NOT FOR PUBLICATION

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U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

YANIV DE RIDDER, individually and as next friend of minor Plaintiff T.D.; ARACELY SOUCEK, individually and as next friend of minor Plaintiff N.S., Plaintiffs - Appellees, v. SHANE SELINGER, Defendant - Appellant,	No. 25-6635 D.C. No. 3:23-cv-04146-VC MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
Vince Chhabria, District Judge, Presiding

Argued and Submitted October 19, 2026
San Francisco, California

Before: S.R. THOMAS, KOH, and TUNG, Circuit Judges.

Shane Selinger appeals the district court's denial of his motion to compel arbitration pursuant to an arbitration agreement contained in Bloxflip's Terms of Service ("Terms"). The district court declined to compel arbitration because it held

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

that Plaintiffs[1] lacked actual and inquiry notice of the Terms. "We review de novo the denial of a motion to compel arbitration, while underlying factual findings are reviewed for clear error." *Berman v. Freedom Fin. Network, LLC*, 30 F.4th 849, 855 (9th Cir. 2022) (citation modified). "We review questions regarding choice of law de novo." *Narayan v. EGL, Inc.*, 616 F.3d 895, 898 (9th Cir. 2010). We have jurisdiction under 9 U.S.C. § 16(a)(1)(B) and affirm.

1. Selinger forfeited his argument that the district court erred by not conducting a choice of law analysis before ruling on contract formation. "Issues not presented to a district court generally cannot be heard on appeal" and may be deemed forfeited if not "raised sufficiently for the trial court to rule on [them]." *Walsh v. Nev. Dep't of Hum. Res.*, 471 F.3d 1033, 1037 (9th Cir. 2006) (citation omitted).

"Federal courts sitting in diversity look to the law of the forum state—here, California—when making choice of law determinations."[2] *Nguyen v. Barnes & Noble Inc.*, 763 F.3d 1171, 1175 (9th Cir. 2014). Under California's choice of law rules, Selinger was required to identify material differences between California law

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[1] Plaintiffs are Yaniv De Ridder, as next friend of minor Plaintiff T.D., and Nathan Soucek. Aracely Soucek ended her representation of Nathan as next friend after he turned 18 years old. Yaniv De Ridder and Aracely Soucek also sued individually but agreed to dismiss their individual claims.

[2] Selinger observed that the Terms contain a choice of law provision stating that Florida law will govern matters arising out of or related to the Terms. However, because no contract was formed in the instant case, the choice of law provision is not enforceable.

and the law of the state whose rule he sought to invoke. *See Wash. Mut. Bank, FA v. Super. Ct.*, 15 P.3d 1071, 1080 (Cal. 2001). In the district court, Selinger did not raise any differences between California and Florida contract formation law, nor did he respond to Plaintiffs' representation that California and Florida contract formation law are "materially identical." Thus, Selinger's choice of law argument is forfeited. *See Walsh*, 471 F.3d at 1037.

2. The district court properly declined to hold an evidentiary hearing because the record showed no genuine dispute of material fact as to whether Plaintiffs received actual or inquiry notice of Bloxflip's Terms.[3] The district court shall only grant a motion to compel arbitration where the making of the arbitration agreement is not "in issue." 9 U.S.C. § 4. The court applies the summary judgment standard in Federal Rule of Civil Procedure 56 to determine whether the existence of the arbitration agreement is "in issue." *Hansen v. LMB Mortg. Servs., Inc.*, 1 F.4th 667, 670 (9th Cir. 2021).

