NOT RECOMMENDED FOR FULL-TEXT PUBLICATION

Nos. 17-5338/17-5375

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Feb 22, 2018
DEBORAH S. HUNT, Clerk

GLORIA TASSY, individually and on behalf of all similarly situated, Plaintiff-Appellee, v. LINDSAY ENTERTAINMENT ENTERPRISES, INC., Defendant-Appellant.	)	ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF KENTUCKY

Before: McKEAGUE, KETHLEDGE, and THAPAR, Circuit Judges.

When "the making of [an] arbitration agreement" is "in issue," the Federal Arbitration Act requires district courts to "proceed summarily to [a] trial" to decide the matter. 9 U.S.C. § 4. In this case, the district court did not "summarily" determine whether the parties had agreed to arbitrate. As such, we reverse.

Two years ago, Gloria Tassy sued Lindsay Entertainment under the Fair Labor Standards Act. When Lindsay moved to compel arbitration, Tassy balked. She claimed she had not signed an arbitration agreement. In response, Lindsay could not produce a signed agreement but only two witnesses who swore she had signed one. The district court noted that the parties had raised a genuine factual dispute and resolved to hold an evidentiary hearing, but it never did. To date, in fact, the district court has not decided the formation question. Instead, after about a year, it (1) conditionally certified Tassy's FLSA class and (2) denied Lindsay's motion to compel arbitration with leave to refile following an evidentiary hearing.[1] The district court's failure to "summarily" determine whether the parties formed an agreement to arbitrate was error.

[1] We do not have jurisdiction to consider the district court's grant of conditional certification under the FLSA, *see Taylor v. Pilot Corp.*, 697 F. App'x 854, 858–60 (6th Cir. 2017), but only its provisional denial of Lindsay's motion to stay the proceedings and compel arbitration, 9 U.S.C. § 16. And, contrary to Tassy's suggestion, Lindsay's appeal from that order is timely. The district court did not deny Lindsay's motion to compel arbitration until March 31, 2017, and Lindsay filed its amended notice of appeal on April 2, 2017. *See* Fed. R. App. P. 4(a)(1)(A).

When arbitration is in dispute, the Federal Arbitration Act requires that "courts process the venue question quickly so the parties can get on with the merits of their dispute in the right forum." *Howard v. Ferrellgas Partners, L.P.*, 748 F.3d 975, 978 (10th Cir. 2014). Taking over a year to resolve Lindsay's motion to compel was not "quick." *Id.* at 977–78 (reversing where district court took a year and a half to rule on arbitrability dispute, and noting that "[t]he object is always to decide quickly—summarily—the proper venue for the case . . . so the parties can get on with the merits of their dispute"); *see also Silfee v. Automatic Data Processing, Inc.*, 696 F. App'x 576, 577–79 (3d Cir. 2017) (holding that district court erred by deciding motion to dismiss before motion to compel arbitration); *Reyna v. Int'l Bank of Commerce*, 839 F.3d 373, 376–78 (5th Cir. 2016) (holding that "upon being presented with [a] motion to compel arbitration, the district court was required to address the arbitrability of [the plaintiff's] claim at the outset of the proceedings, prior to considering conditional certification"). On remand, the district court should promptly determine whether the parties agreed to arbitrate. *See Dean Witter Reynolds, Inc. v. Byrd*, 470 U.S. 213, 218 (1985) ("By its terms, the [FAA] leaves no place for the exercise of discretion by a district court, but instead mandates that district courts *shall* direct the parties to proceed to arbitration on issues as to which an arbitration agreement has been signed."); *Moses H. Cohn Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 22 (1983) (FAA requires "an expeditious and summary hearing, with only restricted inquiry into factual issues").

Accordingly, we **VACATE** the district court's order denying Lindsay's motion to stay proceedings and compel arbitration and **REMAND** for further proceedings consistent with this decision. In addition, we **DISMISS** Lindsay's appeal from the district court's grant of conditional certification for lack of jurisdiction.

ENTERED BY ORDER OF THE COURT

Deborah S. Hunt, Clerk

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Deborah S. Hunt
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Re: Case No. 17-5338/17-5375, *Gloria Tassy v. Lindsay Ent Enterprises Inc.*
Originating Case No. : 3:16-cv-00077

Dear Counsel:

The Court issued the enclosed (Order/Opinion) today in this case.

Sincerely yours,

s/Patricia J. Elder, Senior Case Manager
for Robin L. Johnson, Case Manager

cc: Ms. Vanessa L. Armstrong

Enclosure

Mandate to issue