UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

HERMÉS OF PARIS, INC.,

Petitioner,

-against-

No. 16-cv-6255 (CM)

MATTHEW SWAIN,

Respondent.

MEMORANDUM DECISION AND ORDER GRANTING PETITION TO COMPEL ARBITRATION

McMahon, J.:

Petitioner Hermés of Paris, Inc. ("Hermés" or "Petitioner"), a French luxury goods manufacturer, brings this action to compel Respondent, Matthew Swain ("Swain" or "Respondent"), to arbitrate his employment related claims in New York City and to enjoin an action brought by Swain in New Jersey state court for discrimination and breach of contract. For the reasons set forth below, the Court concludes that it has personal jurisdiction over Swain and grants Hermés's petition to compel arbitration. Petitioner's request to enjoin the New Jersey state court proceeding is denied.

BACKGROUND

Hermés is a limited liability corporation with its United States headquarters in New York, New York. (Pet. to Compel Arbitration and Enjoin Pending State Crt. Action Pursuant to Section 4 of the Fed. Arb. Act. and the Anti-Inj. Act (Dkt. No. 1) ("Hermés Pet.") ¶ 10.) Swain is a New Jersey Resident who was employed by Hermés in one of its New Jersey retail locations from July 31, 2015 to November 6, 2015. (*Id.* ¶ 1, 11.)

On August 28, 2015, Swain signed a five-page "Dispute Resolution Agreement." (*See* Decl. of Lawrence R. Sandak ISO Pet. to Compel Arb. and Enjoin Pending State Crt. Action (Dkt. No. 6) ("Sandak Decl.") Exh. B.) The Agreement provides a process for resolving disputes between employees, and states in relevant part:

> The dispute will be resolved by a single arbitrator, to be held in [the] City, State and County of New York unless you and the Company agree otherwise. Applicable AAA Employment Arbitration Rules shall apply except as otherwise specified in this agreement. . . .
>
> This Dispute Resolution Procedure remains applicable even if you are no longer employed by [Hermés] at the time you assert a claim. By signing below, you agree (i) to mediate; and (ii) to arbitrate, with arbitration being the sole, exclusive and final forum for any remedy. You acknowledge you are waiving any right you may have to a court or jury trial. . . .
>
> Your signature below indicates your understanding and acceptance of this Dispute Resolution Procedure. . . . Either you or [Hermés] may file a request with a court for injunctive relief to enforce this Dispute Resolution Procedure. New York law shall apply to this agreement.

(*Id.* at 2.)

The Agreement contained a "Disputes Covered" provision that defined covered disputes as including:

> all legal and equitable claims, demands, and controversies, of whatever nature or kind, whether in contract, tort, under statute or regulation, or some other law, between you and [Hermés] . . . conditions of your employment with, or separation from [Hermés] . . . ; (ii) any agreements (written or oral) now in existence or that may come into existence in the future between you and [Hermés] . . . ; (v) claims arising from or related to alleged discrimination, harassment, or retaliation in employment (including, but not limited to, race, sex, sexual orientation, religion, national origin, age, marital status, physical or mental disability or handicap, or medical condition) under any federal, state and/or other governmental law, statue, regulation, and/or ordinance…; (vi) any claims relating to leaves of absence, benefits, or compensation or post-termination benefits under federal, state and local laws . . . .

(*Id.*) Directly above Swain's signature, the Agreement stated, in bold print, that "**Your signature means that you have read this agreement, understand it and are voluntarily entering into it.**" (Hermes Pet. ¶ 7.)

On July 19, 2016, Swain filed suit in the Superior Court of New Jersey, Law Division, Essex County, alleging claims of sexual orientation discrimination, creation of a hostile work environment, retaliation, and breach of contract. (*Id.* ¶ 8; Sandak Decl. Exh. A.)

On August 5, 2016, Hermes filed a petition in this Court to compel arbitration, pursuant to 9 U.S.C. § 4, and enjoin Swain's state court action pursuant to 28 U.S.C. § 2283.

DISCUSSION

Respondent opposes Petitioner's petition to compel on the grounds that the Court does not have jurisdiction over Swain or his claims and that the record does not establish that Swain knowingly and voluntarily agreed to the Dispute Resolution Agreement. Neither argument has merit.[1] Because the parties entered into a contractually valid arbitration agreement, the Court grants Hermes's petition to compel arbitration.

1. Jurisdiction

A federal court has the authority to compel arbitration under the Federal Arbitration Act ("FAA"), 9 U.S.C. § 4, provided that the court has jurisdiction over the underlying controversy. *Barbier v. Shearson Lehman Hutton Inc.*, 948 F.2d 117, 120 (2d Cir. 1991). Swain argues that the Court cannot compel arbitration, since it lacks subject matter and personal jurisdiction to hear this Petition. He is wrong as a matter of law.

[1] In a September 8, 2016 conference, Swain suggested that the "First Filed" Rule may also prevent this Court from compelling arbitration. Courts have rejected this argument in this exact context and compelled arbitration, despite the filing of an earlier lawsuit in state court. *See, e g., Cap Gemini Ernst & Young U.S. LLC v Arentowicz*, No. 04 Civ. 0299, 2004 WL 1386145, at *3 (S.D.N.Y. June 22, 2004).

