UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

INTAMIN AMUSEMENTS RIDES INT. CORP. EST.,

Plaintiff,

v. **Case No. 6:20-cv-713-CEM-DCI**

US THRILLRIDES, LLC and POLERCOASTER, LLC,

Defendants.
_________________________________/

ORDER

THIS CAUSE is before the Court on Plaintiff Intamin Amusement Rides Int. Corp. Est.'s Motion for Partial Summary Judgment ("Motion," Doc. 111). For the reasons set forth below, the Motion will be granted.

I. BACKGROUND

The factual background to this matter was previously discussed in the Court's Order denying Plaintiff's Motion for Preliminary Injunction (Doc. 68). Much of that background is reiterated here. The facts recited below are not in dispute.

This case arises from a contract dispute involving several contracts and several entities, some of which are parties to this litigation and some of which are not. Plaintiff is a foreign entity organized under the laws of the Principality of

Liechtenstein. (Slenders Decl., Doc. 111-1, at 2, 17). Defendants are both limited liability companies that are wholly owned by William J. Kitchen ("Kitchen"). (Foltyn-Smith Decl., Doc. 111-4, at 1–2, 5–9). Two non-parties to this federal litigation, International Amusements, Inc. ("IAI") and SkyPlex Ownership Company LLC ("SkyPlex"), are also involved in the contractual dispute.

The contracts at issue involve the proposed construction in Orlando, Florida, of a PolerCoaster™ ("PolerCoaster Ride")—"a ride which moves patrons via trains or pods along a track in a spiral motion to elevate them to the top of the tower or building, to then descend at higher speeds by gravity on the exterior of the tower or building." (Confidentiality and Non-Disclosure Agreement ("NDA"), Doc. 111-1, at 28).

The first contract, the NDA, was executed on January 15, 2015,[1] between Kitchen, US Thrillrides, PolerCoaster, and Plaintiff. (*Id.*). Therein, Plaintiff generally agreed to not disclose any proprietary, confidential, or trade secret information relating to, *inter alia*, the PolerCoaster Ride. (*See generally id.*). The NDA "automatically terminate[d] at the end of two . . . years" from execution. (*Id.* at 4).

[1] The date on the first page of the NDA is "January 15, 2015." (Doc. 111-1 at 28). However, the signatory dated the document "15. Jan 2014." (*Id.* at 30).

The next contract, titled "PolerCoaster Master Intellectual Property Agreement" ("MIPA," Doc. 111-2, at 27), was executed on May 28, 2015, between PolerCoaster and IAI. Neither Plaintiff nor US Thrillrides was a signatory to the MIPA. The MIPA explains that PolerCoaster is the owner of the intellectual property rights associated with the PolerCoaster Ride. (*Id.* at 28). Through the MIPA, PolerCoaster contracted with IAI to "provid[e] engineering services, manufacturing services, construction services, installation services and/or consulting services for the purpose of building and/or operating a [PolerCoaster Ride]." (*Id.*). The MIPA contains a mandatory arbitration clause providing that "[a]ny dispute, controversy or claim arising out of or relating to [the MIPA] or the interpretation, breach, termination or validity thereof, [with exceptions], shall be finally settled [by arbitration]." (*Id*. at 37).

The third contract—a "Design, Engineering, Material Procurement" contract ("DEM," Doc. 111-4, at 85)—was executed on July 3, 2015, between SkyPlex and IAI.[2] The DEM includes several "attachments," which are "fully incorporated into" the DEM. (*Id.*). One such attachment is the MIPA. (*Id.*). Neither Plaintiff nor Defendants were signatories to the DEM. In the DEM, IAI agreed to "be responsible for designing, manufacturing and supplying to the site the [PolerCoaster Ride,] . . . advise on the installation of the [PolerCoaster Ride,] and commission and train

[2] Defendants refer to this contract as the "Master Contract."

