

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

ERIC MAHONEY,

Plaintiff,

v.

CASE NO. 8:19-cv-118-T-02SPF

WELLS FARGO BANK, N.A.,

Defendant.

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ORDER

Upon careful consideration of Defendant's Motion to Refer Matter to Arbitration and Stay Proceedings (Dkt. 5) and Plaintiff's Response (Dkt. 9), the Court concludes the motion should be denied.

The arbitration agreement binds Wells Fargo and Hunters Transporting and Towing, LLC (HTT). Dkts. 5-3, 5-4 at 8. Laura Vincent signed the application to open a business account for HTT. Eric Mahoney did not. She is listed in the public records as a manager of HTT (Dkt. 5-2), but was also named, allegedly incorrectly, as the sole owner on the application. Dkts. 5-2, 5-3.

The gravamen of this removed action is that Defendant negligently permitted Vincent to open a business account for HTT. Dkt. 1-9. The actions or

omissions of Defendant allegedly led to Mahoney, as the sole owner of HTT, suffering financial damages from the theft of HTT's money by Vincent. *Id.*

State law governs whether non-signatories can be compelled to arbitrate. *See Am. Personality Photos, LLC v. Mason*, 589 F.Supp.2d 1325, 1330 (S.D. Fla. 2008). Defendant does not suggest what applicable state law applies, but contends that the Federal Arbitration Act, 9 U.S.C. §§ 1, *et seq.* (FAA) generally governs the validity of an arbitration agreement. *See Dimattina Holdings, LLC v. Steri-Clean, Inc.*, 195 F.Supp.3d 1285, 1288-89 (S.D. Fla. 2016) (noting that whether parties are bound by a given arbitration clause should be decided by a judge). Defendant has failed to show that Mahoney as a non-signatory can be compelled to arbitrate.

ACCORDINGLY, it is **ORDERED AND ADJUDGED** that Defendant's Motion to Refer Matter to Arbitration and Stay Proceedings (Dkt. 5) is denied.

DONE AND ORDERED at Tampa, Florida, on February 13, 2019.

s/William F. Jung
WILLIAM F. JUNG
UNITED STATES DISTRICT JUDGE

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Counsel of Record