If the court determines that the existence of the arbitration agreement is not "in issue" because there is no genuine dispute of material fact, the court need not hold an evidentiary hearing and may decide the issue of contract formation as "a

[3] To the extent Selinger suggests that he was also entitled to demand a jury trial, he is incorrect. Only the party opposing arbitration is entitled to demand a jury trial. *See* 9 U.S.C. § 4 ("If no jury trial be demanded by *the party alleged to be in default . . . the court* shall hear and determine such issue." (emphases added)).

pure question of law." *Oberstein v. Live Nation Ent., Inc.*, 60 F.4th 505, 518 (9th Cir. 2023) (quoting *Long v. Provide Com., Inc.*, 200 Cal. Rptr. 3d 117, 123 (Ct. App. 2016)); *Kam-Ko Bio-Pharm Trading Co. Ltd-Australasia v. Mayne Pharma (USA) Inc.*, 560 F.3d 935, 943 (9th Cir. 2009). There is no genuine dispute of material fact if the party who bears the burden of proof at trial—here, Selinger, as the party seeking to compel arbitration, *see Johnson v. Walmart Inc.*, 57 F.4th 677, 681 (9th Cir. 2023)—"fails to make a showing sufficient to establish the existence of an element essential" to his case, *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986); *Koi Design LLC v. Marron Laws., APC*, 184 F.4th 1132, 1141 (9th Cir. 2026) (a dispute of material fact is only "genuine" if "a reasonable jury could return a verdict for the nonmoving party" (citation omitted)).

On actual notice, Selinger offered no evidence that Plaintiffs had actual notice of the Terms, just speculation. Indeed, Selinger concedes on reply that "there is presently no discovery before the Court affirmatively establishing Plaintiffs' actual notice." Moreover, contrary to Selinger's assertion, Plaintiffs were not required to submit evidence disproving their actual notice of the Terms because Selinger, as the party moving to compel arbitration, "b[ore] the burden of proving the existence of an agreement to arbitrate." *See Johnson*, 57 F.4th at 681. Accordingly, the district court properly concluded that there was no genuine dispute of material fact on actual notice. *See Celotex*, 477 U.S. at 322-23.

On inquiry notice, Selinger's arguments are similarly unavailing. Selinger suggests that the district court's failure to discuss certain visual elements of the login webpages indicates that "the district court resolved disputed factual questions about inquiry notice in Plaintiffs' favor."[4] However, the district court's inquiry notice analysis cited facts that Selinger himself described as undisputed, as well as a screenshot of Bloxflip's login webpage that both parties cited. Moreover, Selinger offers no evidence that creates any genuine dispute of material fact regarding the visual elements that he claims the district court did not discuss. Because Selinger must offer evidence to create a genuine dispute of material fact and cannot rely on argument alone, Selinger's argument that the record contains disputed evidence of inquiry notice fails. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248-50 (1986); *Celotex*, 477 U.S. at 322-23.

Because there was no genuine dispute of material fact concerning actual or inquiry notice, the district court properly decided the contract formation issue as a matter of law without holding an evidentiary hearing. *Kam-Ko*, 560 F.3d at 943. Additionally, the district court did not err by not specifying which undisputed facts in the record formed the basis of its decision on contract formation. The district

[4] We do not reach Selinger's argument that the district court applied an improper legal standard when analyzing inquiry notice. Selinger forfeited this argument by omitting it from his opening brief, which focused instead on whether the district court improperly resolved disputed facts regarding inquiry notice. *See Orr v. Plumb*, 884 F.3d 923, 932 (9th Cir. 2018).

court solely relied on undisputed facts, and in any case, "the court is not required to state findings or conclusions when ruling on a motion" under Rule 56 or "on any other motion." Fed. R. Civ. P. 52(a)(3).

3. The district court did not err by refraining from addressing the delegation clause of the arbitration agreement. Because the district court held that the arbitration agreement was never formed, the delegation clause within that arbitration agreement necessarily never went into effect. The district court therefore properly did not consider the delegation clause or parse which of the parties' arguments would have been decided by the court and which would have been delegated to the arbitrator had the arbitration agreement been made. *See Perez v. Discover Bank*, 74 F.4th 1003, 1011 n.2 (9th Cir. 2023) ("Because the parties here did not form an agreement to arbitrate, we resolve this appeal without determining whether the Citibank agreement's delegation clause would otherwise require an arbitrator to determine the scope or enforceability of the arbitration provision.").

AFFIRMED.