

STATE OF MICHIGAN
IN THE 17th CIRCUIT COURT FOR KENT COUNTY

FAMILY FITNESS 49445; FAMILY
FITNESS OF NORTON SHORES; and
BRIAN CROSSNO, an individual and
as a class representative,

Plaintiffs,

vs.

DOMESTIC LINEN SUPPLY AND
LAUNDRY CO, doing business as
Domestic Uniform,

Defendant.

Case No. 14-02083-CBB

HON. CHRISTOPHER P. YATES

OPINION AND ORDER DENYING, WITHOUT PREJUDICE, DEFENDANT'S
MOTION FOR CONFIRMATION OF AN ARBITRATION AWARD AND
PLAINTIFFS' CROSS-MOTION TO VACATE THAT ARBITRATION AWARD

This contest over the validity of an arbitration award involves an effort by the plaintiffs to air the dirty laundry of Defendant Domestic Linen Supply and Laundry Co (“Domestic Linen”). In substance, the plaintiffs accuse Domestic Linen of routinely tricking low-level workers into signing contracts of adhesion, which Domestic Linen then enforces through arbitration proceedings that can best be described as kangaroo courts. In contrast, Domestic Linen characterizes its actions as simple reliance upon valid arbitration provisions to enforce legitimate contractual agreements without the necessity of judicial involvement. Because the Court concludes that our Legislature did not displace circuit courts as the gatekeepers of arbitration proceedings when it enacted the Uniform Arbitration Act, MCL 691.1681, *et seq*, in 2013, the Court must determine whether the two sides entered into a valid contract to arbitrate their commercial disputes.

I. Factual Background

In April 2013, sales representative Kari Oostveen of Defendant Domestic Linen approached Plaintiff Brian Crossno, a manager for Plaintiff Family Fitness of Norton Shores (“Family Fitness”), to solicit business. Although Crossno informed Oostveen that the Family Fitness facilities in Norton Shores and North Muskegon had a temporary need for laundry services, Crossno advised Oostveen that he had no authority to enter into contracts on behalf of Family Fitness. See Verified Complaint for Declaratory Relief (Affidavit of Brian Crossno, ¶¶ 10, 12). Undeterred, Oostveen gave Crossno a document that she described as “not a contract,” but simply a “month-to-month agreement’ with ‘no commitments.’” See id. (Affidavit of Brian Crossno, ¶ 12). Based upon those representations from Oostveen, Crossno “signed two short one-page documents on April 14 and April 22,” but he “never received copies” of those documents. See id. (Affidavit of Brian Crossno, ¶ 13).

Those two documents surfaced again when Defendant Domestic Linen sought to enforce the provisions of those purported agreements between itself and Plaintiff Family Fitness’s facilities in Norton Shores and North Muskegon. Specifically, Domestic Linen cited terms of those agreements to maintain 60-month contracts with Family Fitness. See Defendant’s Motion for Confirmation of Arbitration Award, Exhibits 2 & 3. When Family Fitness balked at the obligations imposed by the agreements, Domestic Linen invoked the arbitration provision contained in each agreement to set all disputes between itself and Family Fitness for resolution by an arbitrator. The two sides engaged in e-mail correspondence about the arbitration, see id., Exhibits 5 & 7, and the matter ultimately was scheduled for a hearing before an arbitrator in Bloomfield Hills on March 11, 2014. See id., Exhibit 7. Both sides received notice of that arbitration hearing *via* e-mail to their attorneys on February 6, 2014. See id.

On March 10, 2014, less than 24 hours before the scheduled arbitration hearing, the plaintiffs filed the verified complaint in this action requesting declaratory relief in the form of an order barring arbitration and characterizing the agreements executed on April 14 and 22, 2014, as legally invalid.¹ Despite the plaintiffs' initiation of this action and their refusal to attend the arbitration hearing, the arbitrator conducted a hearing on March 11, 2014, and then issued a one-page award on March 13, 2014. See Defendant's Motion for Confirmation of Arbitration Award, Exhibit 1. The arbitration award directed Plaintiff Family Fitness to pay Defendant Domestic Linen \$16,858.44 on the Norton Shores contract, \$8,371.56 on the North Muskegon contract, \$3,000 in attorney fees, and \$2,175 in fees and costs for the arbitration proceeding.² See id. On March 19, 2014, Domestic Linen filed a motion for confirmation of the arbitration award, and the plaintiffs subsequently responded with a cross-motion to vacate the arbitration award. Thus, the Court must consider whether the arbitration award is valid and enforceable as a matter of law.

II. Legal Analysis

In Michigan, our Legislature "has expressed a strong public policy favoring private voluntary arbitration, and our courts have historically enforced agreements to arbitrate disputes." Rembert v Ryan's Family Steak Houses, Inc., 235 Mich App 118, 127-128 (1999). Our legislature "significantly

¹ In addition to the request in Count One for declaratory relief, the verified complaint alleges fraudulent inducement, fraud in the execution, claims of promissory estoppel and "no contract," and even a demand for class certification.

