NOT TO BE PUBLISHED WITHOUT THE APPROVAL
OF THE COMMITTEE ON OPINIONS

GO EXPRESS, INC., EDWARD KIM and SARAH YOON KIM, Plaintiffs, v. AUTODROP, INC., HAYES MILLER, BRYCE MILLER, and PAUL MILLER, INC. Defendants.	SUPERIOR COURT OF NEW JERSEY CHANCERY DIVISION: BERGEN COUNTY DOCKET No. C-231-18 **OPINION**

Argued: September 28, 2018

Decided: October 10, 2018

Appearances: Stephen M. Orlofsky, (Blank Rome, LLP, attorneys) for defendants AutoDrop, Inc., Hayes Miller and Bryce Miller;

Seth L. Dobbs, (Aboyoun, Heller & Dobbs, LLC, attorneys) for defendant Paul Miller;

Eric Inglis, (Schenck, Price, Smith & King, LLP, attorneys) for Plaintiffs.

HON. EDWARD A. JEREJIAN, P.J.Ch.

This matter comes before the Court by way of Cross-Motion by Blank Rome LLP, counsel for Defendants AutoDrop, Inc., Hayes Miller and Bryce Miller, seeking an Order compelling arbitration in response to Plaintiff's initial order to show cause seeking preliminary injunctive relief. Blank Rome filed its cross-motion on September 13, 2018. Plaintiffs, represented by Schenck, Price, Smith & King, LLP, filed opposition on September 20, 2018, to which Defendants filed a reply brief on September 21, 2018. A separate order denying Plaintiff's order to show cause seeking temporary relief and preliminary restraints without prejudice was issued to each of the parties on October 1,

2018. This order exclusively addresses the arbitration issue argued before the Court on September 28, as raised for the first time in Defendants cross-motion.

LEGAL STANDARD

Defendants' cross-motion contends that as a threshold jurisdictional matter, this dispute is governed by a valid and enforceable arbitration clause in the License Agreement between the parties, and therefore falls under the jurisdictional umbrella of the Federal Arbitration Act. See Verified Complaint, Ex. H at 10.03.

The United States Supreme Court has "long recognized and enforced a liberal federal policy favoring arbitration agreements." Howsam v. Dean Witter Reynolds, Inc., 537 U.S. 79, 83 (2002) (internal citations omitted). Where a sufficient nexus exists between an agreement and interstate commerce, the Federal Arbitration Act ("FAA") provides for "the enforcement of arbitration agreements within the full reach of the Commerce Clause." Perry v. Thomas, 482 U.S. 483, 490 (1987). A written arbitration provision contained in a "contract evidencing a transaction involving commerce . . . 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. The New Jersey Legislature has codified the same arbitration principles in the New Jersey Arbitration Act. N.J.S.A. §§ 2A:23B-1 to 32.

The "principal purpose" of the FAA is to "ensure that private Arbitration Agreements are enforced according to their terms." AT&T Mobility, LLC v. Concepcion, 131 S. Ct. 1740, 1748 (2011) (internal citations omitted). Under the FAA, a court must compel arbitration if it finds: (1) that a valid arbitration agreement exists between the parties and (2) the dispute falls within the scope of the agreement. See Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc., 473 U.S. 614, 626-28 (1985); See also Gay v. CreditInform, 511 F.3d 369, 386 (3d Cir. 2007) (internal citations omitted).

The arbitration provision in the parties' License Agreement at bar contains a narrow exception that is the focal point of this dispute. The provision in the parties' License Agreement reads as follows:

> Licensee or Licensor shall be entitled to (i) commence legal proceedings . . . seeking such mandatory, declaratory or injunctive relief as may be necessary to define or protect the rights and enforce the obligations contained in this License Agreement pending the settlement of a Dispute in accordance with the arbitration procedures . . . . License Agreement § 10.03(f), Verified Complaint Ex. H.

Plaintiff proposes that the above exception takes the *entire* dispute out of arbitration merely because Plaintiffs are seeking injunctive relief. This argument is misplaced. In its initial order to show cause, Plaintiff not only asks the Court to enjoin AutoDrop from exercising its rights under the License Agreement, but also asks for complete relief from any of its own obligations under the License Agreement. Plaintiffs' counsel explicitly alluded to this during oral argument in representing plaintiffs desire to re-brand and promote the car wash, possibly with a new name and in a manner of its own choosing. This is not a request to maintain the *status quo*, but is in fact a dispositive request for complete relief under the parties' agreement.

In Thompson v. Nienaber, the plaintiff in a shareholder dispute sought "equitable relief in the form of a declaratory judgment stating that defendants' attempts to enforce the restrictive covenant against him are prohibited and establishing the value of his shares, a permanent injunction restraining defendants from enforcing the restrictive covenant, and other affirmative injunctive relief to compel defendants to comply with the shareholder's agreement and to require defendants to produce documents for inspection and account for their transactions, as well as relief in the form of compensatory and punitive damages and attorneys' fees and costs." Thompson v. Nienaber, 239 F. Supp 2d 478, 485 (D.N.J. 2002). The court declined to entertain this request because the plaintiff sought "permanent relief in [that] Court instead of in arbitration." Id. at 486.

As noted above, Plaintiff here similarly requests relief in its order to show cause that is simply not temporary or preliminary in form, but is in fact the type of "permanent relief" the Thompson court addressed. For instance, Plaintiff's request for an order permitting them to re-brand and promote the car wash under a name of its choosing and in a manner of its choosing is not preliminary in any sense of the word, but is in fact the exact form of dispositive relief the Thomas court declined to entertain. Instead, Plaintiff seeks to bypass the arbitration provision within the License Agreement that this particular dispute falls squarely within. This Court does not possess the authority to "preliminarily" relieve Plaintiff of any of its duties owed to Defendants under the License Agreement, as reflected in this Court's Order dated October 1, 2018 denying the order to show cause without prejudice, and ordering the parties to maintain the status quo until the issuance of this order.

If Plaintiff seeks "permanent," dispositive relief, it must abide by the binding arbitration provision within the License Agreement. As noted under the FAA and by the Thomas court, this court "cannot delve into the merits of an arbitrable dispute; [its] jurisdiction is limited to staying the civil action and compelling the parties to arbitrate." 239 F. Supp. 2d at 484. The only limited exception to this general rule is that a court may "consider the merits of the dispute for the sole purpose of determining *whether temporary injunctive relief is necessary pending the arbitration* of the dispute." Id. at 484-85 (emphasis added). As the court points out both in our October 1, 2018 order, as well as here, the relief sought by Plaintiff is neither temporary, nor necessary, pending the arbitration of this dispute.

For the forgoing reasons, Defendants cross-motion to compel arbitration is hereby granted. An order accompanies this decision.