IT IS SO ORDERED.

Dated: December 30, 2025

Beth A. Buchanan
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

In re:	)	
	)	**Case No. 22-12076**
CARBON IQ, INC.	)	**Chapter 7**
	)	**Judge Buchanan**
Debtor	)	
	)	
JAMES A. COUTINHO, CHAPTER 7 TRUSTEE	)	**Adv. No. 24-1050**
	)	
Plaintiff	)	
	)	
v.	)	
	)	
COOLEY LLP, et al.	)	
	)	
Defendants	)	

MEMORANDUM OPINION AND ORDER GRANTING DEFENDANTS' MOTION TO COMPEL ARBITRATION [Docket Number 23] AND STAYING ADVERSARY PROCEEDING WITH RESPECT TO CLAIMS SUBJECT TO ARBITRATION

[This opinion is not intended for publication.]

This matter is before this Court on *Defendants' Motion to Compel Arbitration and Memorandum of Law in Support* [Docket Number 23] ("Motion to Compel"); *Plaintiff's Memorandum in Opposition to Defendants' Motion to Stay and Compel Arbitration of Adversary Complaint Counts One and Two* [Docket Number 27] ("Response"); and the *Defendants' Reply in Support of Their Motion to Compel Arbitration and Stay Proceedings as to Non-Core Claims* [Docket Number 28] ("Reply").

On December 6, 2024, Plaintiff-Trustee James A. Coutinho ("Trustee") filed a complaint against the defendants asserting core and non-core claims related to Defendant Cooley LLP ("Cooley") and certain of its attorneys' legal representation of Debtor Carbon IQ, Inc. ("Carbon IQ") and its CEO prior to Carbon IQ's bankruptcy filing. On June 16, 2025, the defendants moved this Court to compel the arbitration of certain claims in the complaint pursuant to an arbitration provision in a prepetition agreement between Carbon IQ and Cooley. Citing the Federal Arbitration Act and supporting case law, defendants argue that the non-core claims in the complaint, specifically the legal malpractice and aiding and abetting claims, must be sent to arbitration. The Trustee opposes this relief asserting that the Sixth Circuit would not require enforcement of the arbitration provision in bankruptcy and that the high costs of arbitration would be prohibitive for the estate.

During an August 21, 2025 status conference, the parties agreed that the relevant facts were not disputed and the matter could be submitted on the papers. After careful review of the documents filed and legal authorities, this Court concludes that it lacks discretion to refuse to enforce the arbitration agreement with respect to the non-core claims that are not created by or derived from the Bankruptcy Code. Accordingly, the Motion to Compel is granted.

I. FACTUAL AND PROCEDURAL BACKGROUND

Because the parties do not dispute the factual allegations in the Motion to Compel, Response and Reply, this Court adopts allegations in these documents solely for purposes of this decision.

In April 2022, Carbon IQ engaged Cooley, a law firm, to assist with general corporate matters. The engagement was memorialized in a written agreement (the "Engagement Agreement") containing a mandatory arbitration provision [Docket Number 1, Ex. 7].[1] The provision requires arbitration of "[a]ny claim, dispute or controversy of whatever nature arising out of or relating to this Engagement Agreement . . . or any engagement or services rendered pursuant to this Agreement[.]" *Id*. at Schedule B. It also provides that questions of arbitrability are to be decided by the arbitrator. *Id*. ("The Arbitrator(s), and not a court, shall also be authorized to determine whether this Arbitration Provision applies to a Claim sought to be resolved hereunder.").

In May 2022, Carbon IQ and Ben Cantey ("Cantey"), Carbon IQ's founder, CEO, and sole director at the time, jointly retained Cooley to represent them in litigation brought by a former Carbon IQ employee, captioned *Boisvert v. Carbon IQ*, No. 22STCV12600 (Cal. Super. Ct. L.A. Cty., filed Apr. 14, 2022) (the "Boisvert Litigation") [Docket Number 1, ¶¶ 15-16 and Ex. 8]. The engagement for the Boisvert Litigation was formalized in a Supplemental Engagement Agreement, signed by Cantey, on behalf of himself and Carbon IQ [Docket Number 1, Ex. 8]. The Supplemental Engagement Agreement reflected the parties' agreement that the original Engagement Agreement, and its terms, would govern the representation unless the parties agreed to different terms in writing [*Id*., Ex. 8, p. 1].

[1] The Defendants state that the exhibit was also attached to their motion to compel. However, no documents are attached to the motion to compel filed with this Court at Docket Number 23. Accordingly, this Court refers to the exhibits attached to the complaint.

