UNITED STATES DISTRICT COURT
DISTRICT OF COLORADO
Judge John L. Kane

Civil Action No. 16-cv-2588-JLK

RYAN POPE,

Plaintiff,

v.

THE INTEGRATED ASSOCIATES OF DENVER, INC., a Delaware corporation,
THE INTEGRATED ASSOCIATES, INC., a California Corporation,
ETHAN GILLESPIE, and
ANTHONY MOSER,

Defendants.

ORDER

Kane, J.

This business fraud and wrongful discharge action was originally filed in Denver District Court on September 9, 2016, with Plaintiff seeking compensation due under his employment contract and damages for its alleged breach. Defendants removed the case to federal court, and seek now to enforce the contract's arbitration clause under the Federal Arbitration Act (FAA). Plaintiff contests the enforceability of the arbitration clause on four grounds: (1) that the dispute does not implicate interstate commerce; (2) that the dispute is beyond the scope of the arbitration clause; and (3) that the clause cannot be invoked against the non-signatory defendants. At a minimum Plaintiff contends his Colorado Wage Claim Act claims are not subject to arbitration, in that his statutorily-

protected right to trial on these claims cannot be waived under the FAA. I agree with Plaintiff's latter assertion and grant Defendants' Motion in part and DENY it in part.

DISCUSSION.

Plaintiff is a technical support executive who is suing on his Employment Agreement with The Integrated Associates, Inc. (IA) to build and run a Denver-based affiliate known as The Integrated Associates of Denver (IA-Denver). The contract contained a sweeping arbitration provision pursuant to which the parties "agree[d] that any dispute or controversy arising out of, relating to, or in connection with this Agreement, the interpretation, validity, construction, performance, breach or termination of this Agreement, or any issue arising out of Executive's employment . . . shall be settled by binding arbitration." *See* Employment Agreement (attached as Ex. 2 to Pl's Compl. (Doc. 9-2)), at §5. Paragraph 5.8 of the Agreement reiterated that provision, adding that "THE ARBITRATION CLAUSE CONSTITUTES A WAIVER OF EXECUTIVE'S RIGHT TO A JURY TRIAL AND RELATES TO THE RESOLUTION OF ALL DISPUTES RELATING TO ALL ASPECTS OF THE COMPANY/EMPLOYEE RELATIONSHIP." *Id.*

In his Complaint, Plaintiff asserts eight claims for relief premised on Defendants' alleged failure to pay Plaintiff all of his earned bonuses and commissions under the Agreement, or to give him the earned and vested equity in the company Plaintiff says he was promised. With the exception of claim one for violation of Colorado Wage Act §8-4-109, each of Plaintiff's claims is premised on the Agreement and compensation provisions in it. The claims are subject to arbitration.

I. Plaintiff's Contract Implicates Interstate Commerce

The FAA applies to any written arbitration provision in "a contract evidencing a transaction involving commerce." 9 U.S.C. §2. Commerce is defined as "commerce among the several States" and is broadly construed "so as to be coextensive with congressional power to regulate under the Commerce Clause." *Foster v. Turley*, 808 F.2d 38, 40 (10th Cir. 1986). In *Foster,* plaintiff was a resident of Oregon who purchased an interest in mining claims on property owned by Turley, a resident of New Mexico. *Id*. Because the agreement required Foster to make a substantial down payment to Turley, the "interstate payment" placed the agreement "clearly within the ambit of the Arbitration Act." *Id*. Similarly in *Oesterle v. Atria*, the District of Kansas enforced an arbitration agreement because "routine oversight" by the out-of-state vice president constituted interstate commerce. *Oesterle v. Atria Mgmt. Co.*, LLC, No. 09-4010-JAR, 2009 U.S. Dist. LEXIS 60057, at *20 - 21 (D. Kan. July 14, 2009).

In the instant case, Mr. Pope argues his contract with IAD does not implicate interstate commerce because he worked exclusively in Colorado with Colorado residents and businesses. He relies on *Arkansas Diagnostics Center, P.A. v. Tahiri*, 257 S.W.3d 884 (Ark. 2007), where the court declined to compel arbitration under the FAA based on defendant clinic's failure to prove that it "engaged in interstate business activities" and failed to prove plaintiff's "employment facilitated its alleged interstate business activities." *Id*.