[SkyPlex's] personnel once the [PolerCoaster Ride] is installed." (*Id.*). The DEM also contains a voluntary arbitration provision requiring that "[d]isputes arising out of or related to [the DEM] shall be resolved" by the following methods—first, "informal dialogue," then "non-binding mediation," and, finally, "binding arbitration" only "upon agreement of the parties." (*Id.* at 96). Given the voluntary nature of the arbitration clause, the DEM contains a provision stating that "[i]n the absence of a written agreement to Arbitrate or should either of the parties refuse to mediate, the parties may immediately proceed to litigate the dispute(s)." (*Id.*).

Finally, Skyplex and Plaintiff executed an undated contract titled "Agreement," (Doc. 111-4 at 155), which is referenced therein as a "Guarantee."[3] Defendants were not signatories to this Guarantee. The Guarantee makes "reference" to a contract between SkyPlex and IAI dated July 2, 2015. (*Id.*). While the DEM is dated July 3rd—and not July 2nd—it appears that the parties to the Guarantee are referencing the DEM, to which the Guarantee was attached as Exhibit E. (*Id.*). The Guarantee does not reference the MIPA explicitly. In the Guarantee, Plaintiff "represents and promises that if [IAI] cannot or does not finish the work according to the terms and conditions of the [DEM], then [Plaintiff] . . . will arrange for the completion of the work in full compliance with the terms and conditions of the [DEM]." (*Id.*). The Guarantee also contains a voluntary arbitration clause, stating

[3] Plaintiff refers to this agreement as the "Performance Agreement."

that "[i]n the event of any dispute, claim, question, or disagreement arising from or relating to [the Guarantee] or the breach thereof . . . then the dispute may, upon written agreement of the Parties, resolve [the] matter by binding arbitration." (*Id.*).

To summarize, the contracts set forth the following business transactions. First, through the NDA, US Thrillrides and PolerCoaster were considering a "possible business transaction involving [a PolerCoaster Ride]" to be built in Orlando with Plaintiff, and Plaintiff agreed to not disclose any confidential, proprietary, or trade secret information obtained from Kitchen, US Thrillrides, and PolerCoaster during their negotiations. Second, through the MIPA, IAI agreed that it would not disclose any information regarding intellectual property owned by PolerCoaster while IAI provided consulting, engineering, construction, and installation services for building and operating a PolerCoaster Ride. Third, through the DEM, SkyPlex contracted with IAI for IAI to design and manufacture a PolerCoaster Ride. Finally, through the Guarantee, Plaintiff promised to arrange for a third-party to undertake the work set forth in the DEM if IAI could not or did not finish the work.

Following the events described above, Defendants came to believe that Plaintiff had "br[oken] all of the promises made in connection with the Orlando project and us[ed] all of Defendants' proprietary information." (Response, Doc. 113, at 1). The veracity of those allegations is not before the Court. But, as relevant here,

on March 24, 2020, US Thrillrides and PolerCoaster filed a Demand for Arbitration (Doc. 24-2 at 29) against Plaintiff and IAI alleging, among other things, breach of the NDA, breach of the MIPA, misappropriation of trade secrets, and copyright infringement. (*Id.* at 29–47).

On April 27, 2020, Plaintiff filed the instant lawsuit for declaratory and injunctive relief "to enjoin [US Thrillrides and Poler Coaster] from pursuing the arbitration claims against [Plaintiff]." (Compl., Doc. 1, at 1). Defendants filed a Counterclaim seeking a declaratory judgment that they acted properly in joining Plaintiff in the arbitration. (Doc. 36 at 10). The Court previously denied Plaintiff's Motion for Preliminary Injunction. Plaintiff now moves for partial summary judgment seeking a declaratory judgment that "it is not a party to the Polercoaster Master Intellectual Property Agreement ("MIPA") or its arbitration provision, and has not consented to arbitrate disputes with defendants." (Doc. 111 at 1).