² The arbitrator refused to impose any liability upon Plaintiff Crossno despite his execution of personal guaranties on the contracts with his employer. See Defendant's Motion for Confirmation of Arbitration Award, Exhibit 1. Despite that ruling, Defendant Domestic Linen has asked the Court to hold Crossno responsible for the full amount of the award against his employer. At this juncture, the Court has no authority to grant such relief, which flies in the face of the arbitrator's award. As a result, the Court shall omit Crossno from its analysis of the pending motions.

advanced the public policy favoring arbitration in 1961 when it enacted the Michigan arbitration act, (MAA), MCL 600.5001 *et seq.*” Rembert, 235 Mich App at 131. A steady stream of decisions from our Court of Appeals reflects our jurisprudential commitment to arbitration. *E.g.*, Rooyakker & Sitz, PLLC v Plante & Moran, PLLC, 276 Mich App 146, 156 (2007); Omega Constr Co, Inc v Altman, 147 Mich App 649, 655 (1985). But because arbitration is a matter of contract, a party “cannot be required to arbitrate an issue which he has not agreed to submit to arbitration.” *See* Kaleva-Norman-Dickson School Dist No 6 v Kaleva-Norman-Dickson School Teachers’ Ass’n, 393 Mich 583, 587 (1975). Accordingly, our State’s “preference for arbitration . . . is triggered only if the parties agree to arbitrate.” Macomb County v AFSCME Council 25 Locals 411 and 893, 494 Mich 65, 81 n47 (2013). Here, the two sides seem to embrace these fundamental principles, but they disagree about whether the validity of an arbitration agreement is a matter that must be determined by a court or an arbitrator.

Historically, courts have made the threshold determination as to whether parties to a contract must engage in arbitration, rather than judicial proceedings, to resolve their disputes. Our Supreme Court has held that “[t]he existence of a contract to arbitrate and the enforceability of its terms is a judicial question which cannot be decided by an arbitrator.” Arrow Overall Supply Co v Peloquin Enterprises, 414 Mich 95, 99 (1982). In contrast, the agreements upon which Defendant Domestic Linen relies in this case contain the following sweeping arbitration provision:

In the event of any controversy or claim in excess of \$10,000.00 arising out of or relating to this agreement, including but not limited to questions regarding the authority of the persons who have executed this agreement and enforcement of any guarantee that is related to this agreement, the question, controversy or dispute shall be submitted to and settled by arbitration to be held in the city closest to the city in which the branch office of the Company which serves the Customer is located.

See Defendant’s Motion for Confirmation of Arbitration Award, Exhibits 2 & 3 (Rental Agreement, §15). This capacious directive to arbitrate every aspect of a commercial dispute bespeaks Domestic Linen’s antipathy toward judicial involvement in arbitrability determinations, which seems perfectly understandable in light of the fact that Domestic Linen has lost more than its fair share of arbitration awards in our Court of Appeals. E.g., Fuego Grill, LLC v Domestic Uniform Rental, Nos 302230 & 303763, slip op at 4 (Mich App Jan 22, 2013) (unpublished decision); Domestic Uniform Rental v Finazzo, No 249962, slip op at 2-3 (Mich App Dec 28, 2004) (unpublished decision). Indeed, the Fuego Grill Court rejected precisely the same arguments advanced by Domestic Linen here on facts strikingly similar to those in the instant case. Explaining “that the absence of a valid agreement to arbitrate constitutes a defense to the plaintiffs’ action to confirm the arbitration award[.]” our Court of Appeals concluded that “because plaintiffs challenge the *existence* of the contract to arbitrate – and not merely the arbitration terms within the contract – it was for the court to determine whether an agreement to arbitrate existed.” Fuego Grill, Nos 302230 & 303763, slip op at 4.

Undaunted by the adverse decision in Fuego Grill on the issues presented here, Defendant Domestic Linen argues that our Legislature’s recent enactment of the Uniform Arbitration Act, MCL 691.1681, *et seq*, abrogated the entire body of precedent that the “existence of a contract to arbitrate and the enforceability of its terms is a judicial question which cannot be decided by an arbitrator.” See Arrow Overall Supply, 414 Mich at 99. The Court disagrees. The Uniform Arbitration Act sets up a division of responsibilities between courts and arbitrators. That is, “[a]n arbitrator shall decide whether a condition precedent to arbitrability has been fulfilled and whether a contract containing a valid agreement to arbitrate is enforceable[.]” see MCL 691.1686(3), but “[t]he court shall decide whether an agreement to arbitrate exists or a controversy is subject to an agreement to arbitrate.”

