

**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN**

SENA SALEM-BAZAR,	)	
	)	CASE NO. ST-18-CV-297
Plaintiff,	)	
v.	)	ACTION FOR DAMAGES
	)	
WENDY TARAPANI, ABE TARAPANI	)	JURY TRIAL DEMANDED
and JEWELRY EXCHANGE d/b/a	)	
DIAMONDS INTERNATIONAL,	)	
	)	
Defendants.	)	

MEMORANDUM OPINION AND ORDER

Before the Court is Defendants' Motion to Stay Proceedings and Compel Arbitration or, in the Alternative, to Dismiss the Complaint and Compel Arbitration and Incorporated Memorandum of Law ("Motion"), which was filed on July 16, 2018. Plaintiff filed a response in Opposition on July 18, 2018. Defendants filed a Reply on July 26, 2018.

Plaintiff's claims are subject to the parties' Employment Contract's mutual agreement to arbitrate claims, which provides that the parties mutually consent to resolution by arbitration of all claims or controversies arising out of their employment relationship. Although the Court concurs with the Motion's premise that arbitration is the sole forum within which Plaintiff may pursue her claims, Defendants Wendy Tarapani, Abe Tarapani, and Jewelry Exchange d/b/a Diamonds International's (collectively "Diamonds International") Motion will only be granted in part. Because the Plaintiff must seek her relief exclusively in arbitration, no further action will be taken by the Court, and therefore, discretionary dismissal of the action is preferable to a stay of proceedings. Accordingly, Diamonds International's Motion will be granted in part and denied in part, and Plaintiff's Complaint will be dismissed.

I. BACKGROUND

Plaintiff Sena Salem-Bazar ("Bazar") and Defendant Jewelry Exchange d/b/a Diamonds International entered into an employment contract on December 8, 2004. Defendants Wendy Tarapani and Abe Tarapani co-manage all stores owned by Diamonds International in St. Thomas, U.S. Virgin Islands. Specifically, Wendy is a shareholder, secretary, and employee, and Abe is an employee of Diamonds International.¹ Bazar commenced her employment with Diamonds International as a Sales Associate at its Tanzanite store.² Bazar's employment with Diamonds International is governed by an Employment Contract, which included an arbitration provision

¹ Defs.' Mot. to Stay Proceedings and Compel Arbitration or, in the Alt., to Dismiss the Compl. and Compel Arbitration and Inc. Mem. Of Law 4.

² *Id.* at Ex. A, at 1. Compl. ¶ 9.

(herein referred to as "arbitration agreement") wherein the parties agreed in relevant part as follows:

1. Employer and Employee recognize that differences may arise during the course of employment and that those differences may or may not be related to employment. Employer and Employee agree that by entering into this Employment Contract and the Mutual Agreement to Arbitrate Claims contained therein, they anticipate gaining the benefits of a speedy, impartial, final and binding dispute resolution procedure.

2. Employer and Employee mutually consent to the resolution by arbitration of all claims or controversies ("claims"), past, present or future, whether of [sic] not arising out of their employment relationship or the termination thereof, that Employer may have against Employee or that Employee may have against and of the following (1) the Employer, (2) it's officers, directors, employees or agents in their capacity as such or otherwise, (3) the Employer's parent, subsidiary and affiliated entities, (4) the benefit plans or the plans' sponsors, fiduciaries, administrators, affiliates and agents, and/or (5) all successors and assigns of any of them.

3. Employee and Employer specifically agree that the following arbitration procedure is the sole, final, binding and exclusive remedy for any and all employment related disputes. Both the Employer and Employee agree that neither shall initiate nor prosecute any lawsuit or administrative action in any way related to any claim covered by this Mutual Agreement. Those claims include, but are not limited to: claims for wages or other compensation due; claims for breach of contract or covenant (express or implied); tort claims; claims for discrimination (including, but not limited to, race, sex [,] sexual orientation, religion, national origin, age, marital status, physical or mental disability or handicap, or medical condition); claims for benefits; and claims for violation of any federal, state, territorial or other governmental law, statute, regulation or ordinance.³

Bazar's Complaint alleges five counts: discrimination based on her religion, national origin, race and sex; wrongful termination by her demotion; breach by Diamonds International of its duty of good faith and fair dealing; violation of privacy; and retaliation by Diamonds International for discovering its illegal and fraudulent actions.⁴

³ Defs.' Mot. to Stay Proceedings and Compel Arbitration or, in the Alt., to Dismiss the Compl. and Compel Arbitration and Inc. Mem. Of Law. Ex. A, at 2-3.

