

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
Case No. 18-23463-CIV-WILLIAMS

JAMES WOLFE, *et al*

Plaintiff,

vs.

CARNIVAL CORPORATION,

Defendant.

ORDER GRANTING DEFENDANT'S MOTION TO STAY PROCEEDINGS AND
COMPEL ARBITRATION

THIS MATTER is before the Court on Defendant Carnival Corporation's motion to stay proceedings and to compel arbitration (DE 11), to which Plaintiffs filed a response in opposition (DE 20), and Defendant a reply (DE 21). For the reasons set forth below, Defendant's motion is **GRANTED**.

I. BACKGROUND¹

Plaintiffs are individuals who bought tickets for Carnival cruises between 2015 and 2018. At the time of their booking, Plaintiffs also purchased Carnival's Vacation Protection Package ("VPP"), which included (1) the Cancellation Fee Waiver Program provided by Carnival, (2) Travel Insurance, which is underwritten by a third party insurer and (3) 24/7 Worldwide Travel Assistance, which is also provided by a third party.

In their Complaint, Plaintiffs allege that Carnival receives undisclosed kickbacks to market and sell travel insurance, which are ultimately passed on to the consumer in the

¹ The Court accepts Plaintiffs' allegations as true for purposes of this motion. See *Speaker v. U.S. Dept. of Health and Human Servs. Ctrs. Disease Control & Prevention*, 623 F.3d 1371, 1379 (11th Cir. 2010).

form of inflated premiums for the travel insurance product. Plaintiffs allege that Carnival conceals these kickbacks by bundling the travel insurance products with its Cancellation Fee Waiver Program for a single price. Accordingly, Plaintiffs filed their Complaint against Defendant asserting claims under the Florida Deceptive and Unfair Trade Practices Act ("FDUPTA") and the New Jersey Consumer Fraud Act ("NJCRA"). (DE 1).

Defendant requests the Court to compel arbitration pursuant to the Federal Arbitration Act ("FAA"), 9 U.S.C. § 1, *et seq.* (DE 11). When Plaintiffs booked their cruise, they received a copy of the ticket contract (the "Contract") (DE 11 at 8-9) which contains an arbitration clause that states:

Any and all disputes, claims, or controversies whatsoever, other than for personal injury, illness or death of a Guest, whether brought *in personam* or *in rem* or based on contract, tort, statutory, constitutional or other legal rights, including but not limited to alleged violation of civil rights, discrimination, consumer or privacy laws, or for any losses, damages or expenses, relating to or in any way arising out of or connected with this Contract or Guest's cruise, no matter how described, pleaded or styled, between the Guest and Carnival, with the sole exception of claims brought and litigated in small claims court, shall be referred to and resolved exclusively by binding arbitration pursuant to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York 1958), 21 U.S.T. 2517, 330 U.N.T.S. 3, 1970 U.S.T. LEXIS 115, 9 U.S.C. §§ 202 -208 ("the Convention") and the Federal Arbitration Act, 9 U.S.C. §§ 1, *et seq.*, ("FAA") solely in Miami-Dade County, Florida, U.S.A. to the exclusion of any other forum....

NEITHER PARTY WILL HAVE THE RIGHT TO A JURY TRIAL OR TO ENGAGE IN PRE-ARBITRATION DISCOVERY EXCEPT AS PROVIDED IN THE APPLICABLE ARBITRATION RULES AND HEREIN, OR OTHERWISE TO LITIGATE THE CLAIM IN ANY COURT (OTHER THAN SMALL CLAIMS COURT). THE ARBITRATOR'S DECISION WILL BE FINAL AND BINDING. OTHER RIGHTS THAT GUEST OR CARNIVAL WOULD HAVE IN COURT ALSO MAY NOT BE AVAILABLE IN ARBITRATION. . . .

(DE 11 at 13-14).

Before paying for their cruise, Plaintiffs checked a box expressly stating that they agreed to the terms and conditions of the Contract, including the arbitration provision. (DE 11 at 11-12). Plaintiffs also reviewed and accepted the Contract when they checked in for their cruise. (*Id.*) In further support of its Motion, Defendant submitted the declaration of Suzie Brown Vazquez, the Director of Claims & Staff Counsel at Carnival, who attests that all Plaintiffs here reviewed and accepted the terms of the Contract. (DE 12 ¶ 16).

