UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

LAI CHAN, HUI CHEN, and XUI XIE, individually and on behalf of all others similarly situated,

Plaintiffs,

-v-

CHINESE-AMERICAN PLANNING COUNCIL HOME ATTENDANT PROGRAM, INC.,

Defendant.

15-cv-9605 (KBF)

MEMORANDUM DECISION & ORDER

KATHERINE B. FORREST, District Judge:

On March 11, 2015, plaintiffs Lai Chan, Hui Chen, and Xue Xie, individually and as class representatives, brought this action in New York State Supreme Court against their employer, defendant Chinese-American Planning Council Home Attendant Program, Inc. ("CPC"), alleging several wage-related claims under New York law. (Compl., ECF No. 1-2.) After plaintiffs amended their complaint to include claims alleging violations of the Fair Labor Standards Act ("FLSA"), 29 U.S.C. §§ 206, 207, CPC removed the action to this Court. (Am. Compl., ECF No. 1-1.) On December 15, 2015, CPC moved to compel arbitration and stay the instant action pursuant to the Federal Arbitration Act ("FAA"), 9 U.S.C. §§ 3-4, based on the arbitration provisions of a collective bargaining agreement executed between plaintiffs' bargaining representative, 1199 SEIU United Healthcare Workers East

(the "Union") and CPC. (ECF No. 5.) For the reasons set forth below, defendant's motion is GRANTED.

There is a strong federal policy favoring arbitration under the FAA, which requires federal courts to enforce valid arbitration agreements and stay underlying litigation. See 9 U.S.C. §§ 2-3; Moses H. Cone Mem'l Hosp. v. Mercury Contr. Corp., 460 U.S. 1, 24-25 (1983) ("[A]ny doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration."). The FAA provides that "an agreement in writing to submit to arbitration an existing controversy . . . 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. § 2, including "generally applicable contract defenses, such as fraud, duress, or unconscionability," Doctor's Assocs., Inc. v. Casarotto, 517 U.S. 681, 687 (1996). "Under the [FAA], a district court must stay proceedings if satisfied that the parties have agreed in writing to arbitrate an issue or issues underlying the district court proceeding. The FAA leaves no discretion with the district court in the matter." Katz v. Cellco P'ship, 794 F.3d 341, 344 (2d Cir. 2015) (quoting McMahan Sec. Co. v. Forum Capital Mkts., 35 F.3d 82, 85-86 (2d Cir. 1994)).

On a motion to compel arbitration, the moving party must show that 1) there is a valid agreement between the parties to arbitrate disputes, and 2) the instant dispute falls within the scope of the arbitration agreement. See Hartford Acc. & Indem. Co. v. Swiss Reinsurance Am. Corp., 246 F.3d 219, 226 (2d Cir. 2001); see also JLM Indus., Inc. v. Stolt-Nielsen SA, 387 F.3d 163, 169 (2d Cir. 2004) (stating

that the Court must consider: (1) "whether the parties agreed to arbitrate", (2) "the scope of that agreement", (3) "if federal statutory claims are asserted, [whether] Congress intended those claims to be nonarbitrable", and (4) if some, but not all, of the claims in the case are arbitrable, whether "to stay the balance of the proceedings pending arbitration"). Based on a review of parties' submissions, it is clear that there is a valid arbitration agreement in place and that the instant action falls within the scope of that agreement.

The named plaintiffs and all putative class members are members of the Union, which, since 2009, has had a collective bargaining agreement ("CBA") governing the employment relationship between plaintiffs and CPC. (Kirschner Affirm. ¶ 2, ECF No. 7.) The CBA has been modified and extended by several memoranda of agreement ("MOA"). (Kirschner Affirm. ¶ 2.) Most recently, on January 21, 2016—in other words, during the pendency of this motion—the Union's members ratified an MOA, dated December 7, 2015, between CPC and the Union (the "2015 MOA"). (See Ma Decl. ¶ 3 & Ex. A, ECF No. 40; Kirschner Affirm., Ex. 4, ECF No. 7-4.)[1] The CPC Board of Directors had ratified the 2015 MOA on January 20, 2016. (Ma Decl. ¶ 2.) Having been ratified by both sides, a valid contract has

[1] On January 19, 2016, two days before the Union's scheduled ratification vote, plaintiffs moved for a temporary restraining order, which sought to enjoin CPC and the Union from communicating with putative class members about the 2015 MOA's arbitration clause and to enjoin the Union's ratification vote. (ECF No. 21.) The Court denied that motion on January 21, 2016, on the grounds that plaintiffs failed to show irreparable harm or that they would likely succeed on the merits (or that they provided sufficiently serious grounds to warrant such relief). (ECF No. 36.)

Prior to the removal of this action to this Court, the New York State Supreme Court denied defendant's motion to compel arbitration based on the then-operative 2014 MOA. The state court's decision is not preclusive of defendant's motion here because, inter alia, that court was not addressing the now operative 2015 MOA.

been formed and the 2015 MOA is now in effect.[2] In pertinent part, the 2015 MOA contains amendments that require plaintiffs to submit certain claims to a specified mediation and arbitration process. (Kirschner Affirm., Ex. 4 at 9-10.) As a result, there is a valid agreement between the parties to arbitrate disputes.

