STATE OF NORTH CAROLINA

MECKLENBURG COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
23 CVS 17361

CHARLES SCHWAB & CO., INC.,

Plaintiff,

v.

LAUREN ELIZABETH MARILLEY and PETER JOSEPH MARILLEY,

Defendants.

ORDER ON DEFENDANT PETER MARILLEY'S MOTION TO STAY PROCEEDINGS AND COMPEL ARBITRATION AND DEFENDANT LAUREN MARILLEY'S MOTION TO STAY ARBITRATION

1. **THIS MATTER** is before the Court on two competing Motions to Stay: Defendant Peter Marilley's Motion to Stay Proceedings and Compel Arbitration ("Peter's Motion"), (ECF No. 8), and Defendant Lauren Marilley's Motion to Stay Arbitration ("Lauren's Motion"), (ECF No. 15) (together, the "Motions").

2. Having considered the Motions, the related briefing, other relevant matters of record, and the arguments of counsel at a hearing held 6 February 2024, the Court hereby **DENIES** the Motions.

I. FINDINGS OF FACT[1]

3. The Court is required to make findings of fact and conclusions of law when determining whether to compel arbitration. *Ellis-Don Constr., Inc. v. HNTB Corp.*, 169 N.C. App. 630, 635 (2005) ("Without findings of fact, the appellate court

[1] To the extent any finding of fact is more appropriately characterized as a conclusion of law or vice-versa, it should be reclassified. *See N.C. State Bar v. Key*, 189 N.C. App. 80, 88 (2008) ("[C]lassification of an item within [an] order is not determinative, and, when necessary, the appellate court can reclassify an item before applying the appropriate standard of review.").

cannot conduct a meaningful review of the conclusions of law and test the correctness of the lower court's judgment." (cleaned up)). "Accordingly, for such limited purpose, the court also may consider evidence as to facts that are in dispute." *Capps v. Blondeau*, 2010 NCBC LEXIS 10, at **5 n.6 (N.C. Super. Ct. Apr. 13, 2010). The Court therefore makes the following findings of fact based on the evidence of record submitted by the parties and conclusions of law solely for the purpose of resolving the Motions and without prejudice to any inconsistent findings the Court may make in any subsequent proceeding in this action.

4. This case arises from a controversy concerning the ownership and release of funds formerly held in a joint brokerage account with Plaintiff TD Ameritrade, Inc., n/k/a Charles Schwab & Company, Inc. ("TD Ameritrade" or "Schwab")[2] that was opened by Defendants Peter Marilley ("Peter"), and his daughter, Lauren Marilley ("Lauren").

5. Around March 2005, when Lauren was nine years old, Lauren's paternal grandfather ("Dr. Marilley"), opened an account with TD Ameritrade for Lauren's benefit under the Uniform Transfer to Minors Act (the "UTMA Account"). (Am. Crosscl. ¶ 19, ECF No. 18; Crosscl. & Answ. Ex. C ["Am. Statement of Claim"] ¶ 7, ECF No. 4.) Dr. Marilley initially served as the custodian of the account. (Am. Crosscl. ¶ 19; Am. Statement of Claim ¶ 8.)

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[2] On 6 October 2020, The Charles Schwab Corporation acquired TD Ameritrade Holding Corporation and its subsidiaries, including TD Ameritrade, Inc. Most brokerage accounts previously held at TD Ameritrade, Inc. have been transitioned to Charles Schwab & Co., Inc. (Pl's. Mem. of Law in Opp. to Def.'s Mot. to Compel Arbitration ["Pl.'s Br. Opp."] fn. 1, ECF No. 14.) Accordingly, the Court refers to TD Ameritrade and Schwab interchangeably in this Order.

