other output readable by sight – if it accurately reflects the information.*"[45]

The Agreement is further authenticated by the Declaration of Kerri Odle; the Declaration provides that

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[39] Fed. R. Evid. 1002.

[40] Fed. R. Evid. 1001.

[41] *In re McLain*, 516 F.3d 301, 308 (5th Cir. 2008) (citing Fed. R. Evid. 901(a)).

[42] Fed. R. Evid. 901(b)(1).

[43] *United States v. Jimenez Lopez*, 873 F.2d 769, 772 (5th Cir. 1989) (citations omitted).

[44] *United States v. Arce*, 997 F.2d 1123, 1128 (5th Cir. 1993) (quoting *Jimenez-Lopez*, 873 F.2d at 772).

[45] Fed. R. Evid. 1001 (emphasis added).

the Agreement is a "true and correct exact duplicate[] of the original[] in the possession of XBS."[46] The Declaration was made by a Senior Manager working for XBS with knowledge of the underlying events, and it was made "under penalty of perjury."[47] For the foregoing reasons, admission of the Agreement does not violate the best evidence rule. The Agreement contains all of the requisite elements of a valid and binding contract under Texas law. Based on the evidence submitted, the court concludes there is a valid and binding agreement to arbitrate.

B. Whether the Subject Controversy Falls Within the Scope of the Agreement

The second step in determining whether to grant a motion to compel arbitration is to determine whether the dispute in question falls within the scope of the arbitration agreement. The Agreement provides that, as a condition of her employment with XBS, Plaintiff agrees "to the exclusive final and binding resolution by arbitration under the DRP of all disputes . . . including legal claims, past, present or future, arising out of, relating to, or concerning [her] employment" with XBS.[48] The Agreement further provides that the question of whether a given claim is arbitrable is to be decided by the arbitrator.[49] Parties are free to stipulate in arbitration agreements that the arbitrator, and not the court, is empowered to determine "gateway" provisions, including whether a given controversy is subject to the arbitration agreement.[50] Having concluded that there is a valid and binding arbitration agreement, and that Plaintiff's claims against XBS fall within its scope, the next step is to determine whether there are any

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[46] Declaration 2 ¶ 8.

[47] *Id*.

[48] Agreement 9 (emphasis removed).

[49] *Id*. ("[T]he Arbitrator, and not any federal, state or local court or agency shall have the exclusive authority to resolve any [d]ispute relating to the interpretation, applicability, enforceability, or formation of this Agreement including but not limited to any claim that all or part of this Agreement is void or voidable.").

[50] *See Rent-A-Ctr., West, Inc. v. Jackson*, 561 U.S. 63, 68–69 (2010) ("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.") (citing *Howsam v. Dean Witter Reynolds, Inc.*, 537 U.S. 79, 83–85 (2002)).

grounds at law or in equity for revocation of the contract. As Plaintiff cites no grounds for invalidation of the contract, the court proceeds to the next step: whether the FAA applies to compel arbitration.

C. Whether the FAA Applies to Compel Arbitration

"The FAA reflects the fundamental principle that arbitration is a matter of contract."[51] Section 2 of the FAA provides that a "written provision in . . . a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract . . . shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract."[52] Such agreements may be invalidated by "generally applicable contract defenses such as fraud, duress or unconscionability."[53] Thus the FAA sets forth that an arbitration agreement is valid when it is in writing, it is part of a "contract evidencing a transaction involving interstate commerce," and it is not invalidated by any doctrine of general contract law.[54]

Plaintiff insists that there has been no transaction involving interstate commerce underlying this case, and that the FAA thus does not apply.[55] She explains that she was not engaged in such commerce when she was injured, and that her duties at the time did not involve interstate commercial transactions.[56] She also asserts that the employment contract itself cannot represent the requisite interstate commercial transaction.[57] However, the FAA extends to those intrastate activities that "so affect interstate

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[51] *Id*. at 67.

[52] 9 U.S.C. § 2.

[53] *Doctor's Associates, Inc. v. Casarotto*, 517 U.S. 681, 687 (1996) (citations omitted).

[54] *See* 9 U.S.C. § 2.

[55] Plaintiff's Resp. 7.

[56] *Id*. at 10.

