

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
TRIAL DIVISION—CIVIL

CARL TEITELMAN

Plaintiff

v.

D4 CREATIVE GROUP

Defendant

: December Term, 2014
:
: Case No. 003477
:
: Commerce Program
:
: Control Nos. 15032522,
: 15041367

ORDER

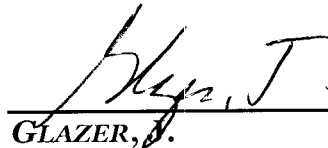
AND NOW, this 1st day of June, 2015, upon consideration of the petition to compel arbitration of defendant D4 Creative Group, the answer in opposition of plaintiff Carl Teitelman, and the respective *memoranda* of law, it is **ORDERED** that the petition to compel arbitration of defendant D4 Creative Group is **GRANTED**, the instant action is **STAYED**, and the parties are instructed to commence arbitration proceedings consistent with this court's **MEMORANDUM OPINION** filed simultaneously herewith.

DOCKETED

JUN - 1 2015

R. POSTELL
COMMERCE PROGRAM

BY THE COURT,


GLAZER, J.

Teitelman Vs D4 Creativ-ORDST



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<i>Plaintiff</i>	:	Case No. 003477
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	:	
D4 CREATIVE GROUP	:	
	:	Control Nos. 15032522,
<i>Defendant</i>	:	15041367

MEMORANDUM OPINION

The motion to compel arbitration requires this court to determine whether it lacks subject matter jurisdiction over a dispute arising out of an employment relationship and its subsequent termination by employer. For the reasons below, this court finds that it lacks subject matter jurisdiction and the parties are instructed to commence arbitration proceedings.

Background

Plaintiff, Carl Teitleman (“Plaintiff”), is a former employee of defendant D4 Creative Group (“Defendant”). On January 1, 2014, Plaintiff and Defendant executed a document captioned “Confidential Information & Non Compete.”¹ This Confidential Information & Non-Compete agreement appears to be an attachment to an un-executed document titled “Employment Offer.” The un-executed Employment Offer describes *inter alia* the employment duties owed by Plaintiff to Defendant, and various forms of

¹ Confidential Information & Non-Compete agreement, Exhibit No. 4 to Defendant’s petition to compel arbitration.

compensation owed by Defendant to Plaintiff.² Notwithstanding issues of fact as to whether the two documents are part of a single, comprehensive agreement, the valid, fully executed Confidential Information & Non-Compete agreement states the following:

Agreement.

As a condition of my employment with D4 CREATIVE GROUP ... [the Company], and in consideration of my further employment with the Company and my receipt of compensation now and hereafter paid to me by the Company, I [Plaintiff herein] agree to the following terms and conditions of this Confidential Information and Non-Compete Agreement....

9. Arbitration and Equitable Relief.

- (a) Arbitration. Except as provided in subsection (b) below, I agree that any dispute, claim or controversy concerning my employment or the termination of my employment or any dispute, claim or controversy arising out of or relating to any interpretation, construction, performance or breach of this Agreement, shall be settled by arbitration in accordance with the rules then in effect of the American Arbitration Association. The arbitrator may grant injunctions or other relief in such dispute or controversy. The decision of the arbitrator shall be final, conclusive and binding on the parties to the arbitration. Judgment may be entered on the arbitrator's decision in any court having jurisdiction. The Company and I shall each pay one-half of the costs and expenses of such arbitration, and each of us shall separately pay our counsel fees and expenses.³

In September 2014, Defendant terminated Plaintiff's employment; subsequently, on December 23, 2014, Plaintiff commenced the instant action against Defendant.

Plaintiff's six-count complaint alleges the claims of breach of the employment contract, violation of the Pennsylvania Wage Payment and Collection Law, unjust enrichment,

² Employment Offer, pp.1—5, Exhibit No. 4 to Defendant's petition to compel arbitration.

³ Confidential Information & Non-Compete, p. 1, p. 3 § 9, Exhibit No. 4 to Defendant's petition to compel arbitration.

promissory estoppel, breach of the covenant of good faith and fair dealing, and violation of the Pennsylvania Minimum Wage Act.

On February 11, 2015, Defendant filed an answer with new matter and counterclaim. In the new matter, at paragraph 66, Defendant asserts that this court has no jurisdiction over the instant controversy because the parties are bound to compulsory arbitration. On March 2, 2015, Plaintiff, as counterclaim defendant, filed preliminary objections against each claim asserted in the Defendant's counterclaim.

On March 18, 2015, Defendant filed a petition to compel arbitration with an accompanying *memorandum* of law; subsequently, on April 6, 2015, Plaintiff filed a response in opposition with *memorandum* of law to the petition to compel arbitration. On April 15, 2015, Defendant filed a reply *memorandum* in further support of its petition to compel arbitration.

On March 23, 2015, Defendant filed an amended counterclaim. The amended counterclaim asserts seven distinct claims against Plaintiff: breach of duty of loyalty, breach of fiduciary duty, computer fraud and abuse under 18 U.S.C. § 1030, conversion, unjust enrichment, unfair competition, and tortious interference with business relations.

On April 8, 2015, Plaintiff, as counterclaim defendant, filed preliminary objections against each claim asserted by Defendant in the amended counterclaim. The preliminary objections to the amended counterclaim and the petition to compel arbitration have been fully briefed and are both ripe for a decision.

