

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

CENTRAL RESERVE LIFE : CIVIL ACTION  
INSURANCE COMPANY :  
 :  
v. :  
 :  
DOROTHY A. MARELLO : 00-3344

**MEMORANDUM AND ORDER**

**J. M. KELLY, J.**

**OCTOBER,**

**2000**

Presently before the Court is a Motion to Compel Arbitration and Stay Court Proceedings filed by the Plaintiff, Central Reserve Life Insurance Company ("Central Reserve"). The Defendant, Dorothy A. Marello ("Marello"), has health insurance coverage provided by Central Reserve. Marello sought medical treatment that Central Reserve refused to cover. Marello subsequently filed suit in state court to compel Central Reserve to cover the cost of her treatment. Central Reserve filed suit in this Court to compel Marello to arbitrate her claims pursuant to an arbitration clause contained in her insurance policy. For the following reasons, Central Reserve's motion is granted.

**I. BACKGROUND**

Central Reserve, an Ohio corporation registered to transact business in Pennsylvania, sells medical insurance policies to

individuals and small groups. Central Reserve issued an individual preferred provider medical indemnification policy ("Insurance Policy") to Mareello, a Pennsylvania citizen who resides in Lancaster, Pennsylvania. Mareello filled out an application for insurance that stated, directly above her signature, that "[a]ny disputes arising under the Policy are subject to an appeals procedure, including arbitration, which may be binding, depending on state law." The Insurance Policy issued to Mareello contained an arbitration provision that reads:

After exhaustion of the Appeal of Decision procedures, any dispute arising out of or related to the Policy that remains shall be settled by arbitration in accordance with applicable federal or state laws and the Insurance Dispute Resolution Procedures, as amended, and administered by the American Arbitration Association . . . .

Mareello signed the Insurance Policy below the arbitration clause. Mareello asserts, however, that Central Reserve neither told her to read the clause nor instructed her as to its effect.

In April of 1999, Mareello was diagnosed with primary amyloidosis. Mareello underwent chemotherapy, which Central Reserve covered. Mareello then sought treatment at the Mayo Clinic in Rochester, Minnesota. In December, 1999, Mareello's doctors proposed treating her with high dose chemotherapy with peripheral stem cell rescue. Central Reserve considered this treatment experimental and notified Mareello that the Insurance Policy did not cover it.

Marello disagreed with Central Reserve and proceeded through an administrative appeal process. Despite the arbitration clause in her Insurance Policy, Marello filed a complaint in the Court of Common Pleas of Lancaster County, Pennsylvania.<sup>1</sup> Marello sought an injunction ordering Central Reserve to pay for her proposed medical treatment and also alleged, among other things, fraud and bad faith. Pursuant to the Federal Arbitration Act ("FAA"), 9 U.S.C. § 1 et seq. (1994), Central Reserve now seeks to compel arbitration of Marello's claims.

## II. STANDARD OF REVIEW

When ruling on a motion to compel arbitration under the FAA, a court may not consider the merits of the underlying claims. Rather, the court may only determine whether the merits of the case should be arbitrated or litigated. Great W. Mortgage Corp. v. Peacock, 110 F.3d 222, 228 (3d Cir. 1997). Before compelling arbitration, a district court must first determine whether: (1) the parties entered into a valid arbitration agreement; and (2) the dispute between the parties falls within the language of the arbitration agreement. Id.; John Hancock Mut. Life Ins. Co. v. Olick, 151 F.3d 132, 137 (3d Cir. 1998). An arbitration agreement is not binding, and thus a court cannot compel

---

<sup>1</sup> Marello v. Central Reserve Life Insurance Company, et al., No. CI-00-05769.

arbitration, if the agreement is based on fraud, duress, mistake, or some other ground recognized in general contract law. Smith v. The Equitable, 209 F.3d 268, 270 (3d Cir. 2000).

