

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF GREENVILLE )  
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 )  
 Redemption, )  
 )  
 Plaintiff, )  
 )  
 vs )  
 )  
 The Relentless Church, )  
 )  
 Defendant/Third-Party Plaintiff, )  
 )  
 vs )  
 )  
 Ron Carpenter and Hope Carpenter, )  
 John Doe and Jane Doe, )  
 )  
 Third-Party Defendant. )  
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IN THE COURT OF COMMON PLEAS

AMENDED  
ORDER

C.A. No 2020-CP-23-00012

**RECEIVED**  
 AUG 13 2020  
 SC Court of Appeals

*(This Amended Order only corrects two scrivener's errors as submitted by counsel for the Plaintiff and no other changes were made. The Plaintiff's Motion to Reconsider had been denied by separate Order.)*

This matter came before the Court upon Plaintiff Redemption's Motion to Compel Arbitration and was heard on July 2, 2020 and was conducted pursuant to the Order of the South Carolina Supreme Court for the "Operation of the Trial Courts During the Coronavirus Emergency" issued on April 3, 2020 (as amended) (hereinafter "Emergency Order"). The parties consented to holding the hearing via videoconference with a Court Reporter. Participating in the hearing were John Devlin and other counsel of record for the Plaintiff and Devon Puriefoy and other counsel of record for Defendant The Relentless Church ("Relentless") and counsel for Third Party Defendants, as well.

On January 2, 2020, Redemption filed an action for ejectment against Relentless for failure to pay rent and abide by their lease arrangements. Relentless filed its Answer and Third Party Complaint on February 2, 2020 referencing a Transition Agreement and a written Lease Agreement. On March 26, 2020, Relentless filed an Amended Answer and Third Party Complaint renewing its claim under the Lease Agreement, but also asserting claims, for the first time, certain claims under an Asset Transfer Agreement (ATA) allegedly entered into by the parties. Redemption filed its Reply to the Amended Counterclaim on May 8, 2020 denying that the ATA had ever been finalized and was not a valid, enforceable contract. At this time, Redemption also filed its Motion to Compel Arbitration under the terms of the ATA. Throughout this period, there were several hearings regarding the ejectment claim and the setting of rent during the pendency of the lawsuit as set forth in the Amended Order of Judge Robin Stilwell on April 2, 2020. Additionally, the parties participated in extensive mediation which failed to resolve this matter.

At the hearing, a very spirited debate ensued over whether Redemption had waived its right to seek arbitration. The parties present an interesting dilemma. Redemption asserts that neither the written Lease Agreement nor the ATA are valid. But these agreements contain the Arbitration provisions which Redemption is attempting to compel. Relentless asserts that the written Lease Agreement and ATA are valid and enforceable contracts, but that Redemption has waived its right to compel arbitration.

First, the Court will address the waiver/estoppel argument raised by Relentless. The causes of action set forth in Redemption's Complaint do not fall within any alleged arbitration provision, so the matter could not have been submitted to arbitration. In the initial response, Relentless, alleged that a written Lease Agreement was controlling (which does have an

arbitration provision), but there was no reference to the ATA. When it filed its Amended Answer and Counterclaim on March 26, 2020, Relentless asserted, for the first time, that the ATA was controlling. Then, Redemption filed its Reply to the Amended Counterclaim on May 8, 2020 along with its Motion to Compel Arbitration. In Redemptions' first opportunity to formally respond to Relentless' claims under the ATA, it asserted its right of arbitration under the purported agreement. Even though the parties had engaged in substantial "legal wrangling" from the filing of the Complaint until the Motion to Compel arbitration was filed, no party's actions were contrary to asserting rights in arbitration under the ATA. Further, even though there had been several hearings and mediations, when Redemption filed its Motion to Compel arbitration, there had been no discovery and the issues had not been fully joined by the pleadings. Therefore, the Court finds that Redemption had not waived its right to seek arbitration nor did it take any action that would support a claim of estoppel.

