IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

IDA WILSON,

Plaintiff,

v.

BJ'S WHOLESALE CLUB, INC.,

Defendant.

Civil Action No. 23-927-RGA

MEMORANDUM ORDER

Before me is Defendant's "Motion to Enforce Arbitration Agreement." (D.I. 13). Defendant's motion seeks to compel arbitration and dismiss the case or, in the alternative, stay the case pending arbitration proceedings. (*Id.* at 1 of 2). I have considered the parties' briefing. (D.I. 14, 15, 16). For the reasons set forth below, Defendant's motion is DENIED.

I. BACKGROUND

Plaintiff is an employee of Defendant. (D.I. 14 at 1). The parties dispute Plaintiff's precise application and hiring process. According to Plaintiff, she applied to work for Defendant at an in-person hiring event on October 23, 2021. (D.I. 15 at 3, D.I. 15-1 ¶¶ 4–6). According to Defendant, Plaintiff submitted an online application on October 6, 2021, then subsequently attended a hiring event where she received a conditional employment offer; Defendant supports its contention with an exhibit of Plaintiff's online application. (D.I. 14 at 2, D.I. 16 at 2, D.I. 16-2). Plaintiff denies having submitted an online application, or any other application, before the hiring event on October 23, 2021. (D.I. 15-1 ¶¶ 5–6). According to Defendant, all of its prospective hires, including those recruited at in-person events, must submit an online

application, but Plaintiff was not required to do so at the time of the hiring event because she had already filled out an application on October 6, 2021. (D.I. 16 at 3).

Defendant's online application includes an arbitration agreement that an applicant must agree to in order to submit an application. (D.I. 14 at 2–4). This arbitration agreement covers "any and all claims" that the applicant may bring against Defendant arising out of the applicant's application or employment with Defendant. (D.I. 14-3 at 1 of 9). The agreement states:

> BY ELECTRONICALLY SIGNING BELOW, YOU ARE AGREEING THAT YOU HAVE CAREFULLY READ THIS ARBITRATION AGREEMENT AND AGREE THAT ARE [sic] YOU ARE GIVING UP YOUR RIGHT TO A COURT OR JURY TRIAL ON COVERED CLAIMS, AND THAT PURSUANT TO THE TERMS OF THIS ARBITRATION AGREEMENT, YOU AND THE COMPANY ARE AGREEING TO ARBITRATE DISPUTES COVERED BY THIS ARBITRATION AGREEMENT.

(*Id.* at 8–9 of 9).

After the hiring event, Defendant sent Plaintiff an offer letter on December 17, 2021 that stated its terms did not affect Plaintiff's agreement to arbitrate any employment disputes she may have with Defendant. (D.I. 16 at 3, D.I. 16-5). Plaintiff subsequently began working for Defendant. (D.I. 5 ¶ 8).

Plaintiff submitted a charge of discrimination against Defendant to the United States Equal Employment Opportunity Commission on June 1, 2023, which issued a right to sue letter on June 5, 2023. (D.I. 5 ¶¶ 4–5). Plaintiff subsequently filed this suit and Defendant moved to compel arbitration. (D.I. 5, 13). The parties have briefed the issue, with Defendant providing copies of Plaintiff's online application and Plaintiff denying having ever submitted an online application or agreeing to arbitrate. (D.I. 16-2, D.I. 15 at 1, D.I. 15-1 ¶¶ 5–7).

II. LEGAL STANDARD

For a court to compel arbitration, it "must determine that (1) a valid agreement to arbitrate exists, and (2) the particular dispute falls within the scope of that agreement." *Kirleis v.*

Dickie, McCamey & Chilcote, P.C., 560 F.3d 156, 160 (3d Cir. 2009). A motion to compel arbitration should not be granted if there is a genuine dispute as to whether parties agreed to arbitrate. *Guidotti v. Legal Helpers Debt Resol., L.L.C.*, 716 F.3d 764, 771 (3d Cir. 2013).

