UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

TWTB, INC., et al.	**CIVIL ACTION**
VERSUS	**CASE NO. 15-3399**
BRUCE J. RAMPICK	**SECTION: "G" (2)**

ORDER

In this litigation, Plaintiffs TWTB, Inc. ("TWTB") and Frank Eugene Raper ("Raper") (collectively "Plaintiffs") allege that Defendant Bruce Rampick ("Rampick") violated his fiduciary duties as a director, officer, and shareholder of TWTB.[1] LRSBR, LLC ("LRSBR"), which was formed by Rampick, has filed a third-party complaint against TWTB for trademark infringement.[2] TWTB filed a cross-claim against LRSBR for breach of contract.[3] Pending before the Court is Rampick and LRSBR's "Motion to Compel Arbitration and For a Stay, Or in the Alternative for Reconsideration" of the Court's Order denying dismissal for improper venue.[4] Having reviewed the motion, the memoranda in support, the memorandum in opposition, the record, and the applicable law, the Court will grant the motion in part to the extent Rampick and LRSBR request that the Court stay the matter pending arbitration, and deny the motion in part to the extent Rampick and LRSBR request that the Court dismiss the case in favor of arbitration.

[1] Rec. Doc. 1.

[2] Rec. Doc. 10.

[3] Rec. Doc. 18.

[4] Rec. Doc. 51.

I. Background

A. Factual Background

In their complaint, Plaintiffs allege that TWTB was lawfully created on or about September 17, 1992.[5] TWTB is 50.5% owned by Rampick, 24.75% owned by Raper, and 24.75% owned by the Joseph E. and Janice V. Anthony Trust.[6] The primary purpose of TWTB was to create an ongoing restaurant and bar establishment known as "Lucy's Retired Surfer's Bar & Restaurant," located at 701 Tchoupitoulas Street in New Orleans, Louisiana.[7] In or about June 2012, TWTB adopted its current By-Laws and the Shareholders' Agreement.[8] At that time, Rampick was the president of TWTB, as well as a director and shareholder.[9] TWTB also entered into a trademark License Agreement in June 2012 with LRSBR.[10]

Plaintiffs allege that Raper was notified in or about October or November 2014 of alleged violations of Rampick's fiduciary duties to TWTB and that an investigation was undertaken.[11] Plaintiffs allege that on January 11, 2015, based upon the findings of the investigation, it was determined by the Board of Directors that Rampick had violated his fiduciary duties to TWTB and that those determinations gave rise to "Just Cause," as defined in the By-Laws, to remove Rampick from his office as President and remove him from the Board of Directors.[12]

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[5] Rec. Doc. 1 at 2.

[6] Rec. Doc. 10 at 11.

[7] Rec. Doc. 1 at 3.

[8] *Id.* at 2.

[9] *Id.*

[10] Rec. Doc. 10 at 7.

[11] Rec. Doc. 1 at 3–4.

[12] *Id.* at 4–5.

On May 26, 2015, LRSBR allegedly notified TWTB, by letter, of at least four material breaches of the License Agreement, pursuant to which TWTB had 30 days to cure the alleged breaches.[13] On June 11, 2015, counsel for TWTB replied to the letter.[14] LRSBR alleges that on August 24, 2015, LRSBR terminated the License Agreement "due to TWTB's failure to cure the material breaches of the Agreement identified in the May 26 letter."[15] LRSBR contends that despite the termination of the License Agreement, TWTB continues to use the trademarks owned by LRSBR.[16]

B. Procedural Background

On August 11, 2015, TWTB and Raper filed a complaint against Rampick, alleging, *inter alia*, that Rampick stole money and other assets from TWTB.[17] On September 25, 2015, LRSBR moved for leave to intervene, which was granted on October 2, 2015.[18] LRSBR filed its third-party complaint alleging trademark infringement against TWTB on October 2, 2015.[19] On November 6, 2015, TWTB filed an answer and cross-claim against LRSBR for breach of contract, alleging that LRSBR had committed a breach of the trademark License Agreement.[20]

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[13] Rec. Doc. 10 at 7.

