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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

MARCUS VAUGHN, Plaintiff and Respondent, v. TESLA, INC., Defendant and Appellant.	A154753 (Alameda County Super. Ct. No. RG17882082)

Marcus Vaughn filed a putative class action complaint against Tesla, Inc. (Tesla), alleging race discrimination and harassment claims pursuant to California's Fair Employment and Housing Act (FEHA, Gov. Code, § 12900 et seq.). The trial court denied Tesla's motion to compel arbitration.

We affirm.[1]

FACTUAL AND PROCEDURAL BACKGROUND

Vaughn—an African American—began working at Tesla's Fremont factory in April 2017. Tesla employees regularly called Vaughn and other African American

[1] Vaughn moves to dismiss the appeal and for monetary sanctions against Tesla for filing a frivolous appeal. (See Cal. Rules of Court, rule 8.276; Code Civ. Proc., § 907.) An appeal is frivolous "when it is prosecuted for an improper motive . . . or when it indisputably has no merit." (*In re Marriage of Flaherty* (1982) 31 Cal.3d 637, 650.) We deny the dismissal motion and decline to impose monetary sanctions. We conclude the merits of the appeal are minimal—and warranting summary treatment—but sanctions "should be used most sparingly to deter only the most egregious conduct." (*Id.* at p. 651.)

employees "nigger" and "nigga." Vaughn reported the conduct to Tesla, but it continued. At some point, Vaughn applied for a permanent position as a production associate. On October 18, 2017, Tesla sent Vaughn an offer letter for the position. The letter contained an arbitration agreement and a November 22, 2017 effective date. It also stated: "If you choose to accept our offer . . . please indicate your acceptance, by signing below and returning it . . . prior to November 6, 2017 after which date this offer will expire."

Vaughn did not sign or return the offer letter. October 31, 2017 was Vaughn's last day of work. On November 3, 2017 Tesla informed Vaughn it would "not . . . proceed with [his] application" for production associate. Shortly thereafter, Vaughn filed a putative class action complaint against Tesla on behalf of similarly situated African American employees, alleging FEHA claims for discrimination, harassment, and failure to prevent discrimination and harassment.

After answering the complaint, Tesla moved to compel arbitration pursuant to the offer letter. It acknowledged the letter was unsigned, but argued Vaughn could be compelled to arbitrate based on the equitable estoppel doctrine, which provides a nonsignatory plaintiff may be compelled to arbitrate when his claims rely on, and presume the existence of, a contract containing an arbitration agreement. According to Tesla, Vaughn's claims relied "on the existence of an employment relationship with Tesla, and in turn, the [offer letter] containing the arbitration agreement." In a supporting declaration, a Tesla human resources manager averred all Tesla employees "must accept the terms and conditions of their offer letter before beginning employment with Tesla. Tesla's offer letters contain mandatory arbitration agreements as a condition of employment. In order to accept an offer of employment and become an employee of Tesla, one is required to accept the arbitration agreement."

In opposition, Vaughn argued he did not consent to arbitration, and that the equitable estoppel doctrine did not apply. The court agreed. It denied the motion to compel arbitration. First, the court determined Tesla did not establish Vaughn "entered into an agreement to arbitrate. Tesla made an offer, [Vaughn] did not accept the offer, and Tesla withdrew the offer." Next, the court rejected Tesla's argument that Vaughn

was "bound by the letter offer under principles of equitable estoppel." It noted equitable estoppel applies only where the plaintiff's claims are " 'dependent upon, or inextricably bound up with, the obligations imposed by the contract' " and that Vaughn's claims were "based on the FEHA" and could "be resolved without reference to the terms of the offer letter." As the court explained, Vaughn "alleges an employment relationship with Tesla . . . but that does not mean that [he] alleges an employment relationship based on the offer letter. The offer letter was apparently intended to supersede some other contractual relationship."

DISCUSSION

"Generally speaking, one must be a party to an arbitration agreement to be bound by it. ' "The strong public policy in favor of arbitration does not extend to those who are not parties to an arbitration agreement, and a party cannot be compelled to arbitrate a dispute that he has not agreed to resolve by arbitration." ' " (*Westra v. Marcus & Millichap Real Estate Investment Brokerage Co., Inc.* (2005) 129 Cal.App.4th 759, 763.) As the party moving to compel arbitration, Tesla had the burden to establish the existence of an arbitration agreement by a preponderance of the evidence. (*Esparza v. Sand & Sea, Inc.* (2016) 2 Cal.App.5th 781, 787.) We review de novo the order denying the motion to compel arbitration. (*Id.* at p. 787.)

"When it is clear . . . that the proposed written contract would become operative *only* when signed by the parties . . . , the failure to sign the agreement means no binding contract was created." (*Banner Entertainment, Inc. v. Superior Court* (1998) 62 Cal.App.4th 348, 358.) To accept the offer letter, Vaughn was required to sign and return it before "November 6, 2017 after which date this offer will expire." Vaughn did not sign or return the offer letter, and Tesla later withdrew the offer. Thus, the offer letter did not create a mutual agreement to arbitrate. Numerous cases support our conclusion. (*Id.* at p. 359 [no agreement to arbitrate where plaintiff did not sign agreement, which "specifically provided, . . . 'this agreement *when signed by the parties hereto* will constitute a legal and binding obligation' "]; *Marcus & Millichap Real Estate Investment Brokerage Co. v. Hock Investment Co.* (1998) 68 Cal.App.4th 83, 89 [buyers included

arbitration provision in purchase agreement, but sellers did not initial that provision and did not agree to arbitrate]; *Knutson v. Sirius XM Radio Inc*. (9th Cir. 2014) 771 F.3d 559, 566 [no agreement to arbitrate where customer did not manifest assent to agreement containing arbitration provision].)