On December 7, 2022, Carbon IQ filed for bankruptcy protection and on December 6, 2024, the Trustee filed an adversary complaint against Cooley, Matt Hallinan, Han Wang, Michael Tu, and Alexandra Mayhugh (collectively, "Defendants"). Count One of the Complaint asserts a claim against Defendants for alleged legal malpractice in Cooley's representation of the Debtor prior to the bankruptcy filing [Docket Number 1, ¶¶ 78-82]. Count Two asserts a claim that the Defendants aided and abetted Canty's fraud and breach of fiduciary duty toward Carbon IQ, a claim that is also related to Cooley's representation during this time frame [*Id*., ¶¶ 83-88]. Counts Three, Four, and Five of the Complaint assert claims under 11 U.S.C. §§ 502(d), 547 and 551 based on payments Cooley received [*Id*., ¶¶ 89-107].

On June 16, 2025, Defendants filed their Motion to Compel requesting that this Court compel the arbitration of Counts One and Two which, they argue, are non-core claims subject to the arbitration provision in the Engagement Agreement and Supplemental Engagement Agreement. They further request that all proceedings with respect to those claims be stayed pending their resolution in arbitration.

The Trustee responded to the Motion to Compel conceding that Counts One and Two are non-core claims that fall within the scope of the language of the arbitration provision in the Engagement Agreement. However, the Trustee asserts that the bankruptcy court does not have to enforce the arbitration provision if doing so would conflict with the purposes underlying the Bankruptcy Code. The Trustee believes that, in this instance, arbitrating the malpractice and aiding and abetting claims would be financially devastating to the bankruptcy estate. The parties would be required to arbitrate their claims in San Francisco California with JAMS administering the arbitration [Docket Number 1, Ex. 7, Schedule B]. Each party would have to pay an equal share of the fees and costs of the arbitrator and JAMS [*Id*.]. The Trustee filed a Declaration noting that

he is an experienced bankruptcy trustee and, based on information and belief, he expects that the bankruptcy estate's share of the expenses of arbitrating the claims could exceed $20,000 [Docket Number 27, attached Declaration of James A. Coutinho, ¶ 3]. While the Trustee believes that the complaint's claims against the Defendants have merit and are likely to succeed, there is no guaranty of success and no guaranty that the Trustee would recover the bankruptcy estate's share of the arbitration costs [*Id*. at ¶ 5]. If those expenses would not be recouped, the Trustee believes that the bankruptcy estate would be rendered administratively insolvent [*Id*. at ¶ 4].

II. LEGAL ANALYSIS

A. Arbitration of Counts One and Two of the Complaint

The Defendants argue that this Court must compel the arbitration of the legal malpractice and aiding and abetting claims in the Trustee's complaint based on the existence of a pre-petition arbitration agreement between the Debtor and Cooley.

The Federal Arbitration Act ("FAA"), 9 U.S.C. § 1 *et seq*., establishes a federal policy favoring arbitration. *Shearson/American Express, Inc. v. McMahon*, 482 U.S. 220, 226 (1987). Under the FAA, a written agreement to arbitrate disputes arising out of a transaction in interstate commerce "'shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract.'" *Javitch v. First Union Sec., Inc.*, 315 F.3d 619, 624 (6th Cir. 2003) (citing 9 U.S.C. § 2). The FAA further provides that a court must stay the trial of its arbitrable issues while the arbitration is pending. 9 U.S.C. § 3; *McMahon*, 482 U.S. at 226; *Kiskaden v. LVNV Funding, LLC (In re Kiskaden)*, 571 B.R. 226, 240 (Bankr. E.D. Ky. 2017) .

However, "[l]ike any statutory directive, the [FAA]'s mandate may be overridden by a contrary congressional command." *McMahon*, 482 U.S. at 226. The party opposing arbitration bears the burden "to show that Congress intended to preclude a waiver of judicial remedies for the

statutory rights at issue." *Id*. at 227. "If Congress did intend to limit or prohibit waiver of a judicial forum for a particular claim, such an intent 'will be deducible from [the statute's] text or legislative history,' . . . or from an inherent conflict between arbitration and the statute's underlying purposes." *Id*. (further citation omitted).

With that in mind, a court must first determine if the parties had an agreement to arbitrate and if the claims raised fall within the scope of the arbitration agreement. *Uszak v. AT&T Mobility Servs., LLC*, 658 F. App'x 758, 761 (6th Cir. 2016) (citing *Stout v. J.D. Byrider*, 228 F.3d 709, 714 (6th Cir. 2000)). These issues are easily determined in this case: the parties agree that the Debtor and the Defendants entered prepetition agreements containing an arbitration provision[2] and the Trustee concedes that the non-core claims in the Trustee's complaint fall within the scope of that provision.

