UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 19-23164-Civ-COOKE/GOODMAN

NICARAGUA TOBACCO IMPORTS, INC.,

Plaintiff,

vs.

YAM EXPORT & IMPORT LLC,
CARLOS MORANO, and
ANGELICA AGUILAR,

Defendants.
_____/

ORDER GRANTING DEFENDANTS'
MOTION TO COMPEL ARBITRATION AND STAY PROCEEDINGS

THIS MATTER is before me on Defendants' Motion to Compel Arbitration and Stay Proceedings (ECF No. 15). Plaintiff brought this action against Defendants Yam Export & Import LLC, Carlos Morano, and Angelica Aguilar, alleging violations of the Lanham Act, common-law trademark infringement, and common-law unfair competition. *See generally Compl.*, ECF No. 1. In response, Defendants filed a motion to compel arbitration and stay the case pending the resolution of arbitration. For the reasons discussed below, Defendants' motion is **GRANTED.**

I. Background

Plaintiff, a Florida incorporated business, sells tobacco products under the trademark "Cuban Crafters." *Compl.*, ECF No. 1 at ¶ 9. In January 2016, Plaintiff entered into a License and Consignation Agreement (the "Agreement") with Defendant Yam Export & Import LLC ("Yam"), authorizing Yam to sell Plaintiff's trademarked goods. *Id.* at ¶ 24. According to the Complaint, Defendant Angelica Aguilar is "a managing member" of Yam. *Id.* at ¶ 30. Defendant Carlos Morano is Aguilar's husband and "actively participates" in Defendant Yam's "sales and product marketing." *Id.* at ¶ 4. Plaintiff alleges that "Morano and Aguilar are moving, conscious, and active forces behind" Yam, and that they "control the acts and transactions of [Yam] that give rise to [Plaintiff's] claims." *Id.*

Plaintiff's "contractual relationship" with Yam was eventually "terminated because [Yam] failed to pay the . . . monthly royalty" required under the Agreement. *Id.* at ¶ 24. Plaintiff then sued Yam in state court for breach of contract. *Id.* Around the same time Plaintiff brought the state-court action, Yam "commenced an arbitration proceeding before the American Arbitration Association" (the "AAA"), asserting claims against Plaintiff "arising from the Agreement." ECF No. 15 at 2. Yam also "moved [the state court] to compel arbitration, but the court denied the motion" and Yam appealed that denial to the Florida Third District Court of Appeal.[1] *Id.* at 2 n.1.

In the instant suit, Plaintiff alleges that despite the termination of the Agreement and "[w]ithout Plaintiff's authorization, the Defendants have continued to sell products bearing Plaintiff's Marks." ECF No. 1 at ¶ 29. Plaintiff alleges that Defendants' conduct is in violation of the Lanham Act, common-law trademark infringement, and common-law unfair competition laws. *See* ECF No. 1. In response, Defendants moved this Court to enforce the arbitration clause in the Agreement and compel the parties to binding arbitration. *See* ECF No. 15. Plaintiff opposes this motion, asserting that: Defendants have waived their right to arbitration; this action for trademark infringement and common-law unfair competition is outside the scope of the arbitration agreement; and that arbitration is inappropriate here because Defendants Morano and Aguilar were not signatories to the Agreement at issue and may not be bound by the arbitration determination. *See* ECF No. 18.

The arbitration clause in the Agreement, in relevant part, states:

> If the Parties should have a dispute arising out of or relating to this Agreement, then the Parties will resolve such dispute in the following manner: (i) appropriate representatives of the Parties will meet and seek to resolve the disputed issue(s) through negotiation, (ii) if such representatives of the Parties are unable to resolve the disputed issue(s) through negotiation, *then the Parties will refer the issue (to the exclusion of a court of law) to final and binding arbitration in Miami Dade County,*

[1] The Third District Court of Appeal subsequently reversed the lower court's denial of the motion to compel, ordering that court to compel arbitration. *See Yam Export & Import LLC v. Nicaragua Tobacco Imports, Inc.*, No. 3D19-1083 (Fla. Dist. Ct. App. Jan. 29, 2020).

> *Florida in accordance with the then existing Commercial Arbitration Rules (the "Rules") of the AAA*.

ECF No. 15-1 at 35 (emphases added).

II. Legal Standards

There is "an emphatic federal policy in favor of arbitral dispute resolution." *Cordoba v. DIRECTV, LLC*, 801 Fed. Appx. 723, 725 (11th Cir. 2020) (quoting *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614, 631 (1985)). The Federal Arbitration Act ("FAA") requires courts to "rigorously enforce agreements to arbitrate." *Davis v. Prudential Sec., Inc.*, 59 F.3d 1186, 1192 (11th Cir. 1995) (quoting *Shearson/Am. Express, Inc. v. McMahon*, 482 U.S. 220, 226 (1987)). The party seeking to compel arbitration has the initial burden of "producing the arbitration agreement and establishing the contractual relationship necessary to implicate the FAA and its provisions granting this Court authority to dismiss or stay Plaintiff's cause of action and to compel arbitration." *Compere v. Nusret Miami, LLC*, 396 F. Supp. 3d 1194, 1199 (S.D. Fla. 2019) (internal citations omitted). When the moving party meets its initial burden, the onus is on the non-moving party to show why the court should not compel arbitration. *See Bhim v. Rent-A-Center, Inc.*, 655 F. Supp. 2d 1307, 1311 (S.D. Fla. 2009).