The 2015 MOA clearly specifies that all wage and hour-related claims brought by employees or the Union must be submitted exclusively to the alternative dispute resolution procedures provided for in the agreement. (Kirschner Affirm., Ex. 4 at 9-10.) In relevant part, the 2015 MOA states:

> Accordingly, to ensure the uniform administration and interpretation of this Agreement in connection with federal, state, and local wage-hour and wage parity statutes, all claims brought by either the Union or Employees, asserting violations of or arising under the Fair Labor Standards Act ("FLSA"), New York Home Care Worker Wage Parity Law, or New York Labor Law (collectively, the "Covered Statutes"), in any manner, shall be subject exclusively, to the grievance and arbitration procedures described in this Article.

(Kirschner Affirm., Ex. 4 at 9.) The CBA thus expressly evinces the parties' intention to arbitrate the precise claims brought here, including all claims brought under the FLSA, New York Home Care Worker Wage Parity Law, and New York Labor Law.[3]

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[2] To the extent that plaintiffs maintain that the 2015 MOA is not yet in effect because it has not yet been approved by the New York City Human Resources Administration ("HRA"), the Court is not persuaded. Plaintiffs do not work on HRA cases, and thus the HRA has no impact on the terms and conditions of their employment. (Ma Decl. ¶ 10.) Furthermore, HRA Deputy Commissioner Arnold Ng has indicated to CPC that HRA intends to approve the 2015 MOA shortly (Ma Decl. ¶ 6), and CPC and the Union have treated the 2015 MOA as in effect and operating in all respects (Ma Decl. ¶¶ 8-9).

[3] Plaintiffs argue that they cannot be forced through a collective bargaining agreement to arbitrate claims brought under the FLSA. The Court rejects this argument. Numerous courts have held that FLSA claims may be subject to mandatory arbitration clauses. Arrigo v. Blue Fish Commodities, Inc., 704 F. Supp. 2d 299, 304 (S.D.N.Y. 2010), aff'd , 408 F. App'x 480 (2d Cir. 2011); Martin v. SCI Mgmt. L.P., 296 F. Supp. 2d 462, 467 (S.D.N.Y. 2003).

Plaintiffs seek to avoid this mandatory arbitration clause by arguing that the agreement to arbitrate embodied in the 2015 MOA cannot apply retroactively to claims that may have accrued prior to the execution of the 2015 MOA. This argument is meritless. The Second Circuit has indicated that, in the absence of a provision placing a temporal limitation on arbitrability, an arbitration provision may cover claims that accrued prior to the execution of the agreement to arbitrate. Smith/Enron Cogeneration Ltd. P'ship, Inc. v. Smith Cogeneration Int'l, Inc., 198 F.3d 88, 98-99 (2d Cir. 1999); see also Arrigo v. Blue Fish Commodities, Inc., 408 F. App'x 480, 481-82 (2d Cir. 2011) (summary order); Duraku v. Tishman Speyer Properties, Inc., 714 F. Supp. 2d 470, 474 (S.D.N.Y. 2010). Significantly, the arbitration provision at issue here contains no such clear limiting language. Furthermore, to the extent there is doubt about the scope of arbitrable issues, the Court must resolve that doubt in favor of arbitration. Green Tree Financial Corp. v. Bazzle, 539 U.S. 444, 452-53 (2003) (plurality opinion); Citigroup, Inc. v. Abu Dhabi Investment Auth., 776 F.3d 126, 130 (2d Cir. 2015). "While a gateway dispute about whether the parties are bound to a given arbitration clause raises a question of arbitrability for a court to decide," it is the role of the arbitrator, rather than this Court, to resolve issues of contract interpretation and arbitration procedures in the first instance. Duran v. J. Hass Grp., L.L.C., 531 F. App'x 146, 147 (2d Cir. 2013) (summary order) (quotation marks omitted); see UBS Financial Services, Inc. v. West Virginia Univ. Hosps., Inc., 660 F.3d 643, 654 (2d Cir. 2011) (stating that "procedural questions which grow out of the dispute and bear on its final

disposition" are generally for the arbitrator to resolve in the first instance (quotation marks omitted)).

Plaintiffs further argue that this Court should not compel them to arbitrate their claims because arbitration will be cost prohibitive, preventing them from vindicating their rights in that forum. "[W]here, as here, a party seeks to invalidate an arbitration agreement on the ground that arbitration would be prohibitively expensive, that party bears the burden of showing the likelihood of incurring such costs." Green Tree Financial Corp.-Alabama v. Randolph, 531 U.S. 79, 92 (2000). Plaintiffs have failed to support this argument with any evidence—as opposed to mere speculation—that they are likely to incur prohibitive costs by pursuing their claims through arbitration. Plaintiffs' argument is, furthermore, belied by the arbitration procedures provided for in the 2015 MOA, as any fees pertaining to a grievance submitted by the Union to mediation and/or arbitration are to be shared equally by the Union and CPC, with the employees bearing no fees at all. (Kirschner Affirm., Ex. 4 at 10; Kirschner Reply Decl. ¶ 5, ECF No. 39.) Because plaintiffs have failed to meet their burden to show that arbitration would be cost-prohibitive, the Court rejects this argument.

Accordingly, defendant's motion to compel arbitration is GRANTED.[4] This action shall be stayed pending arbitration. See 9 U.S.C. § 3.

[4] The Court has considered plaintiffs' other arguments, and concludes that they are without merit.

The Clerk of Court is directed to close the motion at ECF No. 5.

SO ORDERED.

Dated: New York, New York
February 3, 2016

KATHERINE B. FORREST
United States District Judge