6. Additionally, around February 2008, Dr. Marilley opened a separate account for Lauren's benefit, a 529 Education Savings Plan through CollegeInvest (the "CollegeInvest Account"). (Am. Crosscl. ¶ 33.) Dr. Marilley funded the account by transferring $146,794.93 from the UTMA Account to the CollegeInvest Account. (Am. Crosscl. ¶ 33.) Funds from the CollegeInvest Account were used to pay for Lauren's undergraduate degree at Niagara University nearly a decade later. (Am. Statement of Claim ¶ 9.)

7. In 2009, Peter replaced Dr. Marilley as custodian of the UTMA Account. (Am. Crosscl. ¶ 19; Compl. ¶ 7, ECF No. 3; Am. Statement of Claim ¶ 8.) At all times after 17 December 2009, the UTMA Account was a Florida UTMA Account, subject to the Florida Uniform Transfers to Minors Act ("FUTMA"), Fla. Stat. §§ 701.101 *et seq*. (Am. Crosscl. ¶ 20.) Under the FUTMA, the age of majority is twenty-one years old, and Lauren had "the absolute right to compel immediate distribution of the entire custodial property" when she turned twenty-one. (Am. Crosscl. ¶¶ 25, 31.)

8. In August 2016, prior to Lauren turning twenty-one, "Peter instructed Lauren to sign paperwork that would convert the UTMA Account to a joint account at TD Ameritrade." (Am. Crosscl. ¶ 50; Am. Statement of Claim ¶ 10.) As a result, the UTMA Account was converted to a joint account at TD Ameritrade co-owned by Peter and Lauren, (the "Joint Account"), on 18 August 2016. (Am. Crosscl. ¶ 54; Compl. ¶ 8.)

9. Only two deposits were made into the UTMA Account following its conversion to the Joint Account—both from the CollegeInvest Account.

(Am. Crosscl. ¶ 63.) Thus, money that was transferred out of Lauren's UTMA Account to fund Lauren's CollegeInvest Account in 2008 was returned back into Lauren's UTMA Account (then the Joint Account with Peter) in late 2016 and early 2017. (Am. Crosscl. ¶ 63.) Lauren's position is that as the sole beneficiary of the UTMA Account from which these funds originated, she is entitled to all the CollegeInvest funds deposited into the Joint Account. (Am. Crosscl. ¶ 64.)

10. Lauren believes that she was required by CollegeInvest to open a separate, individual account, upon her twenty-first birthday. (Aff. of Lauren Elizabeth Marilley ["Lauren Aff."] ¶ 8, ECF No. 15.2.) Accordingly, she set up such an account and, in March 2017, transferred the remaining $147,361.21 in the CollegeInvest Account to her own individual CollegeInvest Account. (Lauren Aff. ¶ 6; Am. Crosscl. ¶ 41.)

11. Peter, however, contends that Dr. Marilley was entitled to the $147,361 that remained in the CollegeInvest Account following completion of Lauren's undergraduate studies. (Am. Statement of Claim ¶ 12.) Lauren refused Peter's requests to return the funds and used the money between September 2019 and January 2022 to pay for tuition and living expenses while obtaining her advanced nursing degree. (Am. Crosscl. ¶ 80; Am. Statement of Claim ¶ 13.) The CollegeInvest Account is now closed. (Lauren Aff. ¶ 14.)

12. In response to Lauren's transfer of funds into her own individual CollegeInvest Account, Peter instructed TD Ameritrade to place "no trades" and "no funds out" restrictions on the Joint Account he held with Lauren on 7 June 2017.

(Am. Statement of Claim ¶ 14; Am. Crosscl. ¶ 69.) Lauren was not contacted by TD Ameritrade and did not consent to the restrictions placed on the Joint Account. (Am. Crosscl. ¶ 71.) She only learned of the restrictions after she tried to sell stock held in the Joint Account. (Am. Crosscl. ¶ 77.)

