

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX

ROBERT RUIZ,	)	
	)	
PLAINTIFFS,	)	
	)	CIVIL No. SX-08-CV-099
	)	
V.	)	
	)	
	)	ACTION FOR DAMAGES
	)	
HOVENSA, L.L.C.,	)	
	)	JURY TRIAL DEMANDED
DEFENDANT.	)	

MEMORANDUM OPINION

THIS MATTER is before the Court on Defendant HOVENSA, L.L.C's "Motion to Compel Arbitration and Stay Litigation Pending Arbitration", and Plaintiffs' Opposition thereto. For the following reasons, Defendant's Motion to Compel Arbitration will be granted.

I. Case History

This case stems from an incident that occurred on or about January 30, 2007, while Plaintiff was employed as a Boilermaker by Defendant. On this day, to leave for lunch, Plaintiff had to give his ID badge to the security guard, an agent of Defendant, to exit. Plaintiff kept his badge in his wallet, wrapped in a rag to protect it from sweat and moisture. The security guard suspected that Plaintiff was hiding something else in the rag, and would not scan Plaintiff's badge until Plaintiff showed her the contents of his pockets. Plaintiff complied; however, the guard still would not swipe the badge to allow plaintiff to go.

A police officer arrived, and Plaintiff explained the situation to him. The officer demanded that they be able to search Plaintiff's locker, which turned up nothing. Plaintiff was eventually given his badge back. However, later on that day, Plaintiff was told he was being fired

for making threatening statements to the security guard, which plaintiff denies making. Plaintiff then sued seeking damages for lost wages and defamation.

On April 15, 2008, Defendant filed a "Motion to Compel Arbitration and Stay Pending Arbitration In Lieu of an Answer." As a condition of his employment, Plaintiff was required to sign an Arbitration Agreement with Wyatt V.I., Inc., which also specifically names Defendant HOVENSA as a third party beneficiary. Plaintiff opposed, claiming, in essence, that the Arbitration Agreement was invalid because Plaintiff did not sign the agreement knowingly and voluntarily under V.I. CODE ANN. tit. 5 § 815, which states, in essence, that an agreement that waives rights guaranteed under the Constitution is invalid unless it is agreed to knowingly and voluntarily.

II. Standard of Review

The FAA "provides that a court should not order arbitration unless it is satisfied that the making of the agreement for arbitration ... is not in issue." *Par-Knit Mills, Inc. v. Stockbridge Fabrics Co., Ltd.*, 636 F.2d 51, 54 (3d Cir.1980) (internal quotations omitted) (citing 9 U.S.C. § 4). Indeed, a court "must find that there is a valid agreement to arbitrate" before it compels arbitration. *Century Indem. Co. v. Certain Underwriters at Lloyd's, London*, 584 F.3d 513, 523 (3d Cir.2009); . To determine whether the parties have agreed to arbitrate, the Court applies "ordinary state-law principles that govern the formation of contracts." *Kirleis v. Dickie, McCamey & Chilcote, P.C.*, 560 F.3d 156, 160 (3d Cir.2009).

A court may "compel[] arbitration only where there is no genuine issue of fact concerning the formation of the agreement to arbitrate." *Id.* at 159. In other words, a party

moving to compel arbitration is akin to a party seeking summary judgment; it must show that there is no genuine issue of material fact regarding the existence of the arbitration agreement. *Id.*

Pursuant to the summary judgment standard, “[o]nce the moving party points to evidence demonstrating no issue of material fact exists, the non-moving party has the duty to set forth specific facts showing that a genuine issue of material fact exists and that a reasonable factfinder could rule in its favor.” *Ridgewood Bd. of Educ. v. N.E. ex rel. M.E.*, 172 F.3d 238, 252 (3d Cir.1999). “In making this determination, the party opposing arbitration is entitled to the benefit of all reasonable doubts and inferences that may arise.” *Kirleis*, 560 F.3d at 159. A factual dispute is deemed genuine if “the evidence is such that a reasonable jury could return a verdict for the nonmoving party.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986).

III. Analysis

Plaintiff’s challenge to the enforcement of the arbitration clause is based solely on V.I. CODE ANN. tit. 5 § 815. However, in *Fitz and Hubert v. Islands Mechanical Contractor, Inc.* 2010 WL 2384584, the District Court of the Virgin Islands held that section 815 was preempted by the Federal Arbitration Act (“FAA”). The District Court specifically stated that, in regards to Section 815, it

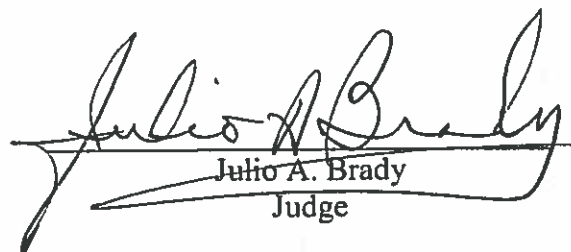
...does not apply to “any contract and cannot be said to be a generally applicable principle of contract law because it is limited to a specific type of contract – an agreement involving the waiver of constitutional rights. Because section 815 places contracts concerning constitutional rights “in a class apart from any contract and singularly limits their validity,” the Court holds that section 815 is preempted by the FAA. *Id.* at *7.

Thus, it is clear that section 815 is preempted, and the arbitration agreement is valid.

IV. Conclusion

It is clear to this Court that the basis which Plaintiff attempts to use to invalidate the arbitration agreement is invalid, and therefore, this case must be referred to arbitration. A separate Order of even date will be issued in conformity to these findings.

Dated: August 16, 2011


Julio A. Brady
Judge

ATTEST:

VENETIA H. VELÁZQUEZ, ESQ.
Clerk of the Court

By:


Court Clerk Supervisor
8/19/11

CERTIFIED TO BE A TRUE COPY
THIS 23 day of Aug 20 11

CLERK OF THE COURT
By  Chief Dep.
Court Clerk