⁴ Compl. ¶¶ 91-105.

II. LEGAL STANDARD

“The Federal Arbitration Act (“FAA”) states that “[a] party aggrieved by the alleged failure, neglect, or refusal of another to arbitrate under a written agreement for arbitration may petition any United States district court . . . for an order directing that such arbitration proceed in the manner provided for in such agreement.”⁵ While the Supreme Court of the Virgin Islands has previously expressed reservations concerning the applicability of the FAA to disputes in the Virgin Islands, recently the Supreme Court held that the “FAA is a legislation which plainly states that it applies to the Virgin Islands . . . [and] may very well apply to the territory by way of the Territorial Clause.”⁶

When ruling on a motion to compel arbitration under the FAA, the Court need not consider the merits of the underlying claims.⁷ Rather, the “primary purpose of the FAA is to ensure that private agreements to arbitrate are enforced according to their terms.”⁸ “Courts have long recognized that arbitration is a creature of contract and litigants may contract to resolve their disputes through arbitration.”⁹ In determining whether a dispute may be arbitrated, the Court must follow a two-step analysis: (1) whether an arbitration provision is present in a valid contract; (2) whether the particular dispute falls within the scope of that agreement.¹⁰ Only when a defendant demonstrates that the pending dispute is arbitrable, does the burden shift to plaintiff to establish that the arbitration clause should not be enforced.¹¹

III. ANALYSIS

Diamonds International argues that Bazar’s valid Employment Contract mandates that “both the Employer and Employee agree that neither shall initiate nor prosecute any lawsuit or administrative action in any way related to any claim covered by this [Arbitration] Agreement.”¹² Diamonds International further argues that as officers and/or employees, Wendy and Abe are third party beneficiaries covered by the arbitration provision.¹³ Because all of Bazar’s claims are subject to the arbitration agreement, Diamonds International moves the Court to stay proceedings pending

⁵ *Daniel v. Treasure Bay Virgin Islands Corp.*, Super. Ct. Civ. No. SX-10-CV-206, 2015 WL 13579174, at * 1 (V.I. Super. Ct. May 14, 2015) (unpublished) (“This Court may enforce arbitration agreements pursuant to the Act.”).

⁶ While the Supreme Court did not decide whether Congress utilized its Commerce Clause power or Territorial Clause power in applying the FAA to the Virgin Islands, the Supreme Court found that it need not decide since an interstate nexus exists. *Whyte v. Bockino*, S. Ct. Civ. No. 2017-0024, 2018 WL 4191523, at * 4-5 (V.I. Aug. 29, 2018) (unpublished). See *Whyte v. Bockino*, Super. Ct. Civ. No. SX-15-CV-83, 2017 WL 3613418, at * 2 (V.I. Super. Ct. Jan. 26, 2017) (unpublished) (collecting cases); *Valentin v. Grapetree Shores*, Super. Ct. Civ. No. SX-11-CV-305, 2015 WL 13579631, at * 2 (V.I. Super. Ct. June 30, 2015) (unpublished) (collecting cases).

⁷ *Whyte*, 2017 WL 3613418, at *2; *Daniel*, 2015 WL 13579174, at * 1.

⁸ *Id.*

⁹ *Valentin*, 2015 WL 13579631, at * 2.

¹⁰ *Id.*; *Whyte*, 2017 WL 3613418, at *2.

¹¹ *Valentin*, 2015 WL 13579631, at * 4.

¹² Defs.’ Mot. to Stay Proceedings and Compel Arbitration or, in the Alt., to Dismiss the Compl. and Compel Arbitration and Inc. Mem. of Law 5.

¹³ *Id.* at 4.

arbitration or alternatively, dismiss the Complaint pursuant to Virgin Islands Rules of Civil Procedure 12(b)(6).