[14] *Id.*

[15] *Id.* at 8.

[16] *Id.* at 10.

[17] Rec. Doc. 1.

[18] Rec. Doc. 8; Rec. Doc. 9.

[19] Rec. Doc. 10.

[20] Rec. Doc. 18 at 34.

On October 15, 2015, Rampick filed a motion to dismiss.[21] On August 3, 2016, the Court denied the motion, finding that a motion to dismiss under Federal Rule of Civil Procedure 12(b)(3) for improper venue was not the proper vehicle to address TWTB's alleged failure to arbitrate.[22] The Court found that a Rule 12(b)(3) analysis was limited to whether venue is wrong or improper based upon a failure to satisfy any of the categories listed in 28 U.S.C. § 1391; however, it noted that the parties did not argue whether venue was improper pursuant to § 1391 in their motion.[23] On August 23, 2016, Rampick and LRSBR filed the instant motion.[24] On September 13, 2016, TWTB and Raper filed an opposition.[25] On September 16, 2016, Rampick and LRSBR filed a reply.[26]

II. Parties' Arguments

A. Rampick and LRSBR's Arguments in Support of Motion

Rampick and LRSBR move to stay this litigation and to compel arbitration, or, in the alternative, for the Court to reconsider its prior Order and dismiss the Plaintiffs' claims on the grounds that the claims are subject to a valid arbitration agreement.[27] Rampick and LRSBR first contend that the Fifth Circuit permits dismissal of claims when the underlying contract at issue contains an arbitration clause covering the disputes at issue.[28] They represent that the Fifth Circuit

[21] Rec. Doc. 16.

[22] Rec. Doc. 50 at 4.

[23] *Id.* at 1.

[24] Rec. Doc. 51.

[25] Rec. Doc. 52.

[26] Rec. Doc. 56.

[27] Rec. Doc. 51-1 at 1.

[28] *Id.*

has held that district courts have the discretion to "dismiss cases in favor of arbitration under 9 U.S.C. § 3."[29] According to Rampick and LRSBR, the Fifth Circuit has even affirmed a court's *sua sponte* decision to dismiss claims subject to an arbitration clause.[30] Thus, Rampick and LRSBR assert that there is sufficiently clear Fifth Circuit authority permitting dismissal of such claims rather than staying the litigation and compelling arbitration.[31]

Rampick and LRSBR concede that not all the claims in this litigation are subject to the arbitration agreement, as the equitable relief that LRSBR seeks for its trademark infringement claim is expressly excluded from the arbitration clause in the Trademark License Agreement, and thus it is reasonable for the Court to stay Plaintiffs' claims instead of dismissal without prejudice.[32] However, Rampick and LRSBR assert that there is "no compelling reason to stay the Plaintiffs' claims in this case," as the dispute would only return to the Court again if an arbitration award is entered and not respected.[33] Nonetheless, Rampick and LRSBR "have no objection if this Court feels that a stay is more appropriate."[34]

Rampick and LRSBR assert that a stay of Plaintiff's claims and an order compelling the arbitration of those claims, or dismissal without prejudice, is appropriate when an arbitration clause

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[29] *Id.* (citing *Fedmet Corp. v. M/V Buyalyk*, 194 F.3d 674, 676 (5th Cir. 1999) (citing *Alford v. Dean Witter Reynolds, Inc.*, 975 F.2d 1161, 1164 (5th Cir. 1992))).

[30] *Id.* at 2 (citing *Murchison Capital Partners, L.P. v. Nuance Communs., Inc.*, 625 F. App'x 617, 626–27 (5th Cir. 2015) ("we affirm the dismissal of Vocada's securities fraud claim because it must be pursued, if at all, in arbitration").

[31] *Id.* at 1–2.

[32] *Id.* at 2.

[33] *Id.* at 3.