[57] *Id*. at 10–11.

commerce" as to make Congressional regulation of them a means of regulating interstate commerce.[58] Thus, the FAA also applies to employment contracts that are purely intrastate.[59] Accordingly, "[e]mployment contracts, except for those covering workers engaged in transportation, are covered by the FAA."[60]

As the FAA "provides for 'the enforcement of arbitration agreements within the full reach of the Commerce Clause,'"[61] it is clear that the "FAA encompasses a wider range of transactions than those actually 'in commerce' – that is, [those] 'within the flow of interstate commerce.'"[62] Although the phrase "evidencing transaction" imposes the requirement that the contract have "involved interstate commerce" in order for the FAA to apply, the words "involving commerce" are "broader than the often-found words of art 'in commerce,' cover[ing] more than 'only persons or activities *within the flow* of interstate commerce."[63] Indeed, the Supreme Court concluded that the term "involving" is the "functional equivalent of 'affecting.'"[64] The exclusionary provision of § 1 of the FAA applies only to employees "actually engaged in the movement of goods in interstate commerce."[65]

There is no requirement, as Plaintiff alleges, that the contract itself constitute an interstate

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[58] *United States v. Darby*, 312 U.S. 100, 118 (1941).

[59] *Circuit City Stores, Inc. v. Adams*, 532 U.S. 105, 119 (2001) ("In sum, the text of the FAA forecloses . . . a construction [of § 1 of the FAA] which would exclude all employment contracts from the FAA.").

[60] *E.E.O.C. v. Waffle House, Inc.*, 534 U.S. 279, 289 (2002) (citing *Circuit City Stores, Inc.*, 532 U.S. at 121).

[61] *Citizens Bank v. Alafabco, Inc.*, 539 U.S. 52, 56 (2003) (citing *Perry v. Thomas*, 482 U.S. 483, 490 (1987)).

[62] *Id*. (citing *Allied Bruce Terminix Companies, Inc. v. Dobson*, 513 U.S. 265, 273 (1995)).

[63] *Allied-Bruce Terminix Companies, Inc.*, 513 U.S. at 273 (citing *United States v. American Building Maintenance Industries*, 422 U.S. 271, 275 (1975) (emphasis in original)).

[64] *Id*. at 273–274.

[65] *Miller v. Pub. Storage Mgmt., Inc.*, 121 F.3d 215, 217 (5th Cir. 1997) (citing *Rojas v. TK Communications, Inc.*, 87 F.3d, 745, 748 (5th Cir. 1996)).

commercial transaction, that the employee be regularly engaged in interstate commerce in performing her duties, or that the employee was so engaged at the time the cause of action arose.[66] The crux of the issue is whether the Agreement affects interstate commerce, not whether Plaintiff was engaged in interstate commerce at the time of her injury. As the FAA extends to employment contracts, Plaintiff's arguments against application of the FAA necessarily fail. The Agreement thus meets all of the requirements for the FAA to apply. It is in writing, it is part of a contract that evidences a transaction involving commerce, and Plaintiff has not cited any grounds on which to revoke the contract.[67]

The Motion thus meets all of the requirements for a motion to compel arbitration. There is a valid and binding contract containing an arbitration clause, Plaintiff's claims against XBS fall within its scope, and no doctrine of law applies to invalidate it. The Agreement clearly provides that the question of arbitrability, as well as the underlying personal injury claim, should be resolved in arbitration. Therefore, XBS' Motion should be granted.

D. Whether the Claims Should be Severed

The next issue to decide is whether, in granting XBS' Motion, the entire case should be compelled to arbitration, or whether only the claims against XBS should be compelled. The Federal Rules of Civil Procedure empower the court to sever claims due to the misjoinder of parties.[68] The court has "broad discretion" in making this determination,[69] and in doing so the court is to consider "(1) whether the claims arose out of the same transaction or occurrence, (2) whether the claims present common questions of law

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[66] *Citizens Bank v. Alafabco, Inc.*, 539 U.S. at 56–57 ("Congress' Commerce Clause power may be exercised in individual cases without showing any specific effect upon interstate commerce if in the aggregate the economic activity in question would represent a general practice . . . subject to federal control . . . Only that general practice need bear on interstate commerce in a substantial way.") (citations omitted).

[67] 9 U.S.C. § 2.

[68] Fed. R. Civ. P. 21

[69] *United States v. O'Neil*, 709 F.2d 361, 367 (5th Cir. 1983) (citation omitted).

or fact, (3) whether settlement or judicial economy would be promoted, (4) whether prejudice would be averted by severance, and (5) whether different evidence or documentary proof are required."[70] Although the claims in this case arise out of the same transaction or occurrence and contain common questions of fact, it would be highly unfair to Jones and Hon to force them, as nonparties to the Agreement, to defend themselves in arbitration. Accordingly this factor weighs heavily in favor of severance.

