UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA

Bussen v. International Precious Metals Corp.

660 F. Supp. 94 (S.D. Fla. 1987) · Decided January 26, 1987

SUMMARY

The court denied defendants' motion to compel arbitration and to stay proceedings concerning the other defendants. It held that the parties had not entered into a valid agreement to arbitrate because the account agreement selected Florida courts and the separate arbitration document did not clearly require arbitration. The court also construed the ambiguous arbitration language against its drafter.

CASE DETAILS

COURT	United States District Court for the Southern District of Florida
WRITING FOR THE COURT	Nesbitt, District Judge
JURISDICTION	Florida
DECIDED	January 26, 1987
DISPOSITION	other
PROCEDURAL POSTURE	Defendants moved to compel arbitration of the claims against IPMC Options and to stay the proceedings against the other defendants. The court denied the motion.
STANDARD OF REVIEW	The court examined the writings to determine, as a threshold matter, whether the parties entered into a valid agreement to arbitrate.
PRECEDENTIAL VALUE	Published federal district court opinion; persuasive authority within the federal judiciary and not binding precedent outside the court.
PARTIES	Bussen v. International Precious Metals Corp.

TOPICS

arbitration · contract interpretation · contracts · commercial litigation · civil procedure

PRACTICE AREAS

arbitration · contract law · commercial litigation · civil procedure

QUESTIONS PRESENTED

1. Whether the parties entered into a valid agreement to arbitrate the plaintiff's claims against IPMC Options.
2. Whether the arbitration agreement's language, considered together with the account agreement's forum-selection provision, required the plaintiff to arbitrate rather than litigate her claims.
3. Whether the proceedings against the other defendants should be stayed pending arbitration.

HOLDINGS

1. The parties did not enter into a valid agreement to arbitrate because the account agreement directed disputes to Florida state or federal courts and the separate arbitration agreement did not expressly require arbitration.
2. The arbitration agreement was ambiguous and, under the rule construing ambiguous contracts against the drafter, did not compel arbitration of the plaintiff's claims.
3. The court denied the request to stay the proceedings against the other defendants because the claims against IPMC Options were not subject to compelled arbitration.

KEY QUOTATIONS

> *"The first step towards determining whether or not arbitration should be compelled is determining whether or not an agreement to arbitrate was made."* (660 F. Supp. at 96)

> *"Arbitration is a matter of contract and a party cannot be forced to arbitrate any claim which he has not agreed to arbitrate."* (660 F. Supp. at 96)

> *"Thus, there is no agreement to arbitrate."* (660 F. Supp. at 96)

FACTUAL BACKGROUND

IPMC Options sent the plaintiff an account agreement that she signed and returned in February 1986. The account agreement provided that disputes arising from the agreement or transactions with IPMC Options would be submitted to Florida state courts or the United States District Court for the Southern District of Florida, with venue in Broward County. Four days later, the plaintiff signed a separate arbitration agreement containing regulatory disclosures but no express provision requiring arbitration of disputes.

PROCEDURAL HISTORY

The plaintiff brought an action seeking recovery for losses allegedly incurred in commodities trading and for commissions paid to defendants, alleging fraudulent inducement. Defendants sought to compel arbitration based on an account agreement and a separately signed arbitration agreement. The district court determined that the writings did not create a valid agreement to arbitrate and denied the motion to compel arbitration and stay.

DISPOSITION

other

CASES CITED

- Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, 473 U.S. 614, 105 S. Ct. 3346, 87 L. Ed. 2d 444 (1985)
- Bigge Crane and Rigging Co. v. Docutel Corp., 371 F. Supp. 240 (E.D.N.Y. 1973)
- Gateway Coal Co. v. United Mine Workers of America, 414 U.S. 368, 94 S. Ct. 629, 38 L. Ed. 2d 583 (1974)
- Hurt v. Leatherby Ins. Co., 380 So. 2d 432 (Fla. 1980)
- Corso v. Creighton University, 731 F.2d 529 (8th Cir. 1984)

OPINION

NESBITT, J.