II. LEGAL STANDARD

A. Summary Judgment

"The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). A dispute is genuine "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A fact is material if it may "affect the

outcome of the suit under the governing law." *Id.*

"The moving party bears the initial burden of showing the court, by reference to materials on file, that there are no genuine issues of material fact that should be decided at trial." *Allen v. Bd. of Pub. Educ.,* 495 F.3d 1306, 1313–14 (11th Cir. 2007). In ruling on a motion for summary judgment, the Court construes the facts and all reasonable inferences therefrom in the light most favorable to the nonmoving party. *Reeves v. Sanderson Plumbing Prods., Inc.*, 530 U.S. 133, 150 (2000). However, when faced with a "properly supported motion for summary judgment," the nonmoving party "must come forward with specific factual evidence, presenting more than mere allegations." *Gargiulo v. G.M. Sales, Inc.*, 131 F.3d 995, 999 (11th Cir. 1997) (citing *Anderson*, 477 U.S. at 248–49 (1986)); *see also LaRoche v. Denny's, Inc.*, 62 F. Supp. 2d 1366, 1371 (S.D. Fla. 1999) ("The law is clear . . . that suspicion, perception, opinion, and belief cannot be used to defeat a motion for summary judgment.").

"[A]t the summary judgment stage the judge's function is not himself to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial." *Anderson*, 477 U.S. at 249. "[T]he proper inquiry on summary judgment is 'whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law.'" *Stitzel v. N.Y. Life Ins. Co.*, 361 F. App'x 20, 22 (11th

Cir. 2009) (quoting *Anderson*, 477 U.S. at 251–52). Put another way, a motion for summary judgment should be denied only "[i]f reasonable minds could differ on the inferences arising from undisputed [material] facts." *Pioch v. IBEX Eng'g Servs.*, 825 F.3d 1264, 1267 (11th Cir. 2016) (quoting *Allen*, 121 F.3d at 646).

B. Federal Arbitration Act

In general, the Federal Arbitration Act, 9 U.S.C. § 1 *et seq*., governs the enforceability of arbitration provisions in contracts involving transactions in interstate commerce. *Hill v. Rent-A-Center, Inc.*, 398 F.3d 1286, 1288 (11th Cir. 2005). "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 the manner provided for in such agreement." 9 U.S.C. § 4. In determining whether to compel arbitration, courts do not weigh the merits of the parties' claims. *AT&T Techs., Inc. v. Commc'ns Workers of Am.*, 475 U.S. 643, 649 (1986). Rather, courts must limit their review to three factors: "(1) whether a valid written agreement to arbitrate exists; (2) whether an arbitrable issue exists; and (3) whether the right to arbitrate was waived." *Fla. Farm Bureau Ins. Cos. v. Pulte Home Corp.*, No. 8:04-CV-2357-T-EAJ, 2005 U.S. Dist. LEXIS 21903, at *9 (M.D. Fla. June 6, 2005) (citing cases). The question of whether an agreement to arbitrate exists "is governed instead by the 'ordinary state-law principles that govern the formation of contracts.'" *Dye v. Tamko*

Bldg. Prod., Inc., 908 F.3d 675, 680 n.5 (11th Cir. 2018) (quoting *Bazemore v. Jefferson Cap. Sys., LLC*, 827 F.3d 1325, 1329 (11th Cir. 2016)).

III. ANALYSIS

Defendants, as the parties seeking enforcement of a purported arbitration agreement, bear the burden of showing the existence of such an agreement. *Gustave v. SBE ENT Holdings, LLC*, No. 19-23961-CIV, 2020 WL 5819847, at *3 (S.D. Fla. Sept. 30, 2020) ("Under Florida law, the party seeking enforcement of an arbitration agreement has the burden of establishing that an enforceable agreement exists." (citing *CEFCO v. Odom*, 278 So. 3d 347, 352 (Fla. 1st DCA 2019))).

