UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	SACV 16-01307 JVS(DFMx)	Date	October 27, 2016
Title	Haven Beauty Inc. v. Kim Kardashian et al		

Present: The Honorable	James V. Selna	
Karla J. Tunis		Sharon Seffens
Deputy Clerk		Court Reporter
Attorneys Present for Plaintiffs:		Attorneys Present for Defendants:
Gregory Fayer Tyler King		Jonathan Stensapir

Proceedings: **Court's Order to Show Cause Regarding Arbitration of Claims** (Docket No. 30)

Cause called and counsel make their appearances. The Court's tentative ruling is issued. Counsel make their arguments. The Court DENIES the Plaintiffs request to compel Hillair, Kaufman, and McAvoy (together, "remaining Defendants") to arbitration, and it stays all of the Plaintiffs' claims against the remaining Defendants pending arbitration and rules in accordance with the tentative ruling as follows:

The Court ordered the parties to show cause in writing why it should not order this matter to arbitration. (Order, Docket No. 26.) Defendants Haven Beauty Inc. ("Haven Beauty"), Hillair Capital Investments LP, Hillair Capital Management LLC (together "Hillair"), Neal Kaufman ("Kaufman"), and Sean McAvoy ("McAvoy") (collectively, "Defendants") filed a brief. (Br., Docket No. 48.) Plaintiffs 2Die4Kourt, Khloe Kardashian, Kourtney Kardashian, Kim Kardashian West, Khlomoney Inc., and Kimsaprincess Inc. (together "Plaintiffs") responded. (Resp., Docket No. 52.) Defendants replied. (Reply, Docket No. 53.)

For the following reasons, Court **denies** the Plaintiffs' request to compel Hillair, Kaufman, and McAvoy (together, "remaining Defendants") to arbitration, and it stays all of the Plaintiffs' claims against the remaining Defendants pending arbitration.

I. BACKGROUND

In May 2012, the Plaintiffs licensed their trademarks, names, and images to

Boldface Licensing and Branding ("Boldface") to develop, market, and sell a line of cosmetics. (Mot. Ex. A, Docket No. 16-2 at 2, 4.) The agreement contains an arbitration clause that states the following:

> This Agreement shall be governed by and construed in accordance with the laws of the State of California applicable to agreements made and to be performed within such state. All claims, disputes and other matters arising out of or relating to this Agreement shall be submitted to, and determined by, binding arbitration in accordance with Judicial Arbitration and Mediation Services (JAMS) . . . .

(Id. at 37.) Eventually, Haven Beauty, as a wholly-owned subsidiary of Hillair, took over as licensee. (Compl., Docket No. 1 ¶¶ 28–34, 39–42.)

On February 26, 2016, the Plaintiffs sent Hillair and Haven Beauty a notice of breach of the License Agreement. (Mot. Ex. A, Docket No. 16-2 at 51.) On July 13, 2016, the Plaintiffs filed the complaint in the present action. (Compl., Docket No. 1.) On July 19, 2016, the Court ordered the parties to show cause in writing why it should not order this matter to arbitration. (Order, Docket No. 26.)

The parties agree that the dispute between Haven Beauty and the Plaintiffs is subject to arbitration. (Br., Docket No. 48 at 8; Resp., Docket No. 52 at 2.) Therefore, the only issue currently before this Court is whether the Court should compel the remaining Defendants to arbitrate. (Resp., Docket No. 52 at 3.)

II. LEGAL STANDARD

The Federal Arbitration Act (the "FAA") governs any arbitration provision contained in a "contract evidencing a transaction involving commerce." 9 U.S.C. § 2. The Supreme Court has stated that the word "'involving' . . . signals an intent to exercise Congress' commerce power to the full." Allied-Bruce Terminix Companies, Inc. v. Dobson, 513 U.S. 265, 277 (1995); see also Southland Corp. v. Keating, 465 U.S. 1, 14 (1984). The FAA "establishes that, as a matter of federal law, any doubts concerning the scope of arbitrable issues should be resolved in

favor of arbitration . . . ." Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp., 460 U.S. 1, 24–25 (1983). But where the issue is "whether a particular party is bound by the arbitration agreement . . ., the liberal federal policy regarding the scope of arbitrable issues is inapposite." Comer v. Micor, Inc., 436 F.3d 1098, 1104 (9th Cir. 2006).

However, a nonsignatory may still compel "arbitration under the FAA if the relevant state contract law allows the litigant to enforce the agreement." Kramer v. Toyota Motor Corp., 705 F.3d 1122, 1128 (9th Cir. 2013); see also Letizia v. Prudential Bache Secur., Inc., 802 F.2d 1185, 1187 (9th Cir. 1986). For instance, equitable estoppel is one of the methods a party can use to compel arbitration: "[e]quitable estoppel precludes a party from claiming the benefits of a contract while simultaneously attempting to avoid the burdens that contract imposes."[1] Comer, 436 F.3d at 1101 (internal quotations and citation omitted).

