

STATE OF NEW YORK
SUPREME COURT COUNTY OF MONROE

Rachael Barnhart,

Plaintiff,

v.

NEXSTAR BROADCASTING OF ROCHESTER,
LLC,

Defendant.

AMENDED
DECISION AND ORDER

Ind # 2006/01718

Since the arbitration clause of the personal services contract at issue here (a contract between a New York resident and a corporation incorporated in Texas, according to plaintiff's complaint), and the arbitration clause of the collective bargaining contract between Channel 8 and the American Federation of Television and Radio Artists (AFTRA), certainly "affect[] interstate commerce," Diamond Waterproofing Systems, Inc. v. 55 Liberty Owners Corp., 4 N.Y.3d 247 (2005), they are "governed by the Federal Arbitration Act (see Circuit City Stores v. Adams, 532 U.S. 105, 121 S.Ct. 1302)." DiBello v. Salkowitz, 4 A.D.3d 230 (1st Dept. 2004) (former radio station employee, whose contract was not renewed, brought action against station owner and station manager, alleging tortious interference with actual and prospective contractual relations, defamation, and racial discrimination in violation of state and city Human Rights Laws - held that arbitration was required by personal services contract

and FAA). The DiBello case controls the disposition of these motions.

The general principles are summarized as follows:

Initially, we agree with petitioners that the Federal Arbitration Act (hereinafter FAA) governs. The FAA applies to any contracts involving interstate commerce (see 9 USC § 2; see also Allied-Bruce Terminix Cos. v. Dobson, 513 U.S. 265, 268, 273-275, 281, 115 S.Ct. 834, 130 L.Ed.2d 753 [1995]), including employment contracts other than those involving federal transportation workers (see Circuit City Stores v. Adams, 532 U.S. 105, 113-116, 121 S.Ct. 1302 [2001]; see also Bracker & Soderquist, Arbitration in the Corporate Context, 2003 Colum. Bus. L. Rev. 1, 25-28).

* * *

The FAA evinces Congress's intent to establish "an 'emphatic' national policy favoring arbitration which is binding on all courts, State and Federal" (Singer v. Jefferies & Co., 78 N.Y.2d 76, 81, 571 N.Y.S.2d 680, 575 N.E.2d 98 [1991]) such that "any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration" (Cone Mem. Hosp. v. Mercury Constr. Corp., 460 U.S. 1, 24-25, 103 S.Ct. 927, 74 L.Ed.2d 765 [1983]). Because the arbitration clause of the partnership agreement is exceedingly broad, encompassing "any controversy or dispute arising under, out of, in connection with, or relating to" the agreement and any subsequent amendments, even collateral matters are presumed to be arbitrable (see Louis Dreyfus Negoce S.A. v. Blystad Shipping & Trading, 252 F.3d 218, 224 [2001], cert. denied 534 U.S. 1020, 122 S.Ct. 546, 151 L.Ed.2d 423 [2001]; Collins & Aikman Prods. Co. v. Building Sys., 58 F.3d 16, 23 [2d Cir.1995]; Gerling Global Reinsurance Corp. v. Home Ins. Co., 302 A.D.2d 118, 126, 752 N.Y.S.2d 611 [2002], lv. denied 99 N.Y.2d 511, 760 N.Y.S.2d 102, 790 N.E.2d 276 [2003]).

In re Arbitration Between Ayco Co., L.P., 3 A.D.3d 635, 636-37 (3d Dept. 2004).

Arbitration has become a common tool in resolving

employment disputes in recent years, and employers are increasingly requiring employees to sign contracts obligating them to arbitrate disputes as a condition of employment. The Supreme Court's recent decision in Circuit City Stores, Inc. v. Adams, 532 U.S. 105, 121 S.Ct. 1302, 149 L.Ed.2d 234 (2001), removes any lingering doubts as to whether these agreements are enforceable under the FAA. In the wake of Circuit City, it is clear that arbitration agreements in the employment context, like arbitration agreements in other contexts, are to be evaluated according to the same standards as any other contract.

Penn v. Ryan's Family Steak Houses, Inc., 269 F.3d 753, 758 (7th Cir. 2001). Thus, "where the FAA is applicable, it preempts State law on the subject of the enforceability of arbitration clauses." Fletcher v. Kidder, Peabody & Co., 81 N.Y.2d 623, 631, 601 N.Y.S.2d 686, 689 (1993).

Plaintiff's argument, drawn from New York's public policy in regard to employment contracts containing restrictive covenants, is without merit inasmuch as it is an argument that the agreement as a whole is unconscionable.¹ Last month, the Supreme Court eviscerated the distinction between void and voidable contracts, and held that, even where the party resisting arbitration claims that the agreement as a whole is void, "unless the challenge is to the arbitration clause itself, the issue of the contract's

¹ That does not mean that the underlying issue concerning whether the restrictive covenant is enforceable has no merit. It may well have merit, or not, under BDO Seidman v. Hirshberg, 93 N.Y.2d 382, 389 (1999), but the court cannot render an advisory opinion on the question when the case is properly held arbitrable. Cheng v. Oxford Health Plans, Inc., 15 A.D.3d 207, (1st Dept. 2005) ("it was an inappropriately rendered advisory opinion when issued").

validity is considered by the arbitrator." Buckeye Check Cashing, Inc. v. Cardegna, ___ U.S. ___, 126 S.Ct. 1204 (Feb 21, 2006). Because the FAA governs, the Cardegna holding trumps the New York rule that a party may resist the enforcement of an arbitration agreement on any ground for revocation of a contract such as fraud, duress, unconscionably, overreaching conduct or violation of public policy. Teleserve Systems, Inc., v. MCI Telecommunications Corp., 230 A.D.2d 585 (4th Dept. 1997). In any event, plaintiff's contention would not likely succeed even under state law after the Court of Appeals' opinion in Matter of New York City Tr. Auth. v. Transport Workers Union of Am., 99 N.Y.2d 1, 6-7 (2002). See Hayes v. County Bank, ___ A.D.3d ___, 2006 WL 490110 (2d Dept. February 28, 2006); Tsadilas v. Providian Nat. Bank, 13 A.D.3d 190, 191 (1st Dept. 2004) ("argument that the credit card agreement as a whole is unconscionable is for the arbitrators, rather than this Court, to decide"); Utica Mut. Ins. Co. v. Gulf Ins. Co., 306 A.D.2d 877, 879-80 (4th Dept. 2003). Cf. In re Monroe County Deputy Sheriff's Ass'n., 300 A.D.2d 993, 752 N.Y.S.2d 457 (4th Dept. 2002).

Accordingly, plaintiff's motion for an injunction is denied and the cross motion to dismiss is granted.

SO ORDERED.

KENNETH R. FISHER
JUSTICE SUPREME COURT

DATED: March 20, 2006
Rochester, New York