

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

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C.A. No. 2017-CP-42-03283

SC Court of Appeals

Daniel Lee Davis, individually and on
behalf of all those similarly situated,

Plaintiff,

v.

ISCO Industries,

Defendant.

**ORDER DENYING DEFENDANT'S
MOTION TO COMPEL ARBITRATION
AND MOTION TO DISMISS PLAINTIFF'S
AMENDED COMPLAINT**

This matter came before the Court on Defendant's Motion to Compel Arbitration and Defendant's Motion to Dismiss Plaintiff's Amended Complaint. Plaintiff filed a Response in Opposition to Defendant's Motions, and the Court held a hearing on both motions on Friday, February 23, 2018, in Spartanburg, South Carolina. After careful consideration and review of the pleadings, motions, memoranda, and arguments of counsel, the Court rules as follows:

I. Defendant's Motion to Compel Arbitration is Denied.

Defendant moved to compel arbitration based on an arbitration agreement that Plaintiff signed at the outset of his employment with ISCO. The Court finds that the arbitration agreement is not applicable to this case.

In particular, the Court finds compelling the decision of the South Carolina Supreme Court in *Aiken v. World Finance Corp. of South Carolina*, 373 S.C. 144, 644 S.E.2d 705 (2007). In *Aiken*, the Supreme Court held that an arbitration agreement did not apply to a borrower's action against a finance company because the theft of the borrower's personal information was outrageous, tortious conduct that was unforeseeable. *Id.* at 149–52, 644 S.E.2d at 708–10. The arbitration agreement that Plaintiff signed applied to claims "arising out of or relating to my

candidacy for employment, employment and/or cessation of employment with ISCO,” but Plaintiff’s claims in this case arise out of Defendant’s release of the personal identifying information of Plaintiff and others to cyber-criminals. (See Am. Compl. ¶¶ 13–21). The Court finds that there is no relationship between the subject matter of Plaintiff’s claims in this case and the arbitration agreement, which relates to employment. Like the Court in *Aiken*, this Court holds that Plaintiff’s claims in this case are “for unanticipated and unforeseeable tortious conduct” and are, therefore, not within the scope of the arbitration agreement. See *Aiken*, 373 S.C. at 151, 644 S.E.2d at 709.

II. Defendant’s Motion to Dismiss is Denied.

Defendant moved to dismiss Plaintiff’s Amended Complaint pursuant to S.C.R.C.P. 12(b)(1) and 12(b)(6) based on lack of standing and failure to state facts sufficient to constitute a cause of action. In support of its Motion to Dismiss, Defendant relied on matters outside the pleadings including an affidavit and other attachments. “If, on a motion asserting the defense numbered (6) to dismiss for failure of the pleading to state facts sufficient to constitute a cause of action, matters outside the pleadings are presented to and not excluded by the Court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56” S.C.R.C.P. 12(b); see also *Johnson v. Dailey*, 318 S.C. 318, 457 S.E.2d 613 (1995).

As to the SCRCP 12(b)(1) motion to dismiss for lack of standing, the Court finds that the plaintiff does have standing to bring suit. Plaintiff has alleged facts sufficient to establish injury and negligence on the part of the defendant.

Additionally, as to the SCRCP 12(b)(6) motion, the Court notes that “[s]ummary judgment is appropriate only if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.” *Glover v. Cty. of Charleston*, 361 S.C. 634, 638, 606

S.E.2d 773, 775 (2004). “[S]ince it is a drastic remedy, summary judgment should be cautiously invoked to ensure that a litigant is not improperly deprived of a trial on disputed factual issues. *Helena Chem. Co. v. Allianz Underwriters Ins. Co.*, 357 S.C. 631, 644, 594 S.E.2d 455, 462 (2004). “[S]ummary judgment is improper if the parties dispute the inferences to be drawn from the facts even if the facts themselves are not in dispute. *CEL Prods., LLC v. Rozelle*, 357 S.C. 125, 129, 591 S.E.2d 643, 645 (Ct. App. 2004). “In determining whether summary judgment is proper, this court must view all evidence in the light most favorable to the non-moving party.” *Silvester v. Spring Valley Country Club*, 344 S.C. 280, 285, 543 S.E.2d 563, 566 (Ct. App. 2001). Importantly, “[i]n cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment.” *Hutchinson v. Liberty Life Ins. Co.*, 393 S.C. 19, 24, 709 S.E.2d 130, 133 (Ct. App. 2011) (internal quotation marks omitted) (quoting *Hancock v. Mid-South Mgmt. Co.*, 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009)). The Court has found that the plaintiff has alleged facts sufficient to clear this hurdle, thus the motion to dismiss is denied.

CONCLUSION

For all of the reasons stated above, Defendant’s Motion to Compel Arbitration is **DENIED** and Defendant’s Motion to Dismiss Plaintiff’s Amended Complaint is **DENIED**.

JUDGE’S SIGNATURE PAGE TO FOLLOW



Spartanburg Common Pleas

Case Caption: Daniel Lee Davis VS Isco Industries, Inc.
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It is so Ordered.

s/ R. Keith Kelly - 2165

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