

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION
Case Number: 16-20107-CIV-GRAHAM

JPAY, INC.,

Plaintiff,

v.

OUMER SALIM,

Defendant

ORDER

THIS CAUSE came before the Court upon Plaintiff JPay, Inc.'s Application to Vacate Arbitration Award [D.E. 46], Defendant Oumer Salim's Response in Opposition [D.E. 47], and JPay, Inc.'s Reply [D.E. 48].

THE COURT having considered the motions, and being otherwise fully advised in the premises, denies JPay's application for the reasons set forth below.

I. Background

Plaintiff JPay, Inc. ("JPay") is a provider of corrections-related services in more than thirty states across the country, as well as a provider of Video Visits for individuals in community corrections. Defendant Oumer Salim ("Salim") purchased Video Visits through JPay to

communicate with an inmate in Noble Correctional Institution in Ohio.

On December 1, 2015, Salim filed a Demand for Class Arbitration ("Demand") of a business dispute before the American Arbitration Association ("AAA"). Salim requested that the matter proceed as a class action arbitration in accordance with the version of JPay's Video Visitation Terms of Service ("Terms of Service" or "Agreement") in effect at the time of the filing of his demand on December 1, 2015. [D.E. 1-2]. Two weeks after Salim filed his Demand, JPay revised its Terms of Service to include a "Dispute Resolution" section that outlined new arbitration procedures including: that all disputes be resolved through arbitration administered by JAMS, pursuant to JAMS rules; that all disputes be arbitrated on an individual basis; express waiver of any participation in a class action lawsuit; and that enforceability of class action waiver be "determined exclusively in the Federal District Court for the Southern District of Florida and not by JAMS or any Arbitrator". [D.E. 1-4, p. 12].

On January 7, 2016, this action was removed from the Miami-Dade Circuit Court. In its Complaint, JPay requested a declaration and injunctive relief that the purported class action arbitration filed by Salim is unlawful. [D.E.

1-4]. Also, JPay moved the court to declare that JPay never consented to class arbitration and to compel bilateral arbitration consistent with the parties' Agreement. [D.E. 1-4, p. 7 at ¶22]. Finally, JPay requested an order staying the class arbitration pending before the AAA. [D.E. 1-4].

In response, Salim opposed JPay's motion to stay his counterclaim, and moved to compel arbitration and stay the entire proceedings, pursuant to Federal Arbitration Act, 9 U.S.C. §§ 3 and 4. [D.E. 16].

On May 24, 2016, this Court denied JPay's Motion to Stay Counterclaim and granted Defendant Oumer Salim's Motion to Compel Arbitration and Stay Proceedings. [D.E. 39]. The Court compelled arbitration in this matter consistent with the terms of the December 1, 2015 version of the Agreement and ordered the arbitrators to determine whether class arbitration was available. The arbitrators found it was.

JPay believes the arbitrators are wrong and appealed this Court's Order to the Eleventh Circuit Court of Appeals. To protect its appellate rights, and because the Eleventh Circuit has indicated JPay's first appeal may be premature, JPay filed this current application. [D.E. 46]. JPay's appeal remains pending before the Eleventh Circuit.

II. Discussion

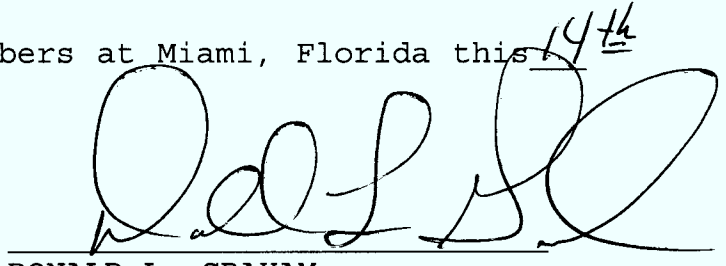
It is well settled that the filing of a notice of appeal "divests the district court of its control over those aspects of the case involved in the appeal." Green Leaf Nursery v. E.I. DuPont De Nemours and Co., 341 F.3d 1292, 1309 (11th Cir.2003) (citing Griggs v. Provident Consumer Discount Co., 459 U.S. 56, 58, 103 S.Ct. 400, 74 L.Ed.2d 225 (1982)). Because JPay's appeals this Court's Order regarding an aspect that would have altered the status of the case, the Court is without jurisdiction to rule on JPay's Application while the present appeal is pending. Green Leaf Nursery v. E.I. DuPont De Nemours & Co., 341 F.3d 1292, 1309 (11th Cir. 2003).

III. Conclusion

Based on the foregoing, it is

ORDERED and ADJUDGED that Plaintiff JPay, Inc.'s Application to Vacate Arbitration Award [D.E. 46] is **DENIED without prejudice**. JPay may refile its Application after the Eleventh Circuit rules on its appeal.

DONE AND ORDERED in Chambers at Miami, Florida this ^{14th}
day of March, 2017.

A handwritten signature in black ink, appearing to read 'Donald L. Graham', written over a horizontal line.

DONALD L. GRAHAM
UNITED STATES DISTRICT JUDGE

cc: All Counsel of Record