

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

JENNIFER WEISS,

Plaintiff,

v

Case No. 2015-146006-CB

Hon. Wendy Potts

**DOMESTIC LINEN SUPPLY &
LAUNDRY COMPANY,**

Defendant.

OPINION AND ORDER RE: DEFENDANT’S MOTION TO COMPEL ARBITRATION

At a session of Court
Held in Pontiac, Michigan On
APR 15 2016

This matter is before the Court on Defendant’s Motion to Compel Arbitration. Counsel for the parties appeared before the Court on November 17, 2015 to argue Defendant’s motion and at the conclusion of oral argument, the Court scheduled the matter for an evidentiary hearing to “allow Plaintiff to rebut Defendants’ affidavits” and for this Court to make a determination as to whether or not Plaintiff subjected herself to arbitration.¹

Plaintiff Jennifer A. Weiss testified on November 23, 2015 during the evidentiary hearing and following her testimony, the parties requested the Court to defer her ruling pending the outcome of facilitation. On March 28, 2016, the parties filed a Stipulation to Release Opinion and Order, effectively requesting the Court to issue its ruling regarding Defendant’s Motion to Compel Arbitration.

¹ Specifically, the parties presented contradictory affidavits in support of their respective positions of whether or not Plaintiff knew that her shares of Class D stock were subject to the Buy-Sell Agreement, which contains an arbitration provision.

By way of background, Defendant Domestic Linen Supply & Laundry Company is a closely-held family corporation. In January 1997, Defendant enacted a succession plan to grant ownership interest in the corporation to its four stockholders' children. The four stockholders – Bruce L. Colton, David J. Colton, Leonard H. Colton, and Marilyn Weiss – entered into a Buy-Sell Agreement² that limited the transfer of the corporation's Class D stock to their respective children.

On January 31, 1997, Marilyn Weiss presented options to purchase shares of Class D stock to her children, Jeffrey Weiss and Plaintiff Jennifer Weiss. Both children exercised their options and each acquired 1,050 shares of Class D stock. Plaintiff has now filed this minority shareholder oppression action under MCL 450.1489 in which she is requesting, among other things, that Defendant purchase her shares of stock for their fair market value. Defendant maintains that it is willing to purchase Plaintiff's shares in accordance with the terms of the Buy-Sell Agreement, which requires arbitration.

In its Motion to Compel Arbitration, Defendant requested the Court to order that Plaintiff's claim - regarding the redemption of her stock - be submitted to binding arbitration. Defendant argued that Plaintiff's Stock Certificate expressly states that her shares of stock are subject to the Buy-Sell Agreement. That agreement contains an arbitration clause, wherein all disputes arising under the Buy-Sell Agreement shall be submitted to final and binding arbitration pursuant to the Rules of the American Arbitration Association. According to Defendant, Plaintiff is bound by the Buy-Sell Agreement and must arbitrate her dispute as to the fair market value of her stock.

Defendant did admit that the original, *executed* Buy-Sell Agreement, Option to Purchase Stock agreement, and subject Stock Certificate are all missing. Defendant attached to its motion

² The Buy-Sell Agreement was executed on January 2, 1997.

as Exhibits One and Two, respectively, an unsigned Buy-Sell Agreement and an unsigned Option to Purchase Stock agreement. Defendant attached as Exhibit Three an unsigned Stock Certificate regarding Plaintiff's 1,050 shares of Class D stock.

To compensate for these deficient documents, Defendant presented as Exhibit Four the Affidavit of Marilyn Weiss, who asserted that Plaintiff's Class D stock is subject to the terms of the Buy-Sell Agreement, which was duly executed on January 2, 1997 and which remains in full force and effect today. Marilyn Weiss specifically stated that "[o]n January 2, 1997, I sold and transferred all of my Class D non-voting stock to my children, one of whom is Jennifer Weiss, subject to the terms of the January 2, 1997 Buy-Sell which restriction is expressly stated on *her* stock certificate (Exhibit 3 to Motion)." [Emphasis added]. Defendant also offered the Affidavits³ of David J. Colton, Bruce L. Colton, and Leonard H. Colton, all of whom confirmed that the Class D stock is subject to the terms of the Buy-Sell Agreement, which was duly executed on January 2, 1997 and which remains in full force and effect today.

Additionally, Defendant offered the Affidavit of Jeffrey Weiss, who maintained that he and Plaintiff were provided with an Option Agreement, setting forth the proposed sale of Class D stock subject to the Buy-Sell Agreement. Jeffrey Weiss stated further in his Affidavit that based upon his conversations with Plaintiff, "Jennifer also knew her shares were subject to the Buy-Sell Agreement." [See Exhibit Eight.]

In her Response, Plaintiff argued that Defendant is relying on unsigned and unauthenticated agreements, namely the Buy-Sell Agreement, the Option to Purchase Stock agreement, and the Stock Certificate, to support its motion to compel arbitration. Moreover, Defendant has not provided any evidence to prove that Plaintiff was ever presented with these documents for review or that she ever executed any of these documents.

³ See Defendant's Exhibits 5, 6, and 7.

Plaintiff offered her own Affidavit, asserting that: (1) she was never informed that an arbitration agreement applied to any aspect of her stock ownership; (2) she does not recollect ever being asked to sign or agree to any Option Agreement, shareholder agreement, or Buy-Sell Agreement; (3) she never received any signed Stock Certificate; (4) she does not recollect being asked to sign or agree to any arbitration agreement; and (5) she never consented to arbitrate any disputes. Plaintiff also emphasized in her Affidavit that she first saw the Buy-Sell Agreement and Option to Purchase Stock agreement in June 2014, when those documents were presented to her attorney by Defendant's counsel. According to Plaintiff, Defendant has failed to demonstrate that she is bound by any arbitration agreement.