Prior to determining whether this matter should be stayed or dismissed, the Court's analysis rests on whether this matter contains a valid and enforceable agreement that encompasses claims that are arbitrable.¹⁴

A. Bazar's claims are within the scope of the arbitration agreement contained in her valid Employment Contract with Diamonds International.

First, the Court, in determining arbitrability, must consider whether there is a valid arbitration agreement between the parties. In determining whether an agreement to arbitrate is valid, the threshold question is whether there was a valid contract.¹⁵ In the Virgin Islands, a valid contract requires a "bargain in which there is a mutual assent to the exchange, and consideration."¹⁶ In measuring assent, Courts look to the parties' outward expression, such as an express contract.¹⁷ In addition, consideration exists in an arbitration agreement where both parties agree to be bound by arbitration.¹⁸

Here, it is clear that a valid arbitration agreement exists that mutually binds both parties.¹⁹ The Employment Contract demonstrates mutual assent between the parties.²⁰ Next, the Court must determine whether Bazar's claims for discrimination based on her religion, national origin, race and sex; wrongful termination by her demotion; breach by Diamonds International of its duty of good faith and fair dealing; violation of privacy; and retaliation by Diamonds International for discovering its illegal and fraudulent actions are within the scope of the arbitration agreement.

In this case, the Employment Contract contains a broad arbitration agreement. Bazar's five claims are within the scope of the arbitration agreement.²¹ The FAA ensures that private agreements to arbitrate are enforced according to the parties' terms.²² The plain language of the arbitration agreement expressly states "claims for wages or other compensation due; . . . claims for discrimination (including, but not limited to, race, sex [,] sexual orientation, religion, national origin, age, marital status, physical or mental disability or handicap, or medical condition); claims for breach of contract or covenant (express or implied); claims for benefits; or claims for violation of any federal, state, territorial or other government law, statute, regulation or ordinance" must be

¹⁴ *Valentin*, 2015 WL 13579631, at * 2, 4; *Whyte*, 2017 WL 3613418, at *2.

¹⁵ *Id.* at 3; *Whyte*, 2017 WL 3613418, at * 2 (quoting *Litton Fin. Printing Div. v. NLRB*, 501 U.S. 190, 200 (1991)) ("The law compels a party to submit his grievance to arbitration only if he has contracted to do so.").

¹⁶ *Valentin*, 2015 WL 13579631, at * 3.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.* at 4.

²⁰ *Id.* at 3. Defs.' Mot. to Stay Proceedings and Compel Arbitration or, in the Alt., to Dismiss the Compl. and Compel Arbitration and Inc. Mem. of Law Ex. A (while the contract was set to expire on March 8, 2005, the contract also provided that it will be renewed for one-month intervals unless terminated by either party).

²¹ *Valentin*, 2015 WL 13579631, at * 2; *Whyte*, 2017 WL 3613418, at *2.

²² *Whyte*, 2017 WL 3613418, at *2; *Daniel*, 2015 WL 13579174, at * 1.

submitted to arbitration.²³ In fact, the arbitration agreement provides that “[Diamonds International] and [Bazar] agree that neither shall initiate nor prosecute any lawsuit or administrative action in any way related to any claim covered by this [arbitration] [a]greement.”²⁴ The arbitration agreement further provides that “the arbitration procedure is the sole, final, binding and exclusive remedy for any and all employment related disputes.”²⁵ Ergo, Bazar’s claims are within the scope of the arbitration agreement. Consequently, the Court finds that this matter should be referred to arbitration because the arbitration agreement is valid, and Bazar’s claims fall within the scope of the arbitration agreement.²⁶

Finally, the Court must determine whether the arbitration agreement extends to employees Wendy and Abe.²⁷ The arbitration agreement of Bazar’s Employment Contract with Diamonds International requires binding arbitration of all claims or controversies . . . whether . . . arising out of their employment relationship or the termination thereof . . . that Employee may have against . . . the Employer [and/or] it’s officers, directors, employees or agents in their capacity as such or otherwise . . . ”²⁸ Therefore, as the plain language of the arbitration agreement states, all of Bazar’s claims against Wendy and Abe, as employees of Diamonds International, must be resolved by arbitration.²⁹

The Court finds that the four corners of the contract sufficiently establish the intent of the parties to arbitrate Bazar’s claims.³⁰ “When interpreting any contract, the intent of the parties control and those intentions are generously construed as to the arbitrability of a claim.”³¹ Accordingly, the Court finds that the express language of the valid arbitration agreement binds Bazar to arbitrate all of her claims against Diamonds International.