The FAA applies to agreements "evidencing transaction involving commerce," which applies to the Agreement at issue here. 9 U.S.C. § 2. Pursuant to Section 4 of the Federal Arbitrating Act, parties aggrieved by another party's failure to arbitrate under a written agreement, may move a United States District Court to compel arbitration. 9 U.S.C. § 4.

III. Discussion

Although the parties do not dispute the existence of the Agreement which contains an arbitration clause, the Defendants have established that a contractual relationship based on the Agreement exists between the parties. As noted above, Plaintiff mainly argues that Defendant has waived its right to arbitration, and that this action does not fall within the scope of the parties' agreement to arbitrate. *See* ECF No. 18. Thus, as an initial matter, the Court must determine whether an arbitrator or the Court determines the questions of whether the parties have a valid arbitration agreement, and whether this action falls within the scope of the Agreement.

"The question of whether the parties have a valid arbitration agreement at all is for the court, not the arbitrator, to decide. This rule makes imminent sense, for in the absence of clear and unmistakable evidence that the parties intended the arbitrator to rule on the validity of the arbitration agreement itself." *Terminix Int'l Co. LP v. Palmer Ranch Ltd. P'ship*, 432 F.3d 1327, 1331 (11th Cir. Dec. 16, 2005) (internal quotations and citations omitted). However, parties to an agreement may contract away this default rule and delegate such determinations to an arbitrator.

Here, the parties' agreement serves as evidence that they intended an arbitrator to rule on issues of arbitrability. According to the arbitration clause in the Agreement at issue, the parties agreed to an arbitration process to be conducted "in accordance with the then existing Commercial Arbitration Rules (the "Rules") of the AAA." ECF No. 10-1 at 35. According to Rule 7 of the AAA Rules, "the arbitrator shall have the power to rule on his or her own jurisdiction, including any objections with respect to the existence, scope or validity of the arbitration agreement." *Am. Arbitration Ass'n, Commercial Arbitration Rules*, https://www.adr.org/sites/default/files/CommercialRules_Web.pdf. The Eleventh Circuit has opined that where the parties "incorporate[e] the AAA Rules…into their agreement, the parties clearly and unmistakably agree that an arbitrator should decide" issues of arbitrability. *Terminix Int'l Co. LP*, 432 F.3d at 1332 (citing *Contec Corp. v. Remote Solution, Co.*, 398 F.3d 205, 208 (2d Cir. 2005) ("when . . . parties explicitly incorporate rules that empower an arbitrator to decide issues of arbitrability, the incorporation serves as clear and unmistakable evidence of the parties' intent to delegate such issues to an arbitrator")). Because the parties here incorporated the AAA Rules into their Agreement, they have "unmistakably agreed" to have an arbitrator decide the issues of arbitrability raised in this matter. *Id.* The Court therefore need not determine the validity and scope of the arbitration agreement.

Plaintiff also argues that arbitration is inappropriate here because Defendants Morano and Aguilar—who are involved in some capacity in Defendant Yam's "sales and product marketing—were not signatories to the Agreement. ECF No. 18 at 3. Under Florida law, which governs the Agreement, *See* ECF No. 15 at 33, Plaintiff is estopped from avoiding arbitration on this ground. The doctrine of equitable estoppel applies where, as here, "the signatory to the contract containing the arbitration clause raises allegations of

concerted conduct by both the non-signatory and one or more of the signatories to the contract." *Marcus v. Fla. Bagels, LLC*, 112 So. 3d 631, 633-34 (Fla. Dist. Ct. App. 4th Dist. April 24, 2013). Plaintiff, a signatory to the Agreement, has raised allegations in the complaint of concerted conduct by both a signatory and two non-signatories to the Agreement. That is, Plaintiff has alleged in the complaint that Defendants Yam, Morano, and Aguilar are all engaged in the unlawful conduct that serves as the basis for this action. Plaintiff is consequently estopped from avoiding arbitration on the grounds that Defendants Morano and Aguilar did not sign the Agreement in their individual capacity.

IV. Conclusion

Accordingly, it is **ORDERED and ADJUDGED** that Defendants' Motion to Compel Arbitration and Stay Proceedings (ECF No. 15) is **GRANTED**. The parties are **ORDERED** to binding arbitration in accordance with the terms set forth in the arbitration agreement. This case is **STAYED** pending the resolution of the arbitration. The Clerk shall ***administratively* CLOSE** this matter. All pending motions are **DENIED *as moot***.

DONE and ORDERED in Chambers, in Miami, Florida, this 17th day of July 2020.

Marcia G. Cooke

MARCIA G. COOKE
United States District Judge

Copies furnished to:
Jonathan Goodman, U.S. Magistrate Judge
Counsel of record