IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN
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MOHAMMED SUID, **Plaintiff,** **-vs-** **LAW OFFICES OF KARIN A BENTZ, P.C., and KARIN BENTZ,** **Defendants.**	**CASE NO. ST-18-CV-349** **ACTION FOR DAMAGES** **JURY TRIAL DEMANDED**

MEMORANDUM OPINION AND ORDER

Before the Court is Defendants' Motion to Compel Arbitration, Dismiss the Case, or in the Alternative, Stay Proceedings and Memorandum of Law in Support ("Motion"), which was filed on September 4, 2018. Plaintiff did not file a response.[1]

Plaintiff's claims are subject to the parties' Contracts for Legal Services' mandatory and binding disputes provision, which provides that questions or disputes as to the amount of a statement must be resolved in arbitration. Although the Court concurs with the Motion's premise that arbitration is the sole forum within which Plaintiff may pursue his claims, Defendants' Motion is only granted in part. Because the Plaintiff must seek his relief exclusively in arbitration, there is no further action to be taken by the Court, and therefore, discretionary dismissal of the action is preferable to a stay of proceedings. Accordingly, Defendants' Motion is granted in part and denied in part, and the Plaintiff's Complaint will be dismissed.

I. BACKGROUND

Plaintiff Mohammed Suid hired Defendant Law Offices of Karin A. Bentz, P.C. ("Firm") to represent him with respect to the following personal injury matters on a contingency basis: (1) an auto accident in St. Thomas, U.S. Virgin Islands on April 4, 2014; (2) an auto accident in St. Thomas, U.S. Virgin Islands on June 20, 2014; (3) an accident at the Hard Rock Hotel Casino in Hollywood, Florida on September 11, 2014; (4) an auto accident in St. Thomas U.S. Virgin Islands on April 8, 2015; and (5) an auto accident on October 24, 2015.[2] Defendant Karin Bentz ("Bentz")

[1] On September 12, 2018, the Court Ordered Plaintiff to respond to Defendant's Motion to Compel Arbitration, Dismiss the Case, or in the Alternative, Stay Proceedings and Memorandum of Law in Support by September 25, 2018.

[2] Def.'s Mot. to Compel Arbitration, Dismiss the Case, or in the Alt., Stay Proceedings and Mem. Of Law in Supp. Ex A.

is the "owner, agent, and partner of"[3] the Law Offices of Karin A. Bentz, P.C., and provided the legal services for Suid's personal injury matters.[4]

Suid's Complaint is not clear as to which one of his five Contract for Legal Services is the basis for the current dispute.[5] Rather, Suid's Complaint broadly alleges that despite agreeing to represent him on a contingency basis, the Firm required Suid's credit card information and improperly billed him monthly.[6] The Complaint further alleges that the Firm made unauthorized charges to Suid's credit card. The legal services provided to Suid are all governed by a Contract for Legal Services, which included a disputes provision[7] (herein referred to as "arbitration agreement") wherein the parties agreed as follows:

> Questions or disputes as to the amount of a statement shall be brought to the attention of the Firm within fifteen (15) days of receipt of the bill. The statement will be reviewed and you may be charged for this time unless that statement is in error. If Agreement cannot be reached, the matter shall be submitted to Mediation first and then to the American Arbitration Association in accordance with their rules for Commercial Disputes for a final binding and judicially-enforceable arbitration award concerning amounts due. Any other disputes or claims between Client and Firm may be resolved in accordance with the rules of the American Arbitration Association for Commercial Disputes. The expenses of Mediation and Arbitration will be divided by the Client and the Firm.[8]

Suid's Complaint alleges four counts: breach of contract, negligent and/or intentional misrepresentation, reimbursement of the fees the Firm improperly charged, and fraud. By their Motion, the Firm argues that Suid's claims are all fee disputes which are subject to the arbitration agreement, and thereby ask the Court to enter an order compelling arbitration and dismissing the case, or in the alternative stay proceedings pending the completion of arbitration.

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

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[3] Def.'s Mot. to Compel Arbitration, Dismiss the Case, or in the Alt., Stay Proceedings and Mem. Of Law in Supp. 5.
[4] Please note that the Court will refer to Defendants Law Offices of Karin A. Bentz, P.C. and Karin Bentz collectively as "Firm". However, when discussing sections only applicable to Attorney Karin Bentz, the Court will refer to her as Bentz.
[5] The Firm states that all of Suid's claims, evidenced by the contract for legal services, have been settled except for the contract executed on January 14, 2015 injury occurring in Florida.
[6] Compl. ¶¶ 8-9, 11.
[7] All five contracts for legal services contain the exact same "Disputes" provision.
[8] Def.'s Mot. to Compel Arbitration, Dismiss the Case, or in the Alt., Stay Proceedings and Mem. Of Law in Supp. Ex A.

