STATE OF MICHIGAN
IN THE 17th CIRCUIT COURT FOR KENT COUNTY

FAMILY FITNESS 49445; FAMILY FITNESS OF NORTON SHORES; and BRIAN CROSSNO, an individual and as a class representative,

Plaintiffs,

vs.

DOMESTIC LINEN SUPPLY AND LAUNDRY CO, doing business as Domestic Uniform,

Defendant.
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Case No. 14-02083-CBB

HON. CHRISTOPHER P. YATES

OPINION AND ORDER CONFIRMING ARBITRATION AWARD

On April 8, 2014, the Court issued an opinion and order scheduling an evidentiary hearing to resolve competing requests from Defendant Domestic Linen Supply and Laundry Co. ("Domestic Linen") to confirm an arbitration award and from Plaintiffs Family Fitness 49445, Family Fitness of Norton Shores (collectively, "Family Fitness"), and Brian Crossno to vacate that arbitration award. The Court conducted the hearing on April 30, 2014, and obtained a transcript of the hearing. Based upon the evidence adduced at that evidentiary hearing, the Court shall confirm the arbitration award in its entirety pursuant to MCR 3.602(I).

I. Factual Background

In April 2013, Defendant Crossno was working as an independent contractor at the Family Fitness facility in Norton Shores, where he managed sales and operations. See Hearing Tr at 23-24. On April 11, 2013, Kari Oostveen of Defendant Domestic Linen went to the Norton Shores facility

to solicit business from Family Fitness. See Hearing Tr at 29-30. She met with Crossno, and by the time she left the facility, Crossno had signed a "Domestic Uniform Rental" agreement as the "Area Manager" of Family Fitness for temporary towel service, see Hearing Exhibit 1; Hearing Tr at 65-69, and Oostveen had signed up for a Family Fitness membership. See Hearing Exhibit D; Hearing Tr at 85. Then, on April 22, 2013, Crossno and Oostveen signed a second "Domestic Uniform Rental" agreement for a separate Family Fitness facility in North Muskegon. See Hearing Exhibit 2; Hearing Tr at 83, 93-95.

After the two agreements were signed on April 11 and 22, 2013, Defendant Domestic Linen delivered towels to the two Family Fitness facilities for several months. See Hearing Tr at 136-137. But eventually Family Fitness no longer needed towels delivered, so it tried to end the contractual relationship by simply paying its balance due to Domestic Linen. See Hearing Tr at 137. Domestic Linen responded with a letter on July 24, 2013, demanding "liquidated damages in the amount of $14,795.52" under the terms of the agreements signed in April of 2013. See Verified Complaint for Declaratory Relief and Other Relief, Exhibit D. Family Fitness balked at that demand, so Domestic Linen invoked the arbitration provision in each of the two April 2013 agreements and set the parties' disputes for resolution by an arbitrator. The two sides engaged in e-mail correspondence about the arbitration, see Defendant's Motion for Confirmation of Arbitration Award, Exhibits 5 & 7, and the matter was scheduled for a hearing before an arbitrator in Bloomfield Hills on March 11, 2014. See id., Exhibit 7.

On March 10, 2014, less than a day before the scheduled arbitration hearing, Family Fitness filed the verified complaint in this action requesting declaratory relief in the form of an order barring arbitration and characterizing the agreements executed in April 2013 as legally invalid. Despite the

initiation of this action and Family Fitness's refusal to attend the arbitration hearing, the arbitrator conducted a hearing on March 11, 2014, and then issued a one-page arbitration award on March 13, 2014. See Defendant's Motion for Confirmation of Arbitration Award, Exhibit 1. That arbitration award directed Family Fitness to pay Defendant Domestic Linen $16,858.44 on the Norton Shores contract, $8,371.56 on the North Muskegon contract, $3,000 in attorney fees, and $2,175 in fees and costs for the arbitration proceeding.[1] See id. On March 19, 2014, Domestic Linen filed a motion for confirmation of the arbitration award, and on March 25, 2014, Family Fitness responded with a cross-motion to vacate the arbitration award. Finally, on April 30, 2014, the Court conducted an evidentiary hearing to fill out the record. Now the Court must decide whether the arbitration award is valid and enforceable as a matter of law.

