

**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS  
DIVISION OF ST. THOMAS AND ST. JOHN**

<b>SANDRA GOOMANSINGH AND</b>	)	
<b>JILLIAN C. BRODIE,</b>	)	<b>CIVIL NO. ST-18-CV-193</b>
	)	
<b>Plaintiffs,</b>	)	
	)	
<b>vs.</b>	)	<b>ACTION FOR DAMAGES</b>
	)	
<b>ICC TV, INC. d/b/a VIYA TV2,</b>	)	
	)	
<b>Defendant.</b>	)	<b><u>JURY TRIAL DEMANDED</u></b>
_____	)	

Cite as 19 V.I. Super 26U

**MEMORANDUM OPINION**

¶1 Before the Court is Defendant's motion to compel arbitration. The parties contest whether the contracts in the underlying disputes in this case evidence an interstate nexus such that arbitration agreements in the contracts would be enforceable under the Federal Arbitration Act. For the reasons set forth below, the Court finds the transactions do evidence an interstate nexus and will enforce the arbitration clauses in the parties' agreements, stay the proceedings, refer the matter to arbitration for resolution, and exercise its discretion to dismiss the case.

**FACTS**

¶2 Plaintiffs Sandra Goomansingh and Jillian Brodie were both employed by Defendant, Brodie as a Master Control Operator in Viya TV2's TV Production

Division and Goomansingh as News Director and News Anchor for TV2.<sup>1</sup> Plaintiffs brought this action claiming that Defendant allowed a hostile work environment that included sexist behavior by a co-worker; retaliated against Plaintiffs for complaining about that behavior; violations of the civil rights statutes of the Virgin Islands; defamation of Plaintiffs; and a breach of duty of good faith and fair dealing as to Goomansingh.

¶3 On August 24, 2018, Defendant filed a Motion to Compel Arbitration through the Federal Arbitration Act (the “FAA”), 9 U.S.C. §§ 1-16, relying on arbitration clauses in Plaintiffs’ employment agreements.<sup>2</sup>

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<sup>1</sup> Amended Compl. 4-5, 46, 49; TV2 Broadcast Employment Agreement Term, Ex. 1 to Def. ICC TV, INC. d/b/a Viya TV2’s Mem. of Law in Supp. of its Mot. to Compel Arbitration (“Def.’s Mem.”); Employment Offer of Jillian Seraphin (Brodie), Ex. 2 to Def.’s Mem.

<sup>2</sup> Brodie’s offer of employment contained the following Dispute Resolution Agreement:

This offer of employment is conditional on your agreement to the following Dispute Resolution Agreement:

I recognize that differences may arise between Innovative Companies (the “Company”) and me in relation to my possible employment with the Company. By accepting this offer of employment, both Company and I agree to resolve any and all claims, dispute, or controversies arising out of or relating to my employment, the terms and conditions of my employment, the relationship between me and Company, any termination of my employment with Company, my presence at any work-site of Company or its affiliates, or any related matter, exclusively by final and binding arbitration before a neutral arbitrator pursuant to the American Arbitration Association’s (“AAA”) Employment Arbitration Rules . . . . The Claims covered by this agreement to arbitrate include, but are not limited to, claims for wages or other compensation due; claims for any breach of contract or covenant, express or implied; tort claims, including claims for personal injury or property damage; claims for wrongful discharge; claims for discrimination, including but not limited to discrimination based upon race, sex, religion, national origin, age, marital status, handicap, disability or medical condition; and claims for violation of any federal territorial, or other governmental constitution, statute or regulation. This agreement extends to disputes with or claims against Company, its owners, contractors or subcontractors with whom Company is doing business, and any of their related or affiliated companies, entities, employees or individuals (as intended their party beneficiaries to this agreement) and survives indefinitely unaffected by any termination or other change in employment or circumstances.

Goomansingh’s employment agreement contained the following arbitration clause:

¶4 The parties do not dispute whether Plaintiffs' and Defendant entered into enforceable employment agreements or whether the issues raised in Plaintiffs' complaint are covered by the language of the arbitration clauses in those agreements. Instead, they argue over whether the agreements to arbitrate are enforceable under the FAA.

