In the United States District Court for the Southern District of Georgia Savannah Division

WILLIAM A. ANDERSON,	*	
	*	
Plaintiff,	*	
	*	
v.	*	CV 414-278
	*	
AIG LIFE AND RETIREMENT,	*	
	*	
Defendant.	*	

ORDER

This matter comes before the Court on a fully-briefed Motion to Dismiss, or, in the alternative, a Motion to Stay and Compel Arbitration filed by Defendant AIG Life and Retirement ("Defendant" or "AIG"). See Dkt Nos. 12, 13, 20, 28. For the reasons set forth below, Defendant's Motion to Dismiss, dkt. no. 12, is **GRANTED** in part and otherwise **DENIED AS MOOT**.

Background

Plaintiff William A. Anderson began employment with AIG sometime around July, 2003. See Dkt. No. 20 at 1; dkt. no. 13-3 at 2. On December 19, 2014, Anderson filed a Complaint against his employer AIG alleging discrimination and retaliation in violation of Section 1981 of the Civil Rights Act of 1866, 42 U.S.C. § 1981 ("Section 1981"), Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-5 ("Title VII"), and the

DOCKET ALARM Find authenticated court documents without watermarks at docketalarm.com.

Americans with Disabilities Act of 1990, 42 U.S.C. § 12117(a) ("ADA"). Dkt. No. 1 at 2. The Complaint contains allegations of events taking place as early as March 2012. Id. at 3.

AIG filed a Motion to Dismiss for lack of subject matter jurisdiction pursuant to Fed. R. Civ. P. 12(b)(1), or, in the alternative, to Stay and Compel Arbitration. Dkt. No. 12. To support its motion, AIG points to an alternative dispute resolution plan entitled "American General Employee Dispute Resolution Plan" ("EDR plan") contained in a Sales Employee Employment Agreement ("2003 Agreement"), dkt. no. 13-1 at 8, which "sales employees such as Mr. Anderson would have signed," Declaration of Michael Herman ("Herman Decl."), dkt. no. 13 ¶ 4. That provisions states, in pertinent part:

> **Alternative Dispute Resolution Plan.** The sales employee agrees that the American General Employee Dispute Resolution Plan, as it may be amended from time to time, is the exclusive means for resolving employment-related legal claims with the Company. American General Life and Accident Insurance Company has adopted a Dispute Resolution Plan in accordance with the Federal Arbitration Act. The Dispute Resolution Plan covers any matter relating to the relationship between the Employee and the Company, including all claims or disputes arising out of the interpretation or enforcement of any duties, rights, or obligations of the parties set forth in this Agreement, all claims amounting to common law tort or pursuant to public policy, and all claims under any federal, state, or local human rights or employment rights statute or wage and hour statute, including, [Title VII, the ADA, and Section 1981, among others,] and any similar state statute or any state retaliatory discharge statute, whether the basis for the dispute arises at the time of application for employment, as a

DOCKET ALARM Find authenticated court documents without watermarks at docketalarm.com.

> result of termination of employment or as a consequence of the company's attempt to enforce a provision of this Agreement after termination of employment.

Dkt. No. 13-1 at 8. The subsequent paragraph carves out certain claims from the EDR plan, including workers compensation, unemployment compensation, and certain ERISA claims. Id. at 8-9. It also states that AIG "in its sole discretion, may amend or terminate the [EDR plan] at any time," id. at 9, and that notice of amendments or modifications would be provided by AIG in writing, id. at 8. Finally, in exchange for the parties' mutual agreement to submit all covered disputes to arbitration, the parties "each expressly waive any right either may have to seek redress in any court." Id. at 9.

The 2003 Agreement filed by AIG in support of its motion, dkt. no. 13-1, is not signed by either AIG or Anderson. AIG has additionally submitted a copy of "Applicant's Understandings and Authorizations," signed by Anderson on July 14, 2003, which contains the following provision regarding the EDR plan:

> Certain [AIG] Companies have adopted Employee Dispute Resolution ("EDR") programs, which include both informal and formal means, including binding arbitration, as the sole method of resolving most employment-related disputes. Seeking or accepting employment with [AIG], means that I agree to resolve employment-related claims against the company or another employee through this process instead of through the courts. **No right of court action exists.** Likewise, the company agrees to resolve these types of disputes it may have with me through the same EDR program rather than through court action. I am still

DOCKET ALARM Find authenticated court documents without watermarks at docketalarm.com.

> free to consult or file a complaint with any governmental agency, such as the EEOC, regarding my legally protected rights. However, if I am not satisfied with the results of the government agency process, this program must be used instead of the court system. The details of the applicable EDR program, including any limitations or exclusions are furnished to each employee and are available to applicants upon request. **I agree that if I either apply for or accept employment with American General Life and Accident Insurance Company, all covered claims and disputes that arise either as part of the hiring process or during employment, if I am hired, will be subject to the terms of the applicable EDR program.**

Dkt. No. 13-3 at 2 (emphasis in original). The EDR plan in effect at this time, dkt. no. 13-2, provides that "[a]pplication for employment, employment or continued employment . . . constitutes consent by both the Employee and [AIG] to be bound by this Plan." Id. at 5. The EDR plan itself is not signed by Anderson or AIG. Id. at 6. On July 28, 2003, Anderson executed a document entitled, "Employee Acknowledgement Concerning [AIG EDR] Program." Dkt. No. 13-4. Therein, Anderson acknowledged that he is "required to adhere to the [EDR] Program" and that he understands his "employment or continued employment with [AIG] constitutes [his] acceptance of the terms of this provision as a condition of [his] employment or continued employment." Id.

