

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY,
COMMONWEALTH OF PENNSYLVANIA**

RALPH J. GRIFFIN and	:	
MICHELE R. GRIFFIN,	:	
Plaintiffs,	:	
vs.	:	Docket CV-2024-00136
	:	
SECHRIST CONSTRUCTION	:	
& REMODELING, INC.,	:	
Defendant.	:	

OPINION AND ORDER

I. Background:

This matter came before the Court for an evidentiary hearing on the Plaintiff’s Motion to Stay Arbitration, filed January 30, 2024. The facts of this matter are substantially undisputed. Plaintiffs executed a contract with the Defendant in connection with residential home construction, on September 20, 2022. While there were both signed and unsigned copies of the contract entered into evidence, the introduced exhibits included copy of the Home Construction Contract (hereinafter the “Contract”) dated September 20, 2022, bearing the signatures of both Plaintiffs, and Steven S. Sechrist, on behalf of the Defendant. All signatures are dated September 20, 2022. The Contract includes multiple attachments, including a four (4) page, single spaced document regarding “Arbitration,” which is titled “Attachment #8.” Attachment #8 contains text which is bolded, and all in capital letters. It provides that either party to the Contract may demand binding arbitration. Attachment #8 is signed by both Plaintiffs, and Steven S. Sechrist, on behalf of the Defendant.

Exhibit A introduced at the hearing is a multipage document attached to the filed Complaint, and contains an unsigned draft of the Contract. Exhibit B is a multipage document containing a signed and dated copy of the Contract. Exhibit C is a copy of Attachment #8 signed by only the Defendant. Exhibit D is a correspondence from counsel to the Plaintiff to counsel to the Defendant outlining the claim which is the subject of the Complaint. Exhibit E is an email chain. It appears from Exhibit E that the

list of potential arbitrators provided to counsel for Plaintiff by counsel for Defendant consists of only contractors.

The language of Attachment #8 leads to the conclusion that it was not prepared by an attorney. It requires binding arbitration by either one (1) or three (3) arbitrators, and requires that any arbitrator “shall be a person who has worked in the areas of residential construction for at least fifteen (15) years.” Presumably, that would include contractors, architects, engineers, developers, or others who have at least fifteen (15) years of experience in the field of residential construction, notwithstanding the nature of that experience. Attachment #8 does not require the arbitrator to have any legal training or qualifications regarding the field of dispute resolution.

Plaintiffs concede that they signed the Contract and concede that they signed Attachment #8. They seek to stay the arbitration, either on the theory that the Contract was a contract of adhesion, or on the basis that Attachment #8 should be regarded as unenforceable.

II. Questions Presented:

- A. Whether Attachment #8 is Void As Unconscionable.
- B. Whether Attachment #8 is Unenforceable As a Matter of Law.

III. Answers to Questions Presented:

- A. Attachment #8 is Not Void As Unconscionable.
- B. Attachment #8 is Not Unenforceable, But Any Arbitration Conducted Under Attachment #8 Must Be Conducted In a Manner Consistent with the Provisions of the Revised Statutory Arbitration Act, 42 Pa.C.S. § 7321.1, *et seq.*

IV. Discussion:

The Revised Statutory Arbitration Act

Section 7321.4 of the Revised Statutory Arbitration Act, 42 Pa.C.S. § 7321.1, *et seq.*, (hereinafter the “Act”) provides that the Act controls “an agreement to arbitrate made on or after the effective date of this Act” (July 1, 2019). Thus, the Act controls the Contract, which was executed on September 20, 2022.

Section 7321.5(b) of the Act establishes that certain requirements of the Act may not be waived **prior to the time when the controversy subject to arbitration arises**, including the effect of Section 7321.6(a) relating to judicial relief, Section 7321.7(a) relating to validity of the agreement to arbitrate, Section 7321.9 relating to provisional remedies, Section 7321.18(a) or (b) relating to witnesses, subpoenas, depositions, and discovery, Section 7321.27 relating to jurisdiction, and Section 7321.29 relating to appeals, Section 7321.10 relating to initiation of the arbitration, Section 7321.13 relating to disclosure by the arbitrator, and Section 7321.17 relating to representation by an attorney.