The doctrine of intertwined claims estoppel can prevent severance, as it allows a party to an arbitration agreement to "compel" a non-party to participate in arbitration under certain circumstances.[71] The purpose of the doctrine is to "prevent signatories to an arbitration agreement from avoiding arbitration simply by suing 'nonsignatory [parties]. . .'"[72] It only applies, however, where the non-party has a "'close relationship'" with one of the signatories, and where the claims are "'intimately founded in and intertwined with the underlying contract obligations.'"[73] Indeed, there must be a "tight relatedness of the parties, contracts and controversies[,]"[74] and the "'close relationship' requirement has generally limited [the application of intertwined claims estoppel] to instances of strategic pleading by a signatory who, in lieu of suing the other party for breach, instead sues that party's nonsignatory principals or agents for pulling the strings."[75]

Although the Supreme Court of Texas has not yet explicitly stated whether it recognizes

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[70] *In re Rolls Royce Corp.*, 775 F.3d 671, 675 n. 6 (5th Cir. 2014) (citation omitted).

[71] *Hays v. HCA Holdings, Inc.*, 838 F.3d 605, 610 (5th Cir. 2016) (citing *In re Merill Lynch Trust Co., FSB*, 235 S.W.3d 185, 193–94 (Tex. 2007)).

[72] *Id*. at 611 (citing *In re Merrill Lynch Trust Co., FSB*, 235 S.W.3d at 194).

[73] *Id*.

[74] *Id*. at 610 (citation omitted).

[75] *In re Merrill Lynch Trust Co.*, 235 S.W.3d at 194 (citations omitted).

intertwined claims estoppel, it has expressed its support for the doctrine implicitly.[76] Plaintiff and Jones argue that this doctrine does not apply to the present case, and that XBS may not use it to compel Plaintiff's claims against non-signatories of the Agreement to arbitrate. The court agrees.

Jones is a real estate management company that managed the premises on which Plaintiff was injured.[77] Jones alleges that, regardless of this relationship, there is no evidence from which to conclude that it could have owed any duty to Plaintiff, and thus that Plaintiff's claims are meritless.[78] The record indicates that Jones served as XBS' "representative for inspection and maintenance of the equipment,"[79] and although it is possible that Jones may have been sufficiently closely related to XBS so as to invoke intertwined claims estoppel, there is insufficient evidence in the record on which to base this conclusion. Accordingly, it would be improper to force Jones, as a non-signatory to the Agreement, to arbitration.

The same analysis applies to Hon. There is no evidence that Hon was sufficiently intertwined with XBS. Indeed, there is no evidence whatsoever that Hon had any relationship with XBS or any other signatory to the Agreement, other than the fact that Hon manufactured a chair that XBS at some point purchased. Furthermore, Plaintiff's products liability claim against Hon are completely separate and distinct from any claims based on the contract between XBS and Plaintiff. As such, the court finds that it would be improper to compel Hon, as a non-signatory of the Agreement, to arbitrate.

As the court concludes that intertwined claims estoppel does not apply to prevent severance, and because the balance of hardships weighs in favor of severing the claim and not forcing nonparties to arbitrate, the court will exercise its discretion and sever the claims against XBS from those against Jones

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[76] *Hays*, 838 F.3d at 611.

[77] "Defendant Jones Lang Lasalle Inc.'s 12(b)(6) Motion to Dismiss," at 3–4, ECF No. 41, filed Aug. 24, 2016.

[78] *Id.*

[79] Compl. 2.

and Hon.

IV. CONCLUSION AND ORDERS

After due consideration, the court finds that it is necessary to dismiss Plaintiff's claims as to XBS and to compel arbitration in accordance with the arbitration agreement signed by the parties. However, the court concludes that there is no basis in law or equity on which to compel Jones and Hon, non-parties to the arbitration agreement, to attend arbitration. Accordingly, "Defendant's Motion to Abate and Compel Arbitration and Brief in Support Thereof" [ECF No. 62] is hereby **GRANTED IN PART AND DENIED IN PART**. The claims against XBS are **HEREBY SEVERED, DISMISSED** and **COMPELLED** to arbitration in accordance with the Agreement. The claims against Jones and Hon, however, **SHALL** remain in this court.

SO ORDERED.

SIGNED this **9th** day of **February, 2017**

FRANK MONTALVO
UNITED STATES DISTRICT JUDGE