

NOT FOR PUBLICATION

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

WILFREDO VALENTIN,

Plaintiff,

SX-11-CV-305

v.

ACTION FOR DAMAGES

**GRAPETREE SHORES, d/b/a DIVI CARINA BAY
RESORT,**

Defendant.

JURY TRIAL DEMANDED

MEMORANDUM OPINION

THIS MATTER is before the Court on Defendant Grapetree Shores d/b/a Divi Carina Bay Resort's (hereinafter "GSI" or "Defendant") Motion to Dismiss Plaintiff's Complaint. Defendant's Motion was filed on July 25, 2011. Plaintiff Wilfredo Valentin (hereinafter "Plaintiff") filed his opposition on September 1, 2011. Defendant filed a Request for Ruling on September 7, 2011. A hearing on the Motion was held on May 1, 2014. For the following reasons, Defendant's Motion shall be granted in part and denied in part.

FACTS AND PROCEDURAL HISTORY

In January 2011, Plaintiff booked a stay for one night at the Defendant's hotel. On June 10, 2011, Plaintiff filed a Verified Complaint alleging that Defendant failed in its duty to keep its room in good repair and free of bed bugs, and as a result, Plaintiff suffered multiple bed bug bites during his stay at Defendant's establishment. Subsequently, Defendant filed a Motion to Dismiss Plaintiff's Complaint. In its Motion, Defendant argues that Plaintiff's claims are subject to arbitration pursuant to the Arbitration Agreement between the parties.

On May 1, 2014, the Court heard oral arguments on the Motion. The Court ordered both parties to submit supplemental briefs in light of *Banks*¹ and *Connor*². The issue before the Court is whether Plaintiff entered into a binding contract to arbitrate any disputes with Defendant when he signed the document containing the arbitration clause.

STANDARD OF REVIEW

The Federal Arbitration Act (hereinafter "FAA") by its terms applies to federal courts.³ The Virgin Islands has not adopted statutes making the FAA pertinent to the Superior Court.⁴ However, Virgin Islands jurisprudence has made portions of the FAA applicable to the local courts.⁵ Moreover, the Supreme Court has applied the FAA directly to the Territorial Court.⁶ For purposes of the FAA, the Superior Court is a state court.⁷ Ergo, as a state court, the FAA only applies in the Superior Court to the extent that an arbitration provision affects interstate commerce.⁸ But, the Superior Court may also regulate arbitration clauses under general contract law principles and invalidate an arbitration clause upon grounds that exist at law or in equity for the revocation of any contract.⁹

¹ *Banks v. International Rental & Leasing Corp.*, 55 V.I. 967 (V.I. 2011).

² *Government of the Virgin Islands v. Connor*, 60 V.I. 597, 602 (V.I. 2014).

³ 9 U.S.C. §§ 3-4,

⁴ *Government of the Virgin Islands v. United Industrial Workers of Am.*, 987 F. Supp. 439, 445 (D.V.I. App. Div. 1997).

⁵ See *Gov't of the V.I. v. Seafarers Int'l Union*, 57 V.I. 649, 656 n.3 (V.I. 2012) (citing *World Fresh Market v. P.D.C.M. Assocs.*, 2011 V.I. Supreme LEXIS 29 (V.I. Aug. 25, 2011) (unpublished) ("not all provisions of the [FAA] apply to Virgin Islands local courts.")).

⁶ *V.I. v. United Indus. Workers, N.A.*, 169 F.3d 172, 178 (3d Cir. V.I. 1999).

⁷ *Id.* at 176. See also *Harris v. Boreham*, 233 F.2d 110, 113-14 (3d Cir. 1956).

⁸ *Ibid.* See also *Allied-Bruce Terminix Cos. v. Dobson*, 513 U.S. 265, 268 (1995) (The Federal Arbitration Act (FAA) (9 USCS §1 *et seq.*), in 2 of the FAA (9 USCS §2), makes enforceable a written arbitration provision in a contract "evidencing a transaction involving commerce," save upon such grounds as exist at law or in equity for the revocation of any contract.).