Plaintiff contends that it is entitled to summary judgment on its declaratory judgment claim because it is not a signatory to the MIPA—the only contract at issue that contains a mandatory arbitration clause, and the only contract pursuant to which Defendants have invoked the jurisdiction of the arbitration in their arbitration demand. (Doc. 24-2 at 35–36). The text of the MIPA makes plain that Plaintiff's factual contention is facially accurate. That contract was signed by only IAI and PolerCoaster. (Doc. 111-2 at 27). Furthermore, the only mention of Plaintiff in the text of the MIPA is as a preapproved "subcontractor" to IAI. (*Id.* at 29). Accordingly, Plaintiff has presented competent evidence that it did not sign the MIPA and thus did not consent to being compelled to participate in an arbitration as to claims asserted against it by Defendants. *See JPay, Inc. v. Kobel*, 904 F.3d 923, 928 (11th

Cir. 2018) ("Arbitration is a matter of contract and of consent. '[A]rbitrators derive their authority to resolve disputes only because the parties have agreed in advance to submit such grievances to arbitration.' (quoting *AT&T Techs.*, 475 U.S. at 648–49)).

In addition, Plaintiff's Motion and Reply adequately respond to Defendants' counterarguments seeking to explain how a non-signatory to the MIPA could be bound by its mandatory arbitration clause. Notably, Defendants have abandoned any "alter-ego" theory to explain Plaintiff's purported obligation to arbitrate. (Doc. 113 at 13 n.11). Instead, Defendants assert five theories to defeat summary judgment: (1) IAI acted as Plaintiff's agent when IAI signed the MIPA, (2) Plaintiff's signing of the Guarantee requires it to arbitrate, (3) Plaintiff's status as a "guarantor" for IAI requires it to arbitrate, (4) Plaintiff is bound by the MIPA as IAI's successor and/or assignee, and (5) Plaintiff is a third-party beneficiary to the MIPA. (*Id.*). The Court concludes that none of these theories is sufficient to raise a genuine dispute of material fact as to Plaintiff's non-consent to the MIPA's arbitration provision—and the resulting non-binding nature of that provision on Plaintiff—and summary judgment will be granted as a result.

A. Defendants' Agency Theory

First, Plaintiff is correct that Defendants' agency theory is not supported by evidence in the record, such that there remains no genuine dispute as to IAI's status as an agent, and no reasonable jury could side with Defendants on this factual issue.

"[A]n agency relationship requires (1) the principal to acknowledge that the agent will act for it; (2) the agent to manifest an acceptance of the undertaking; and (3) control by the principal over the actions of the agent." *Franza v. Royal Caribbean Cruises, Ltd.*, 772 F.3d 1225, 1236 (11th Cir. 2014) (quotation omitted).[4] Because Defendants bear the burden at trial of showing the existence of an enforceable contract against Plaintiff, they would be required to show all three elements to the satisfaction of the jury. The Court concludes, however, that there is no genuine dispute as to any one of the factors.

Indeed, where "nothing in the agreement indicates that the agreement was undertaken for the benefit of any entities or individuals apart from" the signatories, courts have refused to find an agency relationship present. *Am. Personality Photos, LLC v. Mason*, 589 F. Supp. 2d 1325, 1328 (S.D. Fla. 2008). Here, the plain text of the MIPA reveals a lack of any language indicating that the agreement was undertaken for the benefit of Plaintiff. As discussed, the only mention of Plaintiff is

[4] Defendants do not raise any "apparent agency" argument in their Opposition, and any such argument is waived as a result. *See Penmont, LLC v. Blue Ridge Piedmont, LLC*, 607 F. Supp. 2d 1266, 1269 (M.D. Ala. 2009).