## DISCUSSION

¶5 Section 2 of the FAA provides that written agreements to arbitrate "shall be valid, irrevocable, and enforceable, save upon grounds as exist at law or in equity for the revocation of any contract." 9 U.S.C. § 2.<sup>3</sup> Section 3 of the Act provides that, "in any of the courts of the United States," upon a finding that an issue is subject to arbitration under an agreement that is controlled by the FAA, the court shall stay the action on application of one of the parties for resolution by arbitration.<sup>4</sup> Although

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### 18. Binding Arbitration

Any disputes under or in any way relating to this Agreement, the employment or any relations between the parties, or wrongs allegedly done to the Employee shall be submitted solely to arbitration under the commercial rules of the American Arbitration Association, and will be determined in a sealed proceeding conducted in accordance with their Rules, substantially consistent with the laws of the Virgin Islands, United States, without regard to principles of conflicts [of] laws.

<sup>3</sup> 9 U.S.C. § 2 reads in full:

A written provision in any maritime transaction or a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction, or the refusal to perform the whole or any part thereof, or an agreement in writing to submit to arbitration an existing controversy arising out of such a contract, transaction, or refusal, shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract.

<sup>4</sup> 9 U.S.C. § 3 reads in full:

If any suit or proceeding be brought in any of the courts of the United States upon any issue referable to arbitration under an agreement in writing for such arbitration, the

the language of § 3 refers to “courts of the United States”<sup>5</sup>, a state court should nonetheless decline to retain jurisdiction over any issues it has determined should be arbitrated based on an agreement controlled by the FAA. *Moses H. Cone Mem’l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 26 (1983) (“Moreover, state courts, as much as federal courts, are obliged to grant stays of litigation under § 3 of the Arbitration Act.”).<sup>6</sup> If this Court finds that the arbitration clauses in the parties’ agreements are enforceable under the FAA, then the issues in this case should be properly referred to arbitration.

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court in which such suit is pending, upon being satisfied that the issue involved in such suit or proceeding is referable to arbitration under such an agreement, shall on application of one of the parties stay the trial of the action until such arbitration has been had in accordance with the terms of the agreement, providing the applicant for the stay is not in default in proceeding with such arbitration.

<sup>5</sup> See *Prentice v. Seaborne Aviation, Inc.*, 65 V.I. 96, 110 (V.I. Super. Ct. 2016):

On a narrow reading then, it appears that § 3, by its own terms, applies only to actions brought in the courts of the United States and not to proceedings in state or territorial courts. Thus, evaluating the plain meaning of the statute itself in conjunction with the opinions of the Supreme Court of the Virgin Islands in *World Fresh [Mkt. v. P.D.C.M. Assocs., SE]*, 2011 V.I. Supreme LEXIS 29] and subsequent cases, the Court concludes that § 3 constitutes a procedural provision of the FAA that is not, by its own terms, applicable to proceedings in Virgin Islands courts.

<sup>6</sup> See also *Southland Corp. v. Keating*, 465 U.S. 1, 10 (1984) (“In enacting § 2 of the [FAA], Congress declared a national policy favoring arbitration and withdrew the power of the states to require a judicial forum for the resolution of claims which the contracting parties agreed to resolve by arbitration.”); *id.* at 12 (“[T]here are strong indications that Congress had in mind something more than making arbitration agreements enforceable only in federal courts.”); *id.* (“In *Moses* . . . we reaffirmed our view that the [FAA] ‘creates a body of federal substantive law’ and expressly stated what was implicit in *Prima Paint*, i.e., the substantive law the Act created was applicable in state and federal courts.”) (citations omitted); *id.* at 14-15 (“We would expect that if Congress, in enacting the Arbitration Act, was creating what it thought to be a procedural rule applicable only in federal courts, it would not so limit the Act to transactions involving commerce.”); *Moses*, 460 U.S. at 25 n.32 (“The Arbitration Act . . . creates a body of federal substantive law establishing and regulating the duty to honor an agreement to arbitrate[.]”).

**I. The FAA applies only to contracts evidencing a transaction involving interstate commerce (an interstate nexus).**

¶6 Following the Virgin Islands Supreme Court's decision in *Whyte v. Bockino*, S. Ct. Civ. No. 2017-0024, \_\_\_ V.I. \_\_\_, 2018 WL 4191523 (Aug. 29, 2018)<sup>7</sup>, which was decided while this matter was pending, the parties no longer dispute whether the FAA applies in the Virgin Islands.<sup>8</sup> Their dispute is narrowed to the question of whether the subject employment contracts involve an interstate nexus such that the contracts would be brought under the FAA.