Section 7321.5(c) of the Act establishes that certain requirements of the Act **may not be waived at all**, including Section 7321.5, Section 7321.4(a) relating to when the Act applies, Section 7321.8 relating to motion to compel or stay arbitration, Section 7321.15 relating to immunity of arbitrator, competency to testify, and attorney's fees and costs, Section 7321.19 relating to judicial enforcement, Section 7321.21(d) or (e) relating to change of award by arbitrator, Section 7321.23 relating to judicial enforcement, Section 7321.24 relating to vacating award, Section 7321.25 relating to modification or correction of award, Section 7321.26(a) or (b) relating to judgment on award and attorneys fees and litigation expenses, Section 7321.30 relating to uniformity of application and construction, and Section 7321.31 relating to electronic signatures.

Section 7321.7 of the Act provides as follows:

(a)General rule.--An agreement contained in a record to submit to arbitration any existing or subsequent controversy arising between the parties to the agreement is valid, enforceable and irrevocable except upon a ground that exists at law or in equity for the revocation of a contract.

(b)Court decision.--The court shall decide whether an agreement to arbitrate exists or a controversy is subject to an agreement to arbitrate.

(c)Arbitrator decision.--An arbitrator shall decide whether a condition precedent to arbitrability has been fulfilled and whether a contract containing a valid agreement to arbitrate is enforceable.

(d) Challenge to arbitration.--If a party to a judicial proceeding challenges the existence of, or claims that a controversy is not subject to, an agreement to arbitrate,

the arbitration proceeding may continue pending final resolution of the issue by the court, unless the court otherwise orders.

(e) Grounds for validity and enforceability.--(1) Subject to paragraph (2), in determining the validity and enforceability of an agreement to arbitrate, a court may consider any grounds that exist at law or in equity for the revocation of a contract, regardless of whether arising out of federal or state law or as a matter of public policy, that are applicable to other contracts, including fraud, duress, coercion, unconscionability or the imposition by a contract of adhesion of any requirement that unreasonably favors the party that imposed the provision. (2) Paragraph (1) shall not apply in any manner prohibited by 9 U.S.C. (relating to arbitration) or other federal law.

Pennsylvania Law Favors Arbitration

Since the execution of the Attachment #8 on September 20, 2022, is undisputed, the only remaining issue appears to be whether it is enforceable, according to its terms.

In the matter of *Smith v. Cumberland Group, Limited*, 455 Pa.Super. 276, 687 A.2d 1167 (Pa. Super. Ct. 1997), our Superior Court observed as follows:

As a matter of public policy, the courts of this Commonwealth strongly favor the settlement of disputes by arbitration. *Langston v. National Media Corporation*, 420 Pa.Super. 611, 615–16, 617 A.2d 354, 356 (1992) (citations omitted); *Dickler v. Shearson Lehman Hutton*, 408 Pa.Super. 286, 294, 596 A.2d 860, 864 (1991), *allocatur denied*, 532 Pa. 663, 616 A.2d 984 (1992). “[W]hen parties agree to arbitration in a clear and unmistakable manner, the court will make every reasonable effort to favor such agreements.” *DiLucente Corporation v. Pennsylvania Roofing Co., Inc.*, 440 Pa.Super. 450, 456–57, 655 A.2d 1035, 1038 (1995), *allocatur denied*, 542 Pa. 647, 666 A.2d 1056 (1995) (citing *Hassler v. Columbia Gas Transmission Corporation*, 318 Pa.Super. 302, 307, 464 A.2d 1354, 1357 (1983)). When one party to an agreement seeks to prevent another from proceeding to arbitration, judicial inquiry is limited to determining (1) whether a valid agreement to arbitrate exists between the parties and, if so, (2) whether the dispute involved is within the scope of the arbitration provision. *Messa v. State Farm Insurance Company*, 433 Pa.Super. 594, 597, 641 A.2d 1167, 1168 (1994) (citations omitted); *PBS Coal, Inc. v. Hardhat Mining, Inc.*, 429 Pa.Super. 372, 376–77, 632 A.2d 903, 905 (1993)(citations omitted). “If a valid arbitration agreement exists between the parties and appellants' claim is within the scope of the