II. Legal Analysis

In Michigan, our Legislature "has expressed a strong public policy favoring private voluntary arbitration, and our courts have historically enforced agreements to arbitrate disputes." Rembert v Ryan's Family Steak Houses, Inc, 235 Mich App 118, 127-128 (1999). Our legislature "significantly advanced the public policy favoring arbitration in 1961 when it enacted the Michigan arbitration act, (MAA), MCL 600.5001 *et seq.*" Rembert, 235 Mich App at 131. A steady stream of decisions from our Court of Appeals reflects our jurisprudential commitment to arbitration. E.g., Rooyakker & Sitz, PLLC v Plante & Moran, PLLC, 276 Mich App 146, 156 (2007); Omega Constr Co, Inc v Altman,

[1] The arbitrator refused to impose any liability upon Brian Crossno despite his execution of personal guaranties on the contracts with his employer. See Defendant's Motion for Confirmation of Arbitration Award, Exhibit 1. Despite that ruling, Defendant Domestic Linen has asked the Court to hold Crossno responsible for the full amount of the award against his employer. Needless to say, that request flies in the face of Domestic Linen's strident contention that the Court must confirm the arbitrator's award.

147 Mich App 649, 655 (1985). But because arbitration is a matter of contract, a party "cannot be required to arbitrate an issue which he has not agreed to submit to arbitration." See Kaleva-Norman-Dickson School Dist No 6 v Kaleva-Norman-Dickson School Teachers' Ass'n, 393 Mich 583, 587 (1975). Our State's "'preference for arbitration . . . is triggered only if the parties agree to arbitrate.'" Macomb County v AFSCME Council 25 Locals 411 and 893, 494 Mich 65, 81 n47 (2013).

By all accounts, Brian Crossno signed both April 2013 agreements with Domestic Linen as the "Area Manager" for Family Fitness. See Hearing Exhibits 1 & 2; Hearing Tr at 69. Each of the one-page agreements set forth information about quantity and pricing on the front side and standard terms and conditions on the back side. Paragraph 15 on the back side of each agreement prescribed arbitration as the method for resolving disputes between the contracting parties:

> In the event of any controversy or claim in excess of $10,000.00 arising out of or relating to this agreement, including but not limited to questions regarding the authority of the persons who have executed this agreement and enforcement of any guarantee that is related to this agreement, the question, controversy or dispute shall be submitted to and settled by arbitration to be held in the city closest to the city in which the branch office of the Company which serves the Customer is located.

See Defendant's Motion for Confirmation of Arbitration Award, Exhibits 2 & 3 (Rental Agreement, §15). Despite the sweeping language of this arbitration clause, Family Fitness argues that Domestic Linen cannot rely upon the April 2013 agreements either to compel arbitration or to obtain damages.

In deciding whether to confirm the arbitration award, the Court must bear in mind that such an inquiry is circumscribed. That is, MCR 3.602(J)(2) empowers courts to vacate arbitration awards on several grounds, the Uniform Arbitration Act, MCL 691.1681, *et seq*, contemplates challenges for several reasons, see MCL 691.1703, and precedent holds that "the defense of 'no valid agreement to arbitrate' may be raised in an action to confirm or enforce an arbitration award." Arrow Overall

Supply Co v Peloquin Enterprises, 414 Mich 95, 97 (1982); see also MCL 691.1686(2). As a result, Family Fitness may contest the arbitration award only on those grounds.

Turning first to the grounds for vacating an arbitration award set forth in MCR 3.602(J)(2), the Court finds no basis for affording Family Fitness relief. Manifestly, the arbitration award in this case was not "procured by corruption, fraud, or other undue means[.]" See MCR 3.602(J)(2)(a). In addition, the Court cannot find "evident partiality by an arbitrator appointed as a neutral, corruption of an arbitrator, or misconduct prejudicing a party's rights[.]" See MCR 3.602(J)(2)(b). Indeed, the arbitrator refused to impose personal liability upon Brian Crossno in spite of his personal guaranty and his refusal to participate in the arbitration hearing. See Defendant's Motion for Confirmation of Arbitration Award, Exhibit 1. Similarly, the record contains no support for an argument that "the arbitrator exceeded his or her powers[.]" See MCR 3.602(J)(2)(c). Instead, the arbitration award seems to hew to the provisions of the parties' April 2013 agreements. See Defendant's Motion for Confirmation of Arbitration Award, Exhibit 1. Finally, the Court cannot conclude that "the arbitrator refused to postpone the hearing on a showing of sufficient cause[.]" See MCR 3.602(J)(2)(d). As the record makes clear, the parties seemingly agreed to conduct the arbitration hearing on March 11, 2014, see Defendant's Motion for Confirmation of Arbitration Award, Exhibit 7, but Family Fitness unsuccessfully tried to block that hearing from going forward by filing this action less than 24 hours before the scheduled starting time of the hearing. Under the circumstances, the arbitrator acted well within his authority in conducting the hearing at the scheduled time on March 11, 2014.