13. In 2022, Lauren opened an individual brokerage account with TD Ameritrade. (Am. Crosscl. ¶ 81; Compl. ¶ 9.) She attempted to remove the "no funds out" restriction from the Joint Account in late 2022, but was unsuccessful. (Am. Crosscl. ¶ 83.) However, in January 2023, for a reason yet undetermined, TD Ameritrade lifted both the "no trades" and "no funds out" restrictions from the Joint Account. (Am. Crosscl. ¶ 84.) Subsequently, Lauren transferred the funds from the Joint Account to her individual account at TD Ameritrade in May 2023. (Am. Crosscl. ¶ 85; Compl. ¶ 9.)

14. Upon learning that Lauren had transferred the money from the Joint Account to her individual account, Peter complained to TD Ameritrade (now Schwab). (Am. Crosscl. ¶ 87; Compl. ¶ 10.) In response, Schwab restrained the assets that had been transferred to Lauren's individual account (the "Restrained Assets"), preventing her from accessing these funds. (Am. Crosscl. ¶ 88; Compl. ¶ 10.) The Restrained Assets remain in a Schwab account in Mecklenburg County. (Am. Crosscl. ¶ 89.)

15. The Client Agreement applicable to the Joint Account contains an arbitration clause which provides:

> I agree that any controversy between you and your affiliates, any of their respective officers, directors, employees, or agents, and me (including any of my officers, directors, employees, or agents) arising out of or relating to this Agreement, our relationship, any Services provided by

> you, or the use of the Services, and whether arising before or after the date of this Agreement, shall be arbitrated and conducted under the provisions of the Code of Arbitration of the FINRA.

(Compl. Ex. B ["Client Agreement"] § 12.) "I" and "me" means each account owner who signs the Account Application. "You" or "your" means TD Ameritrade / Schwab. (Client Agreement § 1.)

16. Pursuant to the arbitration clause, Peter commenced an arbitration proceeding before the Financial Industry Regulatory Authority ("FINRA") in Florida against both Lauren and TD Ameritrade. Peter's Amended Statement of Claim in the arbitration "requests an award of $147,361, which [Peter] will use to reimburse his father for the CollegeInvest 529 account that was overfunded." (Am. Statement of Claim ¶ 27.) Peter's Amended Statement of Claim also seeks a temporary order requiring Schwab to place a "no funds out" restriction on Lauren's individual account. (Am. Statement of Claim ¶ 30A.) Additionally, Peter asserts claims in arbitration against Schwab for negligence and breach of contract and claims against Lauren for conversion and unjust enrichment.

17. Schwab initiated the action in this Court by filing its Complaint for Interpleader on 29 September 2023. Schwab admits that it has no interest in the Restrained Assets, (Compl. ¶ 16), but avers that it "is in doubt as to who is entitled to the Restrained Assets, is exposed or may be exposed to double or multiple liability, and cannot safely release the Restrained Assets without the aid of this Court." (Compl. ¶ 17.) In addition, Schwab seeks to be discharged from any liability and requests a stay of the FINRA arbitration. (Compl. ¶¶ 19, 22.)

18. On 13 October 2023, Lauren answered the Complaint in this action and asserted a Crossclaim against Peter, which she amended on 14 December 2023. (Answ. & Crosscl., ECF No. 4.) The Amended Crossclaim purports to assert claims against Peter for conversion, breach of fiduciary duty, and constructive fraud. Lauren demands a stay of the FINRA arbitration, a declaration from this Court that she is the sole and rightful owner of the Restrained Assets, and attorney's fees. (*See generally*, Am. Crosscl., ECF No. 18.)

19. The case was designated as a complex business case on 15 November 2023 and assigned to the undersigned the same day. (ECF Nos. 1, 2.)

20. Peter filed his Motion on 17 November 2023, requesting that the Court stay this proceeding and compel the parties to arbitrate. Lauren filed her Motion on 7 December 2023, requesting that the Court stay the arbitration proceeding. Schwab joined Lauren's Motion on 20 December 2023. (ECF No. 22.)

21. After full briefing, a hearing was held on the Motions on 6 February 2024. (*See* Not. of Hrg., ECF No. 28.) The Motions are now ripe for disposition.