as an approved "subcontractor" of IAI. (Doc. 111-2 at 29). The plain text of the MIPA alone is likely enough to doom Defendants' agency theory. Those same authorities have found that a "close corporate relationship" is also insufficient to support an agency finding. *See id.* (citing *Merrill Lynch Inv. Managers v. Optibase, Ltd.*, 337 F.3d 125, 130 (2d Cir. 2003)). Defendants do not argue that every subcontractor is somehow automatically the *principal* to its general contractor—indeed, such an argument would be absurd. The rest of Defendants' evidence on this point suffices to show, at most, the existence of a "close corporate relationship" between Plaintiff and IAI. For instance, it appears that Plaintiff executives were in discussions with IAI throughout the negotiations of the contract documents. (Kitchen Decl., Doc. 42-3, at 2). Even assuming that is true, however, Defendants fail to cite any authority for the proposition that one party's involvement in negotiations renders them the *principal* to the ultimate signatory. Instead, it is perfectly logical for general contractors to communicate with subcontractors throughout the negotiation of agreements to ensure that subcontractors can complete required work on time and under budget. Defendants also proffer evidence that certain participants in the negotiations believed that Plaintiff was in "control" of IAI's behavior. (Gust Dep., Doc. 113-4, at 47–48). But such "speculations are insufficient to create an issue of fact with regard to the agency issue." *Vermeulen v. Worldwide Holidays, Inc.*, 922 So. 2d 271, 275 (Fla. 3rd DCA 2006).

Finally, the evidence reveals that, prior to the signing of the MIPA, it was made clear to Defendants that IAI and Plaintiff were distinct legal entities, and that IAI was "independent" and would be the only signatory to the contract. (Doc. 111-4 at 41, 62–63). *See Palm Garden of Healthcare Holdings, LLC v. Haydu*, 209 So. 3d 636, 640 (Fla. 5th DCA 2017) (no agency relationship where party "specifically advised" other party of that fact).

Having reviewed their proffered evidence, the Court concludes that Defendants have failed to show any "acknowledgement" by Plaintiff that IAI would act on its behalf, any "acceptance" by IAI of that obligation, or any evidence that Plaintiff "controlled" IAI during the negotiations. *See Franza*, 772 F.3d at 1236. Regardless, even if evidence did exist to create a factual dispute as to any one of those factors, there is clearly a lack of evidence to support a finding in Defendants' favor on all three factors.

B. The Guarantee

Defendants make two arguments in relation to the Guarantee signed by Plaintiff and non-party Skyplex. First, Defendants argue that the Guarantee, in fact, binds Plaintiff to the terms of the MIPA, including the MIPA's mandatory arbitration clause. Second, they argue that Plaintiff's status as a "guarantor" to IAI creates an obligation to arbitrate given IAI's signing of the MIPA. Neither argument raises a genuine dispute of material fact.

Defendants' first argument requires the Court to daisy-chain together separate agreements, each of which contains its own arbitration clause, and each of which was signed by distinct parties. To reiterate, the Guarantee was signed by only Plaintiff and Skyplex. It contains its own voluntary arbitration clause. It merely makes "reference" to the DEM—*not* the MIPA. And it makes clear that, despite Plaintiff's guarantee to complete the work if IAI could not, Plaintiff "shall not be liable and/or responsible for any actions and/or omissions of IAI." (Doc. 111-4 at 155). Thus, the guarantee contained in the agreement itself is a limited one.

Despite all of those limitations, Defendants' theory would require the Court to assume that the Guarantee "incorporated by reference" all of the DEM. Given the passing reference by the Guarantee to the DEM, even that finding is doubtful. *See Affinity Internet, Inc. v. Consol. Credit Counseling Servs., Inc.*, 920 So. 2d 1286, 1288 (Fla. 4th DCA 2006) ("A mere reference to another document is not sufficient to incorporate that other document into a contract, particularly where the incorporating document makes no specific reference that it is 'subject to' the collateral document."). But even that finding would still not be enough for Defendants to defeat summary judgment. Defendants' theory requires Plaintiff to be bound by the *MIPA*, not just the DEM. Defendants note that the DEM "fully incorporated" the MIPA. However, like the Guarantee, the DEM *also* contains its

own voluntary arbitration clause.[5] Given that the DEM was signed after the MIPA, and that the signatories to the DEM and the MIPA were distinct—Skyplex did not sign the MIPA—it is difficult to conclude that IAI intended to incorporate the *mandatory* arbitration clause from the MIPA into the DEM it signed with Skyplex despite including a *voluntary* clause in the DEM.

