

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)
)
)
 LATONYA MARIE MILLER-)
 HEMINGWAY,)
)
 Plaintiff,)
)
 vs.)
)
 U-HAUL CO. OF SOUTH CAROLINA,)
 INC. d/b/a U-HAUL MOVING &)
 STORAGE OF SPRING VALLEY,)
)
 Defendant.)
 _____)

IN THE COURT OF COMMON PLEAS

Civil Action No.: 2023-CP-40-004606

RECEIVED

Aug 28 2024

SC Court of Appeals

**ORDER DENYING DEFENDANT’S
MOTION TO DISMISS AND
COMPEL ARBITRATION**

On June 12, 2024, the Court heard the Motion to Dismiss and Compel Arbitration filed by Defendant U-Haul Co. of South Carolina, Inc. d/b/a U-Haul Moving & Storage of Spring Valley (hereinafter “Defendant UHSC”). J. Andrew Delaney appeared on behalf of Plaintiff and Matthew A.L. Anderson and Ashley K. Braithwaite appeared on behalf of Defendant UHSC.

After hearing arguments of counsel, reviewing memoranda and South Carolina case law, the Court denies the Defendant UHSC’s Motion to Dismiss and Compel Arbitration.

Arbitration under the Federal Arbitration Act (hereinafter “FAA”), 9 U.S.C. § 1 et. seq. (2018) rests entirely upon the parties’ consent. The first step, then, is to determine whether the parties formed an agreement to arbitrate, applying South Carolina contract law. Simmons v. Benson Hyundai, LLC, 438 S.C. 1, 881 S.E.2d 646 (Ct. App. 2022). Under the FAA, the court, rather than the arbiter, is presumed to determine the gateway question of arbitrability unless the parties expressly provide otherwise. Sanders v. Savannah Highway Automotive Co., 440 S.C. 377, 892 S.E.2d 112 (2023) (“The question of the arbitrability of a claim is an issue for judicial determination, unless the parties provide otherwise.”) In this case, there is nothing in the

arbitration clause of the Equipment Contract or in the separate Arbitration Agreement that reserves the issue of arbitrability for the arbiter instead of the court. In the absence of any provision that reserves these gateway issues for the arbiter, this is an issue of law for the court, applying South Carolina contract law.

Under South Carolina law, a contract cannot be formed without a meeting of the minds between the parties as to all essential and material terms. The parties must manifest “a mutual intent to be bound.” Player v. Chandler, 299 S.C. 101, 382 S.E.2d 891 (1989). Defendant UHSC relies on two separate documents to form the basis of its’ claim that Plaintiff’s case is subject to arbitration: the Equipment Contract and the Arbitration Agreement. The sole provision in the Equipment Contract pertaining to Arbitration is found in the 9th of 15 separate bullet points and states, in its entirety, “I agree to submit all legal claims in accordance with the U-Haul Arbitration Agreement, incorporated by reference and available at Uhaul.com/contract/email.aspx.” Plaintiff signed the Equipment Contract but there is no evidence that Plaintiff was provided with the separate Arbitration Agreement. The Court finds that the arbitration provision in the Equipment Contract was not at all conspicuous, and did not contain all of the terms of the Arbitration Agreement. It is hard to imagine how Plaintiff could have agreed to the terms set forth in the separate Arbitration Agreement when she was not provided with a copy of the document. Plaintiff would have had to go online when she was presented with the contract, presumably while standing at the counter at the U-haul office, in order to discern exactly what she was agreeing to. Our Supreme Court has stated that “Our courts’ statements that the law “favors” arbitration were never intended to elevate a contractual right of arbitration above the procedural rules of the court or other contractual provisions.” The Act’s purpose was to place an arbitration agreement “upon the same footing as other contracts, where it belongs,” and to overrule the judiciary’s longstanding refusal

to enforce agreements to arbitrate. See Palmetto Construction Group, LLC v. Restoration Specialists, 432 S.C. 633, 856 S.E.2d 150 (2021) and the authorities cited therein.

Applying basic contract principles, I find there was no meeting of the minds to arbitrate the claims and deny the motion to dismiss and compel arbitration.

The Honorable Kristi F. Curtis



Richland Common Pleas

Case Caption: Latonya Marie Miller Hemingway vs U Haul Co Of South Carolina ,
defendant, et al
Case Number: 2023CP4004606
Type: Order/Other

So Ordered

s/ Kristi F. Curtis, Circuit Court Judge, No. 2762