

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX

SANDI GROFF,

Plaintiff,

v.

CANE BAY PARTNERS VI, LLLP,

Defendant.)

SX-15-CV-127

ACTION FOR DAMAGES

JURY TRIAL DEMANDED

MEMORANDUM OPINION AND ORDER DISMISSING COMPLAINT WITH PREJUDICE

THIS MATTER is before the Court on Defendant Cane Bay Partners VI, LLLP's Motion to Compel Arbitration or Dismiss Case (Motion) filed November 13, 2015. Plaintiff's Motion for Extension of Time to Respond to Motion to Compel Arbitration and Motion to Dismiss was granted by Order entered December 28, 2015. However, Plaintiff has filed no response to the Motion. For the reasons that follow, Defendant's Motion will be granted.

By her March 30, 2015 Complaint, Plaintiff alleges that Defendant was her employer (Complaint ¶ 4); that the terms of employment were governed by an offer letter dated September 30, 2013 and an employment agreement that she signed October 2, 2013 (*id.* ¶¶ 7-8); and that she was terminated from the employment on January 27, 2014 (*id.* ¶ 11). Neither the offer letter nor the employment agreement was filed as an exhibit to the Complaint. Plaintiff alleges two counts: "Breach of the Employment Agreement" and "Breach of the Implied Covenant of Good Faith and Fair Dealing." *Id.* ¶¶ 12-18.

Defendant contends that Plaintiff's Complaint fails to state a claim upon which relief may be granted, and that dismissal is warranted pursuant to Fed. R. Civ. P. 12(b)(6) and 12(c) (now V.I.R. Civ. P. 12(b)(6) and 12(c)). Both the September 13, 2013 offer letter and "the employment contract in effect" were attached as exhibits to Defendant's Motion.¹ "If, on a motion under Rule 12(b)(6) or 12(c), matters outside the pleadings are presented to and not excluded by the court, the motion must be treated as one for summary judgment under Rule 56." V.I. R. Civ. P. 12(d); *see Island Tile & Marble, LLC v. Bertrand*, 57 V.I. 596, 612 (V.I. 2012).

¹ The specific employment agreement Plaintiff alleges that she executed October 2, 2013 is not an exhibit to the Motion. Rather, an unsigned document entitled "Salaried Employment Agreement" is presented as "the employment contract in effect." Since Plaintiff has failed to respond to the Motion, the Court accepts Defendant's assertion that the operative contract contained identical terms.

While there is some disagreement among different jurisdictions over precisely what qualifies as being “outside the pleadings,” the great weight of authority holds that generally courts are free to consider the allegations contained in the complaint, exhibits attached to the complaint and matters of public record when ruling on Rule 12(b)(6) motions. *See* 5A C. Wright & A. Miller, *Federal Practice and Procedure* § 1357, at 299 (2d ed. 1990); *Pension Benefit Guar. Corp. v. White Consol. Indus.*, 998 F.2d 1192, 1196 (3d Cir. 1993); *Watterson v. Page*, 987 F.2d 1, 3-4 (1st Cir. 1993); *Emrich v. Touche Ross & Co.*, 846 F.2d 1190, 1198 (9th Cir. 1988).

Additionally, courts may consider “documents whose contents are alleged in the complaint and whose authenticity no party questions, but which are not physically attached to the pleading.” *See Pryor v. NCAA*, 288 F.3d 548, 560 (3d Cir. 2002) (internal citations omitted). The reasoning underlying this approach is particularly sound where the exhibit being considered is the very document forming the basis of a plaintiff’s complaint. Thus, “when ruling on a motion to dismiss, courts may consider undisputed documents relied upon by the claimant.” *Gov’t Guar. Fund of Fin. v. Hyatt Corp.*, 955 F. Supp. 441, 449 (D.V.I. 1997).

Here, the authenticity of original offer letter and the form employment contract presented by Defendant are not questioned by Plaintiff. It is those undisputed documents that are integral to and provide the basis for the claims presented in both counts of Plaintiff’s Complaint. By the allegations of her Complaint, Plaintiff asserts that both she and Defendant were bound by the terms of those agreements. As such, the employment agreement is not “outside the pleadings” and is considered here without the need to convert Defendant’s Motion to one for summary judgment. The parties’ uncontroverted employment agreement clearly states that all claims, controversies, and disputes arising out of the employee’s employment with Defendant, including the termination of that employment, “shall be resolved solely and exclusively by arbitration.” Further, the “parties also agree to arbitrate the issue of arbitrability of any claim.” Motion, at 1-2 (Exhibit 2, ¶ 13-14).²

² In pertinent part, section 13 of the employment agreement, “ARBITRATION,” states as follows: “Except as provided below in this section [relative to collective bargaining grievances and EEOC filings], *all* claims, controversies or disputes (collectively referred to as ‘claims’ for purposes of this Agreement) arising out of or in any way related to Employee’s employment by Employer, or the termination of that employment... shall be resolved solely and exclusively by arbitration as provided in this Agreement... Employee and Employer specifically agree that the agreement to resolve any and all disputes solely and exclusively by arbitration, as set forth herein, shall remain in full force and effect notwithstanding the termination of this Agreement or Employee’s employment for any reason whatsoever. (Emphasis in original.)