Tahiri has been construed as a high water mark limited to "decidedly 'local' enterprises" like the subject medical clinic in that case. *See Hughes v. Wet Seal Retail, Inc*., No. 10-CV-05090, 2010 U.S. Dist. LEXIS 121710, at *13-14 (W.D. Ark. Nov. 16, 2010). In *Hughes,* plaintiff's employer, Wet Seal, was a national retailer. *Id*. Although the plaintiff worked only locally at a specific Wet Seal store, "[W]et Seal's status as a national retailer takes this case out of the realm of the precedent established in *Tahiri* and mandates a finding that arbitration should be compelled." *Id.* Here, Mr. Pope's work at IAD is more like the plaintiff's work in *Hughes,* where a parent company operates in locations beyond the single local clinic at issue in *Tahiri.* IA is a multi-state employer with its headquarters in Delaware, main office in California, and Colorado location in Denver. Mr. Pope himself suggests an interstate commerce connection by alleging in his Complaint that IA in California "controlled all aspects of IAD" and acted as IAD's "alter ego." Complaint ¶ 3. Pope alleges further that IA and IAD "comingled" funds such that Defendants have "taken funds paid to IAD to pay expenses and debts of IA, and vice versa." Complaint ¶ 26. Mr. Pope should not be heard to allege that Colorado's IAD and California's IA are one and the same and then deny any "interstate" activity between them.

II. Plaintiff's Contractual Claims are Within the Scope of the Arbitration Clause

Next Mr. Pope characterizes his claims as arising out of "pre-employment" promises and fraud in the inducement to contract so that the Agreement and its arbitration provision should not be triggered. As an initial matter, I note Mr. Pope is suing on the

contract and does not seek to rescind or repudiate it. Even if he were repudiating the contract, moreover, the Supreme Court has explicitly rejected this as a ground for voiding an agreement to arbitrate included in that contract.

The Supreme Court has ruled that fraudulent inducement claims going to the entire contract must be resolved by an arbitrator. *Buckeye Check Cashing, Inc. v. Cardegna*, 546 U.S. 440, 449 (2006) ("[w]e reaffirm today that, regardless of whether the challenge is brought in federal or state court, a challenge to the validity of the contract as a whole, and not specifically to the arbitration clause, must go to the arbitrator."). *Buckeye* is consistent with the Colorado Supreme Court holding that "[a] fraudulent inducement claim, if it is to be considered by the trial court, must be directed specifically to fraud inducing the plaintiff to agree to arbitrate." *Ingold v. AIMCO/Bluffs, L.L.C.*, 159 P.3d 116, 120 (Colo. 2007). These authorities preclude the distinction Mr. Pope attempts to draw and provide him no relief from his agreement to submit his claims for compensation and equity under the Agreement to arbitration.

III. Plaintiff's Claims Against Non-Signatory Defendants are Subject to Arbitration

Finally, Mr. Pope argues that the Agreement's arbitration provisions cannot be enforced by Defendant Moser because only Mr. Gillespie is a signatory to the Agreement. Under the circumstances of this case, the argument is unpersuasive.

Non-signatories to a contract may be bound to arbitration agreements under general principals of equitable estoppel. *Meister v. Stout*, 2015 COA 60, ¶¶ 11-13. According to the Colorado Appeals Court in *Meister*, a plaintiff is estopped from

avoiding arbitration under an agreement when he alleges claims against a non-signatory that are intertwined with obligations arising out of the underlying contract. ¶¶ 14-15. Although the Colorado Supreme Court has not ruled on this issue, at least one judge on this court has recognized *Meister* as the "strongest data point currently available when predicting what the Colorado Supreme Court would rule." *Pollard v. ETS PC, Inc.,* 186 F. Supp.3d 1166, at 1174 (D. Colo. 2016)(Martinez, J.).

In this case, Pope alleges claims against Gillespie and Moser arising out of the same conduct and same Agreement, and is estopped from cleaving the two to avoid arbitration.

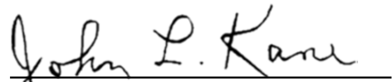
IV. Claims under the Colorado Wage Claim Act are not Subject to Arbitration

While Mr. Pope's claims for compensation, bonuses, and an equity interest in IAD/IA under the terms of his Executive Agreement are subject to arbitration, his First Claim for Relief under the Colorado Wage Claims Act is not. *See Lambdin v. Dist. Court in the 18th Judicial Dist.,* 903 P.2d 1126, 1130 (Colo. 1995)("an arbitration provision that waives an employee's rights under the Wage Claim Act is void"). The Colorado Wage Claim Act guarantees a right to a trial. *Id*. at 1130; *see also* Colo. Rev. Stat. 8-4-110(2) (1987) ("Any person claiming to be aggrieved…pursuant to this article may file suit in any court."). Because the Colorado Wage Claim Act guarantees a right to a trial, Plaintiff's wage claim is exempt from arbitration.

Based on the foregoing, Defendants' Motion to Compel Arbitration (Doc. 12) is GRANTED in part and DENIED in part. With the exception of Plaintiff's First Claim for

Relief under the Colorado Wage Act, Plaintiff's other claims are subject to arbitration and are DISMISSED. I decline the invitation to stay further proceedings pending arbitration, however, and will set this matter for a Scheduling Conference forthwith.

Dated April 21, 2017.



JOHN L. KANE
SENIOR U.S. DISTRICT JUDGE