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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS
ROCK ISLAND DIVISION

KEWU ZHAN, Plaintiff, v. PATRICK F. HOGAN, CMB EXPORT INFRASTRUCTURE INVESTMENT GROUP 48 LP, CMB EXPORT LLC, CMB ILLINOIS REGIONAL CENTER LLC d/b/a CMB REGIONAL CENTERS, and NK IMMIGRATION SERVICES LLC, Defendants.	)	Case No. 4:18-cv-04126-SLD-JEH

ORDER

Before the Court are Defendants' Motion to Stay and to Compel Arbitration and Memorandum of Law ("Motion to Compel"), ECF No. 32, Motion to Dismiss and Memorandum of Law ("Motion to Dismiss"), ECF No. 33, and Motion for Leave to File Reply in Support of Motion to Dismiss, ECF No. 41, and Plaintiff's Motion for Reconsideration, ECF No. 50. For the reasons that follow, the Motion to Compel, construed as a motion to dismiss for improper venue pursuant to Federal Rule of Civil Procedure 12(b)(3), is GRANTED, the Motion to Dismiss and Motion for Leave to File Reply in Support of Motion to Dismiss are MOOT, and the Motion for Reconsideration is DENIED.

BACKGROUND

The factual background of this case is set forth in the Court's December 18, 2018 Order, ECF No. 48, so the Court will not discuss it in detail. Plaintiff seeks rescission of his investment into a fund managed by Defendants. Defendants moved to stay the case and compel arbitration and to dismiss the complaint for failure to state a claim. On December 18, 2018, the Court

issued an order finding that the parties had agreed to arbitration, but that it could not order arbitration because the parties' contract provided for arbitration in a forum outside of the Central District of Illinois. Dec. 18, 2018 Order 4–20. The Court ordered Defendants to provide a supplemental brief clarifying the relief they seek and allowed Plaintiff the opportunity to file a response. *Id.* at 20–21. Defendants filed their supplemental brief on January 4, 2019. Suppl. Br., ECF No. 49. Plaintiff did not file a response. Instead, he filed a Motion for Reconsideration asking the Court to reconsider its December 18, 2018 Order.

DISCUSSION

I. Motion for Reconsideration

a. Legal Standard

Although Plaintiff's Motion for Reconsideration references Federal Rule of Civil Procedure 59(e), Rule 59(e) is not an appropriate vehicle for relief because judgment has not been entered yet. The Motion for Reconsideration is instead properly construed as a motion to reconsider an interlocutory order. "[I]t is well established that a district court has the inherent power to reconsider interlocutory orders and reopen any part of a case before entry of final judgment." *Fisher v. Nat'l R.R. Passenger Corp.*, 152 F.R.D. 145, 149 (S.D. Ind. 1993); *see Peirick v. Ind. Univ.-Purdue Univ. Indianapolis Athletics Dep't*, 510 F.3d 681, 694 n.5 (7th Cir. 2007) (noting that a "district court ha[s] broad authority to reconsider" an interlocutory order). "Unlike motions to reconsider final judgments, which are governed by . . . Rule . . . 59 or 60, a motion to reconsider an interlocutory order . . . may be entertained and granted as justice requires." *United States v. Gerard*, No. 1:14-CV-67-TLS, 2017 WL 4769662, at *1 (N.D. Ind. Oct. 23, 2017) (quotation marks omitted); *see also* Fed. R. Civ. P. 60(b) advisory committee's note to 1946 amendment ("[I]nterlocutory judgments [and orders] are not brought within the

restrictions of [Rule 60(b)], but rather they are left subject to the complete power of the court rendering them to afford such relief from them as justice requires.").

A motion for reconsideration "essentially enables a district court to correct its own errors, sparing the parties and the appellate courts the burden of unnecessary appellate proceedings." *Russell v. Delco Remy Div. of Gen. Motors Corp.*, 51 F.3d 746, 749 (7th Cir. 1995). "Reconsideration is not an appropriate forum for rehashing previously rejected arguments or arguing matters that could have been heard during the pendency of the previous motion." *Caisse Nationale de Credit Agricole v. CBI Indus., Inc.*, 90 F.3d 1264, 1270 (7th Cir. 1996).

b. Analysis

Plaintiff raises two issues in his Motion for Reconsideration, neither of which entitle him to relief. First, he argues that the Court erred by failing to analyze the case in accordance with *Epic Systems Corp. v. Lewis*, 138 S. Ct. 1612 (2018). Mot. Reconsideration 1–4. Second, he argues that the Court erred in concluding that a contract containing an arbitration provision was formed. *Id.* at 4–5.