¶7 An interstate commerce link—an interstate nexus—is necessary to bring an agreement under the scope of the FAA. *See Allied-Bruce Terminix Cos. v. Dobson*, 513 U.S. 265, 274 (1995) (“[T]his Court has previously described the Act's reach expansively as coinciding with that of the Commerce Clause.”) (citing, *inter alia*, *Southland*, 465 U.S. at 14-15 (“Congress would need to call on the Commerce Clause if it intended the [FAA] to apply in state courts. . . . We therefore view the ‘involving commerce’ requirement in § 2, not as an inexplicable limitation on the power of the federal courts, but as a necessary qualification on a statute intended to apply in state and federal courts.”)); *Whyte*, 2018 WL 4191523, \*6 (finding the FAA applied to an employment contract because the contract had an interstate nexus). The FAA only applies to contracts evidencing a transaction involving interstate commerce, and thus

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<sup>7</sup> In *Whyte*, the Supreme Court provided a lengthy discussion on the Territorial Clause and Commerce Clause vis-à-vis the application of the FAA in the Virgin Islands. The court did not hold whether it is applicable through the Territorial Clause or the Commerce Clause, but it did reaffirm that the FAA is applicable in the Virgin Islands.

<sup>8</sup> The parties had originally disputed whether the FAA applies in the territory. They no longer do. *See* Pls.' Supp. Brief in Oppo of Defs.' Mot. to Compel Arbitration.

an interstate nexus is necessary when seeking before this Court enforcement under the FAA. *Allied-Bruce Terminix*, 513 U.S. at 274-75 (“[T]he ‘involving commerce’ requirement is a constitutionally necessary qualification on the Act’s reach, marking its permissible outer limit[.]”) (citation and internal quotations omitted).<sup>9</sup> In other words, a party attempting to compel arbitration must show that an interstate nexus is present in order invoke the stay provision of the FAA. The Court therefore must determine if the transactions underlying this dispute evidence an interstate nexus.

## II. An interstate nexus exists here.

¶8 While it is the burden of the party compelling arbitration to prove a link to interstate commerce, “[t]he burden on the compelling party to show that a contract evidences an interstate nexus is relatively low.” *Whyte*, 2018 WL 4191523, \*5 (citing *Citizens Bank v. Alafabco, Inc.*, 539 U.S. 52, 56 (2003). The FAA “embodies Congress’ intent to provide for the enforcement of arbitration agreements within the full reach of the Commerce Clause.” *Perry v. Thomas*, 482 U.S. 483, 490 (1987); *Shearson/American Express v. McMahon*, 482 U.S. 220, 226 (1987) (“The Arbitration Act thus establishes a federal policy favoring arbitration, requiring that we *rigorously*

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<sup>9</sup> See also *Caley v. Gulfstream Aero. Corp.*, 428 F.3d 1359, 1370 (11th Cir. 2005) (“Enacted pursuant to the Commerce Clause, the FAA applies only to a contract evidencing a transaction involving [interstate] commerce.”) (citations omitted) (alteration in original); *Jenkins v. First Am. Cash Advance of Ga., LLC*, 400 F.3d 868, 875 (11th Cir. 2005) (“Courts determine whether or not interstate commerce exists under the FAA on a case-by-case analysis by examining whether the transaction in question turns out, in fact, to have involved interstate commerce.”).

enforce agreements to arbitrate.”) (emphasis added) (citations and internal quotations omitted).

¶9 The “the word ‘involving’ [in § 2] is broad and is indeed the functional equivalent of ‘affecting.’” *Allied-Bruce*, 513 U.S. at 273-74. Thus, “the FAA encompasses a wider range of transactions than those actually ‘in commerce’--that is, ‘within the flow of interstate commerce[.]’” *Citizens Bank*, 539 U.S. at 56 (quoting *Allied-Bruce*, 513 U.S. at 273); *Whyte*, 2018 WL 4191523, \*5 (“[F]or an interstate nexus to exist, the parties’ agreement need not be *in* interstate commerce nor have a *substantial* effect on interstate commerce[.]”) (citations omitted). “[E]ven the slightest [interstate] nexus is sufficient”, *Whyte*, 2018 WL 4191523, \*6, to evidence a transaction involving commerce. The economic activities of just one party, if those activities affect interstate commerce, are sufficient to “demonstrate[] a nexus to interstate commerce.” *Whyte*, 2018 WL 4191523, \*5 (citing *Citizens Bank*, 539 U.S. at 56).