[34] *Id.*

applies.[35] According to Rampick and LRSBR, in order to determine whether TWTB's claims are subject to arbitration, the Court must first determine whether the parties agreed to arbitrate the dispute, which consists of two separate inquiries: (a) whether there is a valid agreement to arbitrate; and (b) whether the dispute in question falls within the scope of that agreement.[36] Rampick and LRSBR assert that if the parties agreed to arbitrate, the second step of the analysis asks "if any federal statute or policy renders the claims nonarbitrable."[37]

Here, Rampick and LRSBR assert that in June 2012, the parties executed three agreements including a Shareholders' Agreement, new By-Laws for TWTB, and a Trademark License Agreement.[38] Rampick and LRSBR contend that the By-Laws contain an arbitration clause that provides that "any controversy or claim arising out of or relating to [Bruce J. Rampick, Frank Eugene Raper, or the Joseph E. Anthony trust] or their successors in interest, and the Corporation concerning the meaning or interpretation of these By-Laws, or any of their respective rights, duties or obligations under the By-Laws, shall be submitted to final and binding arbitration before a panel of three arbitrators selected by the American Arbitration Association."[39] Rampick contends that the Trademark License Agreement also contained an arbitration provision that states that "[a]ny controversy or claim arising out of or relating to the Agreement, or any breach of it . . . shall be

[35] *Id.* at 4.

[36] *See* Rec. Doc. 16-1 at 4 (citing *Gupta v. Merrill Lynch*, No. 12-1787, 2014 WL 4063831, at *2 (E.D. La. Aug. 15, 2014) (Milazzo, J.)).

[37] *Id.* (quoting *Sherer v. Green Tree Servicing LLC*, 548 F.3d 379, 381 (5th Cir. 2008)).

[38] *Id.*

[39] *Id.* (citing Rec. Doc. 1-4).

submitted to final and binding arbitration . . . ."[40] Therefore, Rampick and LRSBR assert that it is beyond dispute that the parties agreed to arbitrate.[41]

Rampick and LRSBR also assert that TWTB's claims are within the scope of the arbitration provisions because both provisions use the phrase "any controversy or claim arising out of or relating," which courts generally interpret as covering a broad range of claims.[42] In particular, Rampick and LRSBR represent that Counts 1–6 in TWTB's First Amended Complaint, which are based on the alleged misconduct of Rampick while acting as president of TWTB, all fall within the scope of the By-Laws' arbitration clause.[43] Likewise, Rampick and LRSBR state that Count 6, alleging the improper termination of Lucy's trademark license, is "beyond doubt" covered by the Trademark License Agreement's arbitration provision.[44] Turning to the second step of the analysis, Rampick and LRSBR argue that these are agreements freely entered into by private parties and there are no federal laws or policies that would render TWTB's claims nonarbitrable.[45]

B. Plaintiffs' Arguments in Opposition to the Motion

In opposition, Plaintiffs contend that the Court should deny the motion to compel arbitration.[46] Plaintiffs allege that a motion to compel arbitration hinges on (1) whether the parties entered into a valid agreement for arbitration and (2) whether the disputes in this litigation fall

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[40] *Id.* at 5 (citing Rec. Doc. 1-7).

[41] *Id.*

[42] *Id.* (citing *Prima Paint Corp. v. Flood & Conklin Mfg. Co.*, 338 U.S. 395, 406 (1967)).

[43] *Id.* at 6.

[44] *Id.* at 7.

[45] *Id.* at 8.

[46] Rec. Doc. 52-1 at 1.

within the scope of the arbitration agreement.[47] Plaintiffs assert that the Court's determination regarding whether there is a valid agreement to arbitrate is bound by ordinary contract principles.[48] Plaintiffs state that "the parties dispute only the first question: the validity of the agreement."[49] Plaintiffs assert an arbitration clause in a contract is ordinarily "valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract."[50] Plaintiffs contend that this includes the invalidation of a contract by "generally applicable contract defenses, such as fraud, duress, or unconscionability . . . ."[51]

Here, Plaintiffs argue that the arbitration provisions were "the product of fraud, namely the false and fraudulent scheme and artifice to steal and misappropriate the funds and assets of TWTB, Inc. created by the Defendant."[52] Plaintiffs further assert that these instances of fraud "predated and preceded the execution and creation of the Shareholders' Agreement, By-Laws, and Promissory Note," and thus "make the contracts void."[53] Plaintiffs assert that the Louisiana Civil Code Article 1953 defines fraud as "a misrepresentation or a suppression of the truth made with the intention either to obtain an unjust advantage by one party or to cause a loss or inconvenience to the other," and may "result from silence or inaction."[54] Plaintiffs aver that the issue of fraud is

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[47] *Id.* at 2.