B. Bazar’s challenges to the enforceability of the arbitration agreement contained in the Employment Contract must all fail.

Diamonds International having demonstrated that all of the claims in the pending action are referable to arbitration, the burden then shifts to Bazar to establish that the Court should not enforce the arbitration agreement.³² “Arbitration provisions may be attacked under such grounds that exist at law or in equity for the revocation of a contract.”³³ Bazar contends that the arbitration

²³ Defs.’ Mot. to Stay Proceedings and Compel Arbitration or, in the Alt., to Dismiss the Compl. and Compel Arbitration and Inc. Mem. of Law Ex. A, at 3.

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Valentin*, 2015 WL 13579631, at * 2; *Whyte*, 2017 WL 3613418, at *2.

²⁷ *Moore v. Hovensa, L.L.C.*, 46 V.I. 144, 149 (V.I. Super. Ct. 2005); *Whyte*, 2017 WL 3613418, at *2.

²⁸ Defs.’ Mot. to Stay Proceedings and Compel Arbitration or, in the Alt., to Dismiss the Compl. and Compel Arbitration and Inc. Mem. of Law Ex. A, at 2.

²⁹ *Whyte*, 2017 WL 3613418, at * 3 (employment contract provided that all disputes against Pueblo and “against any representative of the other” must be resolved by arbitration).

³⁰ *Moore*, 46 V.I. at 149.

³¹ *Id.*

³² *Valentin*, 2015 WL 13579631, at * 4.

³³ *Id.* (citing *Plaskett v. Bechtel Int’l, Inc.*, 243 F.Supp.2d 334, 339 (D.V.I. 2003) (quoting 9 U.S.C. § 2)).

agreement is unenforceable because (1) the FAA does not apply to the Virgin Islands; (2) Diamonds International failed to meet its burden of proving that the Employment Contract involved a transaction in interstate commerce; (3) any alleged arbitration agreement is unenforceable under 24 V.I.C. § 74a; (4) the stay provision of 9 U.S.C. § 3 does not apply in the Virgin Islands; and (5) V.I. R. Civ. P. 12(b)(6) and 12(d) cannot be utilized to dismiss the Complaint.³⁴

1. Virgin Islands jurisprudence has made the FAA applicable to the territory.

Bazar contends that the FAA does not apply to the Virgin Islands because while the Third Circuit has ruled that provisions of the FAA are enforceable, the Supreme Court of the Virgin Islands has questioned whether the FAA is applicable to the territory.³⁵ Bazar further argues that the FAA is not applicable because Congress enacted the FAA pursuant to its power to regulate interstate commerce under the Commerce Clause, which does not provide Congress with the power to regulate commerce in the territories, such as the Virgin Islands.³⁶

To support her claim that the Commerce Clause is inapplicable to the Virgin Islands, Bazar cites a myriad of legal authorities questioning the applicability of the FAA to the Virgin Islands through the Commerce Clause.³⁷ Specifically, Bazar avers that the Commerce Clause fails to reference that it applies to the Virgin Islands. Indeed, the Supreme Court has previously expressed reservations concerning the applicability of the FAA to disputes in the Virgin Islands.

