IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION

RAYMOND M. TERRY and KITTY MOORE CASE,	)	
Plaintiffs,	)	
VS.	)	No. 02-1035
LABOR READY, INC.,	)	
Defendant.	)	

ORDER GRANTING DEFENDANT'S MOTION TO COMPEL ARBITRATION OF PLAINTIFF CASE'S CLAIM

Plaintiffs Raymond M. Terry and Kitty Moore Case filed suit against their former employer, Labor Ready, Inc., for allegedly discriminating against them on the basis of their race and gender in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq., as amended, and the Tennessee Human Rights Act, T.C.A. § 4-21-101 et seq. Defendant has filed a motion to compel arbitration of Plaintiff Case's claim.[1] Plaintiffs have not responded to the motion. For the reasons set forth below, Defendant's motion is GRANTED.

Plaintiff Case was hired by Defendant in December 1999 as a customer service

[1] On May 13, 20002, the court granted Defendant's motion to compel arbitration of Plaintiff Terry's claim.

representative.[2] On December 15, 1999, Plaintiff signed a written agreement in which she agreed to submit to arbitration all claims "arising out of or relating to this Contract or the breach of this Contract or Employee's employment" including "any claim alleging discrimination or harassment in any form." Plaintiff's Exhibit B.[3] Plaintiff also signed a second agreement on April 27, 2000, in which she agreed to submit to arbitration "claims based on any alleged violation of Title VII . . . and any other federal or state statutes, and including any claims of discrimination, harassment, retaliation, wrongful termination, compensation due or violation of civil rights." Plaintiff's Exhibit A.[4] Plaintiff alleges that her employment was terminated in September 2001 and was the result of "sexual harassment, racial discrimination and harassment as well as retaliation harassment and intimidation." Complaint at ¶ 4. Plaintiff does not dispute the fact that she signed the agreements.

Under the Federal Arbitration Act ("FAA"), a district court must stay proceedings if satisfied that the parties have agreed in writing to arbitrate the issue(s) presented in the lawsuit. 9 U.S.C. § 3. The district court has no discretion to refuse to compel arbitration if the court finds that the parties have so agreed. Dean Witter Reynolds, Inc. v. Byrd, 470 U.S. 213, 218 (1985). Any limitation of an arbitration provision must be read narrowly in order to effectuate the strong national policy of favoring enforcement of agreements to arbitrate,

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[2] The facts are stated for the purpose of deciding this motion only.

[3] This exhibit was attached to Plaintiff's motion in opposition to Defendant's motion to compel arbitration of Plaintiff Terry's claim.

[4] See n. 3.

and any doubts must be resolved in favor of arbitration. Moses H. Cone Memorial Hospital v. Mercury Construction Corp., 460 U.S. 1, 24-25 (1983); Cincinnati Gas & Electric Co. v. Benjamin F. Shaw Co., 706 F.2d 155 (6th Cir. 1983). Arbitration should be ordered unless it can be said that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute. United Steelworkers of America v. Warrior & Gulf Navigation Co., 363 U.S. 574, 582-83 (1960); McMahan Sec. Co. v. Forum Capital Markets, 35 F.3d 82, 88 (2nd Cir. 1994).

When a contract contains a broad arbitration clause covering all controversies arising under the agreement, arbitration must be ordered unless the party seeking to avoid it can show that the particular dispute was expressly excluded. Cincinnati Gas, 706 F.2d at 160. In Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc., 473 U.S. 614 (1985), the Supreme Court made clear the applicability of the FAA to statutorily-created causes of action. See also Circuit City Stores, Inc. v. Adams, 532 U.S. 105 (2001) (compelling arbitration of state court employment discrimination action); Gilmer v. Interstate/Johnson Lane Corp., 500 U.S. 20 (1991) (compelling arbitration of Age Discrimination in Employment Act claim). The party resisting arbitration bears the burden of proving that the claims at issue are unsuitable for arbitration. Id.