[48] *Id.*

[49] *Id.* at 3.

[50] *Id.* at 2 (citing 9 U.S.C. § 2; *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 339 (2011)).

[51] *Id.* (citing *AT&T Mobility LLC*, 563 at 339).

[52] *Id.* at 3–4.

[53] *Id.* at 4.

[54] *Id.*

one of fact that was alleged in the Plaintiffs' complaint, which precludes the Court from granting the instant motion.[55]

Additionally, even if the Court finds that there was a valid contract, Plaintiffs aver that the terms of the By-Laws of TWTB "exclude from arbitration, acts of fraud and/or misappropriation of the fund and asserts of the Corporation."[56] Thus, Plaintiffs argue that the arbitration provision does not cover the allegations in this case.[57]

C. Rampick and LRSBR's Arguments in Further Support of Motion

In reply, Rampick and LRSBR assert that arbitration provisions are severable from the rest of the contract.[58] According to Rampick and LRSBR, the Supreme Court has held that, "unless the challenge is to the arbitration clause itself, the issue of the contract's validity is considered by the arbitrator in the first instance."[59] Thus, Rampick and LRSBR allege that because the Plaintiffs' allegation of fraud is aimed at the contract, and not the arbitration clause itself, the provision is still enforceable.[60] In support, Rampick and LRSBR cite to *Buckeye Check Cashing*, where Rampick and LRSBR represent that the Supreme Court found that an argument that usurious interest rates rendered an entire contract illegal or unenforceable was still subject to the arbitration provision of the contract that was not specifically challenged.[61] Thus, Rampick and LRSBR argue

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[55] *Id.*

[56] *Id.*

[57] *Id.*

[58] Rec. Doc. 56 at 1.

[59] *Id.* (quoting *Buckeye Check Cashing, Inc. v. Cardegna*, 546 U.S. 440, 445–46 (2006)).

[60] *Id.* at 2.

[61] *Id.* (quoting *Buckeye Check Cashing, Inc.*, 546 U.S. at 446).

that even if Plaintiffs have plausibly alleged the entire contract is invalid due to fraud, that challenge only applies to the underlying agreement and not to the arbitration clause itself; thus, Rampick and LRSBR allege that the arbitration clause is still enforceable.[62] Additionally, Rampick and LRSBR assert that there is no exclusion in the By-Laws' arbitration clause for allegations of fraud and/or misappropriation of funds.[63] They contend that the clause is a "broad arbitration provision intended to cover all types of internal business disputes."[64]

Rampick and LRSBR note that there are two agreements with arbitration clauses at issue in this case: (1) the By-Laws; and (2) the Trademark License Agreement. They assert that Plaintiffs make no mention of the Trademark License Agreement in their opposition to the motion.[65]

Rampick and LRSBR note that there are three groups of claims pending in this case: (1) Plaintiffs' claims against Rampick; (2) Plaintiffs' breach of contract claim against LRSBR; and (3) LRSBR's trademark infringement claim against TWTB.[66] They contend that the instant motion addresses the first two groups of claims.[67] They assert that these groups of claims represent only one side of the dispute, because Rampick and LRSBR have claims against TWTB, but none of these claims were presented in this litigation because they believe they are subject to arbitration.[68] Therefore, Rampick and LRSBR argue that "granting the present motion would facilitate a

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[62] *Id.*

[63] *Id.* at 2–3.

[64] *Id.* at 3.

[65] *Id.*

[66] *Id.*

[67] *Id.* at 4.