Focusing next upon the grounds for relief prescribed by the Uniform Arbitration Act, MCL 691.1703(1), which closely resemble the bases for relief under MCR 3.602(J)(2), the Court finds no statutory basis to vacate the arbitration award. The only theory available to Family Fitness under the

Uniform Arbitration Act that is not identified in MCR 3.602(J)(2) requires a showing that "[t]here was no agreement to arbitrate" the dispute. See MCL 691.1703(1)(e). Family Fitness has challenged the validity of the two agreements signed in April 2013 on grounds of fraudulent inducement, fraud in the execution, promissory estoppel, and lack of a meeting of the minds, but the record does not support any of these challenges to the agreement. Family Fitness contends that Brian Crossno was tricked and misled by Kari Oostveen acting on behalf of Domestic Linen. Nothing could be further from the truth. In emotional testimony, Oostveen not only explained that she never misled Crossno about the terms in the Domestic Linen contract, see Hearing Tr at 161, 163, 169, but also confirmed that she left Domestic Linen because she could not tolerate being pressured to mislead customers. See Hearing Tr at 169-171. On the other side of the negotiations, Crossno had vast experience in sales, having participated in approximately 15,000 sales of health-club memberships over a period of 20 years.[2] See Hearing Tr at 107. Although the Court harbors misgivings about the methods that Domestic Linen employs as a matter of course in sales efforts,[3] the Court finds that Oostveen did not engage in such sharp practices when dealing with Crossno. Accordingly, the representations made by Oostveen on behalf of Domestic Linen neither vitiate the two April 2013 agreements nor justify vacating the arbitration award.

The last arrow in Family Fitness's quiver – Michigan precedent – involves a challenge to the "existence of a contract to arbitrate" the parties' disputes. See Arrow Overall Supply, 414 Mich at

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[2] During the negotiations, Crossno even persuaded Oostveen to sign up for a Family Fitness membership. See Hearing Tr at 160-161.

[3] Domestic Linen is no stranger to controversy, as demonstrated by decisions from our Court of Appeals. See, e.g., Fuego Grill, LLC v Domestic Uniform Rental, Nos 302230 & 303763 (Mich App Jan 22, 2013) (unpublished decision); Domestic Uniform Rental v Finazzo, No 249962 (Mich App Dec 28, 2004) (unpublished decision).

99 ("The existence of a contract to arbitrate and the enforceability of its terms is a judicial question which cannot be decided by an arbitrator."). Specifically, Family Fitness asserts that Brian Crossno was simply an independent contractor who lacked authority to bind the company. But Michigan law and the record both undercut that argument. Family Fitness installed Crossno as an on-site manager with full authority over hiring, firing, scheduling, and signing of membership sales agreements. See Hearing Tr at 58. When Crossno signed the two agreements with Domestic Linen in April of 2013, he understood that he was signing on behalf of Family Fitness, see Hearing Tr at 59, and he chose to identify himself on both agreements as the "Area Manager" for Family Fitness. See Hearing Tr at 69. Regardless of whether Family Fitness denied Crossno actual authority to sign the agreements with Domestic Linen, Crossno plainly had the apparent authority to bind Family Fitness. See, e.g., Smith v Saginaw Savings & Loan Ass'n, 94 Mich App 263, 271-273 (1979). Beyond that, even if Crossno lacked apparent authority to enter into the agreements with Domestic Linen, Family Fitness ratified those agreements by accepting towels from Domestic Linen for several months before trying to terminate the contracts. See David v Serges, 373 Mich 442, 443-444 (1964). In sum, the Court concludes that Family Fitness is bound by the agreements that Crossno signed in April of 2013, so there exists no justification under Michigan precedent to relieve Family Fitness of its contractually imposed obligation to arbitrate its disputes with Domestic Linen.

III. Conclusion

For all of the reasons set forth in this opinion, the Court concludes that Family Fitness bound itself, through the actions of Brian Crossno, to the terms of the agreements with Domestic Linen that Crossno signed on April 11 and 22, 2013. See Hearing Exhibits 1 & 2. Because those agreements

contain a capacious arbitration provision, Family Fitness was obligated to resolve its disputes with Domestic Linen through arbitration. And because the arbitration award rendered on March 13, 2014, is valid and enforceable as a matter of Michigan law, the Court must grant Domestic Linen's motion to confirm the arbitration award pursuant to MCR 3.602(I) and deny Family Fitness's cross-motion to vacate the arbitration award under MCR 3.602(J).[4]

IT IS SO ORDERED.

This is a final order that resolves the last pending claim and closes the case.

Dated: August 15, 2014

HON. CHRISTOPHER P. YATES (P41017)
Kent County Circuit Court Judge

[4] Neither side ever moved for final resolution of the plaintiffs' count suggesting that the case should proceed as a class action, see MCR 3.501(A), so the Court need not address class certification under MCR 3.501(B).