

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

COCONUT COAST PARTNERS, L.P.)	CIVIL 17-00212 LEK-KSC
d/b/a Kauai Shores Hotel,)	
)	
Plaintiff,)	
)	
vs.)	
)	
AQUA HOSPITALITY LLC and)	
AQUA-ASTON HOSPITALITY, LLC,)	
)	
Defendants.)	
_____)	

ORDER GRANTING PLAINTIFF’S MOTION TO COMPEL ARBITRATION

Before the Court is Plaintiff Coconut Coast Partners, L.P.’s, doing business as Kauai Shores Hotel (“Plaintiff”), Motion to Compel Arbitration (“Motion”), filed on May 11, 2017. [Dkt. no. 6.] Defendants Aqua Hospitality LLC (“Aqua”) and Aqua-Aston Hospitality, LLC (“Aqua-Aston” and collectively “Defendants”) did not file a memorandum in opposition. The Court finds this matter suitable for disposition without a hearing pursuant to Rule LR7.2(d) of the Local Rules of Practice of the United States District Court for the District of Hawai`i (“Local Rules”). Plaintiff’s Motion is hereby granted for the reasons set forth below.

BACKGROUND

Plaintiff filed its Complaint on May 11, 2017. [Dkt. no. 1.] Plaintiff owns a hotel on the Island of Kaua`i (“Hotel”), and entered into an agreement with Aqua to manage and

operate the Hotel ("Agreement") on June 18, 2012. [Complaint at ¶ 7.] Plaintiff states that, in 2013, Aqua was acquired by Aqua-Aston. [Id.] The Agreement, *inter alia*, prohibits Aqua from doing business that directly competes with the Hotel in an area that the Agreement calls the "Coconut Coast Corridor" without Plaintiff's consent. [Id. at ¶ 9.] Plaintiff argues that Aqua-Aston operates a number of other hotels along the Coconut Coast Corridor, Plaintiff never consented to such business as required by the Agreement, and Defendants have therefore breached the Agreement. [Id. at ¶ 10.] On January 4, 2017, Plaintiff gave Aqua notice that it was terminating the Agreement, but Aqua has thus far refused to comply with the notice of termination. [Id. at ¶ 11.] Plaintiff also alleges that Aqua has violated the Agreement in a number of other ways. See id. at ¶ 12.

Plaintiff brings claims for: breach of contract ("Count I"); [id. at ¶¶ 14-15;] breach of fiduciary duty ("Count II"); [id. at ¶¶ 16-17;] negligence ("Count III"); [id. at ¶¶ 18-19;] and declaratory judgment ("Count IV") [id. at ¶¶ 20-22].

STANDARD

This district has stated:

In determining whether to compel arbitration, a district court may not review the merits of the dispute; rather, "the district court's role is limited to determining whether a valid arbitration agreement exists and, if so, whether the agreement encompasses the dispute at issue. If the answer

is yes to both questions, the court must enforce the agreement." Lifescan, Inc. v. Premier Diabetic Servs., Inc., 363 F.3d 1010, 1012 (9th Cir. 2004) (citing Chiron Corp. v. Ortho Diagnostic Sys., Inc., 207 F.3d 1126, 1130 (9th Cir. 2000)); see also Momot v. Mastro, 652 F.3d 982, 986 (9th Cir. 2011) ("Because arbitration is fundamentally a matter of contract, the central or primary purpose of the [Federal Arbitration Act ("FAA")] is to ensure that private agreements to arbitrate are enforced according to their terms.") (citations omitted).

The Federal Arbitration Act ("FAA"), 9 U.S.C. § 1 *et seq.*, provides that written arbitration agreements "shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or equity for the revocation of any contract." 9 U.S.C. § 2; see also Kramer v. Toyota Motor Corp., 705 F.3d 1122, 1126 (9th Cir. 2013) ("With limited exceptions, the [FAA] governs the enforceability of arbitration agreements in contracts involving interstate commerce."). Under the FAA, "any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration, whether the problem at hand is the construction of the contract language itself or an allegation of waiver, delay, or a like defense to arbitrability." Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp., 460 U.S. 1, 24-25 (1983).

Generally, "the federal policy in favor of arbitration does not extend to deciding questions of arbitrability," that is, the question "who decides whether a claim is arbitrable." Oracle Am., Inc. v. Myriad Group A.G., 724 F.3d 1069, 1072 (9th Cir. 2013) (emphasis omitted). "[G]ateway questions of arbitrability, such as whether the parties have a valid arbitration agreement or are bound by a given arbitration clause, and whether an arbitration clause in a concededly binding contract applies to a given controversy," are issues for the court and not the arbitrator to decide. Momot, 652 F.3d at 987 (citing Howsam v. Dean Witter Reynolds, Inc., 537 U.S. 79, 83-85 (2002)).

Pelayo v. Platinum Limousine Servs., Inc., CIVIL NO. 15-00023
DKW-BMK, 2015 WL 9581801, at *11-12 (D. Hawai`i Dec. 30, 2015)
(some alterations in Pelayo).

DISCUSSION

The Motion seeks an order compelling arbitration on all claims. [Mem. in Supp. of Motion at 6.] The Agreement states, in relevant part:

Any and all issues, disagreements, disputes, questions, or matters arising under this Agreement upon which the parties do not agree shall be settled by arbitration in accordance with the rules of Dispute Prevention and Resolution, Inc. ("DPR") by a single arbitrator appointed in accordance with those rules. Such arbitration shall conducted [sic] in Honolulu, Hawaii. The decision or award rendered may be entered in a court of competent jurisdiction.

[Motion, Decl. of Jason M. Jones, Exh. 1 (the Agreement) at § 16.01.] The Motion is unopposed. Moreover, there is a valid arbitration agreement that encompasses the issues. See Pelayo, 2015 WL 9581801, at *11. Accordingly, the Court compels arbitration and dismisses the Complaint in its entirety. See, e.g., Lexington Ins. Co. v. Centex Homes, 795 F. Supp. 2d 1084, 1090 (D. Hawai`i 2011) ("A stay, however, is not mandatory and the court may alternatively dismiss those claims that are subject to arbitration." (some citations omitted) (citing Thinket Ink Info. Res., Inc. v. Sun Microsystems, Inc., 368 F.3d 1053, 1060 (9th Cir. 2004))).

CONCLUSION

On the basis of the foregoing, the Motion to Compel Arbitration filed by Plaintiff Coconut Coast Partners, L.P., doing business as Kauai Shores Hotel, filed on May 11, 2017, is HEREBY GRANTED and this case is DISMISSED WITHOUT PREJUDICE. The Clerk's Office is hereby directed to enter judgment and close this case on **August 30, 2017**, unless either party files a motion for reconsideration by **August 25, 2017**.

IT IS SO ORDERED.

DATED AT HONOLULU, HAWAII, August 10, 2017.



/s/ Leslie E. Kobayashi
Leslie E. Kobayashi
United States District Judge

COCONUT COAST PARTNERS, L.P., ETC. VS. AQUA HOSPITALITY LLC, ET AL; CIVIL 17-00212 LEK-KSC; ORDER GRANTING PLAINTIFF'S MOTION TO COMPEL ARBITRATION