### III. DISCUSSION

The FAA provides that, so long as an independent basis of federal jurisdiction exists,<sup>2</sup> a party to a contract may petition the federal courts for an order compelling arbitration if the other party breaches an arbitration clause. 9 U.S.C. § 4. Filing a lawsuit based on arbitrable claims constitutes such a breach. Under the FAA, so long as there is a way to interpret the arbitration clause so as to cover the disputed issue, courts should compel arbitration. Smith v. The Equitable, 27 F. Supp. 2d 565, 568 (E.D. Pa. 1998). Moreover, when determining the breadth of an arbitration clause, courts should resolve any ambiguity in the clause in favor of the party seeking arbitration. Id.

In the instant case, Mareello signed a valid agreement for health insurance. The Insurance Policy contained an arbitration clause that is apparent when reading the document. That

---

<sup>2</sup> Diversity exists in the instant action between Plaintiff, Central Reserve, and Defendant, Mareello. Central Reserve could not remove Mareello's state court case to federal court, however, as that related case named several defendants with the same citizenship as Mareello, the plaintiff in that action. See Northwestern Nat'l Life Ins. Co. v. U.S. Healthcare, Inc., 1998 WL 252353 \*2 (E.D. Pa. May 11, 1998).

arbitration clause clearly encompasses the matters Mareello sought to litigate in state court. Therefore, the Court can compel arbitration of the current dispute pursuant to the FAA.

Mareello posits several reasons that the Court should elect not to compel arbitration in this. None of these reasons is persuasive. First, the Court should not abstain from ruling on this matter. Mareello cites four United States Supreme Court cases that advanced different justifications for federal courts to abstain from exercising their jurisdiction over otherwise justiciable cases: Railroad Commission v. Pullman, 312 U.S. 496 (1941); Buford v. Sun Oil Co., 319 U.S. 316 (1943); Younger v. Harris, 401 U.S. 37 (1971); Colorado River Water Conservation District v. United States, 424 U.S. 800 (1976). The instant case, however, implicates none of these doctrines. Abstention pursuant to Pullman, which allows federal courts to abstain if allowing the state court to resolve the claim will make deciding a constitutional claim unnecessary, is inappropriate because the instant case presents no true question of constitutional law. Abstention pursuant to Buford is uncalled for because the instant case neither presents difficult questions of state law nor inappropriately disrupts state efforts to develop consistent public policy. Abstention under Younger is improper because refusing to compel arbitration would nullify Central Reserve's federal statutory rights under the FAA. See Olde Discount Corp.

v. Tupman, 1 F.3d 202, 213 (3d Cir. 1993). Abstention pursuant to Colorado River, which allows abstention in order to avoid piecemeal litigation, is also inappropriate because the FAA prefers piecemeal litigation to ineffective arbitration clauses. See Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp., 460 U.S. 1, 20 (1983). Because Mareello has not met the heavy burden imposed on parties seeking federal judicial abstention, the Court will not abstain from ruling on the motion to compel arbitration.

Second, the Court will not dismiss Central Reserve's motion on grounds of impossibility. Mareello contends that complying with the arbitration clause is impossible because the AAA has abandoned the arbitration procedures set forth in the contract. To the contrary, the Insurance Dispute Resolution Procedures referred to in the Insurance Policy remain in effect. See Plf.'s Reply Mem. of Law at 2-3. Therefore, complying with them is clearly possible.

Third, the Court will not deny Central Reserve's motion merely because Mareello has alleged fraud in her state court Complaint. The alleged fraud is a matter arising from the Insurance Policy and, as such, should be resolved by an arbitrator rather than this Court. Of course, an arbitration clause may be invalid, and thus unenforceable by a motion to compel arbitration, if it was procured through fraud. Smith v. The Equitable, 209 F.3d 268, 270 (3d Cir. 2000). A party can