[68] *Id.*

complete resolution of the dispute, rather than a piecemeal process."[69] Finally, they argue that LRSBR's trademark infringement claim can be resolved without a trial if the parties can reach a reasonable agreement to ensure that future use of the trademarks does not occur.[70] LRSBR asserts that it seeks an accounting of the profits that resulted from the infringement and an award of reasonable attorney fees under 15 U.S.C. § 1117(a). LRSBR notes that these claims are not subject to the arbitration clause in the Trademark License Agreement, but LRSBR is willing to withdraw those claims without prejudice in order to present such claims as part of an arbitration of the larger dispute.[71]

III. Law and Analysis

A. Whether the Federal Arbitration Act Applies to this Dispute

In *Iberia Credit Bureau, Inc. v. Cingular Wireless LLC*, the United States Court of Appeals for the Fifth Circuit explained that the FAA was "in large part motivated by the goal of eliminating the courts' historic hostility to arbitration agreements."[72] Thus, "Section 2 of the FAA puts arbitration agreements on the same footing as other contracts."[73] This means that, "as a matter of federal law, arbitration agreements and clauses are to be enforced unless they are invalid under principles of state law that govern all contracts."[74]

In resolving the motion presently before the Court, it is first necessary to determine whether

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[69] *Id.*

[70] *Id.*

[71] *Id.* at 5.

[72] 379 F.3d 159, 166 (5th Cir. 2004) (citations omitted).

[73] *Id.*

[74] *Id.*

the action falls within the scope of the FAA. On this point, the FAA, as codified at 9 U.S.C. §§ 1–2, provides the basis for the Court's inquiry. Section 2 states that:

> **A written provision in any maritime transaction or a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction**, or the refusal to perform the whole or any part thereof, or an agreement in writing to submit to arbitration an existing controversy arising out of such a contract, transaction, or refusal, **shall be valid, irrevocable, and enforceable**, save upon such grounds as exist at law or in equity for the revocation of any contract.[75]

Section 1 defines "commerce" as meaning "commerce among the several States or with foreign nations."[76] In *Perry v. Thomas*, the United States Supreme Court concluded that the FAA "provide[s] for the enforcement of arbitration agreements within the full reach of the Commerce Clause [of the United States Constitution]."[77]

The FAA, as codified at 9 U.S.C. § 3, gives federal courts authority to stay litigation pending arbitration; it provides as follows:

> If any suit or proceeding be brought in any of the courts of the United States upon any issue referable to arbitration under an agreement in writing for such arbitration, **the court in which such suit is pending, upon being satisfied that the issue involved in such suit or proceeding is referable to arbitration under such an agreement, 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, providing the applicant for the stay is not in default in proceeding with such arbitration.[78]

As the United States Court of Appeals for the Fifth Circuit has observed, Section 3 of the FAA is

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[75] 9 U.S.C. § 2 (emphasis added).

[76] 9 U.S.C. § 1.

[77] 482 U.S. 483, 490 (1987). In *Perry*, the Supreme Court held that § 2 of the FAA preempted a California statute that provided a judicial forum for actions seeking to collect wages, notwithstanding any arbitration agreement between the parties. *Id.* at 484, 492.

[78] 9 U.S.C. § 3 (emphasis added).

mandatory, providing that federal courts "*shall* on application of one of the parties stay the trial of the action."[79]

Section 4 of the FAA covers motions to compel arbitration; it provides:

> A party aggrieved by the alleged failure, neglect, or refusal of another to arbitrate under a written agreement for arbitration may petition any United States district court, save for such agreement, would have jurisdiction under Title 28, in a civil action or in admiralty of the subject matter of a suit arising out of the controversy between the parties, for an order directing that such arbitration proceed in the manner provided for in such agreement.[80]

In this case, the parties do not dispute that both the By-Laws and the Trademark License Agreement include an arbitration clause or that the FAA applies to this dispute. Rampick and LRSBR contend that Plaintiffs' claims against Rampick and Plaintiffs' breach of contract claim against LRSBR are subject to arbitration pursuant to these arbitration clauses. The FAA applies to contracts evidencing a transaction involving commerce. TWTB and Rampick engaged in the performance of a contract as citizens of different states, which means that the transaction involved interstate commerce and the FAA applies. LRSBR, a limited liability company whose sole member is Rampick, and TWTB also engaged in the performance of a contract as citizens of different states. Accordingly, the Court concludes that the Arbitration Agreement falls within the scope of the FAA. It will therefore consider whether the arbitration clause is enforceable.