Plaintiff also argued that the subject arbitration provision applies only to disputes arising out of the Buy-Sell Agreement. Plaintiff indicated that her lawsuit does not arise out of a dispute under the Buy-Sell Agreement because Plaintiff is not asserting any claim under that agreement. Instead, Plaintiff is pursuing a claim under the minority shareholder oppression statute.

During the evidentiary hearing, Plaintiff Jennifer Ann Weiss testified that she worked for Domestic Linen in an executive/clerical/administrative capacity from 1985 through 2015. Plaintiff stated that she acquired stock in 1997 from her mother, Marilyn Weiss. According to Plaintiff, her mother informed her that she was going to sell Plaintiff shares of stock. Plaintiff paid \$20,000.00 for the Class D stock. Plaintiff was unsure whether the \$20,000.00 came from a personal savings account or if it was an advance on her salary by Domestic Linen. She asserted that she was never presented with any Buy-Sell Agreement, nor did she ever see an Option Agreement or Stock Certificate. Plaintiff testified that she did not think that a Stock Certificate existed, however, she then admitted that she was told that a Stock Certificate existed. Plaintiff maintained that no one spoke to her about any arbitration agreement related to the stock.

When asked to review her Affidavit, Plaintiff presented herself in a defensive manner in which she initially asserted that she did not recall signing an Affidavit. Once she reviewed the document, however, Plaintiff confirmed that she had signed the Affidavit. In response to the assertions made in the Affidavit, Plaintiff testified that she was not presented with anything nor did she sign anything. She commented that in “her universe,” it did not happen.

Plaintiff was also presented with her mother’s Affidavit during the course of the hearing. In response to her mother’s assertions in her Affidavit, Plaintiff again stated that she has never seen a Stock Certificate and her mother never said anything to her about a Stock Certificate. Plaintiff then testified that she has no knowledge of a Buy-Sell Agreement. Yet, this latter statement is inconsistent with Plaintiff’s Affidavit, in which she asserted that she saw the Buy-Sell Agreement and Option to Purchase Stock agreement in June 2014.

On re-direct, Plaintiff maintained that she has no personal knowledge of signed Stock Certificates or Option Agreements related to the other Domestic Linen shareholders. Plaintiff’s counsel offered the Affidavits of David Colton and Leonard Colton, both of whom admit that they cannot find signed copies of the Option Agreements, Stock Certificates, or the Buy-Sell Agreement.

With regard to the minority shareholder oppression claim, Plaintiff testified that she is not arguing that there was a breach of any contract to fall within the reach of arbitration. If the case is sent to arbitration, Plaintiff stated that she is fearful that she will lose her right to appeal. Plaintiff also indicated that the selected arbitrators might know Defendants.

At the conclusion of her testimony, Plaintiff rested and Defendant declined to call any rebuttal witnesses.

The Court, having heard the testimony of Plaintiff and having considered the parties' respective affidavits, finds that Plaintiff's credibility and reliability is questionable. Plaintiff was quick to deny knowledge of any and all documents including an Affidavit that she executed for purposes of litigation, the Stock Certificate of which she was told existed, and the Buy-Sell Agreement, which she had in fact reviewed in 2014. Plaintiff's demeanor was unreasonably defensive at times, which also raises doubts in this Court's mind as to her truthfulness. When contrasted with the consistent Affidavits of Marilyn Weiss, Bruce L. Colton, David J. Colton, and Leonard H. Colton and particularly the Affidavit of Jeffrey Weiss, who stated that Plaintiff knew that her shares were subject to the Buy-Sell Agreement based upon her conversations with him, the Court finds in favor of Defendant's position that Plaintiff was aware that her Class D stock was subject to the Buy-Sell Agreement.

Arguably, Plaintiff is subject to the arbitration provision within the Buy-Sell Agreement concerning disputes arising under the Agreement. However, the Court finds that there is a legal question as to whether or not Plaintiff's minority shareholder oppression claim falls outside of the scope of the arbitration provision as written. While MCL 450.1489 provides various remedies for minority shareholder oppression, Plaintiff's request for relief relates to her Class D stock claim, which arises out of the Buy-Sell Agreement and may be subject to arbitration. At the conclusion of the evidentiary hearing, there was an indication by both counsel that the Court may benefit from further briefing of the issue regarding whether or not Plaintiff's shareholder oppression claim would preclude the matter from arbitration.⁴

Accordingly, the Court shall provide the parties with an opportunity to brief the issue of whether or not Plaintiff's minority shareholder oppression claim falls outside of the scope of the

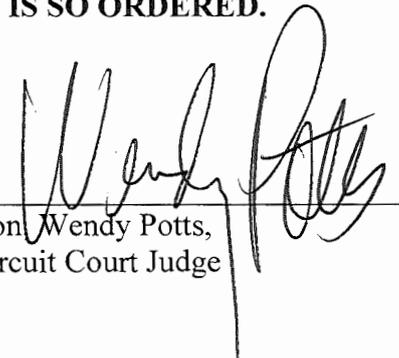
⁴ As noted earlier, the parties requested the Court to delay issuing an opinion and order following the evidentiary hearing as they attempted to settle the case in facilitation.

subject arbitration provision. The parties shall submit their briefs for this Court's consideration by April 29, 2016.

IT IS SO ORDERED.

Dated:

APR 15 2016


Hon. Wendy Potts,
Circuit Court Judge