When presented with the question concerning the applicability of the Commerce Clause to the territory, the Supreme Court stated that while it is “true that the Commerce Clause – in neither its positive nor dormant applications – is not listed among the provisions of the United States Constitution that Congress affirmatively extended to the Virgin Islands in section 3 of the Revised Organic Act”, the omission of the Commerce Clause from the [Revised] Organic Act cannot be interpreted to mean it does not apply to the Virgin Islands, “as it is clearly not the type of statutory provision in which we should expect to find such a reference.”³⁸ To illustrate, the Supreme Court stated that “section 3 does not reference any portion of the United States Constitution that concerns the structure of the federal government.”³⁹ In fact, “section 3 even omits the most basic provisions, such as those setting forth how a bill becomes law, or outlining the powers of the Legislative, Executive, and Judicial Branches.”⁴⁰ Therefore, the Supreme Court found that it cannot interpret that the Commerce Clause does not apply to the Virgin Islands simply because the Commerce Clause is not referenced in the Revised Organic Act.⁴¹

³⁴ Pl.’s Opp’n to Mot. to Stay Proceedings and Compel Arbitration or Alternatively Dismiss the Compl. and Compel Arbitration 2.

³⁵ *Id.* at 3.

³⁶ *Id.* at 4.

³⁷ *Id.* at 2-5.

³⁸ *Whyte*, 2018 WL 4191523, at * 4.

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

While it is unclear whether the FAA applies to the Virgin Islands by way of the Commerce Clause, the FAA applies to “any territory of the United States including the Virgin Islands” through the Territorial Clause.⁴² The Supreme Court expressly stated that “the FAA is a legislation which plainly states that it applies to the Virgin Islands, the Act may very well apply to the territory by way of the Territorial Clause.”⁴³ In spite of this clear language, the Supreme Court held that it need not decide whether Congress utilized the Commerce Clause or Territorial Clause in applying the FAA to the Virgin Islands.⁴⁴ Rather, the Supreme Court decided in *Whyte* that the FAA applied because an interstate nexus exists.⁴⁵ Likewise, the FAA applies to this case because an interstate nexus exists.

2. The Employment Contract establishes an interstate nexus.

Bazar argues that Diamonds International failed to submit any evidence that the alleged arbitration agreement has “any connection to interstate commerce such that the FAA applies to [Bazar’s] employment contract.”⁴⁶ Bazar further argues that legal precedent requires that Diamonds International must prove that the contract evidences a transaction involving interstate commerce.⁴⁷ Because Diamonds International failed to prove interstate nexus, Bazar argues that Diamonds International may not do so in a reply brief because she will not have a chance to respond.⁴⁸

While it is the burden of the party compelling arbitration to prove interstate commerce, the Supreme Court has analyzed whether an employment contract establishes an interstate nexus when the contract was part of the record.⁴⁹ Similarly, here, the Employment Contract is part of the record. Thus, the Court will determine whether the Employment Contract establishes an interstate nexus.

A contract comes within the purview of the FAA if an interstate nexus is shown.⁵⁰ However, a party compelling arbitration must not only show that an agreement to arbitrate exists, but also that the contract establishes an interstate nexus, which is a relatively low burden to

⁴² *Id.* at 4 (Congress has the authority to regulate the Virgin Islands through legislation, such as the FAA, under the Territorial Clause).

⁴³ *Id.* at 5.

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ Pl.’s Opp’n to Mot. to Stay Proceedings and Compel Arbitration or Alternatively Dismiss the Compl. and Compel Arbitration. 7.

⁴⁷ *Id.*

⁴⁸ Bazar argues that “when an argument is raised for the first time on appeal in a reply brief, that argument is deemed waived because the appellee will not get an opportunity to respond to the argument.” *Id.* at 7 n.6 (quoting *Benjamin v. AIG Ins. Co. of Puerto Rico*, 56 V.I. 558, 567 (V.I. Apr. 12, 2012)).

⁴⁹ *Whyte*, 2018 WL 4191523, at * 6 n.9-10 (“Although Pueblo raises this point for the first time on appeal, the employment contract is a part of the record.”).