Courts have rejected the argument that agreements to arbitrate are unenforceable because they establish procedural hurdles with a penalty of dismissal should the employee fail at any step. As discussed in Morrison v. Circuit City, 70 F. Supp.2d 815 (S.D. Ohio

1999),

> Furthermore, the Sixth Circuit recognizes that both statutory and common law claims may be subject to an arbitration agreement enforceable under the FAA. See Cosgrove [v. Shearman Lehman Brothers], 1997 WL 4783, 1997 U.S.App. LEXIS 392 [6th Cir. 1997], at *5-*6 (citing Gilmer v. Interstate/Johnson Lane Corp., 500 U.S. 20, 26, 111 S. Ct. 1647, 114 L.Ed.2d 26 (1991) (holding that claims arising under the Age Discrimination in Employment Act ("ADEA") may be subject to an enforceable arbitration agreement); Willis v. Dean Witter Reynolds, Inc., 948 F.2d 305, 310 (6th Cir.1991) (extending the holding of Gilmer to claims arising under Title VII)). The Supreme Court reiterated in Gilmer that, "'[h]aving made the bargain to arbitrate, the party should be held to it unless Congress itself has evinced an intention to preclude a waiver of judicial remedies for the statutory rights at issue.'" Id., 500 U.S. at 26 (quoting Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc., 473 U.S. 614, 628 (1985)).
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> ...
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> Because we find no evidence that Congress intended to preclude the arbitration of her statutory claims and because Plaintiff fails to persuade us that Ohio would preclude the arbitration of her state-law claims, the Court concludes that Plaintiff should be held to her bargain unless (1) the traditional grounds for revocation of a contract exist in this case or (2) the Agreement fails to protect the substantive rights guaranteed by law. See 9 U.S.C. § 2; Gilmer, 500 U.S. at 28, 33, 111 S. Ct. 1647 (quoting Mitsubishi Motors Corp., 473 U.S. at 637, 627).

70 F. Supp.2d at 820-21.

Here, Plaintiff has failed to show that any "traditional grounds for revocation of a contract exist" or that the agreements fail "to protect the substantive rights guaranteed by law." In Morrison, the court rejected the argument that an agreement to arbitrate was a contract of adhesion merely because the employee had to sign it before she could be considered for employment. 70 F. Supp.2d at 821. The court relied, in part, on Beauchamp v. Great West Life Assurance Co., 918 F. Supp. 1091 (E.D. Mich.1996), and EEOC v.

Frank's Nursery & Crafts, 966 F. Supp. 500 (E.D. Mich.1997) (*rev'd on other grounds,* 177 F.3d 448 (6th Cir.1999)), "in support of the proposition that adhesion contracts do not exist where applicants have a choice of where to apply for a job." 70 F. Supp.2d at 822.

> In Beauchamp, the court indicated its reluctance in finding a contract of adhesion in a context where a plaintiff could choose to work for other employers without signing arbitration agreements. Likewise, the court in Frank's Nursery & Crafts stated that "[i]f [the applicant] disagreed with anything contained in the application she was free to simply look elsewhere for employment.... (When a party ... voluntarily *agrees* to something in an attempt to obtain employment, they are not being 'forced" to do anything"). (emphasis in original).

Id. (citations omitted). Plaintiff has not presented any other "traditional grounds for revocation" of her arbitration agreements.

Because Plaintiff Case, as the party resisting arbitration, has not carried her burden of proving that the claims at issue are unsuitable for arbitration, see Gilmer v. Interstate/Johnson Lane Corp., 500 U.S. 20 (1991), Defendant's motion to compel arbitration is GRANTED. This action as to Plaintiff Case is hereby STAYED until the arbitration is completed. The parties will advise the court within thirty (30) days of the completion of the arbitration.

IT IS SO ORDERED.

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JAMES D. TODD
UNITED STATES DISTRICT JUDGE

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DATE