¶10 Defendant insists that Viya’s business activities, primarily its broadcasts, reach outside the Virgin Islands and thus provide an interstate nexus. Defendant asserts that Viya is “a cable television company owned by ATN International—headquartered in Massachusetts—that broadcasts international and national multi-lingual programs to viewers across the Caribbean and the continental United States.”<sup>10</sup> Also, Defendant “urges the Court to take judicial notice of its international

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<sup>10</sup> Supp. Brief 4.

presence,” citing to an earlier case from the Superior Court wherein the Court took such notice. *See Innovative Communications Corp. v. V.I. Water and Power Authority*, 49 V.I. 57, 62 (V.I. Super. Ct. 2007).<sup>11</sup>

¶11 Goomansingh and Brodie assert that their contracts are with ICC TV, “a Virgin Islands Corporation [sic] and not any of the entities Defendants are attempting to bootstrap into this analysis.”<sup>12</sup> Plaintiffs assert that no evidence of Defendant’s connection to interstate commerce “has been provided under oath” or in any other form. Plaintiffs rightly point out that neither of their agreements make any explicit reference to interstate commerce; they distinguish this from *Whyte*, “where the agreement specifically reference[d] a requirement to report to a Chicago, Illinois office.”<sup>13</sup>

¶12 First, the Court finds that the judicial notice Defendant argues for is not warranted here. Under the Virgin Islands Rules of Evidence, “[t]he court may judicially notice a fact that is not subject to reasonable dispute because it: is generally known within the trial court’s territorial jurisdiction; or can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.” V.I.R.E. Rule 201. Whether TV2 has an interstate character *is* subject to reasonable dispute—

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<sup>11</sup> The court there wrote:

Similarly, even though this incident did not strictly occur in interstate commerce, Plaintiff’s international character is sufficient to create the necessary nexus to interstate commerce for the FAA to apply. The Court takes judicial notice that Plaintiff engages in business in multiple countries in the Caribbean basin and that it is incorporated in the state of Delaware. As an interstate actor, ICC’s involvement in this transaction is sufficient to render the FAA applicable.

<sup>12</sup> Pl.s’ Supp. Brief in Oppo. of Def.’s Mot. to Compel Arbitration 5.

<sup>13</sup> *Id.* 5.



indeed, the Court believes the parties have both made reasonable arguments here. Also, whether TV2 has an interstate reach is a fact not generally known within the territory (the Court, for one, is not aware), and Defendant has provided the Court with no specific evidence from which to conclude that TV2 has such a reach. The fact that the Superior Court in an earlier case gave such notice does not dictate the same result here. In that case, the Court took “judicial notice that [ICC] engages in business in multiple countries in the Caribbean basin and that it is incorporated in the state of Delaware. As an interstate actor, ICC's involvement in this transaction is sufficient to render the FAA applicable.” *Innovative Communications Corp.*, 49 V.I. 57 at 62. However, that decision was in 2007, over ten years ago: it is entirely possible that Defendant's business activities, ownership and structure, or even corporate existence, have changed in the intervening years. Furthermore, Defendant ICC, TV, Inc. appears distinct from Innovative Communications Corp., the plaintiff in that decision.

¶13 Second, Defendant has left the record barren of specific evidence—testimonial, documentary, or otherwise—evidencing an interstate nexus in the underlying transactions. It has provided no evidence showing that Defendant is in fact owned by ATN International or any other non-Virgin Islands company, and no evidence proving that TV2's broadcasts reach beyond the territory.

¶14 Defendant not having provided any evidence of the interstate nexus that it asserts is present in these transactions, the Court initially hesitates to find that one exists. Generally, a court cannot simply take a party's unsubstantiated word that a

transaction has an interstate nexus. If a party could strip the Court of jurisdiction merely by offering unsupported assertions of an interstate nexus, then the § 2 interstate commerce requirement would essentially become hollow.<sup>14</sup> Ordinarily, a party should produce at least a modicum of evidence showing an interstate nexus is present in a transaction in order to meet its burden of showing an interstate nexus and compel enforcement under the FAA.