Next, this Court turns to the issue at the heart of the parties' dispute: whether there are statutory claims or rights at issue and, if so, whether the party opposing arbitration, in this instance the Trustee, can show that Congress intended to preclude a waiver of judicial remedies for those claims or rights. *McMahon*, 482 U.S. at 226-27; *Uszak*, 658 F. App'x at 761. The Trustee does not point to statutory language in the Bankruptcy Code nor legislative history explicitly or implicitly limiting the enforcement of the FAA in bankruptcy proceedings nor has this Court found such a limitation. Instead, the Trustee argues that enforcement of the arbitration provision would inherently conflict with Congress's intent behind the Bankruptcy Code by depleting the limited resources of the bankruptcy estate to pay the costs of arbitration.

---

[2] While the Trustee was not a signatory to the Engagement Agreement or Supplemental Engagement Agreement containing the arbitration provision, a trustee stands in the shoes of the debtor for purposes of the arbitration provision and is bound by it to the same extent as would be the debtor. *See Cooker Restaurant Corp. v. Seelbinder (In re Cooker Restaurant Corp.*), 292 B.R. 308, 311 (S.D. Ohio 2003) (citing *Hays & Co. v. Merrill Lynch, Pierce, Fenner and Smith, Inc.*, 885 F.2d 1149, 1153 (3d Cir. 1989)); *Gertz v. Echo Rock Ventures, LLC (In re Arter & Hadden, LLP),* 339 B.R. 445, 450 (Bankr. N.D. Ohio 2006).

This Court is sympathetic to the Trustee's concerns and desire for a cost-effective and efficient litigation process to maximize value for the bankruptcy estate and its constituents. Nonetheless, bankruptcy courts generally lack the discretion to refuse to enforce an arbitration agreement with respect to non-core causes of action that are not created by, or derived from, the Bankruptcy Code. *See Whiting-Turner Contracting Co. v. Electric Machinery Enter., Inc. (In re Electric Machinery Enter., Inc.)*, 479 F.3d 791, 796 (11th Cir. 2007) (holding that bankruptcy courts generally lack the discretion to decline to enforce an arbitration agreement relating to a non-core proceedings); *Hays and Co. v. Merrill Lynch, Pierce, Fenner & Smith, Inc.,* 885 F.2d 1149, 1157 (3d Cir. 1989); *Cooker Restaurant Corp. v. Seelbinder (In re Cooker Restaurant Corp.)*, 292 B.R. 308, 312 (S.D. Ohio 2003) (collecting cases and determining that a bankruptcy court is without jurisdiction to deny a motion to stay proceedings and compel arbitration of non-core claims pursuant to an agreement to arbitrate); *Great Spa Mfg. Co, Inc. v. Costco Wholesale Corp. (In re Great Spa Mfg. Co., Inc.)*, AP No. 09-5009, 2009 Bankr. LEXIS 5568, at *18-19, 2009 WL 1457740, at *6 (Bankr. E.D. Tenn. May 22, 2009) (concluding that, if the cause of action at issue is not derived from the Bankruptcy Code, then no inherent conflict between the Bankruptcy Code and FAA exists and the debtor is bound to the arbitration agreement just as it would be had the bankruptcy case not been filed).

Nonetheless, the Trustee argues that the Sixth Circuit Court of Appeals has not definitively spoken on the issue and that at least one circuit court of appeals has held that the core / non-core distinction is not determinative of whether a bankruptcy court may may refuse to enforce an arbitration agreement. *See Mintze v. Am. Gen. Fin. Servs, Inc. (In re Mintze)*, 434 F.3d 222, 229

(3d Cir. 2006).[3] While the Trustee accurately describes the Third Circuit's holding in *Mintze*, the difference between *Mintze* and the other cases cited is largely a matter of semantics with respect to non-bankruptcy law claims. In *Mintze*, the Third Circuit Court of Appeals concluded that the labels "core" and "non-core" refer to a bankruptcy court's authority to fully adjudicate a matter and not whether a matter is subject to an enforceable arbitration agreement. *Id*. Instead, the Third Circuit concluded that the United States Supreme Court's *McMahon* standard controls whether a bankruptcy court has discretion to deny enforcement of an arbitration agreement—i.e., whether the party opposing arbitration can establish congressional intent to preclude waiver of judicial remedies for the statutory rights at issue, which intent is found in the text or legislative history or from an inherent conflict between arbitration and the statutory rights at issue. *Id*. at 229-31.