the manner provided for in such agreement.'"[9] 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."[10]

When ruling on a motion to compel arbitration under the FAA, the Court need not consider the merits of the underlying claims.[11] Rather, the "primary purpose of the FAA is to ensure that private agreements to arbitrate are enforced according to their terms."[12] "Courts have long recognized that arbitration is a creature of contract and litigants may contract to resolve their disputes through arbitration."[13] 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.[14] 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.[15]

III. ANALYSIS

A. The contract for legal services contains a valid arbitration agreement.

The Court's first consideration in determining arbitrability is whether there is a valid arbitration agreement between Suid and the Firm. In determining whether an agreement to arbitrate is valid, the threshold question is whether there was a valid contract.[16] In the Virgin Islands, a valid contract requires a "bargain in which there is a mutual assent to the exchange, and consideration."[17] In measuring assent, Courts look to the parties' outward expression, such as an express contract.[18] Arbitration agreements are valid when consideration exists between both parties.[19]

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[9] *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.").
[10] 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 exits. *Whyte*, 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).
[11] *Whyte*, 2017 WL 3613418, at *2; *Daniel*, 2015 WL 13579174, at * 1.
[12] *Id.*
[13] *Valentin*, 2015 WL 13579631, at * 2.
[14] *Id.*; *Whyte*, 2017 WL 3613418, at *2.
[15] *Valentin*, 2015 WL 13579631, at * 4.
[16] *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.").
[17] *Valentin*, 2015 WL 13579631, at * 3.
[18] *Id.*
[19] *Id.*

In the instant matter, mutual assent is evidenced by the parties entering into the contract where the Firm is to provide legal representation, and Suid is to pay for that service.[20] As such, the parties agreed to be bound by the arbitration agreement.[21] Further, Suid's signature appears on all five Contracts for Legal Services containing the arbitration agreement. This indicates that consideration exists.[22] Two contracts show a signature date of January 14, 2015. One contract shows a signature date of April 4, 2017. One contract does not show a signature date, and one contract's signature date is illegible. While the contracts only contain Suid's signature, the contracts expressly state that the contract will not take effect and legal services will not be provided "until [Suid] return[s] a signed copy of this Agreement." Moreover, Suid's signature appears below a statement which reads "[y]our signature acknowledges you understand the [c]ontract and agree to all its terms."

The Court finds that the four corners of the contract sufficiently establish the intent of the parties to arbitrate Suid's claims.[23] "When interpreting any contract, the intent of the parties control and those intentions are generously construed as to the arbitrability of a claim."[24] Accordingly, the Court finds that the express language of the contract binds Suid to arbitrate his claims against the Firm arising from questions or disputes as to the amount charged in a statement.

B. Suid's claims are within the scope of the arbitration agreement.

The Court must next determine whether Suid's claims of breach of contract, negligent and/or intentional misrepresentation[25], reimbursement of the fees the Firm improperly charged, and fraud from the improper fee charges falls within the scope of the disputes provision.[26] As stated above, FAA ensures that private agreements to arbitrate are enforced according to the parties' terms.[27] Here, the plain language of the arbitration agreement contained in the contract states in relevant part, " . . . disputes as to the amount of a statement . . . *shall* be submitted to Mediation first and then to the American Arbitration Association . . . ." The arbitration agreement further provides that the American Arbitration Association will determine "a final binding and judicially-enforceable arbitration award concerning amounts due." Ergo, Suid's claims are within the scope of the arbitration agreement. Consequently, the Court finds that this matter is referable to mediation and then arbitration because the arbitration agreement is valid, and Suid's claims fall within the scope of the arbitration agreement.[28]

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[20] *Id.* at 4.
[21] *Id.* (parties' signatures acknowledging the arbitration agreement established mutual assent); *Whyte*, 2017 WL 3613418, at * 4 (mutual assent evidenced by the parties' continued employment despite the contract's expiration date).
[22] *Valentin*, 2015 WL 13579631, at * 4 (consideration exists when parties signed the disputes resolution agreement displaying parties' intent to be bound by the arbitration agreement).
[23] *Moore v. Hovensa, L.L.C.*, 46 V.I. 144, 149 (V.I. 2005).
[24] *Id.*
[25] Compl. While Suid's Complaint lacks specificity as to Count II, this claim involves a fee dispute because Suid "repeats and realleged each allegation contained in paragraph 1 through 17 . . . ."
[26] *Valentin*, 2015 WL 13579631, at * 2; *Whyte*, 2017 WL 3613418, at *2.
[27] *Whyte*, 2017 WL 3613418, at *2; *Daniel*, 2015 WL 13579174, at * 1.
[28] *Valentin*, 2015 WL 13579631, at * 2; *Whyte*, 2017 WL 3613418, at *2.

