

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

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AMY WILSON,	:	CIVIL ACTION
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Plaintiff,	:	
	:	
v.	:	NO. 99-5020
	:	
DARDEN RESTAURANTS, INC., et al.,	:	
	:	
Defendants.	:	

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**MEMORANDUM**

R.F. KELLY, J.

FEBRUARY 11 , 2000

Plaintiff, Amy Wilson, brings this action against her former employer, Defendant Darden Restaurants, Inc., Darden Corporation, and the Olive Garden (collectively "the Company"), alleging violations of Title VII of the Civil Rights Act of 1964,<sup>1</sup> the Pennsylvania Human Relations Act,<sup>2</sup> 42 U.S.C. § 1981, and state law claims of negligence and intentional infliction of emotional distress. Plaintiff alleges that the Company unlawfully subjected her to sexual harassment and a hostile work environment at her place of employment. Presently before this Court is the Company's Motion to Dismiss Plaintiff's Complaint, or in the Alternative, to Stay Proceedings and Compel Arbitration. For the reasons that follow, the Company's Motion is granted.

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<sup>1</sup> 42 U.S.C. § 2000 et seq.

<sup>2</sup> 43 P.S. § 951, et seq.

## I. BACKGROUND

Plaintiff was employed by the Company as a food server at its Langhorne, Pennsylvania location from September, 1997 to June, 1998. In April of 1998, the Company held a meeting for its employees, which Plaintiff attended, wherein it notified its employees that it was adopting a Dispute Resolution Procedure ("DRP") which the Company and its employees were obligated to use in resolving workplace disputes. At the meeting, employees were also shown a videotape explaining the DRP, were given a copy of the DRP, and were notified that the DRP would become effective on June 1, 1998.<sup>3</sup>

Plaintiff continued her employment after the April, 1998 meeting until June 15, 1998, when she claims she was constructively discharged due to sexual harassment by a fellow employee. As a result of the June 15, 1998 incident, she filed a charge of discrimination with the Equal Employment Opportunity Commission ("EEOC") on November 9, 1998, which resulted in the EEOC's issuing a Dismissal and Notice of Right to Sue on July 13, 1999. Plaintiff filed the present lawsuit on October 12, 1999.

The purpose of the DRP is to "resolve claims or

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<sup>3</sup> Perplexingly, the DRP which was attached as an exhibit to the Company's Motion, and which is the only purported copy available to this Court of the DRP at issue in this case, states that the DRP's effective date was June 1, 1996, rather than June 1, 1998. However, despite this discrepancy, the parties agree that the effective date of the DRP was June 1, 1998.

controversies, (as defined in the DRP arising out of an Employee's employment or termination), that an Employee may have against the Company or the Company may have against the Employee." DRP at 1. The DRP provides for four methods of dispute resolution: (1) Open Door Policy; (2) Peer Review; (3) Mediation; and (4) Arbitration. The DRP states that "neither the Company nor the Employee may litigate [employment] claims against each other in a court." Id. at 2. The only access to the courts for either the employee or the Company is to compel arbitration or enforce an arbitration award. Id. at 13-14. However, the arbitrator has the power to grant the same legal and equitable relief that a judge could grant. Id. at 13. Plaintiff does not dispute that the arbitration provision of the DRP is in accordance with the Federal Arbitration Act ("FAA") as well as the Employment Dispute Resolution Rules of the American Arbitration Association. Furthermore, Plaintiff does not dispute that, if in fact she agreed to arbitrate, the claims in her Complaint are within the scope of arbitrable claims under the DRP. However, Plaintiff never attempted to employ any of the four methods of dispute resolution provided by the DRP.

The Company argues, essentially, that Plaintiff accepted the terms of the DRP because she continued working for the Company for two months after she was made aware of the policy

and continued working even after the DRP went into effect.<sup>4</sup> Therefore, according to the Company, Plaintiff should be held to the terms of the DRP and must arbitrate her employment claims, rather than be permitted to seek relief in this Court. Plaintiff, however, contends that she never agreed to arbitrate and cannot therefore be compelled to do so.

## II. STANDARD

A motion to compel arbitration is viewed as a summary judgment motion if the parties contest the making of the agreement. Lepera v. ITT Corp., No. 97-1461, 1997 WL 535165, at \*3 (E.D.Pa. Aug. 12, 1997)(citing Par-Knit Mills, Inc. v. Stockbridge Fabrics Co., Ltd., 636 F.2d 51, 54 (3d Cir. 1980)). In most cases, a party has a right to a jury trial on this issue. Id. However, if there is no genuine issue of fact concerning the formation of the agreement, the court should decide whether the parties did or did not enter into the agreement. Id. Further, the court should apply the summary judgment standard, giving the opposing party "the benefit of all reasonable doubts and inferences that may arise." Lepera, 1997 WL 535165, at \*5 (citations omitted).

Moreover, "if a party to a binding arbitration

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<sup>4</sup> While Plaintiff claims Plaintiff's employment ended on June 15, 1998, the Company claims that it ended on June 28, 1998. However, according to either party's version, it is undisputed that Plaintiff continued working beyond the effective date of the DRP.

agreement is sued in federal court on a claim that the plaintiff has agreed to arbitrate, it is entitled under the FAA to a stay of the court proceeding pending arbitration . . . and to an order compelling arbitration . . . . If all claims involved in the action are arbitrable, a court may dismiss the action instead of staying it." Seus v. John Nuveen & Co., Inc., 146 F.3d 175, 179 (3d Cir. 1998).