¶15 That admonition aside, the activities of Viya and Plaintiffs' roles as employees in Defendant's television business nevertheless satisfies the Court that an interstate nexus is present here. The United States Supreme Court long ago held that radio, television, and motion pictures are, "three media [] concededly engaged in interstate commerce." *United States v. Int'l Boxing Club*, 348 U.S. 236, 241 n.5 (1955) (citing with approval, *inter alia*, *Dumont Laboratories v. Carroll*, 184 F.2d 153, 154 (3d Cir. 1950), *cert. denied*, 340 U.S. 929 (1951) ("There is no doubt but that television broadcasting is in interstate commerce. This is inherent in its very nature.")). Viya

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<sup>14</sup> See *Ark. Diagnostic Ctr., P.A. v. Tahiri*, 370 Ark. 157, 166-67 (2007) (finding a party did not provide evidence—testimonial or otherwise—showing that a doctor's "employment facilitated [a clinic's] alleged interstate business activities," and upholding the trial court's denial of a motion to compel arbitration); see, *c.f.* *Rota-McLarty v. Santander Consumer USA, Inc.*, 700 F.3d 690, 697 (4th Cir. 2012) ("First, we have held that the FAA does not impose a burden upon the party invoking the FAA to put forth specific evidence proving the interstate nature of the transaction.") (citing *Maxum Foundations, Inc. v. Salus Corp.*, 779 F.2d 974, 978 n.4 (4th Cir. 1985) ("Maxum essentially argues that in order for the [FAA] to apply, the party invoking the Act must put forth specific evidence documenting the interstate aspect of the transaction. The statute does not impose such a burden, however. The Federal Act applies to arbitration agreements in contracts 'evidencing a transaction involving [interstate] commerce,' but does not require proof by affidavit or other specific evidence of the nexus to interstate commerce. Where, as here, the party seeking arbitration alleges that the transaction is within the scope of the Act, and the party opposing application of the Act does not come forward with evidence to rebut jurisdiction under the federal statute, we do not read into the Act a requirement of further proof by the party invoking the federal law.") (citation omitted).

offers television broadcasting through TV2, and both Plaintiffs were employed at TV2 in roles related to Defendant's television broadcasting.

¶16 Furthermore, the Court is amenable to taking judicial notice of the fact that Viya also offers internet and telephone services—that much is well-known in the community and not subject to reasonable dispute. Other courts have held that telecommunications and internet services fall squarely within the realm of interstate commerce. *See, e.g., Manard v. Knology, Inc.*, 2010 U.S. Dist. LEXIS 60629, \*9 (M.D. Ga.) (“It is clear that the transactions in this case--provision of telecommunications services, including telephone and internet--involve interstate commerce.”) (citing *United States v. Faris*, 583 F.3d 756, 759 (11th Cir. 2009) (per curiam) (“The internet is an instrumentality of interstate commerce.”) (citation and internal quotation marks omitted))); *Goldberg v. Johnson*, 117 Ill. 2d 493, 500 (Ill. 1987) (“The very process of interstate telecommunication is interstate commerce.”) (citations omitted); *In re Profanchik*, 31 S.W.3d 381, 385 (Tex. App. 2000) (“Moreover, the nature of the business itself, telecommunications, clearly involves interstate commerce.”); *see also Maye v. Smith Barney, Inc.*, 897 F. Supp. 100, 105 (S.D.N.Y. 1995) (the FAA applied where parties “were required to use and did use various instrumentalities of interstate commerce, including the mail, telephones and various electronic telecommunications systems . . . .”). The number of ways in which individuals and organizations use telephone and internet services to reach the stream of interstate commerce requires no explanation by the Court. The Court is satisfied that Viya's internet and telephone services, in addition to its television broadcasting services and

Plaintiffs' role in helping provide those services, sufficiently provide an interstate nexus.<sup>15</sup>

¶17 The parties' agreement falls under the FAA, and arbitration is compelled.

