UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 23-CV-81111- ROSENBERG

ALLCO FINANCE LIMITED, INC.,

Plaintiff.

vs.

TRINA SOLAR (U.S.) INC., et al.,

Defendants.
_____/

ORDER GRANTING DEFENDANTS' MOTION TO COMPEL ARBITRATION AND STAYING THE CASE

THIS MATTER is before the Court on the Defendants'[1] Motion to Compel Arbitration and Dismiss the Action or Alternatively to Stay the Action Pending Arbitration, DE 22. The Court has carefully considered the Motion, the Plaintiff's response, DE 24, the Defendants' reply, DE 31, and the record, and is otherwise fully advised in the premises. For the reasons below, the Court **GRANTS** the Motion and **STAYS** the case pending arbitration.

I. Background

From 2011 to 2014, Plaintiff Allco Finance Limited, Inc., purchased solar photovoltaic modules manufactured by Trina Solar Limited ("TSL") and sold by Trina Solar (U.S.), Inc. , for installation in solar energy projects. DE 1 at 1 (Plaintiff's Complaint). TSL provided a warranty for each module. *Id.* During the warranty period, the Plaintiff claims the modules showed signs of manufacturing defects and submitted claims under warranties. *Id.* at 2. The Plaintiff brought this suit in federal court to seek full relief under the warranty terms. *Id.* The Plaintiff raised two

[1] The Defendants are Trina Solar (U.S.), Inc., Trina Solar Limited, and a purported Joint Venture between Trina U.S. and TSL.

breach of express warranty claims under warranty agreements from 2011 and 2013, two breach of implied warranty claims of fitness for a particular purpose and merchantability, and one claim for violation of the Magnuson Moss Warranty Act ("MMWA"). *Id.* at 7–11. The Defendants now seek to compel arbitration of all claims.

II. Legal Standard

Courts follow a two-step inquiry to determine the propriety of a motion to compel arbitration. *Klay v. All Defendants*, 389 F.3d 1191, 1200 (11th Cir. 2004). First, the Court "determine[s] whether the parties agreed to arbitrate the dispute." *Id.* Under the Federal Arbitration Act, 9 U.S.C. § 2, "[a] written provision in . . . a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction, . . . 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.A. § 2 (West). The Supreme Court has "long recognized and enforced a 'liberal federal policy favoring arbitration agreements.'" *Howsam v. Dean Witter Reynolds, Inc.*, 537 U.S. 79, 83 (2002) (quoting *Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 24 (1983)). "Under this policy, it is the role of courts to 'rigorously enforce agreements to arbitrate.'" *Klay*, 389 F.3d at 1200 (quoting *Dean Witter Reynolds, Inc. v. Byrd*, 470 U.S. 213, 221 (1985)). Because "arbitration is a matter of contract," a "party cannot be required to submit to arbitration any dispute which he has not agreed so to submit." *United Steelworkers of Am. V. Warrior & Gulf Navigation Co.*, 363 U.S. 574, 582 (1960). "[A]s with any other contract, the parties' intentions control, but those intentions are generously construed as to issues of arbitrability." *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614, 626 (1985) (stating the Court applies the "federal substantive law of arbitrability") (internal citation omitted). "In the absence of an agreement to arbitrate, a court cannot compel the

parties to settle their dispute in an arbitral forum." *Klay*, 389 F.3d at 1200. Second, the Court decides "whether 'legal constraints external to the parties' agreement foreclose[] arbitration.'" *Id.* (quoting *Mitsubishi Motors Corp.*, 473 U.S. 614, 626 (1985)).