That other Tesla employees may have accepted offer letters containing arbitration agreements is immaterial at this stage, where the issue before us is the existence of an arbitration agreement between Vaughn and Tesla.[2] Tesla's contention that acceptance of an offer letter is a condition of employment is similarly unpersuasive—it ignores the fact that Vaughn worked at Tesla from April to October 2017 *without* having signed the offer letter. We conclude Tesla failed to demonstrate the existence of an enforceable arbitration agreement between Vaughn and Tesla. Absent " ' "a clear agreement to submit disputes to arbitration, courts will not infer that the right to a jury trial has been waived." ' " (*Esparza v. Sand & Sea, Inc., supra,* 2 Cal.App.5th at p. 790.)

We decline Tesla's invitation to apply the equitable estoppel doctrine. As relevant here, that doctrine provides a "nonsignatory plaintiff may be estopped from refusing to arbitrate when he . . . asserts claims that are 'dependent upon, or inextricably intertwined with,' the underlying contractual obligations of the agreement containing the arbitration clause. [Citation.] 'The focus is on the nature of the claims asserted . . . . That the claims are cast in tort rather than contract does not avoid the arbitration clause.' [Citation.] Rather, ' "[*t*]*he plaintiff's actual dependence on the underlying contract in making out the claim against the nonsignatory . . . is . . . always the* sine qua non *of an appropriate situation for applying equitable estoppel*." ' [Citations.] '[E]ven if a plaintiff's claims "touch matters" relating to the arbitration agreement, "the claims are not arbitrable unless the plaintiff relies on the agreement to establish its cause of action." ' [Citations.] 'The fundamental point' is that a party is 'not entitled to make use

[2] We express no opinion on whether Vaughn is an appropriate class representative, and we decline to consider whether Vaughn should be compelled to individually arbitrate his claims. (See *Lee v. Southern California University for Professional Studies* (2007) 148 Cal.App.4th 782, 786.)

of [a contract containing an arbitration clause] as long as it worked to [his or] her advantage, then attempt to avoid its application in defining the forum in which [his or] her dispute . . . should be resolved.' " (*Jensen v. U-Haul Co. of California* (2017) 18 Cal.App.5th 295, 306.)

Vaughn's claims do not rely or depend on the offer letter. The complaint alleges FEHA claims, specifically that Tesla violated FEHA by creating a hostile work environment for African American employees and by failing to prevent race-based discrimination and harassment. These claims depend on the existence of an employment relationship with Tesla, but they are not founded on—or bound up with—the terms of the offer letter Vaughn received after he commenced working at Tesla, an offer letter Vaughn did not accept, an offer letter that Tesla withdrew. (See *Jensen v. U-Haul Co. of California, supra,* 18 Cal.App.5th at p. 306 [tort claims " 'fully viable without reference to the terms' " of the agreement containing arbitration provision].)

Tesla correctly notes the complaint alleges Tesla is an employer "due to . . . Tesla's ownership of the facility, its day-to-day managerial role in the facility, its right to hire, fire and discipline the employees, . . . Tesla is Plaintiff and Class Members' FEHA employer, or alternatively a joint employer, which provides *employment pursuant to contract*." (Italics added.) But the complaint's reference to "employment pursuant to contract" does not require application of the equitable estoppel doctrine because Vaughn does not rely on the terms of that unidentified contract to state his causes of action against Tesla. (See *Goldman v. KPMG, LLP* (2009) 173 Cal.App.4th 209, 232.) That Vaughn alleges putative class members were employed pursuant to a contract does not make Vaughn a party to the unidentified employment contract with Tesla. On the record before us, Vaughn signed no contract, offer letter, or other agreement by which he accepted an unidentified arbitration clause.

The equitable estoppel cases upon which Tesla relies are distinguishable. In *JSM Tuscany, LLC v. Superior Court* (2011) 193 Cal.App.4th 1222, the court required nonsignatory plaintiffs "to arbitrate claims arising from contract containing an arbitration clause" under the equitable estoppel doctrine because they sued the defendants for breach

of contract. (*Id.* at p. 1239.) *JSM* explained that "[w]hen a plaintiff brings a claim which *relies on contract terms* against a defendant, the plaintiff may be equitably estopped from repudiating the arbitration clause contained in that agreement." (*Ibid.*) In *Garcia v. Pexco, LLC* (2017) 11 Cal.App.5th 782, the plaintiff signed an employment contract containing an arbitration agreement. (*Garcia*, at p. 784.) He sued several defendants, only one of whom signed the employment agreement. (*Id.* at p. 785.) The *Garcia* court enforced the arbitration agreement under the equitable estoppel doctrine, concluding "[b]ecause the arbitration agreement controls [the plaintiff's] employment, he is equitably estopped from refusing to arbitrate his claims." (*Id.* at pp. 787–788.)

Here, Vaughn is not relying on the offer letter to hold Tesla liable, and the offer letter does not control the terms of his employment. As a result, "the basis for equitable estoppel—relying on an agreement for one purpose while disavowing the arbitration clause of the agreement—is completely absent" and the court properly declined to apply the equitable estoppel doctrine. (*Goldman v. KPMG, LLP, supra,* 173 Cal.App.4th at p. 230.)

DISPOSITION

The order denying Tesla's motion to compel arbitration is affirmed. Vaughn is entitled to costs on appeal. (Cal. Rules of Court, rule 8.278(a)(2).)

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Jones, P.J.

WE CONCUR:

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Simons, J.

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Burns, J.

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