Conducting the analysis under *McMahon* and finding no evidence of an intent to preclude the waiver of judicial remedies in either the statutory text or legislative history of the Bankruptcy Code, the Third Circuit Court of Appeals turned to whether there existed an inherent conflict between arbitration and the Bankruptcy Code. *Id*. at 231. The bankruptcy court had concluded that because the debtor's claims against a lender could impact the distribution to other creditors, this was sufficient to create an inherent conflict between the Bankruptcy Code's underly purposes and arbitration. *Id*. The Third Circuit Court of Appeals disagreed. *Id*. It concluded that when a party to a bankruptcy proceeding opposes enforcement of an arbitration agreement but raises only non-bankruptcy law claims, identifies no statutory claims created by the Bankruptcy Code, and can point to no bankruptcy issues to be decided by the bankruptcy court, there was no "inherent

[3] At least one bankruptcy court in the Sixth Circuit has adopted a similar approach. *Great Spa Mfg. Co, Inc.*, 2009 Bankr. LEXIS 5568, at *18, 2009 WL 1457740, at *6 (Bankr. E.D. Tenn. May 22, 2009) (agreeing that the determinative inquiry in enforcing an arbitration provision is the source of the debtor's cause of action, rather than the core / non-core jurisdictional distinction, but nonetheless concluding that the proceeding is a non-core matter subject to arbitration).

conflict" between arbitration of non-bankruptcy law claims and the underlying purposes of the Bankruptcy Code. *Id*. at 231-32. In those circumstances, the Third Circuit Court of Appeals found a bankruptcy court lacked the authority and discretion to deny enforcement of the arbitration agreement of a plaintiff-debtor's non-bankruptcy law claims, which, in that case, involved federal and state consumer protection laws. *Id*. In essence, the analysis in *Mintze* is the same as the other cases cited: a bankruptcy court lacks discretion to refuse to enforce an arbitration provision related to claims created under non-bankruptcy laws based solely on an argument that such enforcement conflicts with the inherent purposes of the Bankruptcy Code.[4]

Counts One and Two of the Complaint, the claims at issue in the Defendants' Motion to Compel, are prepetition non-bankruptcy law claims neither derived from nor created by the Bankruptcy Code and the Trustee has identified no bankruptcy issues to be decided with respect to those claims. Given the nature of these claims—non-core and/or non-bankruptcy law claims—this Court lacks the discretion to refuse to enforce the arbitration provision. Accordingly, the Defendants' request to compel arbitration of these claims is granted.

B. Stay of Proceedings with Respect to Counts One and Two of the Complaint

Pursuant to Section 3 of the FAA, this Court further stays all proceedings with respect to Counts One and Two, the claims to be arbitrated, pending the results of the arbitration. 9 U.S.C. § 3; *see also McMahon*, 482 U.S. at 226; *Kiskaden*, 571 B.R. at 240. Section 3 of the FAA does not require a stay of the remaining claims that are not being arbitrated. *Kiskaden,* 571 B.R. at 240.

---

[4] The Trustee further cites *Aeronautical Solutions, LLC v Commer. Debt Counselling Corp. (In re Aeronautical Solutions, LLC)*, Adversary Pro. No. L-06-00261-8-AP, 2007 Bankr. LEXIS 4586 (Bankr. E.D.N.C. June 8, 2007) to support the argument that bankruptcy courts may consider the costs of arbitration when determining whether to refuse to enforce an arbitration agreement between the parties. The case is distinguishable because it involved core claims created by the Bankruptcy Code. 2007 Bankr. LEXIS 4586, at *4-5. *See also Kiskaden*, 571 B.R. at 237 (noting that "[b]ankruptcy courts are more likely to have discretion to refuse to compel arbitration of core bankruptcy matters, which implicate more pressing bankruptcy concerns"). Because the claims at issue in the Motion to Compel are non-core claims that were not created by or derived from the Bankruptcy Code, the *Aeronautical Solutions* analysis is not applicable.

Accordingly, this Court will schedule a status conference by separate order to determine the best way to proceed with respect to the remaining claims in this adversary proceeding.

Wherefore, the Motion to Compel [Docket Number 23] is GRANTED. To the extent the Trustee wishes to pursue Counts One and Two of the complaint, he must do so through arbitration as required by the Engagement Agreement and Supplemental Agreement. Proceedings related to Counts One and Two are stayed pending conclusion of the arbitration.

SO ORDERED.

Distribution List:

Justin Cloyd, Esq.
James A. Coutinho, Esq.
Scott A. Kane, Esq.
Barton R. Keyes, Esq.
Stephen D. Lerner, Esq.
Andrew Dennis Rebholz, Esq.

Matt Hallinan
Cooley, LLP
1333 Second Street
Suite 400
Santa Monica, CA 90401

Michael Tu
Cooley, LLP
1333 Second Street
Suite 400
Santa Monica, CA 90401

Alexandra Mayhugh
Cooley, LLP
1333 Second Street
Suite 400
Santa Monica, CA 90401

Han Wang
Cooley, LLP
1333 Second Street
Suite 400
Santa Monica, CA 90401