Once the Court has determined an arbitration agreement is present, it then must decide the proper arbiter of questions of arbitrability, "whether a[n] . . . agreement creates a duty for the parties to arbitrate the particular grievance." *AT & T Techs., Inc. v. Commc'ns Workers of Am.*, 475 U.S. 643, 649 (1986). These questions are undeniably issues for judicial determination "[u]nless the parties clearly and unmistakably provide otherwise." *Id*. One clear indication of a delegation to an arbitrator is an arbitration agreement's incorporation of American Arbitration Association ("AAA") rules, "which themselves provide the arbitrator with authority to decide issues of scope and applicability . . . [as] clear and unmistakable evidence of the parties' intent to arbitrate arbitrability." *Tiffany McDougall v. Samsung Electronics America, Inc.*, No. 23 CIV. 168 (LGS), 2023 WL 6445838, at *7 (S.D.N.Y. Oct. 3, 2023); *accord U.S. Nutraceuticals, LLC v. Cyanotech Corp.*, 769 F.3d 1308, 1311 (11 Cir. 2014) ("When the parties incorporated into the 2007 contract the rules of the Association, they clearly and unmistakably contracted to submit questions of arbitrability to an arbitrator.").

III. Discussion

The Court's analysis proceeds in four parts. First, the Court finds that, contrary to the Plaintiff's position, the parties signed arbitration agreements that potentially include this dispute. Second, the arbitration agreements delegate questions of arbitrability to an arbitrator and not the Court. Third, though the arbitration agreements require arbitration proceedings to take place out of this district, the Court can compel out-of-district arbitration. Fourth, the Magnuson–Moss Warranty Act does not prohibit a claim under it from being arbitrated.

A. The Parties Signed Arbitration Agreements Which Potentially Include This Dispute

The Defendants have provided two arbitration agreements that govern disputes between the parties. Each arbitration agreement was included in the purchase agreements for the solar photovoltaic modules. The Plaintiff's President signed the first purchase agreement on October 14, 2011, which included the following dispute resolution clause in its appendix:

> [a]ny dispute, controversy or claim arising out of or in relation to this purchase contract, including the validity, invalidity, breach or termination thereof, shall be settled under the Rules of the American Arbitration Association . . . in accordance with the said Rules. The arbitration shall be held at San Francisco, CA. . . . The parties hereby waive any defense of inconvenient forum and submit to jurisdiction.

DE 22-1 at 6.

As with the October 2011 Purchase Agreement, a second purchase agreement signed by the Plaintiff's President on July 8, 2013 contained an arbitration clause, and this one submitted "[a]ny dispute or controversy or difference arising out of or in connection with this Contract, including its existence, validity or termination, between the parties" to arbitration "administered by the American Arbitration Association in accordance with its commercial arbitration rules" should written notice to the Defendants leave the issues unresolved. *Id.* at 16.

Both arbitration agreements explicitly cover "any dispute, controversy or claim arising out of or in relation to this purchase contract, including the validity, invalidity, breach or termination thereof," which would facially include disputes arising out of the Plaintiff's purchase of the solar panels at issue in this case. DE 22-1 at 6; *accord* DE 22-1 at 16. Through providing these arbitration agreements, the Defendants have met their threshold burden to compel arbitration because they have produced agreements broad enough to potentially include this dispute. Because the Plaintiff disputes whether its claims are arbitrable, however, the Court next addresses the proper forum for a decision on the arbitrability of the Plaintiff's claims.

B. The Arbitration Agreements Delegate Questions of Arbitrability to the Arbitrator

In response to the two agreements to arbitrate provided by the Defendants, the Plaintiff disputes whether its claims are subject to arbitration, but, importantly, the Plaintiff does not dispute the delegation clauses within the arbitration agreements. Both arbitration agreements subject the proceedings to the American Arbitration Association's rules, which submits questions of arbitrability to the arbitrator. *See U.S. Nutraceuticals, LLC v. Cyanotech Corp.*, 769 F.3d 1308, 1311 (11 Cir. 2014).