Discussion

According to Defendant's petition to compel arbitration, this court lacks subject matter jurisdiction over Plaintiff's claims because the parties agreed in writing that any

dispute concerning Plaintiff's employment with, or termination of his employment by Defendant, should be submitted for resolution to binding arbitration.⁴ In the response in opposition, Plaintiff argues that the arbitration provision is invalid for lack of consideration, or it is unenforceable because unconscionable.⁵ Plaintiff asserts that the arbitration provision is unconscionable because it deprives Plaintiff of his right to statutory remedies under the Pennsylvania Wage Payment and Collection Law, and it unfairly seeks to impose upon Plaintiff a share of the high costs of arbitration.⁶

In Pennsylvania,

[w]hen one party to an agreement to arbitrate seeks to enjoin the other from proceeding to arbitration, judicial inquiry is limited to the questions of whether an agreement to arbitrate was entered into and whether the dispute involved falls within the scope of the arbitration provision.... Thus a party who can establish that he did not agree to arbitrate, or that the agreement to arbitrate, limited in scope, did not embrace the disputes in issue, may be entitled to enjoin an arbitration proceeding.⁷

In addition, "[t]he scope of arbitration is determined by the intention of the parties as ascertained in accordance with the rules governing contracts generally."⁸

In this case, Plaintiff's complaint alleges that Defendant unlawfully terminated Plaintiff's employment, failed to pay the last two weeks of Plaintiff's salary, and has been withholding substantial amounts of commissions earned by Plaintiff in 2013–2014.⁹ Conversely, Defendant's amended counterclaim alleges that Plaintiff, *inter alia*, misused Defendant's credit card, improperly received advanced payment of unearned profit-

⁴ Petition to compel arbitration, ¶ 1.

⁵ Plaintiff's *memorandum* of law in opposition to the motion to compel arbitration, incorporated by reference into Plaintiff's response in opposition, III B–C, pp. 4-7.

⁶ *Id.* pp. 5-7.

⁷ *Flightways Corp. v. Keystone Helicopter Corp.*, 459 Pa. 660, 663; 331 A.2d 184, 185 (Pa. 1975).

⁸ *Elwyn v. DeLuca*, 2012 Pa. Super 136; 48 A.3d 457, 461 (Pa. Super. 2012).

⁹ Complaint, ¶¶ 17–21.

sharing proceeds, damaged two company-owned vehicles without reporting the incidents, and solicited coworkers to assist him in the improper use of Defendants' computer network for personal purposes.¹⁰ All of the above allegations, when read in conjunction with the clear and unambiguous language of the Confidential Information & Non-Compete agreement executed by Plaintiff, including the above-quoted arbitration provision, convince this court that the parties intentionally entered into an arbitration agreement to resolve disputes such as those asserted in the complaint and amended counterclaim.¹¹ Moreover, this court rejects Plaintiff's argument that the arbitration agreement is invalid for lack of consideration, or is unenforceable because unconscionable. The argument based on lack of consideration is rejected because the introductory paragraph to the agreement clearly and unambiguously recites that Plaintiff, "in consideration of ... further employment with the Company and ... receipt of compensation," agrees to be bound to the terms of the agreement.¹² Finally, the argument asserting that the agreement is unenforceable as unconscionable is also rejected because Plaintiff voluntarily agreed to be bound to the terms thereof. In Pennsylvania,

[t]he determination of conscionability is a question of law.... The two-prong test for unconscionability is whether one of the parties lacked a meaningful choice before accepting the terms of the provision and whether the provision unreasonably favors the drafter.¹³

In this case, Plaintiff has not averred in his complaint or response in opposition

¹⁰ Defendant's amended counterclaim, ¶ 13.

¹¹ The arbitration provision specifically states in pertinent part that: "any dispute, claim or controversy concerning [Plaintiff's] employment or termination ... shall be settled by arbitration...." Confidential Information & Non-Compete agreement, § 9, Exhibit No. 4 to Defendant's petition to compel arbitration.

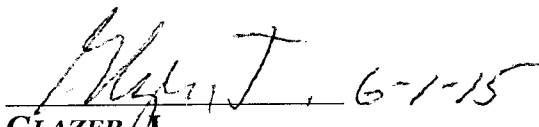
¹² Id.

¹³ Burton v. Republic Ins. Co., 2004 Pa. Super. 67, ¶ 27; 845 A.2d 889, 898 (Pa. Super.2004).

to the petition to compel that he lacked a meaningful choice when he accepted the terms of the Confidential Information & Non-Compete agreement. This court can only conclude that Plaintiff freely entered into such agreement and may not subsequently argue that the agreement is unconscionable.

For the reasons above, the petition to compel arbitration is granted, the instant action is stayed, and the parties are instructed to commence arbitration proceedings.¹⁴ The arbitration proceedings shall seek resolution of all claims asserted in Plaintiff's complaint and Defendant's amended counterclaim, including the issues presented by the preliminary objections thereto.

BY THE COURT,


GLAZER, J.

¹⁴ The court directs the parties' attention to PA. R.C.P. 1028 which states: "(a) Preliminary objections may be filed ... on the following grounds (6) ... agreement for alternative dispute resolution. *Note: An agreement to arbitrate may be asserted by preliminary objection or by petition to compel arbitration....*" (Emphasis supplied). In this case, Defendant filed its petition to compel arbitration after filing an answer to the complaint with new matter and counterclaim. Notwithstanding Defendant's error, which could have resulted in a waiver of its right to assert alternative dispute resolution, this court notes that a "waiver of a right to proceed to arbitration ... should not be lightly inferred and unless one's conduct has gained him an undue advantage or resulted in prejudice to another he should not be held to have relinquished the right." *O'Donnell v. Hovnanian Enterprises, Inc.*, 29 A.3d 1183, 1187 (Pa. Super. 2011). In this case, Defendant has not waived its right to assert alternative dispute resolution because it has gained no undue advantage, and Plaintiff has suffered no prejudice, as a result of Defendant's failure to promptly assert alternative dispute resolution through a petition to compel arbitration, or through preliminary objections, as required under the Pennsylvania Rules of Civil Procedure.