B. Enforceability of the Arbitration Clause

The Supreme Court has made clear that there is a strong presumption in favor of

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[79] *Waste Mgmt, Inc. v. Residuos Industriales Multiquim, S.A. de C.V.*, 372 F.3d 339, 342–43, 346 (5th Cir. 2004) (construing 9 U.S.C. § 3, reasoning that "[t]he grammatical structure of this sentence would seem to make clear that any of the parties to the suit can apply to the court for a mandatory stay, and the court must grant the stay if the claim at issue is indeed covered by the arbitration agreement," and ordering the district court to grant a nonsignatory's motion to compel arbitration).

[80] 9 U.S.C. § 4.

arbitrability,[81] and thus, any doubts about the arbitrability of a dispute should be resolved in favor of arbitration.[82] To overcome this presumption, there must be clear evidence that the parties did not intend the claim to be arbitrable.[83] The Fifth Circuit has established a two-step inquiry to determine if an arbitration clause is enforceable.[84] First, a court determines whether the parties agreed to arbitrate.[85] This involves determining both whether there was a valid agreement to arbitrate and whether the dispute in question falls within the scope of the arbitration clause.[86] Second, a court determines whether any legal constraints external to the agreement foreclose the arbitration of claims.[87]

The FAA provides that a "written provision in . . . a contract . . . to settle by arbitration a controversy thereafter arising out of such contract or transaction, or the refusal to perform the whole or any part thereof . . . shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract."[88] Section 2 of the FAA "is a congressional declaration of a liberal federal policy favoring arbitration agreements, notwithstanding any state substantive or procedural policies to the contrary."[89] "[T]he strong federal policy favoring arbitration preempts state laws that act to limit the availability of

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[81] *See E.E.O.C. v. Waffle House*, 534 U.S. 279, 289 (2002).

[82] *See Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 24–25 (1983).

[83] *Harvey v. Joyce*, 199 F.3d 790, 793 (5th Cir. 2000).

[84] *Fleetwood Enters., Inc. v. Gaskamp*, 280 F.3d 1069, 1073 (5th Cir. 2002).

[85] *Id.*

[86] *Id.*

[87] *Id.*

[88] 9 U.S.C. § 2.

[89] *Moses H. Cone Mem'l Hosp.*, 460 U.S. at 24.

arbitration."[90] More specifically, "the FAA will preempt any state laws that contradict the purpose of the FAA by requir[ing] a judicial forum for the resolution of claims which the contracting parties agreed to resolve by arbitration."[91]

Here, Plaintiffs dispute whether there is a valid arbitration agreement.[92] Specifically, Plaintiffs argue that they were fraudulently induced to enter the contract by the "false and fraudulent scheme and artifice to steal and misappropriate the funds and assets of TWTB, Inc. created by the Defendant, which predated and preceded the execution and creation of the Shareholders' Agreement, By-Laws, and Promissory Note."[93]

In *Prima Paint Corp. v. Flood & Conklin Mfg. Co.*, the Supreme Court "held that, under section 4 of the FAA, the 'making' of an agreement to arbitrate was not called into question by the allegation that the entire contract was fraudulently induced. Therefore, the Court concluded, the fraudulent inducement question was properly resolved by an arbitrator rather than a court."[94] As the Fifth Circuit has recognized, a district court need not address "claims of fraud in the inducement of a contract generally," and must only address an "allegation of fraud [that] goes specifically to the making of the agreement to arbitrate."[95] Where a party has not argued that the agreement to arbitrate is invalid separately from the entire contract, "the arbitration provision

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[90] *Saturn Distrib. Corp. v. Paramount Saturn, Ltd.*, 326 F.3d 684, 687 (5th Cir. 2003) (citing *Southland Corp. v. Keating*, 465 U.S. 1, 16 (1984)).

[91] *Davis v. EGL Eagle Global Logistics L.P.*, 243 F. App'x 39, 44 (5th Cir. 2007) (quotations and citations omitted).

