

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION**

BANK OF ENGLAND d/b/a ENG	*
Lending	*
	*
Plaintiff	*
	*
V.	*
	*
TREVOR BARRETT and BARRETT	*
FINANCIAL GROUP LLC	*
	*
Defendants	*
	*
	*

NO: 4:15CV00683 SWW

ORDER

Plaintiff Bank of England, d/b/a/ ENG Lending, filed this contract dispute pursuant to the Court’s diversity jurisdiction against Trevor Barrett (“Barrett”) and Barrett Financial Group LLC. Before the Court is Plaintiff’s motion to compel arbitration and stay the case [ECF No. 8] and Defendants’ response [ECF No. 11]. After careful consideration, the motion to compel arbitration is granted, and the Clerk of the Court is directed to administratively terminate this case for reporting purposes, subject to its reopening in the event that either party files a motion to reopen within the thirty-day period following the arbitrator’s decision.

I.

The following facts are taken from the complaint. ENG Lending is the name of the mortgage division of the Bank of England, a federally-insured bank with headquarters and a principal place of business in Arkansas. Barrett, a resident of Arizona, has experience in the mortgage industry, and he is the manager and sole member of Barrett Financial Group LLC, an Arizona mortgage company. On March 12, 2012, Barrett and Bank of England entered an

employment agreement (the “Agreement”) by which Barrett agreed to serve as ENG Lending’s branch manager in Mesa, Arizona. The Agreement contained a provision that prohibited Barrett from competing with ENG Lending during the term of the Agreement and for one year thereafter.

With its complaint in this case, Bank of England charges that Barrett breached the Agreement by secretly operating Barrett Financial Group LLC and diverting ENG Lending leads and business to that competing business. Bank of England sues Barrett for breach of fiduciary duty, breach of contract, fraud, violation of the Lanham Act, tortious interference with business expectancy, and unjust enrichment. Bank of England also brings these claims against Barrett Financial Group LLC, alleging that Barrett used the LLC as the vehicle by which he deceived and damaged the Bank of England.

II.

Pursuant to an arbitration clause set forth in the Agreement, Bank of England has moved to compel arbitration and stay this case. The arbitration clause provides that in event of any dispute or claim regarding the interpretation, enforcement or breach of the Agreement, the parties agree to submit the dispute to the American Arbitration Association.¹ The arbitration clause also provides that arbitration hearings will be held in Pulaski County, Arkansas.

Bank of England reports that after it initiated this lawsuit, Barrett and Barrett Financial Group LLC filed suit against it the United States Court of the District of Arizona. After answering the complaint in the Arizona action, Bank of England filed a motion to compel arbitration in that case, which was opposed by the defendants. Bank of England reports that on

¹ECF No. 8-1 (Branch Manager Employment Agreement, ¶ 23).

February 8, 2016, the District Court of Arizona held a scheduling conference, and “acknowledged the merit of ENG’s motion and stayed the Arizona action for 60 days to give this Court [the Eastern District of Arkansas] an opportunity to rule on the arbitrability of the parties’ disputes.”²

“State and federal courts must enforce the Federal Arbitration Act (FAA), 9 U.S.C. § 1 *et seq.*, with respect to all arbitration agreements covered under that statute.” *Marmet Health Care Center, Inc. v. Brown*, – U.S. –, 132 S. Ct. 1201, 1202 (2012)(holding that state prohibition against pre-dispute agreements to arbitrate personal injury or wrongful death claims against nursing homes was preempted by the FAA). 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 or transaction . . . 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. Section 3 of the FAA, in turn, allows litigants already in federal court to invoke agreements made enforceable by § 2, and it requires a court, on application of one of the parties, to stay the action if it involves an issue referable to arbitration under an agreement in writing. *See* 9 U.S.C. § 3.

“A court's role under the FAA is . . . limited to determining (1) whether a valid agreement to arbitrate exists and, if it does, (2) whether the agreement encompasses the dispute.” *See Pro Tech Industries, Inc. v. URS Corp.*, 377 F.3d 868, 871 (8th Cir. 2004)(citing *Gannon v. Circuit City Stores, Inc.*, 262 F.3d 677, 680 (8th Cir.2001)). Here, there is no dispute that the Agreement between Barrett and Bank of England evidences a transaction involving interstate

²ECF No. 8, at 5.

commerce, that a valid agreement to arbitrate exists, and that the dispute falls within the scope of the agreement. The only open question is whether separate defendant Barrett Financial Group LLC is also bound to arbitrate the claims against it.

“[A] willing signatory seeking to arbitrate with a non-signatory that is unwilling must establish at least one of the five theories described in *Thomson-CSF, S.A. v. Am. Arbitration Ass'n*, 64 F.3d 773, 776 (2d Cir.1995). Those five theories are (1) incorporation by reference; (2) assumption; (3) agency; (4) veil-piercing/alter ego; and (5) estoppel. *Thomson-CSF*, 64 F.3d at 776.” *Reid v. Doe Run Res. Corp.*, 701 F.3d 840, 846 (8th Cir. 2012). Here, Defendants argue that Barrett Financial Group LLC should be compelled to arbitrate under veil-piercing and estoppel theories. Defendants state that they do not believe that Barrett Financial LLC can be required to submit to arbitration, but despite this position, Defendants do not oppose the motion to compel because they “prefer to avoid an outcome where the Arkansas claims and defenses pertaining to . . . Barrett are referred to arbitration and the claims and defenses against Barrett Financial Group LLC remain in district court.”³

Barrett Financial Group LLC’s role in Barrett’s alleged conduct and whether the LLC is bound by the arbitration agreement cannot be determined on the current record. However, because Barrett Financial Group LLC is willing to submit to arbitration, the Court finds it unnecessary to determine whether it is bound to the arbitration agreement under one of the foregoing theories and will grant the motion to compel arbitration.

As for Bank of England’s request for a stay, the Court prefers to administratively

³ECF No. 11, at 5.

terminate the case subject to a motion to reopen.

III.

IT IS THEREFORE ORDERED that Defendants' motion to compel arbitration [ECF No. 8] is GRANTED. The Clerk of the Court is directed to administratively terminate this case for reporting purposes.

IT IS FURTHER ORDERED that any party may file a motion to reopen this case within the thirty-day period following the arbitrator's decision.

IT IS SO ORDERED THIS 31ST DAY OF MARCH, 2015.

/s/Susan Webber Wright
UNITED STATES DISTRICT JUDGE