AIG's 2003 Agreement was revised in August 2008 and signed by Anderson and an AIG General Manager on September 23, 2008 ("2008 Agreement"). Dkt. No. 13-5 at 12; Affidavit of William Anderson ("Anderson Aff."), Dkt. No. 20-1 ¶ 4. It contains a

DOCKET ALARM Find authenticated court documents without watermarks at docketalarm.com.

similar EDR plan provision, which incorporates documents that comprise the EDR Program, see dkt. no. 13 ¶¶ 9-10, the receipt of which Anderson acknowledged. Dkt. No. 13-5 at 11-12 ("The Sales Employee acknowledges receipt of the documents that comprise the [EDR plan] which are incorporated herein by reference."). The 2008 Agreement is largely identical to the 2003 Agreement. The notice provision was updated to reflect that AIG is required to provide "30 days[']' notice to current employees" in the event of an amendment or termination of the EDR plan. Id. at 12.

DISCUSSION

"The Federal Arbitration Act ("FAA") generally governs the validity of an arbitration agreement." Walthour v. Chipio Windshield Repair, LLC, 745 F.3d 1326, 1329 (11th Cir.), cert. denied, 134 S. Ct. 2886 (2014). "The FAA was 'enacted in 1925 as a response to judicial hostility to arbitration.'" Id. (quoting CompuCredit Corp. v. Greenwood, 565 U.S. --, --, 132 S.Ct. 665, 668 (2012)). "The FAA thus 'embodies a liberal federal policy favoring arbitration agreements' and seeks 'to relieve congestion in the courts and to provide parties with an alternative method for dispute resolution that is speedier and less costly than litigation.'" Id. (quoting Caley v. Gulfstream Aerospace Corp., 428 F.3d 1359, 1367 (11th Cir. 2005)). Consistent with the text of the FAA, "courts must 'rigorously

DOCKET ALARM Find authenticated court documents without watermarks at docketalarm.com.

enforce' arbitration agreements according to their terms." Am. Exp. Co. v. Italian Colors Rest., -- U.S. --, --, 133 S. Ct. 2304, 2309 (2013) (quoting Dean Witter Reynolds Inc. v. Byrd, 470 U.S. 213, 221 (1985)).

The FAA's primary substantive provision provides that a written agreement to arbitrate a controversy arising out of that contract "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; see also Pendergast v. Sprint Nextel Corp., 691 F.3d 1224, 1231 (11th Cir. 2012) (explaining that arbitration agreements are on "equal footing with other contracts"). "[A] court can decline to enforce an arbitration agreement under the FAA only if the plaintiff[] can point to a generally applicable principle of *contract* law under which the agreement could be revoked." Caley, 428 F.3d at 1371. State law, here Georgia law, generally governs whether an enforceable contract exists; however, the FAA preempts state law to the extent it treats arbitration agreements differently than other contracts. Id. at 1367.

It is clear from the face of the Agreements, both separately and together with the accompanying documents, that the parties' dispute is covered by the arbitration provision. Both the 2003 and 2008 Agreements are broad in that they cover all disputes "regarding legally protected rights," except those

involving workers compensation, unemployment compensation and certain ERISA benefit claims, and both Agreements expressly mention the claims brought by Plaintiff, i.e. Section 1981, Title VII, and the ADA claims. Dkt. Nos. 13-1 at 8, 13-5 at 11-12. Even though the 2003 Agreement is not signed, the 2008 Agreement is signed by both parties. Dkt. Nos. 13-1 at 9, 13-5 at 12. Plaintiff does not dispute that both he and AIG executed this document, nor does he dispute that he received the EDR PLAN documents. Thus, the Court must compel arbitration unless Plaintiff can "point to a generally applicable principle of contract law under which the agreement could be revoked." Caley, 428 F.3d at 1371.

1. Significance of Lack of Signatures and/or Initials

Plaintiff argues arbitration cannot be compelled because not all key documents were signed and/or initialed by the parties. Despite Plaintiff and AIG's signature on the 2008 Agreement, Plaintiff argues the lack of signature and/or initials on the 2003 Agreement and other EDR plan documents makes them unenforceable. Dkt. No. 20 at 1-2, 4. Plaintiff cites to O.C.G.A. § 9-9-2(c), which provides, in part:

> [Part 1 of Georgia Arbitration Code] shall apply to all disputes in which the parties thereto have agreed in writing to arbitration and shall provide the exclusive means by which agreements to arbitrate disputes can be enforced, except the following, to which this part shall not apply . . .

