UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 1:20-cv-24300-UU

SHAUN SPECTOR,

Plaintiff,

v.

BARCLAYS BANK DELAWARE, *et al.*,

Defendants.
_____/

ORDER

THIS CAUSE is before the Court on Defendant Barclays Bank Delaware's Motion to Compel Arbitration and Stay Action. D.E. 45 ("Motion").

THE COURT has considered the pertinent portions of the record and is otherwise fully advised in the premises. For the following reasons, the Motion is GRANTED.

BACKGROUND

Defendant Barclays Bank Delaware ("Barclays") and Plaintiff Shaun Spector ("Spector") entered into a Cardmember Agreement that contains an express arbitration provision: "[A]ny claim, dispute or controversy ("Claim") by either you or us against the other arising from or relating in any way to this Agreement or your Account . . . shall be resolved exclusively by arbitration." D.E. 45, Ex. 1 ¶ 9. Spector does not dispute that he entered into this arbitration agreement with Barclays and does not dispute that his instant action is covered by the Cardmember Agreement's arbitration provision. *See* D.E. 49. Rather, he argues that this Court should deny the Motion because (1) Barclays waived its right to arbitrate the dispute and that (2) this Court is better equipped to resolve the underlying claims in this action since it includes necessary parties Transunion and Equifax. *Id.*

Under the Federal Arbitration Act ("FAA"), a written agreement to arbitrate 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. More specifically, the FAA requires this Court "to compel arbitration upon a showing that (a) the plaintiff entered into a written arbitration agreement that is enforceable 'under ordinary state-law' contract principles and (b) the claims before the court fall within the scope of that agreement." *Lambert v. Austin Ind.*, 544 F.3d 1192, 1195 (11th Cir. 2008). State law governs whether an enforceable contract or agreement to arbitrate exists, though the federal policy in favor of arbitration still must be considered. *See Caley v. Gulfstream Aerospace Corp.*, 428 F.3d 1359, 1368 (11th Cir. 2005). Spector does not contest these elements, and instead relies on waiver and efficiency arguments.

DISCUSSION

Spector does not contest that he has a valid arbitration agreement with Barclays that covers the instant action, and his waiver and efficiency arguments provide an insufficient basis for this Court to deny the Motion. Still, the Court considers Spector's arguments in turn.

A. Whether Barclays Waived its Right to Arbitrate

Despite some substantive participation in this litigation, Barclays has not waived its right to arbitrate. A party may waive its right to compel arbitration when it "substantially participates in litigation to a point inconsistent with an intent to arbitrate and this participation results in prejudice to the opposing party." *Morewitz v. W. of Eng. Ship Owners Mut. Prot. & Indem. Ass'n (Lux.)*, 62 F.3d 1356, 1366 (11th Cir. 1995). Prejudice may exist "where the party seeking arbitration allows the opposing party to undergo the types of litigation expenses that arbitration was designed to alleviate." *Id.*

Barclays answered Spector's Complaint, filed a response to Spector's motion to strike Barclays' affirmative defenses, and participated in the preparation of a joint scheduling report. These actions, while participatory, do not rise to the level of waiver. *Compere v. Nusret Miami, LLC*, 396 F. Supp. 3d 1194, 1204 (S.D. Fla. 2019). Spector has been on notice of the arbitration agreement and no discovery has taken place. Indeed, Barclays' answer to the Complaint included arbitration as an affirmative defense. D.Es. 22; 40. Here, Barclays has not substantially participated in the litigation to the point where it improperly prejudiced Spector.

B. Whether this Court is Better Equipped to Resolve the Action

Spector argues that because his claims against Transunion and Equifax are before this Court, and those claims cannot be forced into arbitration, his claims against Barclays should stay before this Court as well. While the Court is not convinced as to the persuasiveness of this argument, it need not hold whether this rationale is sufficient to deny the Motion. Since the filing of the Motion, Spector's claims against Transunion and Equifax have been dismissed. D.E. 55. Spector's claims against Barclays are the only ones before this Court. Accordingly, it is

ORDERED AND ADJUDGED that the Motion, D.E. 45, is GRANTED. Spector and Barclays SHALL ARBITRATE their claims pursuant to the parties' arbitration agreement. It is further

ORDERED AND ADJUDGED that the Clerk of Court SHALL administratively close this case. All future hearings are CANCELED and all pending motions are DENIED AS MOOT. It is further

ORDERED AND ADJUDGED that upon Plaintiff's Notice of Settlement, D.E. 36, Plaintiff Spector and Defendant Experian Information Solutions are hereby notified that all papers related to the settlement reached by the parties, including any order of dismissal stating

specific terms and conditions, must be received by this Court by February 25, 2021. If such papers are not filed by this deadline, this matter will be DISMISSED without further notice. Within sixty (60) days of such an order of dismissal, either party may petition the court to have the case reinstated after showing good cause as to why settlement was not in fact consummated.

DONE AND ORDERED in Chambers at Miami, Florida, this 16th day of February 2021.

URSULA UNGARO
UNITED STATES DISTRICT JUDGE

cc:
Counsel of Record via CM/ECF