

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION

JIMMY CREASY,	)	
	)	
Plaintiff	)	
	)	
v.	)	NO. 3-17-cv-742
	)	JUDGE TRAUGER
SEELBACH AND CO., INC.,	)	
	)	
Defendant	)	

**MEMORANDUM AND ORDER**

Pending before the court is Defendant’s Motion to Dismiss or, in the Alternative, to Stay the Proceedings and Compel Arbitration (Docket No. 14). For the reasons stated herein, Defendant’s Motion to Stay the Proceedings and Compel Arbitration will be GRANTED.

INTRODUCTION

Plaintiff Creasy brought this action against his former employer, Defendant Seelback and Company, Inc., for alleged violations of the Family and Medical Leave Act (“FMLA”). Plaintiff contends that Defendant interfered with his FMLA rights and retaliated against him for exercising those FMLA rights.

Defendant asks the court to dismiss this case because Plaintiff previously agreed to submit all employment claims to final and binding arbitration. Alternatively, Defendant asks the court to stay this action pending arbitration of Plaintiff’s claims. Defendant has filed a copy of Plaintiff’s signed Application Acknowledgment, which states that Plaintiff knowingly, voluntarily and intentionally agrees that if he has any legal disputes related to the application or his employment with Defendant, such disputes will be resolved through Defendant’s arbitration process as described in

Defendant's Arbitration Policy. (Docket No. 14-1). Defendant's Arbitration Policy, also filed by Defendant, provides for, exclusively, binding arbitration of disputes between Plaintiff and Defendant related to Plaintiff's employment. *Id.*

## ARBITRATION

The question of whether Plaintiff's claim must be arbitrated is governed by the Federal Arbitration Act ("FAA"). The FAA provides that a written arbitration agreement "shall be valid, irrevocable, and enforceable, save upon such grounds as exist in law or in equity for the revocation of any contract." 9 U.S.C. § 2. There is a strong presumption in favor of arbitration under the FAA. *Saunders v. American Intercontinental Univ.*, 2014 WL 5776172 at \* 3 (M.D. Tenn. Nov. 5, 2014) (citing *Morrison v. Circuit City Stores, Inc.*, 317 F.3d 646, 652-53 (6<sup>th</sup> Cir. 2003)). The FAA sets up a presumption in favor of arbitration and requires courts to rigorously enforce agreements to arbitrate. *Dearmon v. Bestway Rent-to-Own*, 2014 WL 1961911 at \* 1 (M.D. Tenn. May 15, 2014). Any suit brought upon an issue referable to arbitration under such an agreement shall be stayed until arbitration has occurred. 9 U.S.C. § 3; *Saunders* at \* 3.

Although courts in the Sixth Circuit are split on whether a motion to dismiss based on an arbitration agreement should be brought under Federal Rule of Civil Procedure 12(b)(1) or 12(b)(6),<sup>1</sup> the Sixth Circuit has been clear that, to avoid compelled arbitration, a party must show that there is a genuine issue of material fact as to the validity or applicability of the agreement to arbitrate. *Saunders* at \* 4; *Great Earth Cos., Inc. v. Simons*, 288 F.3d 878, 889 (6<sup>th</sup> Cir. 2002). The required showing mirrors that required to withstand summary judgment in a civil action. *Id.*

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<sup>1</sup> *Saunders* at \* 3; see also *Powers Distributing Co., Inc. v. Grenzebach Corp.*, 2016 WL 6611032 at \* 2 (E.D. Mich. Nov. 9, 2016) and cases cited therein.

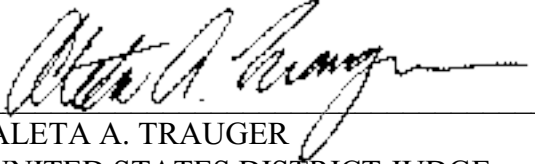
In this case, Plaintiff does not challenge the validity or applicability of the agreement to arbitrate. Plaintiff argues that his Complaint states a claim for which relief may be granted under Rule 12(b)(6) and contends that the court should stay this action and compel arbitration under Rule 12(b)(1). (Docket No. 16).

The court agrees. When presented with an issue that is referable to arbitration pursuant to a valid arbitration agreement, the court, upon the application of either party, must stay the suit and compel arbitration. *Smith v. Servicemaster*, 2009 WL 1457143 at \* 4 (M.D. Tenn. May 22, 2009) (citing 9 U.S.C. §§ 3 and 4).

Accordingly, Defendant's Motion to Stay Proceeding and Compel Arbitration (Docket No. 14) is GRANTED. This action is STAYED, pending arbitration of Plaintiff's claims. The Clerk is directed to close this file administratively.

IT IS SO ORDERED.

ENTER this 11<sup>th</sup> day of July 2017.

  
Aleta A. Trauger  
UNITED STATES DISTRICT JUDGE