II. CONCLUSIONS OF LAW

22. "The Federal Arbitration Act (FAA) mandates the enforcement of arbitration agreements and is enforceable in both state and federal courts." *Park v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 159 N.C. App. 120, 122 (2003) (citing *Perry v. Thomas*, 482 U.S. 483 (1987)). Section 2 of the FAA provides: "[a] written provision in . . . a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract . . . or the refusal to

perform the whole or any part thereof . . . shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract[.]" 9 U.S.C. § 2. Moreover, "[s]ecurities brokerage agreements are contracts 'involving' interstate commerce, and therefore, the FAA applies to them." *Park*, 159 N.C. App. at 122.

23. Similarly, under the North Carolina Revised Uniform Arbitration Act ("NCRUAA"), "[a]n agreement contained in a record to submit to arbitration any existing or subsequent controversy arising between the parties to the agreement is valid, enforceable, and irrevocable except upon a ground that exists at law or in equity for revoking a contract." N.C.G.S. § 1-569.6(a).

24. Both federal and state law require the existence of a valid agreement to arbitrate before compelling the arbitration of any dispute. *See* 9 U.S.C. § 2; N.C.G.S. § 1-569.6; *Routh v. Snap-On Tools Corp.*, 108 N.C. App. 268, 271 (1992) ("[B]efore a dispute can be settled [by arbitration], there must first exist a valid agreement to arbitrate."); *see also* N.C.G.S. § 1-569.7(a)(2) ("On motion of a person showing an agreement to arbitrate and alleging another person's refusal to arbitrate pursuant to the agreement[,] [i]f the refusing party opposes the motion, the court shall proceed summarily to decide the issue and order the parties to arbitrate unless it finds that there is no enforceable agreement to arbitrate.").

25. Thus, "[a] trial court reviewing a motion to compel arbitration must conduct a two-step analysis to ascertain both (1) whether the parties had a valid agreement to arbitrate, and also (2) whether the specific dispute falls within the

substantive scope of that agreement." *Terrell v. Kernersville Chrysler Dodge, LLC*, 252 N.C. App. 414, 418 (2017) (quoting *Slaughter v. Swicegood*, 162 N.C. App. 457, 461 (2004)) (cleaned up).

26. "The question of whether a dispute is subject to arbitration is an issue for judicial determination[,] [and] [t]he trial court's conclusion as to whether a particular dispute is subject to arbitration is a conclusion of law[.]" *Raspet v. Buck*, 147 N.C. App. 133, 136 (2001).

A. Valid Agreement to Arbitrate

27. "[S]tate law generally governs issues concerning the formation, revocability, and enforcement of arbitration agreements." *Park*, 159 N.C. App. at 122; *see also First Options v. Kaplan*, 514 U.S. 938, 944 (1995). Here, the Client Agreement contains a choice-of-law provision, and the parties have selected Nebraska law to govern claims arising under the Agreement. (*See* Client Agreement § 14.k.) Choice-of-law provisions are generally enforceable in North Carolina. *See Tanglewood Land Co. v. Byrd*, 299 N.C. 260, 262 (1980) ("This Court has held that where parties to a contract have agreed that a given jurisdiction's substantive law shall govern the interpretation of the contract, such a contractual provision will be given effect."). Therefore, the laws of the State of Nebraska will determine whether the arbitration clause is valid.

28. Under Nebraska law, "[a]rbitration is purely a matter of contract." *Zweiback Family Ltd. P'ship v. Lincoln Ben. Life Co.*, 907 N.W.2d 700, 703 (Neb. 2018). "A provision in a written contract to submit to arbitration any controversy

thereafter arising between the parties is valid, enforceable, and irrevocable except upon such grounds as exist at law or in equity for the revocation of any such contract, if the provision is entered into voluntarily and willingly." Neb. Rev. Stat. § 25-2602.01(b).[3] "Thus, Nebraska favors enforcement of agreements so long as the contract is not unconscionable and does not violate public policy." *Wheatley v. Friesen*, 2019 Neb. Trial Order LEXIS 4554, at *4 (Neb. Dist. Ct., 3rd Jud. Dist., Lancaster Cty. 2019).

