[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT
SEP 12, 2011
JOHN LEY
CLERK

No. 11-10173
Non-Argument Calendar

D.C. Docket No. 1:10-cv-22355-PAS

UNITE HERE LOCAL 355,

Plaintiff - Appellee,

versus

CALDER RACE COURSE INC.,
d.b.a. Calder Casino & Race Course,

Defendant - Appellant.

Appeal from the United States District Court
for the Southern District of Florida

(September 12, 2011)

Before MARCUS, MARTIN and ANDERSON, Circuit Judges.

PER CURIAM:

Defendant Calder Race Course Inc. ("Calder") appeals from the district court order granting a motion to compel arbitration filed by Plaintiff Unite Here Local 355 (the "Union"), arising from Calder's refusal to arbitrate pursuant to an August 2004 Memorandum of Agreement ("MOA") between Calder and the Union. In opposition to the motion to compel arbitration, Calder argued to the district court that the MOA was not an enforceable binding contract because a condition precedent to the MOA -- passage of local expanded gambling initiatives on a 2004 ballot in Miami-Dade County -- had failed. The district court granted the Union's motion, and sent the parties to arbitration, on the grounds that Calder was not specifically challenging the MOA's arbitration clause, but rather the MOA as a whole, and that the arbitration clause covered the dispute in question. On appeal, Calder argues that the district court erred in sending the case to arbitration because courts, not arbitrators, are required to decide issues of contract formation. After careful review, we affirm.

We review a district court's decision to grant a motion to compel arbitration de novo. Dale v. Comcast Corp., 498 F.3d 1216, 1219 (11th Cir. 2007).

Section four of the Federal Arbitration Act ("FAA") instructs federal courts to grant motions to compel arbitration and order arbitration once satisfied "that the making of the agreement for arbitration . . . is not in issue." 9 U.S.C. § 4. Interpreting this provision, the Supreme Court has said that when faced with motions

to stay suits or order arbitration, courts should evaluate only the validity of the arbitration agreement; challenges to the validity of the entire contract -- e.g., fraud in the inducement -- should be left to the arbitrator. Prima Paint Corp. v. Flood & Conklin Manufacturing Co., 388 U.S. 395, 403-04 (1967). Thus, in Buckeye Check Cashing, Inc. v. Cardegna, 546 U.S. 440 (2006), the Supreme Court of Florida had refused to enforce an arbitration clause in a contract that was challenged as unlawful under state law. The U.S. Supreme Court "conclude[d] that because respondents challenge the Agreement, but not specifically its arbitration provisions, those provisions are enforceable apart from the remainder of the contract. The challenge should therefore be considered by an arbitrator, not a court." Id. at 446. Since Prima Paint and Buckeye, the Supreme Court has addressed a third type of challenge, which asks whether any agreement between the alleged obligor and obligee was ever concluded. In Granite Rock Co. v. Int'l Broth. of Teamsters, __ U.S. __, 130 S.Ct. 2847 (2010), the Supreme Court held "that where the dispute at issue concerns contract formation, the dispute is generally for courts to decide." Id. at 2855-56.

In line with this case law, we have said that:

> Under normal circumstances, an arbitration provision within a contract admittedly signed by the contractual parties is sufficient to require the district court to send any controversies to arbitration. Under such circumstances, the parties have at least presumptively agreed to arbitrate any disputes, including those disputes about the validity of the contract

> in general. Because the making of the arbitration agreement itself is rarely in issue when the parties have signed a contract containing an arbitration provision, the district court usually must compel arbitration immediately after one of the contractual parties so requests.

Chastain v. Robinson-Humphrey Co., 957 F.2d 851, 854 (11th Cir. 1992) (citations, footnote, and emphases omitted).

Here, Calder argues that the district court should have resolved its claim before compelling arbitration because Calder has raised an issue of "contract formation" -- that the MOA as a whole is invalid and never matured into a binding contract because of the failure of a condition precedent, i.e., expanded gambling initiatives on a 2004 ballot were never passed. It makes this argument even though the MOA never mentioned the 2004 proposed legislation,[1] and even though voters approved a 2008 ballot initiative allowing casino-style gaming. But regardless of the specifics of Calder's argument, we cannot agree that its question about the effective date of the contract is an issue of contract formation, requiring resolution by the district court rather than an arbitrator.