[92] Rec. Doc. 52-1 at 3.

[93] *Id.* at 3–4.

[94] *Mesa Operating Ltd. Partnership v. Louisiana Intrastate Gas Corp.*, 797 F.2d 238, 244 (5th Cir. 1986) (citing *Prima Paint Corp. v. Flood & Conklin Mfg. Co.*, 388 U.S. 395, 403–04 (1967)).

[95] *Snap-On Tools Corp. v. Mason*, 18 F.3d 1261, 1268 (5th Cir. 1994) (citing *Prima Paint*, 388 U.S. at 404).

remains separate and enforceable. . . ."[96]

Plaintiffs argue that they were fraudulently induced to enter the Shareholders' Agreement and By-Laws. However, Plaintiffs make no argument that the agreement to arbitrate is invalid separately from the entire contract. Therefore, the fraudulent inducement question should be resolved by an arbitrator rather than this Court. Accordingly, the arbitration provision contained in the By-Laws remains enforceable. Plaintiffs make no argument that the arbitration provision contained in the Trademark License Agreement is unenforceable. Further, Plaintiffs do not argue that the disputes do not fall within the scope of the arbitration agreements. Accordingly, the Court concludes that the arbitration agreements are enforceable.

Section 3 of the FAA provides that when claims are properly referable to arbitration, that upon application of one of the parties, the court shall stay the trial of the action until the arbitration is complete.[97] Rampick and LRSBR argue that that the Fifth Circuit has held that district courts have the discretion to "dismiss cases in favor of arbitration under 9 U.S.C. § 3."[98] In *Alford v. Dean Witter Reynolds, Inc.*, the Fifth Circuit stated that "[t]he weight of authority clearly supports dismissal of the case when all of the issues raised in the district court must be submitted to arbitration."[99] Rampick and LRSBR concede that not all the claims in this litigation are subject to the arbitration agreement, as the equitable relief LRSBR seeks for its trademark infringement claim

[96] *Id.* (citing *Mesa Operating*, 797 F.2d at 244).

[97] 9 U.S.C. § 3.

[98] Rec. Doc. 51-1 at 1 (citing *Fedmet Corp. v. M/V Buyalyk*, 194 F.3d 674, 676 (5th Cir. 1999) (citing, *Alford v. Dean Witter Reynolds, Inc.*, 975 F.2d 1161, 1164 (5th Cir. 1992))).

[99] *Alford*, 975 F.2d at 1164.

is expressly excluded from the arbitration clause in the Trademark License Agreement.[100] Although LRSBR has indicated that it may be amenable to dismissal of its claims against Plaintiffs without prejudice, at this time, those claims remain pending before the Court. Therefore, the Court finds it appropriate to stay and administratively close the matter pending arbitration, and denies Rampick and LRSBR's alternative request that the Court dismiss the case in favor of arbitration.

IV. Conclusion

For the foregoing reasons, the Court finds that the parties entered into valid agreements to arbitrate the instant disputes. The Court concludes that the parties' agreements fall within the scope of the FAA and that the arbitration clauses are enforceable under the FAA. Because LRSBR's claims against Plaintiffs are not subject to the arbitration clause, the Court finds it appropriate to stay and administratively close the matter pending arbitration, and denies Rampick and LRSBR's motion to the extent it requests that the Court dismiss the case. Accordingly,

IT IS HEREBY ORDERED that Rampick and LRSBR's "Motion to Compel Arbitration and For a Stay, Or in the Alternative for Reconsideration"[101] is **GRANTED IN PART** to the extent it requests a stay pending arbitration **AND DENIED IN PART** to the extent that it requests that the matter be dismissed in favor of arbitration.

[100] *Id.*

[101] Rec. Doc. 51.

IT IS FURTHER ORDERED that Plaintiffs' claims against Rampick and LRSBR are **STAYED AND ADMINISTRATIVELY CLOSED PENDING ARBITRATION.**

NEW ORLEANS, LOUISIANA, this 25th day of October, 2016.

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Nannette Jolivette Brown

NANNETTE JOLIVETTE BROWN
UNITED STATES DISTRICT JUDGE