ORDER ON MOTION TO COMPEL ARBITRATION NESBITT, District Judge. This case is before the Court upon the Defendants' Motion to Compel Arbitration [with respect to IPMC OPTIONS, LTD.] and to Stay the Proceedings With Respect to the Other Defendants and the Plaintiff's Response thereto. Plaintiff commenced this action to recover for losses incurred as a result of commodities trading and for commissions paid to the Defendants.

Plaintiff claims she was fraudulently induced to enter into said commodities trading by the Defendants. The Defendants now seek to stay these proceedings while the Plaintiff's claims against IPMC OPTIONS are submitted to arbitration. Defendants rely on an arbitration agreement entered into by the Plaintiff to support their Motion.

The Plaintiff counters that the document that she signed does not require arbitration of any claims. Plaintiff further asserts that the Defendant IPMC OPTIONS expressly agreed to submit any disputes arising out of her transactions with it to Florida state courts or to the federal courts for the Southern District of Florida. There are two writings involved in the present dispute.

IPMC OPTIONS first sent to the Plaintiff a "Customer Commodity Option Account Agreement and Disclosure Statement Acknowledgment" form (the Account Agreement). The Plaintiff signed and returned this form to the IPMC OPTIONS in February of 1986. Paragraph 7 on page 2 of the Account Agreement states that any proceedings concerning disputes, claims or controversies arising out of this Agreement or any transactions with IPMC Options shall be submitted to the jurisdiction of the Courts of the State of Florida or the United States District Court for the Southern District of Florida and that the venue for any action arising from this Agreement or any transaction with IPMC Options shall be in Broward County, Florida.

IPMC also sent to the Plaintiff an "Arbitration Agreement" (attached hereto as Exhibit A). Four days after the Plaintiff signed and returned the Account Agreement to IPMC OPTIONS she signed and returned this Arbitration Agreement.

The Federal Arbitration Act, 9 U.S.C. § 1 et seq., greatly favors the use of arbitration as a mechanism of dispute resolution. However, the first step towards determining whether or not arbitration should be compelled is determining whether or not an agreement to arbitrate was made. Mitsubishi Motors Corporation v. Soler Chrysler-Plymouth, 473 U.S. 614, 105 S.Ct.

3346, 87 L.Ed.2d 444 (1985); Bigge Crane and Rigging Co., v. Docutel Corp., 371 F.Supp. 240 (E.D.N.Y.1973). *96Upon a review of the exhibits presented it appears that the parties never entered into a valid agreement to arbitrate. There are two reasons for this conclusion.

First is the language of the Account Agreement which states that any disputes between the parties would be submitted to Courts of the State of Florida or the Federal Courts of the Southern District of Florida. This language is very clear, and was on a form prepared by IPMC OPTIONS.

Second, the language of the Arbitration Agreement is as ambiguous as the language of the Account Agreement is clear. The language of the Arbitration Agreement is merely a reprint of the language required to be included in an arbitration agreement by the Commodities Futures Trading Commission (CFTC), Part 180b— Arbitration or Other Disputed Settlement Procedures; CCH Commodity Futures Law Reporter 113322 Reg. § 180.3(b)(6).

There is no agreement to arbitrate included in the writing. The language simply explains that arbitration is sometimes advantageous but does entail the waiver of the right to go to court. There is no clause in the Arbitration Agreement, for example, which states “all disputes arising out of any transaction between the parties shall be submitted to arbitration.” Thus, there is no agreement to arbitrate.

Arbitration is a matter of contract and a party cannot be forced to arbitrate any claim which he has not agreed to arbitrate. Gateway Coal Co. v. United Mine Workers of America, 414 U.S. 368, 94 S.Ct. 629, 38 L.Ed.2d 583 (1974). Additionally, a basic canon of contract construction is that an ambiguous contract is construed against the drafter. Hurt v. Leatherby Ins.