only avoid an arbitration clause, however, if she specifically alleges that the arbitration clause itself was the product of fraudulent inducement. Prima Paint Corp. v. Flood & Franklin Mfg. Co., 388 U.S. 395, 403-04 (1967); Republic of the Philippines v. Westinghouse Elec. Corp., 714 F. Supp. 1362, 1367 (D.N.J. 1989). Although Marello's response to the Central Reserve's Motion to Compel Arbitration contends otherwise, Marello's Complaint never specifically alleges that Central Reserve fraudulently induced Marello to agree to the arbitration clause. See Complaint ¶¶ 78-81, 89-92. That Central Reserve may not have highlighted the language in the contract, which Marello signed, neither amounts to fraud nor justifies avoiding the arbitration clause. Marello signed the contract and is charged with having read it. See Reliance Ins. Co. v. Moessner, 121 F.3d 895, 903 n.7 (3d Cir. 1997); Audio Video Center, Inc. v. First Union Nat'l Bank, 84 F. Supp. 2d 624, 627 (E.D. Pa. 2000); see also Standard Venetian Blind Co. v. American Empire Ins. Co., 469 A.2d 563, 566 (Pa. 1983).

Fourth, the arbitration clause does not violate Marello's constitutional rights to due process. Marello's claims of fraud and bad faith arise out of the Insurance Policy and are arbitrable under Pennsylvania law. Shadduck v. Christopher J.

Kalick, Inc., 713 A.2d 635, 638-39 (Pa. Super. 1998).<sup>3</sup>

Fifth, the state court's dismissal of Central Reserve's preliminary objections has no preclusive effect on this matter. In Mareello's state court action, the judge dismissed Central Reserve's preliminary objections, which had requested that the court dismiss the Complaint pending the outcome of arbitration. Mareello believes that the court's dismissal amounts to a finding that arbitration is not appropriate and that, consequently, this Court must bow to that resolution. Federal courts must only give preclusive effect to forum state court decisions, however, if a court in that forum state would do the same. Urrutia v. Harrisburg County Police Dep't, 91 F.3d 451, 461 (3d Cir. 1996). Under Pennsylvania law, a state court's holding does not have either claim or issue preclusive effect until the issues in the first action have been fully litigated and adjudged. Id.; Bortz v. W.C.A.B., 683 A.2d 259, 261 (1996). Claim or issue preclusion is inappropriate unless, among other things, the ruling was valid, final and on the merits. Judge Stengel's dismissal of Central Reserve's preliminary objections are not considered final under Pennsylvania law unless all claims raised in the underlying

---

<sup>3</sup> Even if a Pennsylvania court ruled that Mareello's bad faith claim was not arbitrable, arbitration of her other claims should proceed because the FAA requires piecemeal litigation if necessary to effectuate a valid arbitration agreement. See Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp., 460 U.S. 1, 20 (1983).

action are dismissed. Continental Bank v. Andrew Building Co., 648 A.2d 551, 554 (1994). Because the state court's ruling in this matter is not final, it has no preclusive effect on this Court. Nothing precludes the Court from ruling on this matter.

Finally, Mareello seeks leave to conduct discovery regarding the arbitration clause. As this matter should be arbitrated, this Court's ordering or allowing discovery regarding the arbitration clause is inappropriate. Discovery may, of course, be conducted pursuant to the applicable procedures set forth during arbitration.

In summary, this matter should proceed to arbitration with all possible speed. The Court does not hold that Mareello's claims lack merit. The Court holds only that, for the time being, that decision belongs to a neutral arbitrator. Accordingly, Central Reserve's Motion to Compel Arbitration is granted and Mareello will be enjoined from pursuing her state court claim until after arbitration.

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

CENTRAL RESERVE LIFE	:	CIVIL ACTION
INSURANCE COMPANY	:	
	:	
v.	:	
	:	
DOROTHY A. MARELLO	:	00-3344

**O R D E R**

**AND NOW**, this            day of October, 2000, in consideration of the Motion to Compel Arbitration and Stay Court Proceedings filed by the Plaintiff, Central Reserve Life Insurance Company (Doc. No. 2), the response of the Defendant, Dorothy A. Marello, Plaintiff's reply, and the various sur-replies thereto filed by the parties, it is ORDERED that the motion to compel arbitration is GRANTED. Defendant is ENJOINED from participating in the state court proceeding until the completion of arbitration.

BY THE COURT:

---

JAMES MCGIRR KELLY, J.