Epic Systems involved the interaction between two statutes that the plaintiffs argued directly conflicted: the Federal Arbitration Act ("FAA"), 9 U.S.C. §§ 1–307, and the National Labor Relations Act ("NLRA"), 29 U.S.C. §§ 151–69. The plaintiffs argued that arbitration agreements requiring individualized arbitration violated their rights under the NLRA to engage in "concerted activit[y]," 29 U.S.C. § 157, and, therefore, that the agreements could not be enforced under the FAA, *see* 9 U.S.C. § 2 (providing that an arbitration agreement "shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract"). *Epic Systems* has no bearing on this case.

As the Court explained in its last order, there is a difference between challenging the validity of an arbitration provision specifically and the contract it is contained within generally. *See* Dec. 18, 2018 Order 9–11. A challenge to the validity of an entire contract goes to an arbitrator, while a challenge to the arbitration provision specifically is determined by a court. *See Buckeye Check Cashing, Inc. v. Cardegna*, 546 U.S. 440, 445–46 (2006) ("[A]s a matter of substantive federal arbitration law, an arbitration provision is severable from the remainder of the contract."). In *Epic Systems*, 138 S. Ct. at 1621, the plaintiffs opposed arbitrating their underlying wage claims, arguing specifically that their arbitration contracts violated the NLRA. They argued that either their arbitration contracts were illegal and could not be enforced under § 2 of the FAA or the NLRA overrode the FAA with respect to class waivers in arbitration agreements. *Id.* at 1621– 25. In this case, by contrast, Plaintiff's underlying claim is that his investment contract violates the Securities and Exchange Act of 1934, 15 U.S.C. §§ 78a–78qq. He does not claim that there is a potential conflict of federal laws regarding the validity of the arbitration provision contained within that contract. *Epic Systems*, then, says nothing about this case. Plaintiff's concern seems to be that the Court is lending dignity to his allegedly illegal contract by requiring the parties to arbitrate his claim that the contract is illegal. But because arbitration provisions are severable, the Court can enforce the parties' arbitration provision without making any assessment of the merits of Plaintiff's underlying claims.

Plaintiff also argues that the Court erred in concluding that a contract with an arbitration clause existed. However, the Plaintiff merely rehashes arguments already rejected by the Court, which is not appropriate on a motion for reconsideration. *See Caisse Nationale*, 90 F.3d at 1270. Moreover, Plaintiff offers no factual support for his contention that "no one can say what the so-called 'contract' contained when the signature blocks were signed in China." Mot.

Reconsideration 4. A party seeking to avoid arbitration "must identify a triable issue of fact concerning the existence of the agreement in order to obtain a trial on the merits of the contract." *Tinder v. Pinkerton Sec.*, 305 F.3d 728, 735 (7th Cir. 2002). Plaintiff fails to reckon with the fact that he provided the contract, including the arbitration provision, to the Court and called it the "full package" of documents. Am. Compl. ¶ 22, ECF No. 29. And he offers nothing but speculation that Defendants added or altered pages of the contract after Plaintiff signed. Neither of Plaintiff's arguments persuade the Court to reconsider its December 18, 2018 Order. The Motion for Reconsideration is DENIED.

II. Motion to Compel

Defendants have clarified that they seek dismissal of Plaintiff's action pursuant to Federal Rule of Civil Procedure 12(b)(3). Suppl. Br. 2–3. Plaintiff did not file a response. The Court construes Defendants' Motion to Compel as a motion to dismiss pursuant to Rule 12(b)(3). For the reasons discussed in the December 18, 2018 Order, the motion is GRANTED.

CONCLUSION

Accordingly, the Motion for Reconsideration, ECF No. 50, is DENIED. The Motion to Stay and to Compel Arbitration and Memorandum of Law, ECF No. 32, construed as a motion to dismiss for improper venue pursuant to Federal Rule of Civil Procedure 12(b)(3), is GRANTED. The action is DISMISSED. In light of this ruling, the Motion to Dismiss and Memorandum of Law, ECF No. 33, and the Motion for Leave to File Reply in Support of Defendants' Motion to Dismiss, ECF No. 41, are MOOT. The Clerk is directed to enter judgment and close the case.

Entered this 6th day of February, 2019.

s/ Sara Darrow
SARA DARROW
UNITED STATES DISTRICT JUDGE