The standard to determine whether to grant a motion to compel arbitration depends on the record in the case. *Id.* at 776. On the one hand, a Rule 12(b)(6) motion to dismiss standard applies "when it is apparent, based on 'the face of a complaint, and documents relied upon in the complaint,' that certain of a party's claims 'are subject to an enforceable arbitration clause.'" *Id.* (internal citations omitted); *see also Robert D. Mabe, Inc. v. OptumRX*, 43 F.4th 307, 325 (3d Cir. 2022) (explaining that, under the Rule 12(b)(6) standard for evaluating a motion to compel arbitration, "we look to the complaint and the documents on which it relies and will compel arbitration only if it is clear, when read in the light most favorable to the respondents, that the parties agreed to arbitrate"). On the other hand, if the complaint is unclear regarding an agreement to arbitrate or if the non-moving party presents sufficient facts to place an agreement to arbitrate into issue, then the parties are entitled to "limited discovery" and further briefing, which will be reviewed under a Rule 56 summary judgment standard. *Guidotti*, 716 F.3d at 776. In this scenario, after renewed briefing, if "there is 'a genuine dispute as to the enforceability of the arbitration clause,' the 'court may then proceed summarily to a trial'" on whether an arbitration agreement was made. *Id.*

III. DISCUSSION

The issue is into which of the two contexts this case falls and thus the standard of review that applies. Plaintiff makes no specific argument as to what standard of review applies but argues that her complaint is silent as to arbitration and requests discovery on the issue. (D.I. 15 at 1–3). Plaintiff's request for discovery is consistent with the summary judgment standard

being applied after limited discovery and renewed briefing. Defendant submits that the summary judgment standard applies but argues that discovery is unnecessary. (D.I. 14 at 4–5, D.I. 16 at 3).

When a complaint is unclear as to whether there is an arbitration agreement, a motion to compel arbitration must be denied and the parties must be allowed the opportunity to obtain discovery on the issue of arbitration. *Guidotti*, 716 F.3d at 774. After limited discovery, the moving party can file a renewed motion to compel arbitration and the parties can brief the issue with "arguments . . . supported by a developed record" and subject to the summary judgment standard. *OptumRX*, 43 F.4th at 330; *Guidotti*, 716 F.3d at 774. A ruling to the contrary would "invite courts to consider facts and evidence that have not been tested in formal discovery." *OptumRX*, 43 F.4th at 330 (internal quotations and citations omitted).

Recently, in a closely analogous case, the Third Circuit relied upon its decision in *Guidotti* to vacate a District Court decision that granted a motion to compel arbitration. *Grajales-El v. Amazon Prime*, 2024 WL 3983335, at *2–3 (3d Cir. Aug. 29, 2024). In *Grajales-El*, the plaintiff made no mention of an arbitration agreement in his complaint or exhibits; rather, the issue was first brought up in the defendant's motion to compel arbitration. *Id.* at *2. The Third Circuit held, "Under the applicable Rule 12(b)(6) standard, the District Court was not permitted to rely on [the defendant's] filing to analyze the validity or enforceability of the arbitration agreement." *Id.* Therefore, the District Court erred in granting the motion to dismiss. *Id.* at *3.

Here, the amended complaint makes no reference to an arbitration agreement. (D.I. 5, 5-1). There are no exhibits to the amended complaint that reference an arbitration agreement. (*Id.*). The issue of arbitration was first introduced by Defendant in its pending motion. (D.I. 14

at 1). The parties must be allowed to obtain discovery on the issue of arbitration before filing renewed motions to be considered under the summary judgment standard. *Guidotti*, 716 F.3d at 776. Plaintiff has in fact denied having consented to an arbitration agreement in a signed affidavit and has requested discovery on the issue. (D.I. 15 at 2–3, D.I. 15-1 ¶ 7).

I determine that the opportunity for further discovery and renewed briefing is warranted, and the renewed briefing will be reviewed under a summary judgment standard.

IV. CONCLUSION

For the reasons stated above, Defendant's motion to compel arbitration and dismiss the case or, in the alternative, stay the case pending arbitration (D.I. 13) is DENIED without prejudice. The parties should meet and confer and agree to a schedule for limited discovery on the arbitration issue and renewed briefing after the conclusion of the limited discovery. The parties shall submit the proposed schedule within one week.

IT IS SO ORDERED.

Entered this 11th day of September, 2024

Forrest G. Anderson
United States District Judge