Plaintiffs do not dispute that they reviewed and accepted the terms of the Contract, including the arbitration agreement. Instead, they argue that the present dispute does not fall under the scope of the arbitration clause. (DE 20 at 12-13).

II. LEGAL ANALYSIS

Under the FAA, a written arbitration provision in a “contract evidencing a transaction involving commerce” is “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. “The FAA places arbitration agreements on equal footing with all other contracts and sets forth a clear presumption—‘a national policy’—in favor of arbitration.” *Parnell v. CashCall, Inc.*, 804 F.3d 1142, 1146 (11th Cir. 2015) (citing *Buckeye Check Cashing, Inc. v. Cardegna*, 546 U.S. 440, 443 (2006)). A court may not, however, compel arbitration under the FAA until it is “satisfied that the making of the agreement for arbitration or the failure to comply therewith is not in issue.” 9 U.S.C § 4. The Court therefore looks first to whether the parties entered into a valid agreement to arbitrate and then to whether the claims brought fall under the scope of the arbitration agreement. See *Doe v. Princess Cruise Lines, Ltd.*, 657 F.3d 1204, 1213–14 (11th Cir. 2011).

Here, Plaintiffs do not dispute that they entered into a valid arbitration agreement. Their only argument against arbitration is that their claims do not fall within the scope of the arbitration clause. “[I]t is the language of the contract that defines the scope of disputes subject to arbitration.” *Gamble v. New England Auto Fin., Inc.*, 735 F. App’x 664, 665 (11th Cir. 2018). And “any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration.” *Doe*, 657 F.3d at 1213. The arbitration clause at issue here is broadly drafted to cover “[a]ny and all disputes, claims, or controversies whatsoever ... relating to or in any way arising out of or connected with this Contract or Guest’s cruise, no matter how described, pleaded or styled ...” The sole exceptions are “claims for personal injury illness or death of a guest” or “claims brought and litigated in small claims court.” The Eleventh Circuit has found that broad clauses containing the “arising out of” “relating to” and “connected with” language require some direct connection between the dispute and the contract. *See Doe*, 657 F.3d at 1219. If the underlying claims “touch matters” covered by parties’ arbitration agreement, then those claims must be arbitrated. *Indus. Risk Insurers v. M.A.N. Gutehoffnungshutte GmbH*, 141 F.3d 1434, 1449 (11th Cir. 1998).²

The Court finds that Plaintiffs’ claims fall under the scope of the arbitration provision. First, Plaintiffs’ claims relate to the Contract. Plaintiffs’ Complaint alleges that Carnival’s customers are prompted to elect whether to purchase VPP before completing their cruise purchases. (DE 1 ¶ 23). It further alleges that VPP is an amalgamation of (1) the Cancellation Fee Waiver Program, (2) the Travel Insurance Policy and (3) the

² To determine the scope of the arbitration clause the Court applies “federal substantive law of arbitrability.” *Klay v. All Defendants*, 389 F.3d 1191, 1200 (11th Cir. 2004)

Carefree Worldwide Emergency Assistance Program, which is sold for one consolidated price (DE 1 ¶¶ 28-29) and that Carnival inflated the cost of VPP that it sold to Plaintiffs. (DE 1 ¶ 44). Notably, the Complaint also alleges that customers are not able to purchase a cruise ticket without electing to purchase VPP or not. (DE 1 ¶ 32). The whole purpose of VPP is to protect Plaintiffs' stay on the cruise, which is the core of the Contract. Additionally, as acknowledged in the Complaint, VPP is sold at the same time that the cruise is booked and the parties agree to the terms of the Contract, VPP is included in the total cost that a guest pays for when she books the cruise, and VPP is not sold independent of the cruise. (DE 1 ¶ 32; DE 12 ¶¶ 8, 29, 48). Indeed, without the existence of the Contract there is no VPP and therefore no claims for Plaintiffs to advance. In light of these facts and the strong federal policy favoring arbitration, it is clear that Plaintiffs' claims that Carnival inflated the VPP fees relate to the Contract.