Thus, the Defendants' theory would require the Court (and any jury) to conclude that when Plaintiff signed the 1.5-page Guarantee with Skyplex (which agreement makes no mention of the MIPA), it not only guaranteed (with limitations) IAI's performance to Skyplex, but it also agreed to be bound in full by two entirely separate agreements, signed by other parties, and it agreed to ignore the voluntary arbitration provisions in two contracts in favor of the mandatory provision in the MIPA. No reasonable jury could come to such unsupported conclusions, and Defendants' first theory must be rejected.

Defendants' second theory related to the Guarantee asserts that, in general, a "guarantor will be bound by an arbitration provision in an incorporated contract unless the arbitration provision containing language limited the parties to be bound by the clause." (Doc. 113 at 17). However, the cases relied on by Defendants to support that theory are distinguishable from the instant matter. For instance, the case

[5] At times in their Opposition, Defendants appear to mistakenly cite the DEM—or "Master Contract"—as the location of the mandatory arbitration provision. (Doc. 113 at 18). It is only the *MIPA* that contains such a provision.

most heavily relied upon by Defendants, *Compania Espanola de Petroleos, S.A. v. Nereus Shipping, S.A.*, concerned a guaranty in which the guarantor "unequivocally" stated that it would "assume the rights and obligations" of another party pursuant to a specifically referenced agreement. 527 F.2d 966, 973 (2d Cir. 1975). Here, no such broad language appears, and Plaintiff's guarantee is much more limited. Moreover, the Guarantee does not explicitly reference the MIPA at all. Indeed, *Compania* itself recognized that application of its holding requires that the guarantor "expressly undertake[]" additional obligations, and that its holding would not apply to guarantees "which prescribe[] merely that the third party would 'guarantee performance.'" *Id.* That "guarantee performance" language is much closer to the Guarantee's language. Similarly, *U.S. Fidelity & Guaranty Co. v. West Point Constuction Co.*, involved a performance bond that explicitly "referred to and made a part of the bond" a subcontract that itself included a mandatory arbitration clause. 837 F.2d 1507, 1508 (11th Cir. 1988). That is unlike the present circumstances, where the mandatory arbitration clause is two or three steps removed from the only agreement signed by Plaintiff, and where each of the intervening agreements themselves contain distinct, *voluntary* arbitration clauses. The Court is not persuaded by Defendants' guarantor theory and finds that it, too, fails to raise a genuine issue of material fact.

C. Defendants' Successor and/or Assignee Theory

Defendants next assert that Plaintiff is obligated to proceed in arbitration due to its purported status as IAI's successor and/or its assignee. Defendants spend less than a page of their Opposition on this theory, and the Court will reject it.

Defendants do not cite any record evidence whatsoever to support this theory beyond a vague and conclusory assertion that "[i]t was well-known to all the parties that Plaintiff would be performing all of the work under the Master Contract." (Doc. 113 at 19). But that fact, even if true, says nothing about Plaintiff's status as a formal assignee or successor to IAI's interests, rights, and/or obligations under the MIPA. Indeed, the entire purpose of subcontractors vis-à-vis general contractors is for those subtractors to "perform work" necessary for completion of the project. And the record evidence that does exist shows conclusively that Plaintiff was not a successor or assignee to IAI. Instead, the MIPA requires that any assignment or delegation by IAI be approved explicitly in writing by Polercoaster. (Doc. 111-2 at 38). No such writing was produced, and there is no other evidence of any such assignment or delegation. There is also no evidence that Plaintiff is or was IAI's "successor," as Defendants conclusorily state. This theory is unsupported by the evidence and it fails to raise a genuine dispute of material fact.