⁹ See *Allied-Bruce*, *supra*.

DISCUSSION

The FAA “established a strong federal policy in favor of the resolution of disputes through arbitration.”¹⁰ Disputes as to whether the parties are bound by a given arbitration clause are to be decided by the courts.¹¹ Under the FAA, when considering a motion to compel arbitration, the court must conduct a two part analysis as to (1) whether a valid agreement to arbitrate exists and (2) whether the particular dispute falls within the scope of that agreement.¹²

When presented with a valid arbitration agreement, the FAA prescribes that the court “shall on application of one of the parties stay the trial of the action until such arbitration has been had in accordance with the terms of the agreement,” provided that the court is “satisfied that the issue involved ... is referable to arbitration” under the parties' agreement.¹³ Courts have long recognized that arbitration is a creature of contract and litigants may contract to resolve their disputes through arbitration.¹⁴

A. The Arbitration Agreement is Valid on its Face

The first consideration in determining arbitrability is whether there is valid arbitration agreement between the Parties.¹⁵ Here, both Parties entered into the dispute resolution agreement

¹⁰ *Alexander v. Anthony Int'l., L.P.*, 341 F.3d 256, 263 (3d Cir. 2003); see *Moses H. Cone Mem'l Hosp. v. Mercury Const. Corp.*, 460 U.S. 1, 24, 103 S. Ct. 927, 74 L. Ed. 2d 765 (1983) (federal law holds a presumption in favor of arbitration where a valid arbitration agreement exists).

¹¹ *Ehleiter v. Grapetree Shores, Inc.*, 482 F.3d 207, 216 (3d Cir. 2007) (citing *Howsam v. Dean Witter Reynolds*, 537 U.S. 79, 84 (U.S. 2002) (a gateway dispute about whether the parties are bound by a given arbitration clause raises a “question of arbitrability” for the courts to decide)(internal quotation marks omitted)).

¹² *Virgin Island Water & Power Authority v. General Electric International, Inc.*, 2009 U.S. Dist. LEXIS 55561, *5 (D.V.I. 2009) (citing *Trippe Mfg. Co. v. Niles Audio Corp.*, 401 F.3d 529, 532 (3d Cir. 2005)).

¹³ 9 U.S.C. §3

¹⁴ *Browne v. ACUREN Inspection, Inc.*, 2014 U.S. Dist. LEXIS 43965, *4-5 (D.V.I. Mar. 31, 2014) (citing *Teamsters Local Union No. 764 v. J.H. Merritt & Co.*, 770 F.2d 40, 42 (3d Cir. 1985); *Gov't of the V.I. v. 0.459 Acres of Land Consisting of the Following: Parcel No. 6A Estate Thomas Kings Quarter & Parcel No. 9A, Estate Thomas, Virgin Islands*, 286 F. Supp. 2d 501, 511 (D.V.I. 2003)).

¹⁵ 9 U.S.C. §3

(hereinafter “DRA”) at issue on January 15, 2011 when Plaintiff signed a receipt upon check-in at the resort. The DRA, which is printed in all caps, reads as follows:

NOTICE! PLEASE READ THE FOLLOWING WHICH AFFECTS YOUR RIGHTS.

FOR VALUABLE CONSIDERATION, ALL DISPUTES AND CLAIMS AGAINST GRAPETREE SHORES, INC. INCLUDING CLAIMS FOR BODILY INJURY AND PROPERTY DAMAGE OR LOSS) AND ITS EMPLOYERS, TENANTS, AND AFFILIATES (COLLECTIVELY, “GSI”) ARISING FROM THE GUESTS STAY AT THIS RESORT SHALL BE EXCLUSIVELY SETTLED BY BINDING ARBITRATION IN ST. CROIX, USVI PURSUANT TO THE UNITED STATES FEDERAL ARBITRATION ACT (TITLE 9, U.S. CODE SECTIONS 1-16 AS AMENDED FROM TIME TO TIME) AND IN ACCORDANCE WITH THE APPLICABLE RULES OF THE AMERICAN ARBITRATION ASSOCIATION USING A SINGLE ARBITRATOR WHOSE DECISION SHALL BE FINAL AND BINDING. THIS AGREEMENT SHALL BIND THE UNDERSIGNED AND ALL MINORS UNDER THEIR GUARDIANSHIP AND SHOULD ANY SUCH MINOR PURSUE LITIGATION IN CONTRAVENTION OF THIS AGREEMENT, THE UNDERSIGNED JOINTLY AND SEVERALLY AGREE TO INDEMNIFY AND HOLD GSI HARMLESS FROM THE CLAIMS, EXPENSES AND DAMAGES ARISING THEREFROM (sic).

