UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

LISA CASTELLO,	)	
	)	
Plaintiff,	)	Case No. 18-cv-01874
	)	
v.	)	Judge Sharon Johnson Coleman
	)	
AT&T MOBILITY SERVICES, LLC,	)	
	)	
Defendant.	)	

ORDER

The evidence before this Court establishes a genuine dispute of material facts as to whether an arbitration agreement exists in this case. Resolution of the defendant's motion to compel arbitration [20] will therefore require a trial pursuant to 9 U.S.C. § 4. A status hearing is set for January 11, 2019 at 9:00 AM. The defendant's motion to compel arbitration is entered and continued until that date. The parties are to be prepared to set a trial date at that hearing. The parties are directed to discuss whether they would consent either to a bench trial or to the exercise of jurisdiction by a magistrate judge for this singular issue.

STATEMENT

Plaintiff, Lisa Castello, filed a two-count claim against her former employer AT&T Mobility Services, LLC, alleging violations of the Americans with Disabilities Act and the Family and Medical Leave Act. AT&T asserts that Castello electronically signed an agreement to arbitrate all disputes relating to her employment and that Castello's claims fall squarely within the scope of that agreement.

The Federal Arbitration Act requires courts to stay or dismiss proceedings and to compel arbitration if an issue or controversy is covered by a valid arbitration agreement. 9 U.S.C. §§ 3–4; *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 344, 131 S.Ct. 1740, 179 L.Ed.2d 742 (2011); *Tinder*

v. Pinkerton Sec., 305 F.3d 728, 733 (7th Cir. 2002). The party seeking to compel arbitration must show that: (1) a written arbitration agreement exists between the parties, (2) there is a dispute among the parties regarding the scope of arbitration agreement, and (3) one of the parties is refusing to participate in arbitration. *Zurich Am. Ins. Co. v. Watts Indus., Inc.*, 417 F.3d 682, 690 (7th Cir. 2005). Once a moving party has shown those elements, the burden shifts to the party opposing arbitration to demonstrate that the arbitration agreement is unenforceable. *Tinder*, 305 F.3d at 735. A party opposing arbitration must meet the evidentiary standard required of a party opposing summary judgment under Rule 56(e) and identify specific evidence in the record establishing a genuine dispute of material fact that must be resolved in a trial. *Id.* In conducting this assessment, this Court cannot make credibility determinations, choose between competing inferences, or balance the relative weight of conflicting evidence. *Washington v. Haupert*, 481 F.3d 543, 550 (7th Cir. 2007); *Abdullahi v. City of Madison*, 423 F.3d 763, 773 (7th Cir. 2005). A party cannot avoid compelled arbitration, however, "by generally denying the facts upon which the right to arbitrate rests; the party must identify specific evidence in the record demonstrating a material factual dispute for trial." *Tinder*, 305 F.3d at 735.

The existence of an arbitration agreement is determined under principles of state contract law. *Tinder*, 305 F.3d at 733. Because all the relevant events occurred in Illinois, Illinois law determines the validity of the alleged agreement. *Id.* Under Illinois law, the elements of an enforceable contract are offer, acceptance, and consideration. *Clarendon Nat. Ins. Co. v. Medina*, 645 F.3d 928, 936 (7th Cir. 2011) (citing *Steinburg v. Chi. Med. Sch.*, 69 Ill.2d 320, 329, 371 N.E.2d 634 (Ill. 1977)). If the making of the arbitration agreement is in dispute, the court must proceed to trial to decide that issue. 9 U.S.C. § 4.

There is no dispute that this litigation is within the scope of the alleged arbitration agreement at issue and that Castello refuses to comply with that alleged agreement. However, a genuine

dispute of material fact exists regarding whether the parties formed a valid and enforceable agreement to arbitrate. AT&T asserts that when Castello transitioned to a full-time position at AT&T the parties entered into an arbitration agreement as part of the hiring process. Angela Christian, a Lead Consultant HR Technology at AT&T, testified through declaration that employment offers are contingent on a candidate's successful completion of the pre-onboarding process, which includes agreeing to AT&T's arbitration agreement. (Dkt. 19-1.) AT&T provided screenshots of data from its onboarding system that it maintains shows that Castello added her electronic signature to the arbitration agreement by entering her e-mail address. (*Id.*) Christian later "published" Castello's name into the arbitration agreement using this data, although the "published" agreement does not list the e-mail address that AT&T submits was required for Castello's electronic signature. (*Id.*) Castello responds that the arbitration agreement should not be enforced because she did not ever review, access, or sign the arbitration agreement. (Dkt. No. 22-1.) Additionally, Castello maintains that arbitration was not discussed during her application process or at any time during her employment at AT&T, and she was never informed by AT&T that her employment was contingent on consenting to the arbitration agreement. (*Id.*)

AT&T contends that it is appropriate to compel arbitration notwithstanding this genuine dispute because Castello does not deny generally that she completed the required onboarding process prior to the start of her employment with AT&T. AT&T further argues that the totality of the evidence that the company provides in support of its position warrants compelling arbitration. However, the question at this junction is not who has more evidence to support their position, but merely whether Castello has some evidence to support her position. She does. Unlike the plaintiff in *Tinder v. Pinkerton Security*, Castello swore unequivocally that she was not aware of the arbitration agreement and did not ever "sign, access, or review" the agreement "prior to or during [her] employment with AT&T." (Dkt. No. 22-1 ¶ 13.) *Compare Tinder*, 305 F.3d at 735 (holding that

plaintiff's own affidavit stating that she "not *recall* receiving or seeing the arbitration brochure" did not raise a genuine issue of fact) (emphasis added). This Court will not "resolve swearing contests between litigants." *Payne v. Pauley*, 337 F.3d 767, 770 (7th Cir. 2003). Given this fundamental dispute regarding the existence of an agreement to arbitrate, the Court need not consider further the parties' additional arguments regarding arbitration. Castello's sworn statements and the inconsistencies between the "published" agreement and how AT&T submits that the agreement would have been electronically signed prevent this Court from compelling arbitration at this time. *See Van Tassell v. United Mktg. Grp., LLC*, 795 F. Supp. 2d 770, 789 (N.D. Ill. 2011) (Castillo, J.) (requiring hearing on motion to compel arbitration where plaintiff "never even viewed the enrollment pages or the relevant Terms and Conditions, let alone agreed to them"); *Mecum v. Weilert Custom Homes, LLC*, 239 F. Supp. 3d 1093, 1097 (N.D. Ill. 2017) (Coleman, J.) (ordering trial to ascertain whether the arbitration agreement "was offered to and accepted by [plaintiff]").

Accordingly, a trial must be held pursuant to 9 U.S.C. § 4 to ascertain whether the arbitration agreement was offered to and accepted by Castello.

IT IS SO ORDERED.

Date: 12/28/2018

Entered:

SHARON JOHNSON COLEMAN
United States District Judge