agreement, the controversy must be submitted to arbitration.” *Messa v. State Farm Insurance Company*, *supra* at 600, 641 A.2d at 1170. An agreement to arbitrate a dispute is an agreement to submit oneself as well as one's dispute to the arbitrators' jurisdiction. Therefore, a party who can establish that he did not agree to arbitrate may be entitled to enjoin an arbitration proceeding. *Gaslin, Inc. v. L.G.C. Exports, Inc.*, 334 Pa.Super. 132, 141, 482 A.2d 1117, 1122 (1984) (quoting *Hoffman v. Gekoski*, 250 Pa.Super. 49, 53, 378 A.2d 447, 448 (1977) (*en banc*), citing *Flightways Corporation v. Keystone Helicopter Corporation*, 459 Pa. 660, 331 A.2d 184 (1975)).

455 Pa.Super. at 283, 687 A.2d at 1171.

The Court finds that the parties entered into a clear written agreement to arbitrate disputes arising under the Contract. Ms. Griffin admitted that she executed the entire Contract, including Attachment #8. The focus of her concern was to secure a contractor to build the home. It appears to the Court that the terms of Attachment #8 were of little concern to Plaintiffs when it was executed. Plaintiffs offered no testimony to support a finding that their execution of Attachment #8 was inadvertent, or the product of duress.

As an aside, this Court had significant experience with private arbitration during a very long career in the private practice of law. That experience was uniformly negative. The Pennsylvania Rules of Civil Procedure provide many procedural safeguards that are lacking in private arbitration. Contrary to popular belief, arbitration is frequently more time consuming and more expensive than state court litigation. The Court believes that few litigation counsel prefer private arbitration, and that most view state court litigation in Pennsylvania to be far preferable. Those facts notwithstanding, our law favors private arbitration.

The Test For An Unconscionability

In the matter of *Huegel v. Mifflin Constructoin Company, Inc.*, 796 A.2d 350 (Pa. Super. Ct. 2002), homeowners brought an action against a construction company for breach of contract and breach of warranty. Defendant filed a motion to compel arbitration. Homeowners contended that the arbitration provision was unenforceable as a contract of adhesion. The trial counsel dismissed defendant's motion to compel arbitration. Our Superior Court reversed and remanded, observing as follows:

The Huegels next argue that the arbitration clause “constitutes a contract of adhesion and is an unconscionable provision between the parties.” Brief of Huegels at 10. “An adhesion contract is defined as a ‘[s]tandard form contract prepared by one party, to be signed by the party in a weaker position, [usually] a consumer, who has little choice about the terms.’ ” *Robson v. E.M.C. Ins. Cos.*, 785 A.2d 507, 510 (Pa.Super.2001) (quoting BLACK’S LAW DICTIONARY (7th ed.1999)). “However, merely because a contract is a contract of adhesion does not automatically render it unconscionable and unenforceable.” *Todd Heller, Inc., v. United Parcel Service, Inc.*, 754 A.2d 689, 700 (Pa.Super.2000). The issue of whether a contract is unconscionable is a question of law. *See id.* In order for a court to deem a contractual provision unconscionable, “it must determine both that the contractual terms are unreasonably favorable to the drafter and that there is no meaningful choice on the part of the other party regarding acceptance of the provisions.” *Id.* at 701 (quotation marks and citations omitted). Although the Huegels devote four pages of argument to this issue, they never attempt to articulate how the arbitration clause in the third contract is “unreasonably favorable” to Appellants. The arbitration clause does not in any way limit the Huegels’ remedies against the Appellants. The clause requires that arbitration proceed pursuant to the rules of the American Arbitration Association. We fail to discern how this clause may possibly be construed to be “unreasonably favorable” to Appellants. Furthermore, our Supreme Court has repeatedly stated that the law of our Commonwealth favors the resolution of disputes by arbitration:

It is unquestioned that arbitration is a process favored today in this Commonwealth to resolve disputes. By now it has become well established that settlement of disputes by arbitration are no longer deemed contrary to public policy. In fact, our statutes encourage arbitration and with our dockets crowded and in some jurisdictions congested, arbitration is favored by the courts. *Commonwealth, Office of Admin. v. Commonwealth, Pennsylvania Labor Relations Bd.*, 528 Pa. 472, 598 A.2d 1274, 1277–78 (1991) (quotation marks and citations omitted). Accordingly, we conclude that the arbitration clause in this case is not unconscionable.

796 A.2d at 357-358.

A. Attachment #8 is Not Void As Unconscionable.

In the matter at bar, *Attachment #8 has no provision which limits the relief available to Plaintiffs, nor a provision which imposes any particular burden upon the Plaintiffs in asserting their claims.* The Court cannot find, as a matter of law, that Attachment #8, “is unreasonably favorable” to the Defendant.

B. Attachment #8 is Not Unenforceable, But Any Arbitration Conducted Under Attachment #8 Must Be Conducted In a Manner Consistent with the Provisions of the Revised Statutory Arbitration Act, 42 Pa.C.S. § 7321.1, *et seq.*

Plaintiffs may have some concern that, because Attachment #8 requires that the arbitrator be “a person who has worked in the areas of residential construction for at least fifteen (15) years,” the selected arbitrator will be a contractor who is biased in favor of the Defendant. The Court cannot invalidate Attachment #8 on that basis, alone. *First, Attachment #8 contains no prohibition against the selection of an arbitrator who is an engineer or architect or developer or contractor, or other building trade professional.* Second, although Plaintiffs’ claims are subject to arbitration, that proceeding must be conducted consistent with the provisions of the Revised Statutory Arbitration Act, 42 Pa.C.S. § 7321.1, *et seq.* *Thus, no person may serve as an arbitrator in this matter if that person would be subject to disqualification as a judge under Rule 2.11 of the Code of Judicial Conduct. If Defendant will not agree to an arbitrator who is completely free of bias, Plaintiffs can seek relief pursuant to the provisions of 42 Pa.C.S. § 7321.9, or 42 Pa.C.S. § 7321.12.*

FINDINGS AND ORDER

AND NOW, this 25th day of March 2024, for the reasons more fully set forth above, Plaintiffs’ Motion to Stay Arbitration is granted in part and denied in part. The Court finds as follows:

1. The claims asserted in the Complaint filed in this matter are subject to arbitration pursuant to Attachment #8 to the Home Construction Contract executed on September 20, 2022.
2. The arbitration in this matter must be conducted in a manner consistent with the Provisions of the Revised Statutory Arbitration Act, 42 Pa.C.S. § 7321.1, *et seq.*
3. While the arbitrator or arbitrators must be “a person who has worked in the areas of residential construction for at least fifteen (15) years,” there is no prohibition against an engineer or architect or developer or contractor, or other building trade professional.
4. The Court retains jurisdiction of this matter to enter an order for provisional remedies prior to the selection of an arbitrator pursuant to 42 Pa.C.S. § 7321.9, or to appoint an arbitrator, if the parties cannot agree, pursuant to 42 Pa.C.S. § 7321.12.
5. Except to the extent set forth herein, Plaintiffs’ Motion to Stay Arbitration is denied.

BY THE COURT,

Hon. William P. Carlucci, Judge

WPC/aml

CC: Court Administrator
Thomas A. Burkhart, Esquire
Zach Dugan, Esquire