Plf.’s Opp’n, Ex. 1. Also, above the signature line the DRA also reads, “For each guest, please print your name and sign below acknowledging agreement to the above.” *Id.* By its terms, the Plaintiff was required to sign the agreement as a prerequisite to resort accommodation. *Id.*

In determining whether an agreement to arbitrate is valid, the threshold question is whether there was a valid contract.¹⁶ Courts must apply the laws of the state where the contract was formed.¹⁷ In the case at bar, the agreement pertains to a service contract. Service contracts are governed by the common law. The Virgin Islands Supreme Court has not expressly adopted the common law rule for formation of a valid contract. Ordinarily, when confronted with a common law doctrine, the Court would have to conduct a *Banks* analysis¹⁸ to determine the soundest rule

¹⁶ *Prima Paint Corp. v. Flood & Conklin Mfg. Co.*, 388 U.S. 395, 412 (U.S. 1967) (Sections 2 and 3 of the Federal Arbitration Act Assume the existence of a valid contract and provide for enforcement where a valid contract exists.)

¹⁷ *First Options of Chicago, Inc. v. Kaplan*, 514 U.S. 938, 944, 115 S. Ct. 1920, 131 L. Ed. 2d 985 (1995); *Nat’l Fin. Partners Corp.*, 52 V.I. at 540-541, 2009 WL 1939818 at *3.

¹⁸ In *Connor*, 2014 WL 702639, the Supreme Court of the Virgin Islands held that pursuant to its opinion in *Banks*, 55 V.I. at 979, in the absence of binding precedent the Superior Court must perform a three-part analysis when determining the common law. In *Connor*, the Supreme Court also called into question some of its earliest cases issued prior to *Banks* which cited the Restatements without first determining if it was the soundest rule. *Id.* at *4 n.1. This Court extends the negligence analysis in *Machado v. Yacht Haven U.S.V.I., LLC*, 61 V.I. 373, 380 (VI. 2014), to the

for the Virgin Islands. However, the basic elements for what constitutes a valid contract are so widely accepted and fundamental to the practice of law in the Virgin Islands and every other United States jurisdiction that maintaining these elements is unquestionably the soundest rule for the Virgin Islands.¹⁹ In the Virgin Islands, a valid contract requires a “bargain in which there is a mutual assent to the exchange, and consideration.”²⁰ Assent is not measured by subjective intent, but by outward expression.²¹ In an arbitration agreement, consideration exists where both parties agree to be bound by the arbitration.²²

Here, both Parties’ signatures appear on the bottom of the DRA where the Parties agreed to be bound by the arbitration agreement.²³ This indicates that consideration exists. Plaintiff argues that there was no manifestation of mutual assent, because he did not assent to the arbitration agreement when he signed the receipt—he was only agreeing to rent the room for the night. Pl.’s Opp’n at 7. The Court does not agree with Plaintiff’s argument. Mutual assent to be bound by the agreement to arbitrate is apparent because each party signed below the statement “acknowledging agreement” to the DRA. Pl.’s Opp’n, Ex. 1. Ergo, the arbitration agreement satisfies the basic contract principles and is valid on its face.

case at bar. Like the elements of negligence, the basic elements of a valid contract are so widely accepted that they represent the soundest rule for the Virgin Islands.