> (9) Any contract relating to terms and conditions of employment unless the clause agreeing to arbitrate is initialed by all signatories at the time of the execution of the agreement[.]

§ 9-9-2(c)(9). The parties do not dispute that the arbitration provision contained in the 2003 Agreement and the 2008 Agreement is not initialed by the parties as contemplated by § 9-9-2(c)(9). According to the statute, then, the Georgia Arbitration Code does not apply to those Agreements. That does not mean, however, that, the Agreements are unenforceable, as Plaintiff suggests. Rather, the Agreements are governed by the FAA, as contemplated by the Agreements and/or the EDR plans themselves. See 2003 Agreement, Dkt. No. 13-1 at 8 (noting that the EDR Plan "is the exclusive means for resolving employment-related claims . . . in accordance with the Federal Arbitration Act"); EDR Program in effect September 2008, dkt. no. 13-6 ¶¶ 2, 7.A. (stating that the "Act" shall apply to the EDR Program and defining "Act" as the "Federal Arbitration Act"). As courts across the country, including Georgia, have recognized, the FAA preempts state law when the law undermines the FAA's objective of enforcing arbitration agreements according to their terms. See Harrison v. Eberhardt, 651 S.E.2d 826, 828 (Ga. Ct. App. 2007) ("When an agreement expressly provides for the

FAA to govern, the FAA preempts Georgia's requirement that the parties initial the provision."); see also Am. Gen. Fin. Servs. v. Jape, 732 S.E.2d 746, 748 (Ga. 2012). Plaintiff's argument that the arbitration provisions are unenforceable because they are not initialed by the parties is preempted by the FAA.

2. Continued Employment as Consideration

Plaintiff argues that though "[t]he documents submitted by AIG present several offers to [Plaintiff] and it is uncontested that Mr. Anderson accepted employment and continued employment with AIG," because he is an at-will employee, his continued employment is insufficient consideration. Dkt. No. 20 at 5; see also id. at 6. Plaintiff's "argument evidences a misunderstanding of the concept of consideration." Jackson v. Cintas Corp., 425 F.3d 1313, 1318 (11th Cir. 2005). "Under Georgia law, a mutual exchange of promises constitutes adequate consideration." Id. (citing Brown v. McGriff, 567 S.E.2d 374, 376 (Ga. Ct. App. 2002). Not only did AIG provide Plaintiff a job as consideration for his assent to the EDR plan, but AIG itself agreed to be bound by the same plan. See dkt. nos. 13-1 at 8-9, 13-5 at 11-12, 20-1 ¶ 4. Plaintiff's argument that the Agreement(s) lack consideration is meritless.

3. Whether Agreement(s) are Illusory Contracts

Plaintiff argues that "an agreement to arbitrate that can be rescinded or modified unilaterally by the employer at any time does not create a mutually enforceable, binding contract." Dkt. No. 20 at 5. It follows, argues Plaintiff, that "the provisions should be determined illusory and unenforceable." Id. at 6. Specifically, Plaintiff states that the 2008 Agreement allows AIG to amend it "'from time to time' without a provision for how the Plaintiff would be noticed." Id. at 11.

The illusory promises doctrine "instructs courts to avoid constructions of contracts that would render promises illusory because such promises cannot serve as consideration for a contract." M & G Polymers USA, LLC v. Tackett, -- U.S. --, 135 S. Ct. 926, 936 (2015). "It has long been the rule in Georgia that the test of mutuality is to be applied as of the time the contract is to be enforced." Jones v. Quigley, 315 S.E.2d 59, 60 (Ga. Ct. App. 1984). "If at that time the contract contains mutual obligations equally binding on both parties to the contract, then the contract is not unilateral and unenforceable." Id.

Plaintiff's argument that AIG is imposing an illusory, one-sided requirement to arbitrate, dkt. no. 20 at 4, is misguided. The 2008 Agreement—and the 2003 Agreement, for that matter—clearly states that both parties agree to participate in binding arbitration and waive their right to court action. Dkt. No. 13-

DOCKET ALARM

info@
docketalarm.com

Access the Rest of This Document

Join Docket Alarm to Access this Document and Millions More!

Comprehensive Search: Millions of PACER cases and documents, the US Supreme Court, California Courts, the ITC, the TTAB, and the PTAB. Thousands of cases are added every data.

Real-Time Alerts: Never check the court docket again. Track existing cases, or be alerted to new cases as they are filed.

Legal Analytics: Analyze your chances of winning. See a firm's clients, and how they do for those clients, and much more.

Benefits

Combine Services: Docket Alarm does the work of multiple services in one package.

Uber-Fast Updates: Ping the court up to 16 times a day to get filings in near real-time.

Advanced Search: We support both terms and connectors and natural language searching.

Lots of Filters: Easily narrow your search with filters.

Bulk Downloads: Download hundreds of filings in seconds.

Reports: Easily export reports from your research.

API: Integrate our data into your app with our PACER API.

User Friendly: Our service is beautiful and, yes, fun to use.

Some of Our Clients

LATHAM LATHAM&WATKINS ORRICK ROPES & GRAY Lilly