UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
OCALA DIVISION

CJ'S SALES AND SERVICE OF OCALA, INC.,

Plaintiff,

v. Case No: 5:18-cv-194-Oc-30PRL

GLEN D. HOWARD,

Defendant.

ORDER

Once again, this Court is asked to determine whether Plaintiff's claims against its former employee arising in part from violation of a confidentiality agreement are subject to arbitration. Previously, this Court concluded it was unclear whether the arbitration provision was binding without considering extrinsic evidence of the parties' negotiations and intent when executing the confidentiality agreement. Now the parties ask the Court to reconsider the issue without the extrinsic evidence for a compelling reason—there is none. Reviewing the alleged arbitration agreement with that understanding, the Court concludes there is no clear agreement to arbitrate and there was no meeting of the minds to form a binding arbitration agreement. So the Court denies the motion to compel arbitration.

BACKGROUND

Plaintiff hired Defendant in October 2017 as its director of sales. (Doc. 2, ¶ 6). Plaintiff required Defendant to sign an Agreement for the Disclosure of Confidential

Information (the "Agreement"). (Doc. 2, ¶¶ 7–8). The Agreement prohibited Defendant from disclosing or making copies of confidential information. (Doc. 2, ¶¶ 9).

In December 2017, Defendant resigned. (Doc. 2, ¶ 13). Plaintiff later learned that Defendant had made copies of its confidential information and was using that information while working for a competitor. (Doc. 2, ¶¶ 14–15).

Relevant to the pending motion, the Agreement contains the following provision:

> **1. DEFINITIONS**
> …
>
> "Arbitration" means if any dispute arises under this Agreement and such dispute has not been resolved to the satisfaction of either Party, either Party may submit the dispute exclusively to final binding arbitration in the City and the Country elected by the Disclosing Party by and ad hoc arbitration tribunal for arbitration according to the United Nations Commission on International Trade Law (UNCITRAL) Arbitration Rules as at present in force, to the extent that such rules and procedures are not inconsistent with this Agreement. The arbitration proceedings shall be conducted in the English language and any decision or award rendered by the arbitration tribunal shall be written in the English language.

(Doc. 2, Ex. A). The Agreement does not contain any other mention of arbitration, but does contain the following provision:

> **7.11 Governing Law.** This Agreement and any non-contractual obligation arising out of or in connection with this Agreement shall be governed by the Governing Law and each of the Parties submits to the exclusive jurisdiction of the Courts in the State of New York over any claim arising out of or in connection with this Agreement.

(Doc. 2, Ex. A). The "Governing Law" is defined as the "laws of the State of New York." (Doc. 2, Ex. A).

PROCEDURAL HISTORY

Plaintiff sued Defendant for breach of the Agreement and for other claims. Defendant filed a motion to compel arbitration (Doc. 5), citing the above alleged arbitration provision. The Court denied the motion, concluding there was "a factual dispute as to whether the parties intended to enter into an arbitration agreement." (Doc. 10). The Court also concluded that a trial or evidentiary hearing would be necessary to determine whether the parties agreed to arbitrate the dispute. Thereafter, the parties filed their Case Management Report, in which they stated:

> [T]he parties have conferred and now stipulate that there was no discussion or negotiation of any of the language contained in the Agreement. Instead, the Agreement was presented by Plaintiff and proffered to Defendant for his signature, and thus the only evidence for the Court to consider is the plain language of the Agreement itself under applicable rules of construction.

(Doc. 11, p. 1). Plaintiff now moves the Court to reconsider its prior Order. (Doc. 19).

DISCUSSION

The Federal Arbitration Act ("FAA") provides that a written arbitration agreement in any contract involving commerce "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. "Notwithstanding the strong federal policy favoring arbitration as an alternative means of dispute resolution, courts must treat agreements to arbitrate like any other contract." *U.S. Titan, Inc. v. Guangzhou Zhen Hua Shipping Co.*, 241 F.3d 135, 146 (2d Cir. 2001) (internal citations omitted). "[A]rbitration is simply a matter of contract between the parties; it is a way to resolve those disputes—*but only those disputes*—that the parties have agreed to submit to arbitration." *Wells Fargo Sec. LLC v. Senkowsky*, 512 F. App'x 57, 59

(2d Cir. 2013) (citing *First Options of Chi., Inc. v. Kaplan,* 514 U.S. 938, 943 (1995)) (emphasis added). "Without a meeting of the minds such that an enforceable agreement to arbitrate was formed, we will not compel arbitration." *ISC Holding AG v. Nobel Biocare Investments N.V.*, 351 F. App'x 480, 481 (2d Cir. 2009).

"Because arbitration is a matter of contract, '[w]hen deciding whether the parties agreed to arbitrate a certain matter[,] ... courts generally ... should apply ordinary state-law principles that govern the formation of contracts.'" *Senkowsky*, 512 F. App'x at 59. "[T]o constitute a valid, binding arbitration agreement, the language used must be clear, explicit and unequivocal" *Blizzard Cooling, Inc. v. Park Developers & Builders, Inc.*, 134 A.D.3d 867, 869, 21 N.Y.S.3d 348 (N.Y. App. Div. 2015). "[W]here the undisputed facts in the record require the matter of arbitrability to be decided against one side or the other as a matter of law, we may rule on the basis of that legal issue and 'avoid the need for further court proceedings.' " *Meyer v. Uber Techs., Inc.*, 868 F.3d 66, 74 (2d Cir. 2017) (citing *Wachovia Bank, Nat. Ass'n v. VCG Special Opportunities Master Fund*, 661 F.3d 164, 172 (2d Cir. 2011)).

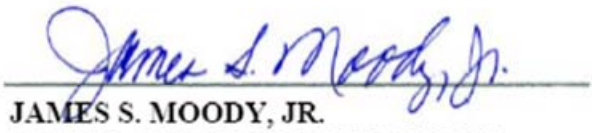
The Court concludes it is far from clear that alleged arbitration agreement was intended to be binding. "When determining the intent of the parties, courts must look to the plain language of the contract and construe the contract as a whole." *Bell v. Cendant Corp.*, 293 F.3d 563, 568 (2d Cir. 2002). Here, the alleged arbitration agreement is in the definition section and is not repeated elsewhere in the Agreement. Considering the Agreement as whole, the Court concludes there is no clear, explicit, and unequivocal language evidencing an agreement to arbitrate.

Moreover, there was never an interaction between the parties indicating that they intended the alleged arbitration agreement to be more than just a definition. As the parties admit, "there was no discussion or negotiation of any of the language contained in the Agreement." (Doc. 11, p. 1). There is no evidence that there was a meeting of the minds, so Defendant cannot meet his burden of showing there is an enforceable agreement to arbitrate. *See Dreyfuss v. Etelecare Glob. Sols.-U.S. Inc.*, 349 F. App'x 551, 554 (2d Cir. 2009) (affirming district court order denying motion to compel arbitration because there was no meeting of the minds). So the Court concludes Defendant's request to compel arbitration must be denied.

Accordingly, it is ORDERED AND ADJUDGED that:

1. Plaintiff's Motion for Reconsideration of Order Denying Defendant's Motion to Compel Arbitration (Doc. 19) is GRANTED.
2. Defendant's Motion to Dismiss/Stay and Compel Arbitration (Doc. 5) is DENIED.

DONE and **ORDERED** in Tampa, Florida, this 10th day of October, 2018.



JAMES S. MOODY, JR.
UNITED STATES DISTRICT JUDGE

Copies furnished to:
Counsel/Parties of Record