ELECTRONICALLY FILED - 2018 Jan 09 2:18 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0401932

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	TENTH JUDICIAL CIRCUIT
COUNTY OF ANDERSON)	
)	
HICKS UNLIMITED, INC.,)	
)	
PLAINTIFF,)	**ORDER**
)	**CASE NUMBER: 2017-CP-04-01932**
-VS-)	
)	
UNIFIRST CORPORATION,)	
A MASSACHUSETTS CORPORATION,)	
)	
DEFENDANT.)	
)	

RECEIVED
MAR 15 2018
SC Court of Appeals

DATE OF TRIAL:	November 27, 2017
TRIAL JUDGE:	R. Scott Sprouse, Circuit Court Judge For the Tenth Judicial Circuit
ATTORNEY FOR PLAINTIFF:	James S. Eakes of the Law Firm of Allen and Eakes
ATTORNEY FOR DEFENDANT:	Jude C. Cooper, and Ian D. McVey
COURT REPORTER:	Donna Brady

This matter came to be heard before me on November 27, 2017, at 2:00 p.m. pursuant to the Plaintiff's motion to stay arbitration and the Defendant's motion to compel arbitration. The Plaintiff was present and represented by its attorney, James S. Eakes. The Defendant was represented by its attorney Jude C. Cooper, a non-resident attorney, admitted *pro hac vice*, in association with local counsel, Ian D. McVey.

A copy of the contract, which is the subject of this litigation, dated September 21, 2006, is attached to the Plaintiff's complaint and also to the Defendant's motion to compel arbitration. The Plaintiff alleges in its complaint that the contract had been terminated and that "... the terms of the contract are illegal, unconscionable, and unenforceable." The Plaintiff further maintains that the contract was never subject to mandatory arbitration because it did not comply with the mandatory notice provision contained in **S.C. Code Ann.** § 15-48-10(a) (2005).

ELECTRONICALLY FILED - 2018 Jan 09 2:18 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0401932

The primary thrust of the Defendant's motion to compel arbitration and its answer is that the contract involved interstate commerce and is, therefore, subject to the Federal Arbitration Act ("FAA" or "Federal Act"), 94. U.S.C. §1 through §16, and not the South Carolina arbitration statute. The Defendant maintains that federal law prempts state law regarding the subject contract and its arbitration provision.

After carefully considering the arguments of the parties' respective attorneys, the memorandums of law, the legal authority submitted by the respective parties' attorneys, and based upon the pleadings and subject contract, the Court finds as follows:

The contract was entered into in Anderson County, South Carolina, on September 21, 2006, and is titled "Flame Resistant Garment Agreement". By the rental agreement, the Defendant was to provide the Plaintiff with fire retardant overalls for its employees at the Michelin Plant in Sandy Springs, South Carolina, in Anderson County. The Plaintiff is a corporation organized and existing pursuant to the laws of the State of South Carolina, having a place of business, and doing business in Anderson, South Carolina. The Defendant is a Massachusetts corporation authorized to do business and doing business in, South Carolina since 1984. It has a place of business in Greenville County, South Carolina. The Plaintiff always dealt with the Defendant's Greenville business location, and the fire retardant garments were always delivered from Greenville to the Plaintiff in Anderson County.

Based upon the pleadings, the contract, and the surrounding facts, the contract does not involve, nor does it implicate, interstate commerce. The contract was entered into in Anderson County, South Carolina, and the delivery of the flame resistant rental garments was in Anderson County from Defendant's business location in Greenville County. The contract is devoid of any basis for holding that the transaction between the parties involved or implicated interstate commerce. Interstate commerce is a necessary basis for application of the Federal Act (FAA)

and, therefore, the Federal Act does not supersede the State Act contained in **S.C. Code Ann** §15-48-10 *et seq.* (2005). **See** Timms v. Mary Greene, National Health Corp., L.P., Greenwood Nursing Homes, Inc., d/b/a Greenwood Health Care Center, 408 S.C. 371, 427 S.E.2d 642 (1993). The contract clearly does not comply with the notice provisions of **S.C. Code Ann.** §15-48-10 (a) (2005), the State Act.

Furthermore, The Plaintiff has alleged in its complaint that the contract is unconscionable and unenforceable and that the arbitration provision is, therefore, unconscionable and unenforceable. The Plaintiff should be able to raise whether or not it lacked a meaningful choice to arbitrate and that the arbitration provision was unconscionable and unenforceable on its face at a merits hearing. **See** Smith v. D.R. Horton, Inc., et al., 417 S.C. 42, 790 S.E.2d 1 (2016).

IT IS, THEREFORE, HEREBY, ORDERED, ADJUDGED, AND DECREED:

1.) That the Defendant's motion to compel arbitration is hereby denied; and

2.) That arbitration shall be stayed pending a merits hearing.

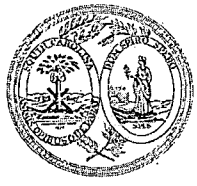
IT IS SO ORDERED.

Walhalla, South Carolina
January _____, 2018

_____
R. Scott Sprouse,
Circuit Court Judge for the
Tenth Judicial Circuit

ELECTRONICALLY FILED - 2018 Jan 09 2:18 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0401932

ELECTRONICALLY FILED - 2018 Jan 09 2:18 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0401932



Anderson Common Pleas

Case Caption: Hicks Unlimited, Inc VS Unifirst Corporation, A Massachusetts Corporation

Case Number: 2017CP0401932

Type: Order/Other

s/R. Scott Sprouse, Judge #2752

Tenth Judicial Circuit