29. Schwab concedes that a valid agreement to arbitrate exists. (*See* Pl.'s Br. Opp. p. 5.) Lauren, however, questions the authenticity of the Client Agreement that has been presented to the Court. (*See* Lauren Marilley's Br. in Supp. of Mot. to Stay Arbitration ["Lauren's Br. Supp."] ECF No. 16 ("Lauren has no knowledge that the document attached to the Complaint as Exhibit B is 'the applicable TD Ameritrade Client Agreement[.]'")) She argues that (1) "Peter has not authenticated the Client Agreement or put forth any evidence that would evidence the factual circumstances surrounding the creation of the Purported Client Agreement document"; (2) Peter "has not averred that any version of the Client Agreement was ever signed by him or Lauren"; (3) the Client Agreement attached to the Complaint does not bear any party's signature; and (4) the Client Agreement attached to the

[3] The Court observes that Nebraska and North Carolina law are substantially the same in this regard. *See* N.C.G.S. § 1-569.6; *Register v. Wrightsville Health Holdings, LLC*, 271 N.C. App. 257, 265 (2020) ("The law of contract governs the issue of whether an agreement to arbitrate exists. [A] valid contract requires (1) assent; (2) mutuality of obligation; and (3) definite terms.").

Complaint was copyrighted by Schwab in 2022, several years after the Joint Account was opened in 2016. (Lauren's Br. Supp. p. 4.)

30. Despite these contentions, Lauren alleges in paragraph nine of her Amended Crossclaim that "[u]pon information and belief, Exhibit B [to the Complaint] is a copy of a TD Ameritrade Client Agreement for the [Joint Account]." (Am. Crosscl. ¶ 9.) Furthermore, Lauren avers that "[a] true and correct copy of the 'UTMA/UGMA Account Conversion Application' . . . is Exhibit D [to the Answer & Crossclaim]," (Am. Crosscl. ¶ 51), and Exhibit D bears the signatures of both Peter and Lauren. Above the signatures, the application states,

> I have received and read the Client Agreement, which is incorporated by this reference, that will govern my account. I agree to be bound by this Client Agreement, as amended from time to time, and request an account to be opened in the name(s) set forth below. **The Client Agreement applicable to this brokerage account agreement contains predispute arbitration clauses. By signing this agreement, the parties agree to be bound by the terms of the agreement, including the arbitration agreement located in Section 12 of the Client Agreement on pages 7 and 8**.

(Answ. & Crosscl. Ex. D § 10) (emphasis in original).

31. "As a general rule, every person of mature age able to read and write, who has an opportunity to read an instrument, and executes the same is presumed to know the contents of the instrument signed and is estopped from denying the contents thereof." *Wheatley*, 2019 Neb. Trial Order LEXIS 4554, at *5. Lauren does not allege that she did not voluntarily and willingly enter into the Client Agreement. Accordingly, the Court concludes that a valid arbitration agreement exists.

B. Scope of Arbitration Agreement

32. As noted above, the arbitration clause provides that "any controversy" between Schwab and Defendants "arising out of or relating to" the Client Agreement is subject to arbitration. However, Peter's Amended Statement of Claim in arbitration makes clear that his dispute with Lauren is not within the scope of this clause.

33. At the heart of Peter's claims is Lauren's failure to return to her grandfather monies that remained in the CollegeInvest Account when she completed her undergraduate nursing degree. Peter contends that when Lauren transferred the funds from the Joint Account to her individual account, the Joint Account had a value of $287,615. (Am. Statement of Claim ¶ 27.) However, he seeks the return of only $147,361—the same amount he claims Lauren owes her grandfather. The arbitration provision contained in the Client Agreement cannot be read to apply to this intrafamilial dispute. The fact that Peter seeks repayment for alleged misuse of the CollegeInvest Account by seeking to restrict funds that are in the Schwab Joint Account does not change this result.