---

[1] In relevant part, the MOA provides:

> This Agreement shall be in full force and effect for 4 years from the installation of the first slot machine, Video Lottery Terminal or similar gaming device at the gaming facility . . . . This Agreement is not in effect if slot machines, Video Lottery Terminals or similar gaming devices are not installed and open to the public at the gaming facility.

MOA ¶ 15.

In a related context, the First Circuit has recently noted that "[n]ot all questions of contract duration are alike." Unite Here Local 217 v. Sage Hospitality Resources, 642 F.3d 255, 262 (1st Cir. 2011). In Sage, a hotel had challenged the expiration date of the agreement at issue, which the First Circuit found to be "a classic issue of contract construction and one the parties clearly contemplated would be resolved by an arbitrator." Id. As it reasoned, "[t]his type of grievance concerns neither the validity of the arbitration clause nor its applicability to the underlying dispute between the parties." Id. (citing Green Tree Financial Corp. v. Bazzle, 539 U.S. 444, 452 (2003)). Sage distinguished its timing issue from that of Granite Rock, which addressed when an agreement had been ratified by the parties, i.e., the date of contract formation. In making this distinction, the Sage court cited a D.C. Circuit case, Nat'l R.R. Passenger Corp. v. Boston & Me. Corp., 850 F.2d 756, 762 (D.C. Cir. 1988), which had distinguished duration disputes from formation disputes on the theory that "[w]hen there is an issue of formation, the court cannot be sure that the party resisting arbitration ever viewed the arbitrator as competent to resolve any dispute."

The same rationale applies here. Calder is not challenging whether or when the parties ever formed a contract, as in the cases Calder cites to, see Granite Rock, 130 S. Ct. at 2856 (addressing "when" an agreement had been ratified by the union and "thereby formed"); Janiga v. Questar Capital Corp., 615 F.3d 735, 742 (7th Cir. 2010)

(addressing whether an agreement ever existed since one of the parties did not get a copy of the contract, never read it, could not read it if he tried, and did not know what he agreed to do); Chastain, 957 F.2d at 853-54 (addressing whether an agreement existed since one of the parties claimed that she never signed the agreement and did not authorize anyone to affix her signature). Instead, Calder is simply challenging the timing of the MOA, a contract it indisputably read, ratified, and signed. As a result, because Calder is challenging the validity of the contract as a whole, and not specifically the arbitration clause nor the formation of the contract, its dispute "must go to the arbitrator." Buckeye, 546 U.S. at 449.[2]

Moreover, the breadth of the MOA's arbitration clause is quite impressive. It provides that "[t]he parties agree that any disputes over the interpretation or application of this Agreement shall be submitted to expedited and binding arbitration." MOA ¶ 14. Unlike the clause in Granite Rock, which covered disputes that "arise under" the agreement, 130 S. Ct. at 2860, the clause here covers "any

[2] Moreover, to the extent Calder suggests that passage of the 2004 legislation was a condition precedent to the formation of the MOA, we are unpersuaded. Applying Florida law to this question, as we must, Caley v. Gulfstream Aerospace Corp., 428 F.3d 1359, 1368 (11th Cir. 2005), "conditions precedent are not favored, and courts will not construe provisions to be such, unless required to do so by plain, unambiguous language or by necessary implication." In re Estate of Boyar, 592 So.2d 341, 343 (Fla. Dist. Ct. App. 1992). Because nothing in the MOA makes reference to the 2004 legislation, much less in terms of "plain, unambiguous language or by necessary implication," we cannot say this is a condition precedent to the formation of the MOA.

dispute over [the MOA's] interpretation or application." Thus, the parties here intended to submit to arbitration, and viewed it as a desirable place in which to resolve any disputes over the MOA, which surely would include a determination of its effective date. See Sage, 642 F.3d at 262 & n.6.

Accordingly, the district court did not err in granting the Union's motion to compel arbitration, and we affirm.

AFFIRMED.