¹⁹ See *Machado*, *supra*

²⁰ *Morales v. Sun Constructors, Inc.*, 541 F.3d 218, 221, 50 V.I. 1069 (3d Cir. 2008); see also *Kendall v. Superior Court, Gov’t of the Virgin Islands*, 2013 U.S. Dist. LEXIS 27320, *59, 2013 WL 785518, *18 (D.V.I. Mar. 1, 2013); *Univ. of V.I. v. Petersen-Springer*, 232 F. Supp. 2d 462, 469 (D.V.I. 2002).

²¹ *Morales*, 541 F.3d at 221; *Fitz v. Islands Mech. Contractor, Inc.*, 53 V.I. 806, 820, 2010 WL 2384585, *5 (D.V.I. 2010).

²² *Blair v. Scott Specialty Gases*, 283 F.3d 595, 603-04 (3d Cir. 2002) (citing *Michalski v. Circuit City Stores, Inc.*, 177 F.3d 634, 637 (7th Cir. 1999) and *Johnson v. Circuit City Stores, Inc.*, 148 F.3d 373, 378 (4th Cir. 1998)); see also *Harris v. Green Tree Fin. Corp.*, 183 F.3d 173, 180 (3d Cir. 1999); *Plaskett v. Bechtel Int’l, Inc.*, 243 F. Supp. 2d 334, 338 (D.V.I. 2003).

²³ *Blair*, 283 F.3d at 603 (When both parties have agreed to be bound by arbitration, adequate consideration exists and the arbitration agreement should be enforced.)

B. Plaintiff's Claims are Within the Scope of the DRA

Next, the Court looks to whether Plaintiff's action for damages for breach of warranty and injury from bed bug bites falls within the scope of the DRA.²⁴ The central purpose of the FAA is to ensure that private agreements to arbitrate are enforced according to their terms.²⁵ Here, the scope of the arbitration clause is broad and covers all disputes and claims against GSI including claims for bodily injury. Pl.'s Opp'n, Ex. 1. Ergo, Plaintiff's claims are within the scope of the agreement to arbitrate. The Court finds that this matter is referable to arbitration because the arbitration agreement is valid and Plaintiff's claims are within the scope of the arbitration agreement.

C. Plaintiff's Challenge to the Enforceability of the DRA

If the Defendant demonstrates that the issue in the pending action is referable to arbitration, then the burden shifts to the Plaintiff to establish that the court should not enforce the arbitration clause. Arbitration provisions may be attacked under such grounds that exist at law or in equity for the revocation of a contract.²⁶ Plaintiff argues that the arbitration agreement is unenforceable because (1) no valid contract exists since Plaintiff's signature was procured by fraudulent inducement (2) there is no contract or agreement with respect to arbitration; and (3) even if there was a contract, it is unenforceable because it is unconscionable.

Plaintiff contends that although he signed the document containing an arbitration clause, there was no valid contract because Defendant fraudulently induced Plaintiff to sign the guest receipt that included the arbitration agreement. A court deciding a motion to compel or stay can address

²⁴ See *Trippe Mfg. Co.*, 401 F.3d at 532.

²⁵ *Allen v. HOVENSA, L.L.C.*, 59 V.I. 430, 439 (VI. 2013)(citations and internal quotation marks omitted).

²⁶ *Plaskett v. Bechtel Int'l, Inc.*, 243 F. Supp. 2d 334, 339 (D.V.I. 2003) (quoting 9 U.S.C. § 2).

a fraudulent inducement defense only when the fraud was purportedly directed specifically to the arbitration clause itself.²⁷ Consequently, the Court cannot address a party's fraudulent inducement defense that relates to the contract as a whole—this issue is solely for the arbitrator to decide.²⁸

Here, Plaintiff attacks the contract as a whole—not the arbitration clause itself because he states that the agreement to arbitrate was nothing more than additional term which was an attempt to alter the parties' agreement. Pl.'s Opp'n at 7. Whether the contract was materially altered is an issue for the arbitrator alone to decide. Plaintiff's does not challenge the arbitration clause in his fraudulent inducement arguments. Therefore, the Court cannot address plaintiff's fraudulent inducement defense because it relates to the contract as a whole. The question of whether there was fraud in the inducement in the contract itself is an issue is for the arbitrator alone to decide.²⁹ Furthermore, Plaintiff's claims that no one explained the arbitration terms to him are equally unavailing. It is the Defendant's obligation to ensure he understood the Agreement before signing.³⁰

Last, Plaintiff asserts that even if there was a contract, it is unenforceable because it is both procedurally and substantively unconscionable. Pl.'s Opp'n at 8-12. The court in *Browne*³¹ succinctly describes what Plaintiff must show to prevail on his defense of unconscionability.

