

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No. **2:16-CV-03817 RGK (JEM)** Date September 14, 2016

Title ***DEAN v. AD ASTRA RECOVERY SERVICES, INC., et al.***

Present: The Honorable R. GARY KLAUSNER, U.S. DISTRICT JUDGE

Sharon L. Williams (Not Present)	Not Reported	N/A
Deputy Clerk	Court Reporter / Recorder	Tape No.

Attorneys Present for Plaintiffs:

Attorneys Present for Defendants:

Not Present

Not Present

Proceedings: (IN CHAMBERS) Order re: Ad Astra’s Motion to Compel Arbitration and Stay Proceedings (DE 20)

I. INTRODUCTION

On June 1, 2016, Plaintiff Mitchell Dean (“Plaintiff”) filed a lawsuit in federal court against Ad Astra Recovery Services, Inc. (“Ad Astra”), Trans Union LLC (“Trans Union”), Experian Information Solutions, Inc. (“Experian”), and Equifax Information Services, LLC (“Equifax”) (collectively, “Defendants”). Plaintiff brings claims for negligence, defamation, and violations of the Fair Credit Reporting Act, 15 U.S.C. § 1681 *et seq.* (“FCRA”).

Presently before the Court is Ad Astra’s Motion to Compel Arbitration (pursuant to 9 U.S.C. §§ 2, 3, 4), and Stay Proceedings or alternatively, Dismiss the Action (“Motion”).

For the following reasons, Defendant Ad Astra’s Motion to Compel Arbitration is **GRANTED**, and the action is **STAYED** as to Ad Astra only.

II. FACTUAL BACKGROUND

On January 16, 2015, Plaintiff entered into an agreement with non-party Speedy Cash for a \$255 loan. (Newman Decl. Ex. A, at 1, ECF No. 20-3.) Above Plaintiff’s signature line, the contract informed Plaintiff in bold print that “[b]y signing this contract . . . [y]ou will not be entitled to have a trial by jury to resolve any claim against us. You will not be entitled to have a court, other than a small claims court, resolve any claim against us.” (*Id.* at 6.)

The contract also contained an arbitration provision, in which Plaintiff agreed that either party could elect to arbitrate “any claim, dispute or controversy between you and us (or our related parties) that arises from or relates in any way to this Agreement or . . . our collection of any amounts you owe; or our disclosure of or failure to protect any information about you.” (*Id.* at 3.) The arbitration provision further stated that a claim “is to be given the broadest possible meaning and includes claims of every kind and nature.” (*Id.*) The arbitration provision defined “related parties” to include “all parent companies, subsidiaries and affiliates of ours (including Ad Astra Recovery Services, Inc.).” (*Id.*) In addition, Section 10 of the arbitration provision notified Plaintiff that the arbitration provision “survives” any sale or transfer of Speedy Cash’s rights under the contract. (*Id.* at 5.)

On February 4, 2015, Speedy Cash placed Plaintiff’s loan account with Ad Astra for collection. (Newman Decl. ¶ 8, ECF No. 20-2.) Plaintiff and Defendants dispute the events that transpired between then and Plaintiff’s filing of the instant lawsuit on June 1, 2016. Plaintiff alleges that Defendants committed negligence, defamation, and violations of the FCRA.

On August 11, 2016, Ad Astra moved to compel arbitration pursuant to the contract between Plaintiff and Speedy Cash. On August 22, 2016, Trans Union, Experian, and Equifax (collectively, “Credit Reporting Defendants”) filed a Joint Response stating that they did not oppose Ad Astra’s Motion, and requested that the Court stay the matter against Trans Union, Experian, and Equifax pending the outcome of arbitration. Plaintiff did not file an Opposition to Ad Astra’s Motion.

III. JUDICIAL STANDARD

The Federal Arbitration Act (“FAA”) provides that written agreements arising out of transactions involving interstate commerce “shall be valid, irrevocable, and enforceable, save upon such grounds that exist at law or in equity for the revocation of any contract.” 9 U.S.C. § 2. The FAA reflects a “liberal federal policy favoring arbitration agreements,” and “any doubts concerning the scope of the arbitrable issues should be resolved in favor of arbitration.” *Moses H. Cone Mem. Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 24–25 (1983).

In deciding a motion to compel arbitration, federal courts must determine (1) whether a valid agreement to arbitrate exists between the parties, and (2) whether the arbitration agreement encompasses the dispute at issue. *Chiron Corp. v. Ortho Diagnostic Sys., Inc.*, 207 F.3d 1126, 1130 (9th Cir. 2000). To determine if a valid and enforceable agreement to arbitrate has been formed, federal courts “should apply ordinary state-law principles that govern the formation of contracts.” *Circuit City Stores v. Adams*, 279 F.3d 889, 892 (9th Cir. 2002) (quoting *First Options of Chi., Inc. v. Kaplan*, 514 U.S. 938, 944 (1995)). Arbitration agreements are also subject to general contract defenses, such as fraud, duress, or unconscionability. *AT&T Mobility LLC v. Conception*, 563 U.S. 333, 339 (2011).