C. Karin Bentz is an intended third-party beneficiary, and therefore, may enforce the arbitration agreement.

The Court must also decide whether Karin Bentz ("Bentz"), as a non-signatory to an agreement to arbitrate, is a third-party beneficiary that is bound by the agreement. The Firm argues that while Bentz is not a signatory to the contract, "as an owner, agent and partner of her firm, at all relevant times, she is subject to and covered by the arbitration agreement and is entitled to enforce it as a third-party beneficiary."[29] The Court agrees.

A third-party beneficiary may enforce an arbitration agreement.[30] When seeking to compel arbitration, a third-party beneficiary has been bound by contract terms where the claim arises out of the underlying contract to which it was an intended third-party beneficiary.[31] Intended beneficiaries of a contract are entitled to enforce arbitration provisions of a contract only if the dispute is covered by the contract.[32]

To prove intended beneficiary status, the third-party must show that the contract reflects the express or implied intention of the parties to the contract to benefit the third-party.[33] The contract need not name a beneficiary specifically or individually in the contract; however, the court must examine the terms of the contract as a whole, giving them their ordinary meaning.[34] Moreover, "a beneficiary of a promise is an intended beneficiary if recognition of a right to performance in the beneficiary is appropriate to effectuate the intention of the parties . . . [and] the circumstances indicate that the promise intends to give the beneficiary the benefit of the promised performance."[35]

Here, Bentz is an intended third-party beneficiary of the firm and Suid's contract.[36] Bentz is the owner, agent, and principal of the Firm. The contract expressly states, *inter alia*, that "fees may be charged on the basis of time and effort required, complexity of matters, difficulties encountered, [and] skill required to perform the legal services[.]" In addition, the contract expressly states that "the Firm reserves the responsibility of designating which employee shall perform the various aspects of the representation." In Suid's case, Bentz provided the legal representation, which triggered the four hundred twenty-five dollars ($425.00) hourly rate. The

[29] Def.'s Mot. to Compel Arbitration, Dismiss the Case, or in the Alt., Stay Proceedings and Mem. Of Law in Supp. 5.
[30] *Foy v. Ambient Technologies, Inc.*, Civ. No. 07-92, 2009 WL 1750033, at *2 (D.V.I. June 19, 2009).
[31] *Id.* (quoting *E.I. DuPont de Nemours & Co. v. Rhone Poulenc Fiber & Resin Intermediates, S.A.S.*, 269 F.3d 187, 195 (3d Cir. 2001)).
[32] *Id.*
[33] *Allison Petrus, Surtep Enters., Inc. v. Queen Charlotte Hotel Corp.*, 56 V.I. 548, 555 (V.I. 2012) (overruled on other grounds) ("[A] third-party that was an intended beneficiary of the promise may also bring an action to enforce a promise in the contract, even though they did not sign the contract.")
[34] *Id.* at 555-56.
[35] *Id.* at 556.
[36] *Id.* at 555.

legal services provided by Bentz were appropriate to effectuate the intention of the Firm and Suid.[37]

Moreover, Suid's claims against Bentz are covered by the contract.[38] Suid's Complaint does not differentiate between the defendants. The dispute agreement provides "questions or disputes as to the amount of a statement shall be . . . submitted to Mediation first and then to the American Arbitration Association" if an agreement cannot be reached. Since all of Suid's claims reference that he was improperly billed and his credit card improperly used, his claims against Bentz must also be submitted to mediation and then arbitration.

D. The Firm meets its burden to establish an interstate nexus.

A contract comes within the purview of the FAA if an interstate nexus is shown.[39] 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 relatively low.[40] Specifically, the FAA requires the contract to evidence a transaction involving commerce.[41] "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."[42] Rather, the contract must only affect interstate commerce by evidencing at least one of the parties' economic activities demonstrates a nexus to interstate commerce.[43]

Here, the Firm establishes an interstate nexus.[44] The contracts at issue are between Suid, a St. Thomas resident, and the Firm, a "Virgin Islands Professional Corporation that [] Bentz owns."[45] The contract required that legal "services shall specifically be with regards to litigation regarding an accident at the Hard Rock Hotel & Casino in Hollywood, Florida on September 11, 2014." "This provision regulating an important aspect of the parties' agreement is sufficient to establish an interstate nexus."[46] In addition, the Firm's credit card usage "for all amounts, charges,