Unconscionability encompasses both procedural and substantive unconscionability, and the party seeking to invalidate a contract on this basis bears the burden of showing both.³² Procedural unconscionability may exist, for example, with a contract of adhesion — where one party has no meaningful choice regarding acceptance — or, where the contract drafter obfuscates terms with convoluted or unclear language.³³

²⁷ *Prima Paint Corp.*, 388 U.S. at 409 (the arbitration clause in the contract is "separable" from the rest of the contract and that allegations that go to the validity of the contract in general, as opposed to the arbitration clause in particular, are to be decided by the arbitrator, not the court.) (citations omitted).

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Morales*, 541 F.3d at 223.

³¹ *See Browne* at *13.

³² *Alexander*, 341 F.3d at 265.

³³ *Id.* (fine print can render a contract procedurally unconscionable); *see also Harris*, 183 F.3d at 181.

Here, Plaintiff fails to establish that the DRA is procedurally unconscionable. Plaintiff has not shown that he had no meaningful choice in the matter of acceptance. Plaintiff asserts that the provision was “sandwiched between two areas of the document” and “embedded in the guest receipt.” Pl.’s Opp’n at 5, 10. Upon review of the document, the DRA is in the center of the document in all caps. Pl.’s Opp’n, Ex. 1. Upon careful review of the document, it does not appear that the DRA was obfuscated or buried unfavorable terms.³⁴ Accordingly, the Court finds that Plaintiff has failed to meet his burden to show procedural unconscionability. On that basis alone, Plaintiff’s unconscionability argument must fail.

CONCLUSION

Based on the foregoing analysis, the Court finds that Plaintiff has failed to prove that the DRA signed by both parties is unenforceable. The arbitration agreement is valid and encompasses Plaintiff’s claim. Courts are to direct arbitrable disputes out of the court and into arbitration as quickly as possible.³⁵ Since the Court has determined that arbitration is the bargained-for or agreed-upon method of resolving the controversies in the matter *sub judice*, pursuant to the FAA, the proceedings should be stayed pending arbitration.³⁶ Accordingly, the Court will not dismiss Plaintiff’s Complaint as requested by the Defendant, but rather, the case will be referred to arbitration and the proceedings in this Court stayed pending arbitration. The Court will issue an Order consistent with this Opinion.

³⁴ See *Browne, supra*.

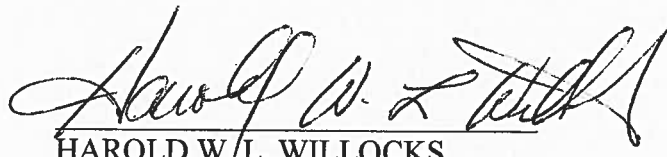
³⁵ *Moses H. Cone*, 460 U.S. at 22. (internal quotation marks omitted).

³⁶ 9 U.S.C. § 3; *Martinez v. Colombian Emeralds, Inc.*, 51 V.I. 174, 191, 2009 WL 578547, *7 (V.I. 2009).

Dated: 6-30-15

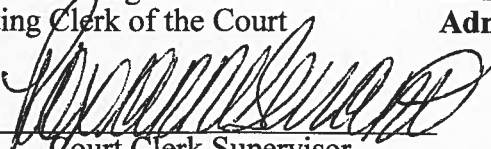
ATTEST:

Estrella George
Acting Clerk of the Court



HAROLD W. L. WILLOCKS

Administrative Judge of the Superior Court

By: 

Court Clerk Supervisor

Dated: 7/1/15