### III. DISCUSSION

"[F]ederal law presumptively favors the enforcement of arbitration agreements." Harris v. Green Tree Fin. Corp., 183 F.3d 173, 178 (3d Cir. 1999). The FAA was enacted to reverse the longstanding judicial hostility toward arbitration agreements and to make them enforceable to the same extent as other contracts. Id. (citations omitted); Seus, 146 F.3d at 178; Wetzel v. Baldwin Hardware Corp., No. Civ. A. 98-3257, 1999 WL 54563, at \*2 (E.D.Pa. Jan. 29, 1999). Accordingly, the FAA directs courts towards vigorous enforcement of arbitration, requiring that an arbitration agreement "shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract." Seus, id. (quoting 9 U.S.C. § 2); Wetzel, id. (citations omitted). Further, "a federal court is authorized to compel arbitration if a party to an arbitration agreement institutes an action that involves an arbitrable issue and one party to the agreement has failed to enter arbitration."

Harris, 183 F.3d at 179.

Recently, in Wetzel, the United States District Court for the Eastern District of Pennsylvania dealt with the precise issue of whether the defendant-employer's unilaterally imposed dispute resolution policy was an enforceable agreement against the plaintiff-employee. Wetzel, 1999 WL 54563. In that case, the plaintiff continued working for his employer despite the fact that he had received a copy of the arbitration policy and accompanying explanatory memorandum. Id. at \*1. The policy explicitly stated that acceptance was a condition of employment and that both the employer and its current employees were bound by its terms. Id. It also stated that the policy covered all claims that either current and former employees or the employer may have concerning the employee's employment or termination. Id. However, nearly a year after he received a copy of the policy with accompanying explanatory memorandum, and without following any of the procedures set forth in the arbitration agreement, the plaintiff attempted to bring a claim in federal court against his employer under the Age Discrimination in Employment Act ("ADEA.") Id. The defendant filed a Motion to Dismiss and Compel Arbitration, which the court granted.

The Wetzel court explained that because arbitration is a matter of contract, the determination of whether an arbitration agreement is enforceable should be made under Pennsylvania law.

Id. at \*3. Accordingly, the court examined whether there had been an offer, acceptance of the offer and consideration, holding that an employee policy or handbook will not be considered a contract, unless a statement by an employer exists as to its intent to be bound. Id.

The court noted that the arbitration agreement explicitly bound the defendant-employer to its terms. Id. It also observed that the plaintiff had received the policy along with an explanatory memorandum and thereby had notice of it before he initiated his lawsuit. Id. Moreover, the court held that the plaintiff's continued employment indicated his acceptance of the policy, as well as provided consideration for the arbitration agreement, concluding that "as this court must generously construe the parties intentions in favor of arbitrability, the explicit terms of the [DRP] and continued employment of [the plaintiff] are sufficient basis for finding that an enforceable arbitration agreement exists." Id. at \*4.

Similarly, in Lepera, the plaintiff-employee continued to work after receipt of a unilaterally imposed mandatory arbitration policy and explanatory memorandum which specifically stated that the policy prevented employees from access to a judicial forum in employment disputes. Lepera, 1997 WL 535165, at \*4. When the plaintiff failed to comply with the policy by bringing tort claims against his employer in federal court, the

court granted the defendant's Motion to Compel Arbitration.<sup>5</sup> The court observed that the plaintiff "clearly and unequivocally worked after receipt of the Policy and explanatory Memorandum; he did not vacillate between working and not working." Id. Accordingly, the court held that the plaintiff had "accepted [his employer's] offer of continued employment with a [sic] arbitration provision in his contract when he continued working after he received the Policy," and, therefore, must arbitrate his claims. Id. at \*5. See also Venuto v. Insurance Co. of N. Am., No. Civ. A. 98-96, 1998 WL 414723, at \*5 (E.D.Pa. July 22, 1998)("[A]n employee's decision to continue working with an employer for a substantial period of time after the imposition of a new policy demonstrates acceptance of its terms.")

Guided by the above principles, in the instant case, we find that an enforceable arbitration agreement existed between Plaintiff and the Company. It is undisputed that in April of 1998, two months before her alleged constructive discharge, Plaintiff received a copy of the DRP, was shown a videotape explaining the DRP, and was notified that the DRP would be in effect as of June 1, 1998. The DRP clearly explains that it is equally binding on the Company as well as its employees, in that neither the Company nor the employees may litigate in a court of

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<sup>5</sup> The Motion to Compel Arbitration was granted as to all but one defendant, the claims against whom the court found not to be arbitrable under the policy.

law any claims arising out of an employee's employment or termination. Such notice afforded to Plaintiff, in April of 1998, of the future implementation of the DRP is sufficient to constitute an offer of continued employment subject to the terms of the DRP.

It is also undisputed that Plaintiff continued to work for Defendant, beyond the effective date of the policy, until her alleged constructive discharge on or about June 15, 1998. Her continued employment for two months after being made aware of the future implementation of the DRP, and beyond the DRP's effective date, is sufficient to constitute both acceptance of the Company's offer as well as consideration for an enforceable arbitration agreement. Therefore, viewing the undisputed facts in the light most favorable to Plaintiff, we find that there was an offer of continued employment subject to the terms of the DRP, acceptance of the offer and consideration. As such, Plaintiff is bound by the arbitration provision of the DRP, and her Complaint is dismissed.

An appropriate Order follows.