34. The plain language of the arbitration clause makes this clear. It says, "I agree that any controversy between you . . . and me . . . arising out of or relating to this Agreement, our relationship, any Services provided by you, or the use of the Services, and whether arising before or after the date of this Agreement, shall be arbitrated[.]" Given that "I" and "me" means each account owner who signs the

Account Application, and "you" means TD Ameritrade / Schwab, the Court agrees with Schwab that:

> Peter agreed that any controversy *between Schwab and him* arising out of or relating to the Agreement, his relationship with Schwab, any Services provided by Schwab, or the use of the Services would be arbitrated. Lauren separately agreed that any controversy *between Schwab and her* arising out of or relating to the Agreement, her relationship with Schwab, and any Services provided by Schwab, or the use of the Services would be arbitrated. Critically, however, Lauren did not agree in the Agreement that any controversy *between Peter and her* would be subject to arbitration.

(Pl.'s Br. Opp. p. 6.)

35. The arbitration clause is meant to provide an avenue for dispute resolution between Schwab and its customers, not between the customers themselves. Under Nebraska law, as in North Carolina, "[a] contract written in clear and unambiguous language is not subject to interpretation or construction and must be enforced according to its terms. A court is not free to rewrite a contract or to speculate as to terms of the contract which the parties have not seen fit to include." *Benjamin v. Bierman*, 943 N.W.2d 283, 291 (Neb. 2020).

36. Moreover, attempting to shoehorn Peter's claims against Lauren into FINRA arbitration, as Peter requests, would make for an uneasy fit. Peter and Lauren's claims against each other and the relief they each seek relate to ownership of the Restrained Assets. Ownership of those assets is not controlled by the Client Agreement. Furthermore, the FINRA Code, which governs the arbitration, "applies to any dispute between a customer and a member or associated person of a member[.]" (FINRA Rule 12101(a).) "[T]he term 'member' means any broker or dealer admitted to membership in FINRA[.]" (FINRA Rule 12100(s).) Neither Peter nor Lauren is a

"member" as defined by the FINRA Code.[4] Accordingly, Peter's claims against Lauren are not subject to arbitration.

37. Notwithstanding the above, two of Peter's claims are against Schwab, and those claims do fall within the scope of the arbitration clause. Peter asserts that Schwab "acted negligently in handling [Peter's] investment account because it breached a duty owed to [him] to manage his account" and "failed to use reasonable care in supervising its personnel by failing to enforce the [account] restrictions[.]" (Am. Statement of Claim ¶ 36.) Peter also alleges that Schwab "breached its contract to provide securities brokerage services and investment advice to [him] by failing to enforce the restrictions [he] had placed on the joint account." (Am. Statement of Claim ¶ 42.)

38. There can be little doubt that whether Schwab acted negligently and/or breached a fiduciary duty by removing the restrictions Peter placed on the Joint Account are controversies between Peter and Schwab that arise out of or relate to the Client Agreement and the services provided thereunder. Accordingly, the Court will not stay arbitration of these claims, and, to that extent, Lauren's Motion (joined by Schwab) is **DENIED.**[5] In addition, to the extent Schwab demands to be completely

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[4] During the hearing, Peter's counsel argued, for the first time, that Rules 12313(a) and 12303 of the FINRA Code allow for the arbitration of other claims arising out of the same transaction or occurrence. Schwab's counsel disagreed but also complained that the argument was not included in Peter's brief. Given that the argument was not briefed, and therefore inappropriately raised for the first time in oral argument, the Court will not consider it in its ruling. *See* Business Court Rule 7.2.