⁵⁰ *Id.* at 5 (quoting *Gov’t of the V.I. v. United Indus.*, 64 V.I. 312, 322 n.3 (V.I. 2016)) (whether Congress utilized its Commerce Clause power or Territorial Clause power to apply the FAA to the Virgin Islands, an interstate nexus must be shown).

establish.⁵¹ Specifically, the FAA requires the contract to evidence a transaction involving commerce.⁵² “Precisely, for an interstate nexus to exist, the parties’ agreement need not be in interstate commerce nor have a substantial effect on interstate commerce; in other words, the FAA commands the ‘full reach’ of Congress’s commerce power.”⁵³ Rather, the contract must only affect interstate commerce by evidencing at least one of the parties’ economic activities demonstrates a nexus to interstate commerce.⁵⁴

Here, the Employment Contract establishes an interstate nexus.⁵⁵ The contract is between Bazar, a St. Thomas resident, and Diamonds International, “a wholly owned subsidiary of Almod Diamonds Ltd. Incorporated in New York with its principal place of business in New York [,] which does business in the U.S. Virgin Islands.”⁵⁶ The contract expressly provides that the “[e]mployer hereby employs Employee as a Sales Associate in Employer’s operations located in the U.S. Virgin Islands and *such other locations as Employer may commence operations.*”⁵⁷ While it is unclear which other locations Diamonds International operate, it is undisputed that Bazar worked at Diamonds International’s stores in Alaska at least twice during her employment.⁵⁸ Therefore, such regulation of “an important aspect of the parties’ agreement is sufficient to establish an interstate nexus.”⁵⁹

Furthermore, the contract provides that “[e]mployee . . . Bazar, fully understands and acknowledges that tourism is the foundation of our economic prosperity and that it is essential that the employer is open in order to take advantage of cruise ship arrivals.”⁶⁰ In *Whyte*, the Supreme Court concluded that a business that receives its goods from interstate commerce that “arrive to St. Croix via container ship” affects interstate commerce even if slightly.⁶¹ Likewise, Diamonds International’s business is derived from customers arriving to the Virgin Islands through cruise

⁵¹ *Id.* at 6.

⁵² *Id.* (quoting *Allen v. HOVENSA, L.L.C.*, 59 V.I. 430, 442 n.2 (V.I. 2013)).

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ Compl. ¶ 5.

⁵⁷ Defs.’ Mot. to Stay Proceedings and Compel Arbitration or, in the Alt., to Dismiss the Compl. and Compel Arbitration and Inc. Mem. Of Law. Ex. A, at 1 (emphasis added).

⁵⁸ Compl. ¶¶ 17, 47.

⁵⁹ *Whyte*, 2018 WL 4191523, at * 7 (interstate nexus established when “the employment contract required that Whyte send any notices to Pueblo to an address that the company maintains in Chicago, Illinois”); *Prentice v. Seaborne Aviation, Inc.*, 65 V.I. 96, 108 (V.I. Super. Ct. 2016) (interstate nexus established when the employment contract concerned work to be performed in the Virgin Islands between a Virgin Islands business that provided interstate and international commercial air travel and a Virgin Islands citizen).

⁶⁰ Defs.’ Mot. to Stay Proceedings and Compel Arbitration or, in the Alt., to Dismiss the Compl. and Compel Arbitration and Inc. Mem. Of Law. Ex. A, at 2.

⁶¹ The record did not establish that Pueblo’s goods were actually imported via container ship, but the Supreme Court used this point to emphasize that the bar to establish interstate nexus is relatively low that a business could establish interstate nexus by receiving its goods via container ship. In this case, the interstate nexus was already established because the employment contract required that Whyte must report to Chicago. See *Whyte*, 2018 WL 4191523, at * 6, 6 n.10.

ships leaving from various ports. Therefore, here – as in *Whyte* – the employment contract is sufficient to establish an interstate nexus to invoke the application of the FAA.⁶²

3. The FAA preempts 24 V.I.C. § 74a.

Bazar also argues that since Diamonds International failed to prove that the employment contract involves a transaction in interstate commerce, any alleged arbitration agreement is unenforceable under the FAA or general contract principles.⁶³ Specifically, Bazar argues that Diamonds International failed to comply with the “requirements of 24 V.I.C. § 74a which, notwithstanding the existence of an employment contract or an arbitration clause, purport to allow arbitration of disputes only where: 1) the party seeking arbitration submits a written request for arbitration to the other party, and 2) the other party consents in writing no later than sixty days after receiving the request.”⁶⁴ However, it is well-established in the Virgin Islands that 24 V.I.C. § 74a is preempted by the FAA.⁶⁵ Consequently, the Court finds that Bazar’s argument rendering the arbitration agreement of the Employment Contract unenforceable for failure to comply with § 74a must fail.⁶⁶

C. Because all of Bazar’s claims are subject to the arbitration agreement, the Court will exercise its inherent power to control its docket to best promote fair and efficient dispute resolution and dismiss Bazar’s Complaint.