Next, the Court must determine whether Redemption can assert arbitration based on an agreement that it claims had never been finalized and was not enforceable. South Carolina and federal policy strongly favor arbitration as a means to resolve disputes between parties and thus the Courts have held that arbitration agreements are presumed to be valid. See *Cape Romain Contractors, Inc. v. Wando E., LLC*, 405 S.C. 115 (2013). The Court would note that Relentless is the party that inserted these Agreements into the lawsuit and there is no claim that the arbitration provisions are void or unconscionable. There is a long line of authority which supports Redemptions' argument that even if the enforceability of a contract is in issue, the Courts must still compel arbitration. Under the *Prima Paint* doctrine, an arbitration provision of a contract can be imposed by the Court even though the enforceability of the contract is in issue. See, *Prima Paint Corporation v. Flood & Conklin Mfg. Co.*, 388 U.S. 395 (1967). However,

Redemption's Motion must be viewed in light of two recent decisions by the South Carolina Court of Appeals: *Damico v. Lennar Carolinas, LLC*, 2020WL3067558 (S.C. Ct App. 6/10/20) and *Doe v. TCSC, LLC*, Opinion No. 5733 (S.C. Ct. App. 7/1/20). In *Damico*, the Court of Appeals in applying *Prima Paint* stated the following: "In deciding whether the parties have a valid agreement to arbitrate we must therefore isolate the arbitration clause from the rest of the contract. If the arbitration agreement is valid, any issues as to the validity of other parts of the contract go to the arbitrator, not the Court." In *Damico*, the Court was addressing a contract which one of the parties claimed was fraudulently induced and found that since the arbitration provision was not in question, that the arbitrator must determine whether the contract was fraudulently induced. But in the case before this Court, Redemption claims that the ATA and lease agreements were never finalized and are not valid *ab initio* and this Court finds that *Doe v. TCSC, LLC* is more applicable. In *Doe*, the Court of Appeals found that the Court, and not the arbitrator, "will decide 'gateway' issues related to arbitration, including whether the arbitration agreement is valid and enforceable and whether it cover the parties' dispute." (citing *First Options of Chicago, Inc. v. Kaplan*, 514 U.S. 938, 944 (1995).) The Court must also look to whether the "gateway" issues were delegated to the arbitrator as well.

Redemption asserts that the contracts containing the arbitration provisions are not valid because they were never finalized. If there is no valid contract between the parties, then there is no basis to compel arbitration. Further, there is no delegation of the gateway issues to the arbitrator. The arbitration provision of the ATA states as follows:

Any controversy, claim, or dispute arising from or related to this Agreement except in respect of the injunctive relief described in Section 2.2(g) shall be settled by mediation and, if necessary, legally binding arbitration in accordance with the Rules of Procedure for Christian Conciliation of the Institute for Christian Conciliation, a division of Peacemaker Ministries (the "Rules"). The complete text of the Rules may currently be

obtained by accessing [www.HisPeace.org](http://www.HisPeace.org). Judgment upon an arbitration decision may be entered in any court otherwise having jurisdiction. The parties understand that these methods shall be the sole remedy for any controversy, claim, or dispute arising out of this Agreement and they expressly waive their rights to file a lawsuit in any civil court against one another for such controversies, claims or disputes, except to enforce an arbitration decision.

There is clearly no delegation of the "gateway" issues in this provision.

This Court finds that *Doe v. TSCS, LLC* is controlling and that the Court must determine the "gateway" issue of whether the contracts are valid before determining whether the arbitration can be compelled. At this point, the issue of the validity of the various agreements is not properly before the Court and no evidence had been presented for the Court to make this determination. Therefore, the Court denies Redemption's Motion to Compel arbitration. If, after additional discovery and developments, there is sufficient evidence to support the validity of the various agreements, then Redemption can renew its Motion and the Court can make a determination of the "gateway" issues at that time and determine whether arbitration is appropriate

It is so ordered.

August 5, 2020

*E-signature Page of Judge Gravely to follow*



Greenville Common Pleas

**Case Caption:** Redemption , plaintiff, et al vs. The Relentless Church , defendant, et al  
**Case Number:** 2020CP2300012  
**Type:** Order/Amend

So Ordered

s/ Honorable Perry H. Gravely, #2755