[5] Indeed, neither party has presented law supporting this Court's authority to stay a FINRA arbitration. In any event, Plaintiff appears to agree that the requested relief does not extend to these claims. (*See* Pl.'s Br. Opp. p. 9 ("Schwab is not . . . requesting that the Court prevent

released from all claims relating to its activities with respect to the Joint Account, such a demand would infringe upon the claims in arbitration, and the Court therefore **STAYS** that aspect of Schwab's claim.

39. Next, because the Court concludes that Peter's claims against Lauren are not within the scope of the arbitration clause, the Court further concludes that the fact Peter is pursuing claims in arbitration against Schwab does not provide a basis upon which to stay the non-arbitrable claims in this action. Therefore, to that extent, Peter's Motion is also **DENIED**.

40. However, the Court further concludes that Lauren has presented sufficient evidence that she is likely to succeed on the merits of her cross-claim and that there is the potential for immediate, irreparable harm to warrant an order protecting the Restrained Assets from further disposition until this Court has addressed Schwab's interpleader action. *See A.E.P. Indus., Inc. v. McClure*, 308 N.C. 393, 401 (1983) (The movant bears the burden to show: (1) a likelihood of success on the merits, and (2) that it is likely to sustain irreparable loss unless the injunction is issued or, "if, in the opinion of the Court, issuance is necessary for the protection of plaintiff's rights during the course of litigation."); *see also* N.C.G.S. § 1-485.

41. Likelihood of success means a "reasonable likelihood[.]" *A.E.P. Indus., Inc.*, 308 N.C. at 404. Irreparable injury is not necessarily injury that is "beyond the possibility of repair or possible compensation in damages, but that the injury is one

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Peter from arbitrating a claim that is actually subject to arbitration under the Agreement. Instead, Schwab is simply asking the Court to resolve a dispute between two parties—Lauren and Peter—whose disputes with each other are not subject to arbitration under the Agreement."))

to which the complainant should not be required to submit or the other party permitted to inflict, and is of such continuous and frequent recurrence that no reasonable redress can be had in a court of law." *Id.* at 407 (emphasis omitted). The Court therefore orders that Peter may seek relief in arbitration against Schwab, but only to the extent that the relief sought does not address ownership of the Restrained Assets, which is a matter to be determined by the Court in this action.[6]

42. Likewise, to the extent Schwab seeks in this action to be discharged "from any and all liability or responsibility," as pleaded in the *ad damnum* clause of its Complaint, the Court declines at this time to consider or order any relief that would infringe on Peter's right to arbitrate his claims solely against Schwab for its alleged conduct.

III. CONCLUSION

43. **WHEREFORE**, the Court, in the exercise of its discretion, hereby **ORDERS** as follows:

a. Defendant Peter Marilley's Motion to Stay Proceeding and Compel Arbitration is **DENIED,** except that, until further order, the Court **STAYS** Schwab's request for relief to the extent that relief would

[6] To the extent Peter has forecasted that he will challenge the Court's jurisdiction, the Court underscores that its order is limited to the disposition of property that is located in North Carolina. *See, e.g.*, *Credit Union Auto Buying Serv. v. Burkshire Props. Grp. Corp.*, 243 N.C. App. 12, 15 (2015) ("[W]hen claims to the property itself are the source of the underlying controversy between the plaintiff and the defendant, it would be unusual for the State where the property is located not to have jurisdiction." (quoting *Shaffer v. Heitner*, 433 U.S. 186, 207 (1977))); N.C.G.S. § 1-75.8(1).

infringe on Peter's right to arbitrate his claims against Schwab alone for its alleged misconduct;

b. Defendant Lauren Marilley's Motion to Stay Arbitration is **DENIED,** except that Peter is **ENJOINED** from seeking relief in arbitration against Schwab that would address ownership of the Restrained Assets, which is a matter to be determined by the Court in this action.

IT IS SO ORDERED, this 20th day of February, 2024.

/s/ Julianna Theall Earp

Julianna Theall Earp
Special Superior Court Judge
for Complex Business Cases