# Mandizha v. Bank of America Corporation et al

2019 | Cited 0 times | W.D. North Carolina | January 11, 2019

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF NORTH CAROLINA

CHARLOTTE DIVISION CIVIL ACTION NO. 3:17-CV-00258-RJC-DSC

THIS MATTER is before the Court on Defendants (documents #31 and 33

This matter has been referred to the undersigned Magistrate Judge pursuant to 28 U.S.C. §

The pro se Plaintiff is a former employee of Defendant TEKsystems who was assigned to work at its client Defendant Bank of America. Plaintiff executed a Mutual Arbitration Agreement when he began working for TEKsystems, which he agreed was Arbitrat Document #31-1, Exhibit C. Except as to certain not applicable here, Plaintiff agreed to arbitrate ed to his employment, including claims for alleged discrimination, harassment, and retaliation. Id.

On May 12, 2017, Plaintiff filed his Complaint alleging racial discrimination and retaliation in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e et seq. CHARLES MANDIZHA, )

Plaintiff, ) v. )

MEMORANDUM AND ORDER BANK OF AMERICA CORPORATION and TEKSYSTEMS, INC.,

Defendants. ) Plaintiff served Bank of America, see Document #4, but did not properly serve TEKsystems. See Conrad, Jr. (denying against TEKsystems (document #12)

and ordering pro se plaintiff

On October 19, 2018, Defendants filed their Motions to Compel Arbitration. Bank of America seeks to compel arbitration as a non-signatory beneficiary. Long v. Silver, 248 F.3d 309, 315-16 (4th Cir. 2001) (arbitration compelled for non-signatories of arbitration agreement where

Plaintiff does not dispute the validity or scope of the arbitration agreement. He argues that Defendants delayed in compelling arbitration, thus and waiving their right to arbitration. Document

#35 at 3, Document #36 at 2. He also argues

generally that mandatory arbitration clauses are inequitable and bad public policy. Documents ## 35 and 36.

provides that arbitration clauses "shall be valid, irrevocable, and enforceable, save upon such

grounds as exist at law or in equity for the revocation of any contract." 9 U.S.C. § 2. The FAA requires courts to stay proceedings and compel arbitration in the event of a refusal to comply with a valid agreement to arbitrate. 9 U.S.C. § 3. The Supreme Court has described the FAA liberal federal policy favoring arbitration. AT&T Mobility LLC v. Concepcion, 563 U.S. 333,

339 (2011) (citation omitted). Furthermore, the Supreme Court has held that courts must Am. Exp. Co. v. Italian Colors Rest., 133 S. Ct. 2304, 2309 (2013) (internal quotation omitted). This Court must compel a valid agreement to arbitrate, and (ii) the dispute in Chorley Enter., Inc. v. Dickey's Barbecue Rest., Inc., 807 F.3d 553, 563 (4th Cir. 2015). In deciding whether the parties have an enforceable agreement to arbitrate, courts apply state law principles governing the formation of contracts. First Options of Chicago, Inc. v. Kaplan, 514 U.S. 938, 944 (1995). A party has impliedly waived its contractual right to arbitration if, by its delay or actions inconsistent with arbitration, another party is prejudiced by the order compelling arbitration. Maxum Foundations, Inc. v. Salus Corp., 779 F. 2d 974, 981 (4th Cir. 1985); Cyclone Roofing Co. v. David M. LaFave Co., 312 N.C. 224, 321 (N.C. 1984). When the party seeking arbitration waiver of the right to compel arbitration. MicroStrategy, Inc. v. Lauricia, 268 F.3d 244, 249 (4th

Cir. 2001); Maxum Foundations, Inc., 779 F.2d at 981. discretion and is based upon the specific facts of the case. Id. statutory default are limited and, in light of the federal policy favoring arbitration, are not to be

Maxum, 779 F.2d at 981. Courts in other circuits have considered three factors in determining prejudice: whether discovery has occurred on arbitrable claims, the time and expense incurred defending against dispositive motions, assert its right to arbitrate. JS Barkats, PLLC v. BE, Inc., 2013 WL 44919 (S.D.N.Y. 2013) (five

month delay insufficient to create prejudice where no discovery occurred and no dispositive motions were filed) (citing Republic Inc. Co. v PAICO Receivables, LLC, 383 F.3d 341, 346 (5th Cir. 2004)).

The Court concludes that Defendants are entitled to an order compelling arbitration. Defendants have shown that Plaintiff entered into a valid agreement to arbitrate. No dispositive motions have been filed and discovery has not commenced. TEKsystems moved to compel arbitration within the time allotted to respond to the Complaint. Plaintiff has failed to overcome the well established policy favoring arbitration. The Court has discretion to dismiss an action where all the issues raised are

arbitrable. The more common practice is to stay the action or those claims pending the outcome of arbitration in order to provide a convenient forum for confirmation of any ensuing arbitration award. See 9 court so specified for an order confirming the award, and thereupon the court must grant such an

order unless the award is vacated ). s to Compel Arbitration are granted.

NOW THEREFORE IT IS HEREBY ORDERED:

1. Defendants (documents #31 and 33) are GRANTED. The parties shall arbitrate claims as provided in the Arbitration Agreement. Pending completion of arbitration, this case is STAYED. The parties are directed to file a status report within fifteen days of conclusion of the arbitration proceeding.

2. The Clerk is directed to send copies of this Order to counsel of record and to the Honorable Robert J. Conrad, Jr.

SO ORDERED.

Signed: January 11, 2019