IV. DISCUSSION

Defendant Ad Astra moves to (a) compel arbitration and (b) stay the proceedings, or alternatively, dismiss the action. The Court discusses each in turn.

A. Motion to Compel Arbitration

Plaintiff did not submit an opposition to Ad Astra’s Motion. Under Local Rule 7-12, “[t]he failure to file any required document . . . may be deemed consent to the granting or denial of the motion.” C.D. Cal. L.R. 7-12. As such, the Court need not consider any potential objections on behalf of Plaintiff. The Court, instead, only needs to determine if: (1) a valid arbitration agreement exists between

the parties, and (2) the arbitration agreement encompasses the dispute at issue. *Chiron*, 207 F.3d at 1130.

1. *A Valid Arbitration Agreement Exists*

The Ninth Circuit has held that a contract may “bind non-parties such as an intended third party beneficiary, an agent, or an assignee.” *Comedy Club, Inc. v. Improv W. Assocs.*, 553 F.3d 1277, 1287 (9th Cir. 2009). As discussed above, Plaintiff signed an agreement with non-party Speedy Cash when he took out a \$255 loan. The loan agreement included an arbitration provision, which provided that either party could elect to require arbitration of any claim. The arbitration provision defined “claim” to include “any claim, dispute or controversy between you and us (or our related parties).” (Newman Decl. Ex. A, at 3.) The agreement further defined “related parties” by expressly referring to Ad Astra as an affiliate of Speedy Cash. Since Ad Astra was an intended third party, the Court finds that a valid arbitration agreement existed between Plaintiff and Ad Astra.

2. *The Arbitration Agreement Encompasses the Dispute*

Having determined that a valid arbitration agreement exists, the Court next addresses whether the arbitration agreement encompasses the dispute at issue. By its terms, the arbitration provision applies to “any claim, dispute or controversy between you and us (or our related parties) that arises from or relates in any way to this Agreement or . . . our collection of any amounts you owe.” (Newman Decl. Ex. A, at 3.) The agreement also states that a claim “is to be given the broadest possible meaning.” (*Id.*) Here, Plaintiff claims Ad Astra’s falsely reported his debt as delinquent to Credit Reporting Defendants. (Compl. ¶ 29, ECF No. 1.) Furthermore, Plaintiff does not dispute that his claims fall within the scope of the agreement to arbitrate, since he failed to file an opposition. As such, the Court finds that the dispute falls within the scope of the arbitration agreement.

Accordingly, the Court **GRANTS** Defendant Ad Astra’s Motion to Compel Arbitration, and **ORDERS** Plaintiff and Defendant Ad Astra to arbitrate their dispute **within five months of this order being issued**.

B. Motion to Stay Proceedings

In light of the foregoing decision to compel arbitration between Plaintiff and Ad Astra, the Court severs Plaintiff’s action against Defendants into two proceedings: (1) against Defendant Ad Astra, and (2) against Credit Reporting Defendants.

1. *Proceedings Against Defendant Ad Astra*

Section 3 of the FAA mandates courts to stay an action involving arbitrable issues upon application by one of the parties. 9 U.S.C. § 3. As such, the Court **STAYS** the action between Plaintiff and Defendant Ad Astra pending arbitration.

2. *Proceedings Against Defendants Trans Union, Experian, and Equifax*

It is well settled that a district court’s power to stay proceedings is incidental to its discretion to control the disposition of cases on its docket. *See Landis v. N. Am. Co.*, 299 U.S. 248, 254–55 (1936). Therefore, the Court **DENIES** Credit Reporting Defendants request to stay Plaintiff’s action against them pending the arbitration with Ad Astra, but **CONTINUES** the Scheduling Conference between Plaintiff and Credit Reporting Defendants to **March 20, 2017**.

V. CONCLUSION

For the foregoing reasons, **IT IS ORDERED** as follows:

- (1) Defendant Ad Astra's Motion to Compel Arbitration is **GRANTED**, and the action is **STAYED** as to Ad Astra only;
- (2) Plaintiff and Defendant Ad Astra are **ORDERED** to arbitrate Plaintiff's claims **within five months of this order being issued**; and
- (3) the current Scheduling Conference, set for October 11, 2016, is hereby **CONTINUED** to **March 20, 2017**.

Initials of Preparer

_____ : _____
CB
