IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MICHAEL R. NELSON, : CIVIL ACTION

•

Plaintiff, : NO. 17-3232

:

:

DAVID L. BROWN, et al.,

v.

:

Defendants.

:

PLAINTIFF'S MEMORANDUM IN OPPOSITION TO CROSS-MOTION OF DEFENDANT HAMILTON FOR JUDGMENT ON THE PLEADINGS OR SUMMARY $\underline{JUDGMENT}$

In connection with his opposition to Plaintiff Nelson's Motion to Compel Arbitration, Defendant Michael Hamilton has filed a Cross-Motion for Judgment on the Pleadings or for Summary Judgment. The Cross-Motion raises four issues: (1) the notice that Plaintiff Nelson provided to the PBA was insufficient; (2) the law firm/LLC is an indispensable party; (3) the claims in the Amended Complaint are insufficiently specific; and (4) Defendant Hamilton is entitled to discovery.

The first three issues--regarding notice, the law firm as an indispensable party, and the specificity of the allegations in paragraph 18 of the Amended Complaint—were all previously addressed by Plaintiff Nelson in his Response to the Defendants' Motions to Dismiss the Amended Complaint (Nelson's Response is at ECF 51, and is incorporated by reference). Those issues have also been previously ruled upon by the Court, against Defendants, in the Court's Opinion denying the Motions to Dismiss the Amended Complaint (ECF 65). Hamilton's Cross-Motion fails to point to any new facts or new law that would compel this Court to reconsider its prior rulings on those issues.

The reasons why Defendant Hamilton is not entitled to discovery as to the issue of

arbitrability is addressed by Plaintiff Nelson in his Motion to Compel Arbitration currently

pending before the Court (ECF 76), which is incorporated by reference. For all of these reasons,

the Cross-Motion should be denied.1

Hamilton also argues that a stay is not proper. His primary argument is that he believes

that the Amended Complaint does not state a claim upon which relief should be granted.

However, pursuant to the FAA, 9 U.S.C. §3, this Court shall stay a lawsuit pending arbitration

upon a party's application. See Devon Robotics LLC v. DeViedma, 798 F.3d 136, 143-144 (3d

Cir. 2015). This is because of "the ongoing role of the district court after sending all of the

claims in a lawsuit to arbitration, including resolving disputes regarding the appointment of an

arbitrator, compelling witnesses, and entering judgment on the award... If a case were dismissed

rather than stayed, the parties would have to file a new action each time the Court's assistance

was required..." *Id.* at 143-144 (citations omitted).

Plaintiff thus respectfully requests that the Court grant his Motion.

Respectfully submitted,

Dated: June 29, 2018

/s Michael LiPuma

Michael LiPuma, Esq. 325 Chestnut Street, Suite 1109

Philadelphia, PA 19106

(215) 922-2126

¹ In addition, summary judgment is not proper because Hamilton has failed to provide a "Concise Statement of Material Facts" or otherwise to comply with this Court's Policies and Procedures regarding Rule 56 Motions.

2

CERTIFICATE OF SERVICE

I certify that on June 29, 2018 I caused a copy of the foregoing document, together with all supporting papers, to be served by ECF upon all parties and counsel.

/s Michael LiPuma, Esq. Michael LiPuma, Esq.