When, as here, "an arbitration agreement contains a delegation provision—committing to the arbitrator the threshold determination of whether the agreement to arbitrate is enforceable—the courts only retain jurisdiction to review a challenge to that specific provision." *Parnell v. CashCall, Inc.*, 804 F.3d 1142, 1144 (11th Cir. 2015) (citing *Rent–A–Center, West, Inc. v. Jackson,* 561 U.S. 63, 72 (2010)). Courts may not consider challenges to the contract as a whole or even the arbitration agreement but "challenge[s] [to] the delegation provision specifically." *Rent–A–Center, West, Inc.,* 561 U.S. at 72. This includes procedural questions such as whether "steps of a grievance procedure were completed, where these steps are prerequisites to arbitration" or allegations of waiver of arbitrability "are presumptively not for the judge, but for an arbitrator, to decide." *Howsam v. Dean Witter Reynolds, Inc.*, 537 U.S. 79, 84 (2002). Absent such a challenge, the Court "must treat [the arbitration agreement] as valid under [9 U.S.C.] § 2, and must enforce it under §§ 3 and 4, leaving any challenge to the validity of the Agreement as a whole for the arbitrator." *Id.*

This clear command to compel arbitration absent challenges to an arbitration agreement's delegation clause addresses most of the Plaintiff's responses to the instant motion in which it does not challenge the delegation clauses within the arbitration agreements. Thus, they are not within the purview of the Court. Indeed, as to the delegation clause, the Plaintiff's response is effectively

silent. The Court must therefore treat the arbitration agreements as valid under 9 U.S.C. § 2 and enforce them under §§ 3 and 4.

The Court next addresses two final arguments by the Plaintiff: (C) the Court cannot compel arbitration because the location of arbitration must be outside of this District and (D) the Court cannot compel arbitration because certain claims cannot be arbitrated as a matter of federal law. Each argument is addressed in turn.

C. The Court Can Compel Out-of-District Arbitration

The Plaintiff argues that the Court cannot compel arbitration because "the Court can only order arbitration within its district and not in California," even though this Court must enter "an order directing the parties to proceed to arbitration in accordance with the terms of the agreement." 9 U.S.C. § 4. The Plaintiff's argument is based upon the statutory text that "[t]he hearing and proceedings, under [the agreement to arbitrate], shall be within the district in which the petition for an order directing such arbitration is filed." *Id.* Although the Eleventh Circuit has not expressly ruled on a district court's authority to compel out-of-district arbitration, this issue was squarely addressed by the Fifth Circuit in *Dupuy-Busching Gen. Agency, Inc. v. Ambassador Ins. Co.*, 524 F.2d 1275 (5th Cir. 1975).[2] Pursuant to *Dupuy*, "to be consistent with the policy underlying the Federal Arbitration Act," a court can compel arbitrations when "the party seeking to avoid arbitration brings a suit for injunctive relief in a district other than that in which arbitration is to take place under the contract." *Id.* at 1278. Additionally, "the party seeking arbitration may assert its Section 4 right to have the arbitration agreement performed in accordance with the terms of the agreement." *Id.* at 1277–78. The Court therefore has the authority to compel arbitration and stay

[2] Opinions of the Fifth Circuit issued prior to October 1, 1981, are binding precedent in the Eleventh Circuit. *See Bonner v. City of Prichard*, 661 F.2d 1206, 1209 (11th Cir. 1981).

the instant litigation under the FAA, even though the parties have agreed to arbitrate their claims outside of this District.

D. The Magnuson–Moss Warranty Act Does Not Prohibit the Claim Arising Under it From Being Arbitrated

Finally, the Plaintiff argues that its claim under the Magnuson–Moss Warranty Act ("MMWA") cannot be subject to arbitration as a matter of law for two reasons. First, warranties subject to the MMWA can never be subject to arbitration. Second, even if MMWA-based warranties can theoretically be subject to arbitration, an agreement to arbitrate warranty claims is only valid if it is included in the same document that creates the warranty.