Co., 380 So.2d 432 (Fla.1980); Corso v. Creighton University, 731 F.2d 529 (8th Cir.1984). Consequently, the Arbitration Agreement signed by the Plaintiff in this case does not compel arbitration of the Plaintiff's claims against IPMC OPTIONS.

Accordingly, it is hereby ORDERED AND ADJUDGED that the Defendants’ Motion to Compel Arbitration and to Stay the Proceedings with Respect to the Other Defendants be and the same is DENIED. EXHIBIT A Arbitration Agreement THREE FORUMS EXIST FOR THE RESOLUTION OF COMMOOITY DISPUTES: CIVIL COURT LITIGATION, REPARATIONS AT THE COMMODITY FUTURES TRADING COMMISSION (CFTC) ANO ARBITRATION CONDUCTED BY A SELF-REGULATORY OR OTHER PRIVATE ORGANIZATION.

THE CFTC RECOGNIZES THAT THE OPPORTUNITY TO SETTLE DISPUTES BY ARBITRATION MAY IN SOME CASES PROVIOE MANY BENEFITS TO CUSTOMERS INCLUDING THE ABILITY TO OBTAIN AN EXPEDITIOUS AND FINAL RESOLUTION OF

DISPUTES WITHOUT INCURRING SUBSTANTIAL COSTS. THE CFTC REQUIRES, HOWEVER, THAT EACH CUSTOMER INDIVIDUALLY EXAMINE THE RELATIVE MERITS OF ARBITRATION AND THAT YQUR CONSENT TO THIS ARBITRATION AGREEMENT BE VOLUNTARY.

BY SIGNING THIS AGREEMENT, YOU: (1) MAY BE WAIVING YOUR RIGHT TO SUE IN A COURT OF LAW; AND (2) ARE AGREEING TO BE BOUNO BY ARBITRATION OF ANY CLAIMS OR COUNTERCLAIMS WHICH YOU OR IPMC OPTIONS MAY SUBMIT TO ARBITRATION UNDER THIS AGREEMENT. YOU ARE NOT, HOWEVER, WAIVING YOUR RIGHT TO ELECT INSTEAO TO PETITION THE CFTC TO INSTITUTE REPARATIONS PROCEEDINGS UNDER SECTION 14 OF THE COMMODITY EXCHANGE ACT WITH RESPECT TO ANY DISPUTE WHICH MAY BE ARBITRATED PURSUANT TO THIS AGREEMENT.

IN THE EVENT A DISPUTE ARISES, YOU WILL BE NOTIFIED IF IPMC OPTIONS INTENDS TO SUBMIT THE DISPUTE TO ARBITRATION. IF YOU BELIEVE A VIOLATION OF THE COMMODITY EXCHANGE ACT IS INVOLVED AND IF YOU PREFER TO REQUEST A SECTION 14 "REPARATIONS" PROCEEDING BEFORE THE CFTC, YOU WILL HAVE 45 DAYS FROM THE DATE OF SUCH NOTICE IN WHICH TO MAKE THAT ELECTION. YOU NEED NOT SIGN THIS AGREEMENT TO OPEN AN ACCOUNT WITH IPMC OPTIONS.

(SEE 17 CFR 180.1-180.5.) II you «lecl lo submil a claim lo aibilrallon. you must nollly IPMC Oplions in wining ol your inlonl to submit a claim. You will have tho opportunity lo soled a qualified forum for conducting the proceeding at a later date. Within ten business days after receipt of said notice. IPMC Options must provide you with a list of two or more organizations qualified to conduct arbitrations in accordance wtth 17 C.F.

R. Pari 180 and a copy of the rules of each forum selected The list must include (i) the contract market upon which the disputed transaction arose, and *97(h) ai least one other organization which will provide you an opportunity to select the location of the arbitration and the selection of mixed panel to hear the arbitration. IPMC Options shall bear all incremental fees assessed by a mixed panel, unless you are found to have acted m bad faith AUTHORIZED ACCOUNT SIGNATURE(S): [[Image here]]