Second, even if Plaintiffs' claims did not relate to the Contract, the Court finds that they relate to the "Guest's cruise." Again, the whole purpose of the VPP is to protect the Guest's cruise. In this regard, Chief Justice Moore's decision in *Milfort v. Comcast Cable Commc'ns Mgmt. LLC*, 309 F. Supp. 3d 1268, 1269 (S.D. Fla. 2018) is instructive. *Milfort* involved two separate agreements that the plaintiff had with Comcast: (1) a subscription agreement to Comcast services, and (2) an agreement where the plaintiff paid Comcast \$100 in exchange for Comcast's promise not to perform a credit check of plaintiff. The subscription agreement contained a broad arbitration provision. The court found that the subscription agreement's arbitration provision applied to plaintiff's FDUPTA claims for Comcast's failure to seek authorization to obtain plaintiff's credit report. Even though the separate agreement did not contain an arbitration clause, the court reasoned that the

relationship between plaintiff and Comcast was governed principally by the subscription agreement and the subscription agreement related to services provided to plaintiff. The court then concluded that the process that allowed Comcast to obtain plaintiff's credit report was related to the services provided to plaintiff. As in *Milfort*, Carnival's practices with respect to their sale of VPP are related to the Guest's cruise, because VPP is offered to protect the Guest's cruise. Thus, the Court finds that Plaintiffs' claims fall under the scope of the arbitration provision in Contract.

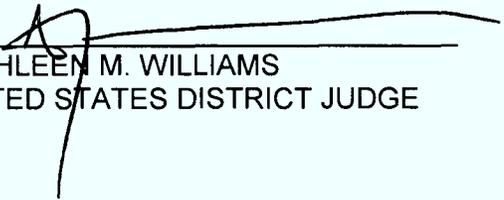
Plaintiffs' arguments against arbitrating this dispute are unavailing. Plaintiffs argue that that the claims in this lawsuit are not related to the Contract or the Guest's cruise because the purchase of VPP was a separate transaction and Plaintiffs can bring these claims without referencing the Contract. They argue that the travel insurance policy at issue has its own arbitration provision, which is permissive and not mandatory. But these arguments miss the mark. As explained above, when dealing with broad arbitration clauses, the test is whether the underlying claims "touch matters" covered by the arbitration provision. *Indus. Risk Insurers*, 141 F.3d at 1449; *Gregory v. Electro-Mech. Corp.*, 83 F.3d 382, 384 (11th Cir. 1996). Here, the arbitration provision covers all disputes related to the Contract or the Guest's cruise, with only limited listed exceptions, which do not include the sale of VPP. VPP is only offered and sold to protect the Guest's cruise. Therefore, Plaintiffs' claims against Carnival related to the sale of VPP are related to the Contract and the Guest's cruise. Additionally, the fact that the Travel Insurance Policy contains its own permissive arbitration provision is immaterial. The permissive arbitration provision in the Travel Insurance Policy governs the relationship between the Plaintiffs' and the Insurer, which is not at issue. At issue here, are the claims between

Plaintiffs and Carnival, which the Court finds are governed by the Contract, including the arbitration provision regardless of whether Carnival is being sued in its capacity as an insurance agent or not. See *Carretta v. Royal Caribbean Cruises Ltd.*, No. 18-cv-23917-UU (S.D. Fla. Nov. 27, 2018) (rejecting plaintiffs' argument that the relevant agreement did not apply because defendant was being sued in its capacity as an insurance agent).

III. CONCLUSION

For the foregoing reasons, it is **ORDERED AND ADJUDGED** that Defendant's Motion to Compel Arbitration (DE 11) is **GRANTED**. Plaintiffs' claims against Defendant shall be submitted to binding arbitration pursuant to the terms of the arbitration provision in the ticket contract. All proceedings in this matter are **STAYED**. The Clerk is directed to **CLOSE** this case for administrative purposes. All pending motions are **DENIED** as moot.

DONE AND ORDERED in chambers in Miami, Florida, this 3rd day of January, 2019.


KATHLEEN M. WILLIAMS
UNITED STATES DISTRICT JUDGE