As to the second argument, Plaintiff's reasoning is as follows: The MMWA requires "any warrantor warranting a consumer product to a consumer by means of a written warranty shall, to the extent required by rules of the [Federal Trade] Commission, fully and conspicuously disclose in simple and readily understood language the terms and conditions of such warranty," which "may require [the] inclusion . . . of . . . informal dispute settlement procedure[s]." 15 U.S.C.A. § 2302 (West). The Federal Trade Commission ("FTC"), which refers to these procedures as "informal dispute settlement mechanisms," considers pre-dispute binding arbitration to be a mechanism subject to its rules. 40 Fed. Reg. 60617 (1975). The FTC's inclusion of pre-dispute binding arbitration agreements as informal dispute settlement mechanisms renders the arbitration agreement subject to the MMWA's single-document rule. DE 24 at 11. Under the single-document rule, if a warrantor does not include the pre-dispute binding arbitration agreement in the warranty document, the MMWA will not permit the arbitration clause to be enforced. *Id.*

The Plaintiff argues that arbitration agreements are informal dispute settlement mechanisms. But, the Eleventh Circuit directly rejected this premise in *Davis v. S. Energy Homes, Inc.*, 305 F.3d 1268 (11th Cir. 2002). In *Davis*, the Eleventh Circuit considered "[w]hether the

[MMWA] permits or precludes enforcement of binding arbitration agreements with respect to written warranty claims." *Id.* at 1270. The *Davis* court analyzed the MMWA's legislative history as well as its implementation and interpretation by the FTC and federal courts, ultimately deciding arbitration agreements are not informal dispute settlement procedures and thus not subject to FTC regulations requiring disclosures. *Id.* at 1276 (finding "no evidence that Congress intended binding arbitration to be considered an informal dispute settlement procedure"). The Eleventh Circuit concluded "the FTC's interpretation of the MMWA is unreasonable, and [] decline[d] to defer to the FTC regulations of the MMWA regarding binding arbitration in written warranties." *Id.* at 1280. The Court held that "written warranty claims arising under the Magnuson–Moss Warranty Act may be subject to valid binding arbitration agreements." *Id.*

The Plaintiff urges the Court not to follow *Davis*, arguing that *Davis* "is no longer controlling precedent" because *Davis* is outdated in light of newer FTC regulations. DE 24 at 12. Yet, the Eleventh Circuit relied on more than then-current FTC regulations for its holding. Indeed, the Eleventh Circuit devoted the vast majority of its analysis to the MMWA and FAA's legislative text and history. *Davis*, 305 F.3d at 1272–77; *but see id.* at 1277–80 (considering FTC regulations). The Plaintiff does not address these additional bases for the Eleventh Circuit's ruling and thus, offers no persuasive argument for the Court to disregard *Davis*. In fact, under the prior precedent rule, this Court is bound to follow a prior binding precedent 'unless and until it is overruled by this court en banc or by the Supreme Court.'" *United States v. Vega-Castillo*, 540 F.3d 1235, 1236 (11th Cir. 2008) (quoting *United States v. Brown*, 342 F.3d 1245, 1246 (11th Cir. 2003)).

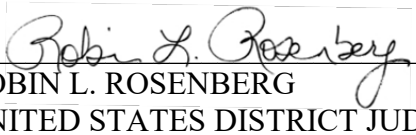
The Court rejects the Plaintiff's argument that the MMWA claim cannot be submitted to arbitration as a matter of law. Pursuant to *Davis*, it can. Also pursuant to *Davis*, an agreement to arbitrate need not be included in the same document that creates a written warranty.

For all of the foregoing reasons, the Plaintiff must arbitrate its claims against the Defendants, and the arbitrator will decide whether the Plaintiff's claims are arbitrable.

It is therefore **ORDERED AND ADJUDGED** that:

- The Defendants' Motion to Dismiss to Arbitration, DE 22, is **GRANTED**. The Plaintiff is **ORDERED** to arbitrate its claims pursuant to the arbitration agreements between the parties.
- This Case is **STAYED** pending arbitration. All pending motions are **DENIED AS MOOT**. The Clerk of the Court is directed to **CLOSE THIS CASE FOR STATISTICAL PURPOSES**. This closure shall not affect the merits of any party's claim.

DONE AND ORDERED in Chambers, West Palm Beach, Florida, this 1st day of November, 2023.



ROBIN L. ROSENBERG
UNITED STATES DISTRICT JUDGE

Copies furnished to Plaintiff and counsel of record