

IN THE CIRCUIT COURT OF MARSHALL COUNTY, WEST VIRGINIA

COTY LANTZ,

Plaintiff,

vs.

WILLIAMS WPC – 1, LLC, and
LEE DAWSON

Defendants.

CIVIL ACTION NO. 21-1-C-00011
Judge Cramer

JOSEPH M. RUOKI

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FILED

**ORDER DENYING DEFENDANTS' MOTION TO
DISMISS AND COMPEL ARBITRATION**

On or about March 11, 2020 defendants Williams WPC– 1, LLC and Lee Dawson, by counsel filed their Motion to Dismiss For Lack of Jurisdiction and Motion to Compel Arbitration. Plaintiff Coty Lantz, by counsel, filed his memorandum of law in opposition to these motions on or about March 26, 2021. The Court granted the defendants' motion for leave to file a reply brief, and defendants filed their reply brief on April 20, 2020. The Court, having considered the motion and the briefs of the parties, including the memoranda in support and opposition and defendants' reply brief, makes the following findings of fact and conclusions of law:

Findings of Fact

1. Defendants allege that an enforceable arbitration agreement existed between the defendants and the plaintiff as of January 1, 2020. Defendants allege that the claims of the plaintiff in this litigation are covered by this arbitration agreement. Plaintiff denies that an enforceable arbitration agreement exists but concedes that his claims would be covered by it, if enforceable.

2. Defendants produced evidence that a copy of this arbitration agreement prior to January 1, 2020 was sent to a work email address associated with the plaintiff, was mailed to the home address of the plaintiff, and was posted on an inter-company website.
3. Plaintiff testified by affidavit that he recalls the subject of arbitration coming up at work in late 2019 but never had seen the arbitration agreement prior to this lawsuit being filed.
4. The defendants are unable to produce a copy of the arbitration agreement which was signed or acknowledged by the plaintiff.
5. There is no evidence that the plaintiff ever had to confirm or acknowledge in any form, electronic or otherwise, that he received or signed the arbitration agreement.
6. Defendant Williams WPC never conducted any sort of meeting, whether in person, telephonically, or online, with its employees where the arbitration agreement was discussed or explained.
7. Defendants produced no evidence that plaintiff ever consented or agreed to be bound by the arbitration agreement.
8. The consideration offered by the defendants for the arbitration agreement by its own terms was the continued employment of the plaintiff.

Conclusions of Law

1. When a Circuit Court in West Virginia is called upon to rule on a motion to compel arbitration under the Federal Arbitration Act, "the authority of the trial court is limited to determining the threshold issues of (1) whether a valid arbitration agreement exists

between the parties, and (2) whether the claims averred by the plaintiff fall within the substantive scope of that arbitration agreement.” Syl. Pt. 2, *New v. GamaStop, Inc.*, 232 W.Va. 564, 753 S.E.2d 62 (2013)

2. “In considering whether an arbitration agreement has been validly formed, normal rules of contract interpretation apply.” *New*, 232 W.Va. at 571, 753 S.E.2d at 69. “West Virginia contract law requires mutual assent to form a valid contract.” *Id.* at 572, 70. A party meets its burden of establishing prima facie evidence of an arbitration agreement by producing a copy of a “written and signed agreement to arbitrate.” *State ex rel. Troy Grp., Inc. v. Sims*, 2020 W.Va. Lexis 814, 852 S.E.2d 270, 278 (November 20, 2020).
3. Defendants are unable to produce any evidence of mutual assent to the formation of the arbitration agreement. Defendants are unable to show in any form that the plaintiff signed, acknowledged, consented or agreed to the arbitration agreement. Defendants offer no legal authority that the promise to plaintiff of continued employment constitutes assent to the arbitration agreement by plaintiff, and this Court concludes as a matter of law that defendants’ offer of continued employment is not evidence of mutual assent to the arbitration agreement.
4. This court concludes as a matter of law that no mutual assent existed between the plaintiff and the defendants to create a contract, i.e. the arbitration agreement.
5. In addition, defendants are unable to show any consideration given for the arbitration agreement. The promise of continued employment does not constitute consideration for a new contract between an employer and an existing employee. *Environmental Prods. Co. v. Duncan*, 168 W.Va. 349, 351, 285 S.E.2d 889 (1981). This Court

concludes as a matter of law that no consideration existed for the arbitration agreement which defendants seek to enforce.

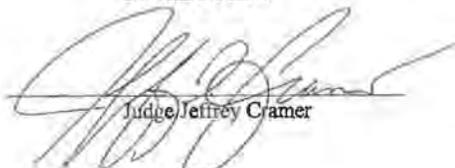
WHEREFOR, the Court FINDS that the arbitration agreement produced by the defendants is not a valid contract between plaintiff and defendants as the defendants failed to establish mutual assent and consideration in the formation of the contract. The Court further FINDS that the Arbitration Agreement produced by the defendants is not enforceable.

Accordingly, the Court ORDERS that the defendants' motion is DENIED.

All objections and exceptions of the parties are noted and saved.

May 4th, 2021

BY THE COURT:


Judge Jeffrey Cramer

A Copy Teste:
Joseph M. Ruckl, Clerk
By *Dorina Crout* Deputy