Bazar’s last two points of contention involve which standard the Court must utilize to dispose of the instant matter.⁶⁷ First, Bazar correctly contends that the automatic stay under 9 U.S.C. § 3 is not applicable to the Virgin Islands.⁶⁸ Second, Bazar contends that V.I. R. Civ. P. 12(b)(6) cannot dispose of this matter because Diamonds International has attached exhibits of matters outside the pleadings to its Motion.⁶⁹ Alternatively, Bazar argues that the Court must not utilize V.I. R. Civ. P. 12(d) to dismiss this matter also because adequate discovery has not been

⁶² *Id.* at 6.

⁶³ Pl.’s Opp’n to Mot. to Stay Proceedings and Compel Arbitration or Alternatively Dismiss the Compl. and Compel Arbitration 8.

⁶⁴ *Prentice*, 65 V.I. at 101.

⁶⁵ See e.g. *id.* (citing *Moore v. HOVENSA, L.L.C.*, 46 V.I. 144, 147-148 (V.I. Super. Ct. 2005); *Rose v. HOVENSA, L.L.C.*, 46 V.I. 151, 153 (V.I. Super. Ct. 2005); *Edwards v. HOVENSA, LLC*, 497 F.3d 355, 362 n.4 (3d Cir. 2007); *Wilhelm v. Hovic*, 2009 U.S. Dist. LEXIS 13624, at *8, 2009 WL 424592 (D.V.I. 2009)).

⁶⁶ *Id.*

⁶⁷ Pl.’s Opp’n to Mot. to Stay Proceedings and Compel Arbitration or Alternatively Dismiss the Compl. and Compel Arbitration 11-13.

⁶⁸ *Id.* *Prentice*, 65 V.I. at 110 (“[I]t appears that § 3, by its own terms, applies only to actions brought in the courts of the United States and not to proceedings in state or territorial courts. Thus, evaluating the plain meaning of the statute itself in conjunction with the opinions of the Supreme Court of the Virgin Islands in *World Fresh [Mkt. v. P.D.C.M. Assocs., S.E.]* and subsequent cases, the Court concludes that § 3 constitutes a procedural provision of the FAA that is not, by its own terms, applicable to proceedings in Virgin Islands courts.”). S. Ct. Civ. No. 2011-0051, 2011 WL 3851739, at * 2 (V.I. Aug. 25, 2011).

⁶⁹ Pl.’s Opp’n to Mot. to Stay Proceedings and Compel Arbitration or Alternatively Dismiss the Compl. and Compel Arbitration 11.

conducted and Diamonds International has not presented any evidence warranting summary judgment.⁷⁰

The Court need not rely upon V.I. R. Civ. P. 12(b)(6) or V.I. R. Civ. P. 12(d) to dismiss the present action. In cases where a party moves to compel arbitration and stay proceedings or in the alternative dismiss the case, Virgin Islands courts have permitted discretionary dismissal in actions in which all claims have been referred to arbitration.⁷¹ Specifically, courts that favor discretionary dismissal rightfully argue that “retaining jurisdiction over actions that have been referred, in their entirety, to arbitration would serve no purpose as any post-arbitration remedy sought by parties would ‘not entail renewed consideration and adjudication on the merits of the controversy but would be circumscribed to judicial review of the arbitrator’s award in the limited manner prescribed by law.’”⁷² In fact, retaining jurisdiction may only encourage parties to resort to filing motions with the court where the parties may disagree with parts of the arbitrator’s decision, “thereby diminishing the role of the arbitrator and delaying resolution of the dispute.”⁷³

Here, all of Bazar’s claims must be referred to arbitration.⁷⁴ The arbitration agreement mandates that the “arbitration procedure is the sole, final, binding and exclusive remedy for any and all employment related disputes.”⁷⁵ Consequently, the Court finds that since arbitration is “the sole forum in which [Bazar] may seek redress for [her] . . . claims necessarily leads to the conclusion that the Court’s role in the substantive resolution of the dispute between the parties has come to an end.”⁷⁶