III. DISCUSSION

Under equitable estoppel, "a nonsignatory defendant may invoke an arbitration clause to compel a signatory plaintiff to arbitrate its *claims* when the causes of action against the nonsignatory are 'intimately founded in and intertwined' with the underlying contract obligations." Boucher v. Alliance Title Co., Inc., 127 Cal. App.4th 262, 271–72 (2005) (italics supplied); see also JSM Tuscany, LLC v. Superior Court, 193 Cal. App. 4th 1222, 1237 (2011). "This requirement comports with, and indeed derives from, the very purposes of the doctrine: to prevent a party from using the terms or obligations of an agreement as the basis *for his claims* against a nonsignatory, while at the same time refusing to arbitrate with the nonsignatory under another clause of that same agreement."

[1] The parties only disagree regarding whether equitable estoppel applies to the remaining Defendants: (1) the parties agree that the Court must decide whether a nonsignatory is subject to arbitration (Br., Docket No. 48 at 11; Resp., Docket No. 52 at 6), (2) the Plaintiffs do not argue alter ego liability at this time (Resp., Docket No. 52 at 10), and (3) the parties agree that the third-party beneficiary exception is inapplicable (Br., Docket No. 48 at 16; Resp., Docket No. 52 at 17.). Therefore, this Court will only examine whether equitable estoppel compels the remaining Defendants to arbitrate.

Goldman v. KPMG, LLP, 173 Cal. App. 4th 209, 221 (2009) (italics supplied).

Equitable estoppel focuses on the "*nature of the claims* asserted by the plaintiff against the nonsignatory defendant." Boucher, 127 Cal. App. 4th at 272 (italics supplied). "*Claims* that rely upon, make reference to, or are intertwined with *claims* under the subject contract are arbitrable." Rowe v. Exline, 153 Cal. App. 4th 1276, 1287 (2007) (italics supplied); see also Goldman, 173 Cal. App. 4th at 229–30 ("Because equitable estoppel applies only if plaintiffs' claims against the nonsignatory are dependent upon, or inextricably bound up with, the obligations imposed by the contract plaintiff has signed with the signatory defendant, we examine the facts alleged in the complaints.").

Here, the Plaintiffs argue that "Hillair and the Officers/Directors must be compelled to arbitrate *their defenses* to the Kardashians' claims because those *defenses* arise out of and relate to the License Agreement." (Resp., Docket No. 52 at 6 (italics supplied).)

However, equitable estoppel does not apply in the current situation because the remaining Defendants have not used the licensing agreement to assert any *claim* against the Plaintiffs.[2] In addition, the Plaintiffs have not cited to any legal authority applying equitable estoppel when a nonsignatory asserts *defenses* stemming from a contract with an arbitration clause. See, e.g., Noble Drilling Services, Inc v. Certex USA, Inc., 620 F.3d 469, 474–75 (5th Cir. 2010) ("Noble's *claims*—by its own admission—rise or fall on the pre-purchase representations and whatever duties a manufacturer and distributor have by law. We thus conclude that the theory of direct benefits estoppel is not applicable, and Noble is not obligated to arbitrate *its claims*.") (italics supplied). In fact, any binding precedent that the Plaintiffs have cited applies equitable estoppel to *claims*. See, e.g., In re Toyota Motor Corp. Unintended Acceleration Mktg., Sales Practices, & Prod. Liab. Litig., 838 F. Supp. 2d 967, 991 ("In determining whether to apply equitable estoppel and

[2] At oral argument on October 27, 2016, the Plaintiffs' counsel referenced the state court proceeding that Hillair filed against the Plaintiffs on March 21, 2016. The Court clarifies that the remaining Defendants have not used the licensing agreement to assert any claim against the Plaintiffs in the proceeding before *this* Court.

compel arbitration of *Plaintiffs' claims*, the Court looks to the relatedness of the claims to the agreement containing the arbitration provision.") (italics supplied); Comer, 436 F.3d at 1101 ("We turn, then, to the single issue that was briefed and argued by the parties: whether the arbitration agreements apply to Comer's ERISA *claim* against Smith Barney.") (italics supplied). Therefore, equitable estoppel does not apply simply because the remaining Defendants' *affirmative defenses* arise from the licensing agreement.

In conclusion, because the Plaintiffs assert that the remaining Defendants' *affirmative defenses* arise out of the licensing agreement, the Court finds that equitable estoppel does not require this Court to compel the remaining Defendants to arbitration.[3]

IV. CONCLUSION

For the aforementioned reasons, Court **denies** the Plaintiffs' request to compel the remaining Defendants to arbitration, and it stays all of the Plaintiffs' claims against the remaining Defendants pending arbitration.

IT IS SO ORDERED.

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[3] One further consideration supports the result here. The non-signatory Defendants have a Seventh Amendment right to a jury trial, which would be extinguished if they were forced to arbitrate.