D. Defendants' Third-Party Beneficiary Theory

Defendants' final argument in opposition to summary judgment is that Plaintiff is a "third-party beneficiary" of IAI's contractual dealings, and is thus bound by the MIPA's mandatory arbitration clause. The basic concept underpinning the theory is that one who "steps into the shoes of a contracting party and is subject to all provisions of contract [as] a third-party beneficiary of a contract containing an arbitration provision can be compelled to arbitrate." (Doc. 113 at 20 (quoting *Pulte Home Corp. v. Bay At Cypress Creek HOA*, 118 So. 3d 957, 958 (Fla. 2d DCA 2013))). Defendants again fail to cite any record evidence to support their theory, which is alone reason enough to reject it at the summary judgment stage. *See Cooney v. Barry Sch. of Law*, No. 614CV106ORL22KRS, 2016 WL 7130941, at *2 (M.D. Fla. Mar. 9, 2016) ("Assertions for or against a motion for summary judgment must be supported by materials in the record to be deemed proper.").

Moreover, Defendant's unsupported third-party beneficiary theory lacks merit. First, Plaintiff's status as a third-party beneficiary of the MIPA is highly doubtful. *See Taylor Grp., Inc. v. Indus. Distribs. Int'l Co.*, 859 F. App'x 439, 447 (11th Cir. 2021) ("[S]imply making money as a result of a contract between other parties is not a 'direct benefit' that binds a non-party to the contract."). In addition, the theory fails to recognize that, under basic Florida contract law, third-party beneficiaries are entitled to *enforce* agreements, not to have them enforced *against*

them. *See Mendez v. Hampton Ct. Nursing Ctr., LLC*, 203 So. 3d 146, 149 (Fla. 2016) ("Critically, the third-party beneficiary doctrine enables a non-contracting party to enforce a contract against a contracting party—not the other way around."). Thus, even if the Court were to assume that Plaintiff is a third-party beneficiary to the MIPA, it is entirely unclear why that would require them to submit to arbitration for claims made *against them* by Plaintiffs as a result of their reaping some benefit from the MIPA. *Cf. Guy Roofing, Inc. v. Angel Enters., LLC*, No. 17-14081-CIV, 2018 WL 1863764, at *5 (S.D. Fla. Mar. 1, 2018), *report and recommendation adopted*, No. 2:17-CV-14081, 2018 WL 1863602 (S.D. Fla. Mar. 20, 2018) ("*Mendez* . . . substantially call[s] into question whether, under Florida law, a third party beneficiary can ever be compelled to arbitrate based on an arbitration provision in a contract it did not sign.").

As with Defendants' other theories, this theory fails to raise a genuine dispute of material fact and it cannot defeat summary judgment.

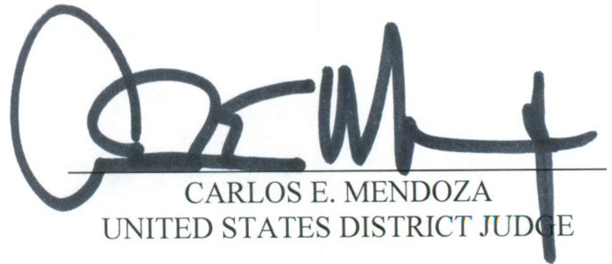
IV. CONCLUSION

In accordance with the foregoing, it is **ORDERED** and **ADJUDGED** as follows:

1. Plaintiff's Motion for Partial Summary Judgment (Doc. 111) is **GRANTED**.

2. **On or before May 10, 2022,** the parties shall file a status report informing the Court what issues remain to be tried in this matter given the Court's ruling on the instant motion and its previous denial of Plaintiff's Motion for a Preliminary Injunction.

DONE and **ORDERED** in Orlando, Florida on April 26, 2022.



CARLOS E. MENDOZA
UNITED STATES DISTRICT JUDGE

Copies furnished to:

Counsel of Record