The Court concludes that the Employment Contract’s mandatory arbitration agreement is enforceable, and that Bazar’s claims must be resolved in arbitration. This Court has previously analyzed and determined that the “best policy for the Virgin Islands is to permit discretionary dismissal of actions in which all claims have been referred to mandatory, binding arbitration.”⁷⁷ By dismissing the Complaint, the Court will efficiently manage its docket by dismissing cases in which the Court will no longer have any action left to take, other than enforce a party’s compliance with the arbitration award or vacate the award, which is distinct from the instant matter.⁷⁸ Further, by dismissing the Complaint, the Court furthers the goal of permitting parties to resolve disputes

⁷⁰ *Id.*

⁷¹ *Prentice*, 65 V.I. at 113; *Whyte*, 2017 WL 3613418, at * 6.

⁷² *Prentice*, 65 V.I. at 112.

⁷³ *Id.*

⁷⁴ *Id.* at 113; *Whyte*, 2017 WL 3613418, at * 6.

⁷⁵ Defs.’ Mot. to Stay Proceedings and Compel Arbitration or, in the Alt., to Dismiss the Compl. and Compel Arbitration and Inc. Mem. Of Law. Ex. A, at 3.

⁷⁶ *Prentice*, 65 V.I. at 113 (Therefore, “[t]he Court finds that the most appropriate course of action is to exercise its inherent power to control its docket to best promote the fair and efficient resolution of the dispute between the parties and, on that basis, dismiss Plaintiff’s Complaint.”); *Whyte*, 2017 WL 3613418, at * 6.

⁷⁷ *Id.*

⁷⁸ *Id.*

in a forum of their own choosing.⁷⁹ Accordingly, the Court will grant the Motion in part and dismiss Bazar's Complaint.

IV. CONCLUSION

The Court finds that the FAA is applicable to the Employment Contract between Bazar and Diamonds International and therefore, pursuant to the contract's mandatory arbitration agreement, Bazar's claims must be resolved in arbitration. Having determined that all of Bazar's claims against Diamonds International are subject to arbitration, there is no further controversy over which the Court must retain jurisdiction. Consequently, the Court finds that the most appropriate course of action is to exercise its inherent power to control its docket to best promote the fair and efficient resolution of the dispute between the parties and, on that basis, dismiss Bazar's Complaint.⁸⁰ As a result, Diamonds International's Motion will be granted in part and denied in part.

Accordingly, it is hereby

ORDERED that Defendants' Motion to Stay Proceedings and Compel Arbitration or, in the Alternative, to Dismiss the Complaint and Compel Arbitration and Incorporated Memorandum of Law, filed on July 16, 2018, is **GRANTED** to the extent that the Motion requests the Court to compel arbitration and dismiss the case; and it is further

ORDERED that Defendants' Motion to Stay Proceedings and Compel Arbitration or, in the Alternative, to Dismiss the Complaint and Compel Arbitration and Incorporated Memorandum of Law, filed on July 16, 2018, is **DENIED** to the extent that the Motion requests a stay of proceedings pending arbitration; and it is further

ORDERED that Sena Salem-Bazar's Complaint is **DISMISSED with prejudice**, and Bazar **SHALL** send her written notice to initiate arbitration proceedings to the Human Resources Director at the Employer's current address in accordance with the parties' Employment Contract; and it is further

ORDERED that a copy of this Memorandum Opinion and Order shall be directed to Attorney Stephanie L. Adler-Paindiris and Attorney Alicia M. Chiu of Jackson Lewis P.C., and to Attorney Lee J. Rohn of Lee J. Rohn and Associates, LLC.

DATE: 10/30/2018

ATTEST:

Estrella H. George
Clerk of the Court

By:

Lori Boynes-Tyson
Chief Deputy Clerk

Denise M. Francois

DENISE M. FRANCOIS

Judge of the Superior Court of the Virgin Islands

⁷⁹ *Id.*

⁸⁰ *Id.*