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[37] *Id.* at 556.
[38] *Foy*, 2009 WL 1750033, at *2.
[39] *Whyte*, 2018 WL 4191523, 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).
[40] While the Firm in this case did not raise this argument in their Motion, the contract is part of the record. *Whyte*, 2018 WL 4191523, at * 6 ("Although Pueblo raises this point for the first time on appeal, the employment contract is a part of the record.").
[41] *Id.* (quoting *Allen v. HOVENSA, L.L.C.*, 59 V.I. 430, 442 n.2, (V.I. 2013)).
[42] *Id.*
[43] *Id.*
[44] *Id.*
[45] *See id.* Compl.
[46] *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. 2016) (interstate nexus established when the employment contract concerned work

costs, and expenses" also establishes an interstate nexus.[47] Hence, based on the record, the Firm sufficiently met its burden to establish an interstate nexus. Accordingly, the FAA applies to the parties' contracts for legal services.

E. Because all of Suid'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 Suid's Complaint.

The Firm moves the Court to compel arbitration and dismiss the case or in the alternative stay proceedings. Virgin Islands courts have permitted discretionary dismissal in actions in which all claims have been referred to arbitration.[48] 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 of the merits of the controversy but would be circumscribed to judicial review of the arbitrator's award in the limited manner prescribed by law.'"[49] 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."[50]

Here, each of Suid's claims must be referred to mediation and then arbitration.[51] Furthermore, the contract states that the American Arbitration Association provides the "final binding and judicially-enforceable arbitration award concerning amounts due." As a result, the arbitration agreement, pursuant to the valid contract for legal services, provides "the sole forum in which [Suid] may seek redress for his . . . 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."[52]

Since Suid's claims are referred to mandatory arbitration, there remains no action to be taken by this Court with regard to Suid's action against the Firm. This Court has previously analyzed and determined that the "best policy for the Virgin Islands is to permit discretionary

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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).

[47] Suid states that his credit card was used "to bill for the expenses to travel to Florida to inspect the scene, hire investigators and to virtually take vacations on Plaintiff's credit card[.]" *Whyte*, 2018 WL 4191523, at * 6 (citing to *United States v. Bolton*, 68 F.3d 396, 400 (10th Cir. 1995)) ("[D]efendant's possession of stolen credit cards containing out-of-state addresses was sufficient to establish the requisite effect on interstate commerce in the context of credit card fraud because only a de minims effect was necessary.").

[48] *Prentice*, 65 V.I. at 113; *Whyte*, 2017 WL 3613418, at * 6.

[49] *Prentice*, 65 V.I. at 112.

[50] *Id.*

[51] *Prentice*, 65 V.I. at 113; *Whyte*, 2017 WL 3613418, at * 6.

[52] *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.

dismissal of actions in which all claims have been referred to mandatory, binding arbitration."[53] 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.[54] Further, by dismissing the Complaint, the Court furthers the goal of permitting parties' to resolve disputes in a forum of their own choosing.[55] Accordingly, the Court will grant the Motion in part and dismiss Suid's Complaint.

IV. CONCLUSION

The Court finds that the Contracts for Legal Services' mandatory arbitration clause is enforceable and that Suid's claims are covered by the arbitration agreement and therefore, must be resolved in arbitration. Having determined that all of Suid's claims against the Firm are subject to arbitration, there is no further controversy over which the Court must retain jurisdiction. As a result, the Firm's Motion will be granted in part and Suid's Complaint will be dismissed.

Accordingly, it is hereby

ORDERED that Defendant's Motion to Compel Arbitration, Dismiss the Case, or in the Alternative, Stay Proceedings, and Memorandum of Law in Support, filed on September 4, 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 Defendant's Motion to Compel Arbitration, Dismiss the Case, or in the Alternative, Stay Proceedings, and Memorandum of Law in Support, filed on September 4, 2018, is **DENIED** to the extent that the Motion requests to stay proceedings pending arbitration; and it is further

ORDERED that Mohammed Suid's Complaint is **DISMISSED with prejudice**, and Suid may file his written request to initiate arbitration proceedings with the American Arbitration Association in accordance with the Contract for Legal Services of the parties; and it is further

ORDERED that a copy of this Memorandum Opinion and Order shall be directed to Attorney Lee J. Rohn (Lee J. Rohn and Associates, LLC) and Attorney Charlotte K. Perrell (Dudley, Topper and Feuerzeig, LLP).

DATE: 10/26/2018

Denise M. Francois
DENISE M. FRANCOIS
Judge of the Superior Court of the Virgin Islands

ATTEST:
Estrella H. George
Clerk of the Court
By:
Lori Boynes-Tyson
Chief Deputy Clerk 10/26/18

[53] *Id.*
[54] *Prentice*, 65 V.I. at 113
[55] *Id.*