### III. V.I. Code Ann. Tit. 24, § 74a does not control here.

¶18 Plaintiffs argue that V.I. Code Ann. Tit. 24, § 74a controls whether the arbitration agreements are enforceable because, "Defendant has failed to prove that Plaintiffs' employment agreement evidences a transaction involving interstate commerce."<sup>16</sup> If § 74a controls, Plaintiffs argue, the agreements are unenforceable because that section "requires the express agreement of the parties after the dispute arises, notwithstanding the existence of an arbitration clause . . . ."<sup>17</sup> However, because the Court finds that Plaintiffs' employment agreements fall under the FAA, this argument is moot. It is well-established . . . that 24 V.I.C. § 74a is preempted by the FAA. *Salem-Bazar v. Tarapani*, Super. Ct. Civ. No. ST-18-CV-297, 2018 V.I.

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<sup>15</sup> Though the Court again emphasizes that, while a party's burden of proving an interstate nexus is low, it is not as simple as checking a box. A party should provide at least a modicum of specific evidence showing that a transaction involves an interstate nexus in order to bring an agreement under the FAA.

<sup>16</sup> Title 24, section 74a reads in full:

(a) Notwithstanding an employment contract that provides for the use of arbitration to resolve a controversy arising out of or relating to the employment relationship, arbitration may be used to settle such a dispute only if:

(1) the employer or employee submits a written request after the dispute arises to the other party to use arbitration; and  
(2) the other party consents in writing not later than sixty (60) days after the receipt of the request to use arbitration.

(b) An employer subject to this chapter may not require an employee to arbitrate a dispute as a condition of employment.

<sup>17</sup> Pls.' Oppo. to Mot. to Compel Arbitration.

LEXIS 122, \*16 (V.I. Super. Ct. Oct. 30, 2018) (collecting cases making that holding). To the extent § 74a conflicts with the FAA, the FAA controls. *See, e.g., Cullinane*, 300 Neb. at 226 (“Arbitration in Nebraska is governed by the UAA as enacted in Nebraska, but if arbitration arises from a contract involving interstate commerce, it is governed by the FAA.”).

#### **IV. The Court must stay litigation and refer the issues to arbitration.**

¶19 Plaintiffs’ final argument is that § 3 of the FAA—the section directing courts to stay proceedings—does not apply in the Virgin Islands, and that Virgin Islands Rule of Civil Procedure 12(b)(6) “cannot be utilized to dispose of this issue.”<sup>18</sup>

¶20 Plaintiffs argument that the stay provision of § 3 does not apply in Virgin Islands courts might have merit. As already mentioned above, various state courts have found that § 3 is not applicable in state courts, and this Court tends to think as well that it does not apply here. However, whether it does or not, that does not limit the Court’s power to stay the proceedings, nor does the fact that Defendant made no specific request to the Court to stay or dismiss the litigation.

¶21 The Court has inherent power to stay proceedings when necessary. *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936) (“[T]he power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket . . . .”). It *must* stay proceedings if it finds all issues should be referred to

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<sup>18</sup> Defendant is not relying on Rule 12(b)(6) to compel dismissal of this suit.

arbitration pursuant to the FAA. *Shearson/American Express v. McMahon*, 482 U.S. 220, 226 (1987) (“[T]he [FAA] provides that a court must stay its proceedings if it is satisfied that an issue before it is arbitrable under the agreement[.]”) (citing 9 U.S.C. § 3); *Moses H. Cone Mem’l Hosp.*, 460 U.S. at 26 (“[S]tate courts . . . are obliged to grant stays of litigation under § 3 of the Arbitration Act.”); *Lenz v. FSC Secs. Corp.*, 2018 MT 67, P14 (Mont.) (“Consequently, courts must stay litigation and compel arbitration on all claims subject to a valid and enforceable arbitration agreement.”) (citations omitted).<sup>19</sup>

¶22 Additionally, the Court has discretion to dismiss the case in addition to staying the proceedings. In *Salem-Bazar*, a recent opinion of the Superior Court, the Court wrote:

The Court need not rely upon V.I. R. Civ. P. 12(b)(6) or V.I. R. Civ. P. 12(d) to dismiss the present action. In cases where a party moves to compel arbitration and stay proceedings or in the alternative dismiss the case, Virgin Islands courts have permitted discretionary dismissal in actions in which all claims have been referred to arbitration. *Prentice v. Seaborne Aviation, Inc.*, 65 V.I. 96, 113 (Super. Ct. 2016); *Whyte v. Bockino*, 2017 V.I. LEXIS 14, \*17 (Super. Ct. 2017). Specifically, courts that favor discretionary dismissal rightfully argue that “retaining jurisdiction over actions that have been referred, in their entirety, to arbitration would serve no purpose as any post-arbitration remedy sought by parties would ‘not entail renewed consideration and

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<sup>19</sup> See also *Moses H. Cone Mem’l Hosp.*, 460 U.S. at 26 n.34:

Although § 3 refers ambiguously to a suit “in any of the courts of the United States,” the state courts have almost unanimously recognized that the stay provision of § 3 applies to suits in state as well as federal courts, requiring them to issue the same speedy relief when a dispute is referable to arbitration. . . . This is necessary to carry out Congress’ intent to mandate enforcement of all covered arbitration agreements; Congress can hardly have meant that an agreement to arbitrate can be enforced against a party who attempts to litigate an arbitrable dispute in federal court, but not against one who sues on the same dispute in state court. See also *Prima Paint*, 388 U.S., at 404.

adjudication on the merits of the controversy but would be circumscribed to judicial review of the arbitrator's award in the limited manner prescribed by law. *Prentice*, 65 V.I. at 112.

2018 V.I. LEXIS 122, \*17-18; *Prentice*, 2016 V.I. LEXIS 127, \*30 (“[T]he best policy for the Virgin Islands is to permit discretionary dismissal of actions in which all claims have been referred to mandatory, binding arbitration.”). Therefore, the Court need not rely on Rule 12(b)(6) to dismiss this case once it is required to stay the proceedings.

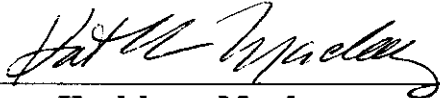
¶23 Consequently, since all issues in this dispute are subject to arbitration, the Court must stay these proceedings and refer the matter to arbitration. It will exercise discretion to dismiss the case.

### CONCLUSION

¶24 The FAA requires the Court to enforce an arbitration clause in an agreement if that agreement evidences a transaction involving interstate commerce—an interstate nexus. The transactions underlying Plaintiffs’ agreements with Defendant evidence an interstate nexus. The arbitration clauses in those agreements cover all the issues raised in the Amended Complaint. Thus, the Court must enforce the arbitration clauses in the agreements, stay these proceedings, and refer this matter to arbitration for resolution. All of the issues referred to arbitration, the Court will exercise its discretion to dismiss the case.

¶25 An order consistent with this memorandum will follow.

DATED: February 25, 2019



**Kathleen Mackay**  
Judge of the Superior Court  
of the Virgin Islands

**ATTEST:**

**ESTRELLA H. GEORGE**

Clerk of the Court

BY: 

**LORI BOYNES-TYSON**

Chief Deputy Clerk 2/25/19



IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS  
DIVISION OF ST. THOMAS AND ST. JOHN

SANDRA GOOMANSING AND  
JILLIAN C. BRODIE,

Plaintiffs,

vs.

ICC TV, INC. d/b/a VIYA TV2,

Defendant.

CIVIL NO. ST-18-CV-193

ACTION FOR DAMAGES

JURY TRIAL DEMANDED

Cite as 19 V.I. Super 26U

ORDER

This matter is before the Court on Defendant's Motion To Compel Arbitration. For the reasons set forth in the Memorandum Opinion entered on this day, it is hereby

**ORDERED** that Defendant's Motion To Compel Arbitration is **GRANTED**;

**ORDERED** that this matter is **STAYED**;

**ORDERED** that this matter is **REFERRED TO ARBITRATION** for resolution of all issues;

**ORDERED** that this matter is **DISMISSED** and **CLOSED**; and it is further

**ORDERED** that copies of this Order and the Memorandum Opinion be directed to counsel of record.

DATED: February 25, 2019

ATTEST:

ESTRELLA H. GEORGE  
Clerk of the Court

BY:

LORI BOYNES TYSON  
Chief Deputy Clerk 2/25/19

Kathleen Mackay

Kathleen Mackay  
Judge of the Superior Court  
of the Virgin Islands