Section 14 “MATTERS ARBITRABLE” states further: “Arbitrable matters shall be those specified above. Arbitral matters shall include, but are not limited to, claims under the following: ...this Agreement or any other contract...”

Defendant moves to compel arbitration in accordance with the Federal Arbitration Act (FAA). Motion, at 3 (citing *Thomas v. V.I. Terminal Servs. LLC.*, 2015 U.S. Dist. LEXIS 98164, at *3 (D.V.I. 2015)). Historically, the FAA was created to overcome judicial hostility to the enforcement of arbitration agreements by placing arbitration clauses on equal footing with other contractual provisions. *Gov't of the V.I. v. United Indus. Workers*, 169 F.3d 172, 176 (3d Cir. 1999); *Allied-Bruce Terminix Companies v. Dobson*, 513 U.S. 265, 275 (1995). *Prentice v. Seaborne Aviation, Inc.*, 65 V.I. 96, 110 (V.I. Super. Ct. 2016). “The central or ‘primary’ purpose of the FAA is to ensure that ‘private agreements to arbitrate are enforced according to their terms.’” *Allen v. HOVENSA, L.L.C.*, 59 V.I. 430, 439 (V.I. 2013) (citations omitted).

However, here, the Court need not apply the FAA. Rather, Defendant’s Motion is determined by recognizing and enforcing the parties’ contractual agreement according to its terms, which require that any dispute between them be determined by arbitration at the election of either party, without resort to or application of any provision of the FAA. Irrespective of the applicability of the FAA, arbitration agreements are enforceable as a matter of Virgin Islands law. *See Gov’t of the V.I. v. United Indus., Svc., Transp., Prof. & Gov’t Workers of N.A.*, 64 V.I. 312, 327 (2016) (citing *Volt Info. Sciences, Inc. v. Board of Trs.*, 489 U.S. 468, 479 (1989) for the “basic principle that parties are generally free to structure their arbitration agreements as they see fit and they may limit by contract the issues which they will arbitrate”).

By her Complaint, Plaintiff asserts that the terms of her employment with Defendant “are detailed in her offer letter, employment agreement and other employment documents.” Complaint, ¶ 13. Count I alleges that “CBP breached the terms of Plaintiff’s employment agreement when it terminated her without cause on January 27, 2014.” *Id.* ¶ 14. Count II references the allegations preceding it, including the binding applicability on both parties of the offer letter and the employment agreement, stating that “CBP’s conduct in maliciously firing Plaintiff constitutes a breach of the duty of good faith and fair dealing as set forth in RESTATEMENT (SECOND) OF CONTRACTS § 205.” *Id.* ¶ 17.

The arbitration provision within the parties’ employment agreement was “clearly meant to encompass any controversy or claim arising out of or relating to” the termination of Plaintiff’s employment. As such, “the agreement is clear as to what claims are subject to arbitration and the type of claim brought in this case is specifically identified within the agreement as being subject to arbitration.” *Allen v. HOVENSA, L.L.C.*, 59 V.I. at 438-39.

Because the parties agreed by their employment agreement that “all claims, controversies or disputes ... arising out of or in any way related to Employee’s employment by Employer, or the termination of that employment ... shall be resolved solely and exclusively by arbitration” Plaintiff must seek her remedy in that forum.

Lacking any statutory framework for arbitration in the Virgin Islands, and without binding precedent from the Supreme Court, there is no clear direction as to the propriety of a stay of the action pending appeal (as required in the federal courts pursuant to section 3 of the FAA), as opposed to its outright dismissal. Since *all* Plaintiff’s claims must be referred to mandatory, binding arbitration, the Court’s role in the resolution of the parties’ dispute has come to an end. Accordingly, rather than ordering a stay of these proceedings pending arbitration, discretionary dismissal of this litigation is deemed the proper result. Dismissal at this stage allows the parties to resolve their dispute in the contractually mandated forum of their choosing, while clearing the Court’s docket of litigation to be effectively resolved elsewhere. Further, dismissal rather than issuance of a stay provides an avenue for immediate appeal. Therefore, the Court will exercise its inherent power to control its docket to best promote the fair and efficient resolution of the parties’ dispute and, on that basis, will dismiss Plaintiff’s Complaint. *See Prentice v. Seaborne Aviation, Inc.*, 65 V.I. at 111-13.

Accordingly, on the basis of the foregoing, it is hereby

ORDERED that Defendant’s Motion to Compel Arbitration or Dismiss Case is GRANTED; Plaintiff’s Complaint is DISMISSED WITH PREJUDICE; and this case is CLOSED.

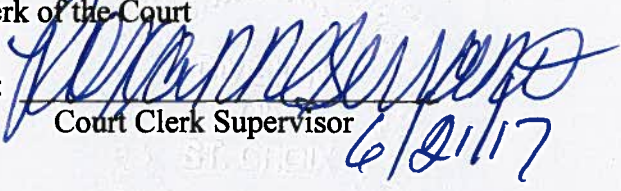
Dated: June 20, 2017.


DOUGLAS A. BRADY, JUDGE

ATTEST:

ESTRELLA GEORGE
Clerk of the Court

By:


Court Clerk Supervisor 6/21/17