See MCL 691.1686(2). To be sure, several strands of the plaintiffs’ arguments impermissibly invite the Court to usurp the arbitrator’s function by declaring the arbitration provision unenforceable, but the other strands of the plaintiffs’ arguments permissibly invoke the Court’s authority to declare the agreement containing the arbitration provision void *ab initio* – and therefore non-existent. These arguments carried the day in the Fuego Grill case, and nothing in the Uniform Arbitration Act, which went into effect in July of 2013, undermines the logic of Fuego Grill.³ Indeed, the grant of authority to courts in MCL 691.1686(2) fortifies the logic in Fuego Grill.⁴ Consequently, the plaintiffs have presented a potentially viable rejoinder to Domestic Linen’s motion to confirm the arbitration award. See Fuego Grill, Nos 302230 & 303763, slip op at 4.

In deciding whether to confirm the arbitrator’s award, the Court must bear in mind that such an inquiry is quite circumscribed. That is, MCR 3.602(J)(2) empowers courts to vacate arbitration awards on several grounds, the Uniform Arbitration Act contemplates challenges for a few specific reasons, see MCL 691.1703, and precedent holds “that the absence of a valid agreement to arbitrate

³ The unpublished decision from our Court of Appeals in Rogensues v Weldmation, Inc, Nos 310389 & 311211, slip op at 7 (Mich App Feb 11, 2014), seems to confirm the continuing validity of that principle in the wake of our Legislature’s enactment of the Uniform Arbitration Act. There, our Court of Appeals reaffirmed that “whether a contract to arbitrate exists and the enforceability of its terms is a matter for the court, not the arbitrator, to decide.” *Id.* Our Court of Appeals further confirmed that “[a] party cannot be required to arbitrate an issue which he has not agreed to submit to arbitration,” and that “a party cannot be required to arbitrate when it is not legally or factually a party to the agreement.” *Id.* Curiously, the Rogensues decision makes no mention of the Uniform Arbitration Act as a potentially significant basis for revisiting longstanding precedent. Moreover, the losing side has filed an application with our Supreme Court for leave to appeal the unpublished decision. But for now, the Rogensues opinion adds weight to the plaintiffs’ arguments here.

⁴ “In interpreting a statute,” courts should “avoid[] a construction that would render any part of the statute surplusage or nugatory.” Michigan Properties, LLC v Meridian Township, 491 Mich 518, 528 (2012). If the Court were to read MCL 691.1686(3) as expansively as Defendant Domestic Linen suggests, and thereby assign virtually all responsibility to the arbitrator, the language of MCL 691.1686(2) assigning powers to the court would be rendered effectively nugatory.

constitutes a defense to [an] action to confirm the arbitration award.”⁵ Fuego Grill, Nos 302230 & 303763, slip op at 4, citing Arrow Overall Supply, 414 Mich at 97; see also MCL 691.1686(2). As a result, the Court must conduct a hearing to consider whether the arbitration award at issue in this case should be confirmed or vacated.⁶ At that hearing, the plaintiffs shall be limited to the theories enumerated in MCR 3.602(J)(2), identified in the Uniform Arbitration Act, see MCL 691.1686(2) & 691.1703, or authorized by Michigan jurisprudence.⁷

IT IS SO ORDERED.

Dated: April 8, 2014



HON. CHRISTOPHER P. YATES (P41017)
Kent County Circuit Court Judge

⁵ This principle illustrates why Defendant Domestic Linen’s reliance upon the “separability doctrine” is misplaced. That doctrine limits the authority of the courts to foreclose arbitration before it occurs. See, e.g., Buckeye Check Cashing, Inc v Cardegna, 546 US 440, 444-446 (2006). Here, the arbitration hearing has taken place, see MCL 691.1686(4), and the plaintiffs have subsequently interposed a challenge to the validity of the agreement as a defense to Domestic Linen’s motion for confirmation of the arbitrator’s award. Nothing in this process has done violence to the “separability principle” by blocking or interfering with the arbitration hearing.

⁶ The Court has no intention of taking up the plaintiffs’ request to proceed with a class action against Defendant Domestic Linen. A cursory review of the most recent pronouncement from our Court of Appeals on the subject of class certification reveals that this dispute is especially ill-suited for class certification. See Duskin v Dep’t of Human Services, No 310353 (Mich App April 1, 2014) (published decision).

⁷ As far as the Court can tell, MCR 3.602(J)(2) has not been harmonized with the Uniform Arbitration Act, MCL 691.1703, even though both of those binding authorities address the subject of vacating arbitration awards in similar fashion. Likewise, neither our Supreme Court nor our Court of Appeals has discussed the breadth of MCL 691.1686(2), even though the language of that statute seems compatible with the reasoning of our Court of Appeals in Fuego Grill. As a result, the Court shall permit the plaintiffs to advance all theories derived from those three sources of law.