First, this Court has subject matter jurisdiction, since the parties are diverse and the amount in controversy exceeds $75,000. Hermes and Swain are "citizens" of different states; Hermes, a French limited liability corporation, has its headquarters in New York, while Swain is a New Jersey resident. (*See* Hermes Pet. ¶¶ 10-11.) Furthermore, "in determining whether the jurisdictional amount in controversy is satisfied," the Second Circuit has held that "a court may look to the amount a party might obtain in the arbitration." *Utopia Studios, Ltd. v. Earth Tech, Inc.*, 607 F. Supp. 2d 443, 446 (E.D.N.Y. 2009). The Court thus has subject matter jurisdiction over this dispute.

Second, this Court has personal jurisdiction over Swain since he agreed to arbitrate his employment related disputes in New York City. A party who agrees to arbitrate in a particular jurisdiction consents to both personal jurisdiction and venue of the courts within that jurisdiction. *Doctor's Assocs., Inc. v. Stuart*, 85 F.3d 975, 979, 983 (2d Cir. 1996). The Dispute Resolution Agreement provides that any disputes between Hermes and Swain are to be resolved "in the City, State and County of New York." (Sandak Decl. Exh. B.) Assuming his consent to the Agreement was valid, the Court has personal jurisdiction over Swain because he consented to arbitrate in New York. *See id.*; *see also NGC Network Asia, LLC v. PAC Pac. Grp. Int'l, Inc.*, No. 09 Civ. 8684, 2010 WL 3701351, at *3 (S.D.N.Y. Sept. 20, 2010).

2. Validity of the Agreement

Before compelling arbitration, the district court must determine whether "the parties enter[ed] into a contractually valid arbitration agreement," and if so, whether "the parties' disputes fall within the scope of the arbitration agreement." *Cap Gemini Ernst & Young*, 346 F.3d 360, 365 (2d Cir. 2003). Respondent does not argue that his claims are not covered by the Dispute Resolution Agreement. He only argues that the record in this case contains no evidence

suggesting that his consent to the Dispute Resolution Agreement was knowing and voluntary. His argument has no merit.

The Dispute Resolution Agreement, produced by Petitioner, contains Swain's signature below a line that states, in bold, that his "signature means that you have read this agreement, understand it and are voluntarily entering into it." (Sandak Decl. Exh. B.) Nothing in the record suggests that the signature was forged or made involuntarily, and Petitioner's argument that he needs discovery to ascertain the validity of his own consent is ludicrous, since the information he needs is entirely within his own control. Because Respondent has the burden of proof in establishing that his claims should not be arbitrated, *see Green Tree Fin. Corp-Alabama v. Randolph*, 531 U.S. 79, 91 (2000), it is incumbent on him to provide the court with *some* evidence — for instance, a sworn affidavit — to establish that his consent was not voluntary. Having failed to produce any such evidence, there is no basis on which to find the agreement invalid.

3. Stay of State Court Proceedings

Finally, Petitioner also asks the Court to enjoin the proceedings in New Jersey state court. Plaintiff has not convinced the Court that it has the power to do so. As a result, the Petitioner's petition to enjoin the New Jersey proceedings is denied.

As a general rule, federal courts are prohibited from enjoining proceedings in state court by the Anti–Injunction Statute, 28 U.S.C. § 2283. Under three exceptions to that statute, federal courts may enjoin such a proceeding (1) where "expressly authorized by Act of Congress"; (2) "where necessary in aid of its jurisdiction"; or (3) "to protect or effectuate its judgments." 28 U.S.C. § 2283.

Several courts in this district have relied on the latter two exceptions to enjoin a state court action when granting a petition to compel arbitration. *See, e.g., Pervel Indus., Inc. v. TM Wallcovering, Inc.*, 675 F. Supp. 867, 870 (S.D.N.Y. 1987), *aff'd*, 871 F.2d 7 (2d Cir. 1989). In one such case cited by Plaintiff, *Pervel Industries*, the Second Circuit affirmed the district court's decision, but without addressing whether the district court correctly stayed state court claims. *See id.* District courts outside this circuit have held that these two exceptions are inapplicable; according to one such court, an order enjoining the state court proceedings is not "necessary in aid of its jurisdiction," since the "mere existence of a parallel action in state court does not rise to the level of interference with federal jurisdiction to permit injunctive relief" required under the exception to the Anti-Injunction Act, and is not necessary to "protect or effectuate" a judgment, since the court "has not issued nor have we been asked to issue an order which would create a judgment which requires an injunction to effectuate or enforce it." *AK Steel Corp. v. Chamberlain*, 974 F. Supp. 1120, 1123 (S.D. Ohio 1997).

Petitioner has not cited a Second Circuit case expressly stating that district courts have the power to enjoin a state court action when granting a petition to compel an arbitration, and the Court finds the case law outside this circuit more compelling.

The petition to enjoin the state court proceeding is denied.

The Court has the authority to enjoin *Respondent* from proceeding in New Jersey, but Hermes has made no such motion. Nothing precludes it from doing so now — or from seeking a stay of proceedings directly in the New Jersey Superior Court, where it could and should have brought this proceeding to compel in the first place.

CONCLUSION

For the reasons set forth above, the Court grants Petitioner's petition to compel arbitration, but denies Petitioner's petition to enjoin Respondent's state court claims. The Clerk is directed to remove the motion at Docket Number 4 from the Court's list of open motions.

Dated: September 13, 2016

U.S.D.J.

BY ECF TO ALL COUNSEL