APPENDIX

IN THE DISTRICT COURT OF
EL PASO COUNTY, TEXAS
346TH JUDICIAL DISTRICT

IVETH RODRIGUEZ LOPEZ,	§	
	§	
Plaintiff,	§	
	§	
vs.	§	No. 2014-DCV-1252
	§	
READYONE INDUSTRIES, INC.,	§	
	§	
	§	
Defendant.	§	

ORDER DENYING DEFENDANT'S
MOTION TO COMPEL ARBITRATION

On the13th day of August, 2014, came on to be heard Defendant's Motion to Compel Arbitration. After hearing the arguments of counsel and considering the briefs and authorities cited by the parties, the Court finds the following Order reasonable and necessary.

It is ORDERED, ADJUDGED and DECREED that Defendant's Motion to Compel Arbitration be and is hereby DENIED.

Signed this 17 day of March, 2015.

/s/ Angie Juarez-Barill
JUDGE

551 S.W.3d 305(Tex. App.–El Paso 2018, pet. denied)

COURT OF APPEALS
EIGHTH DISTRICT OF TEXAS
EL PASO, TEXAS

No. 08-15-00157-CV
Appeal from 346th District Court
of El Paso County, Texas (TC#2014-DCV1525)

READYONE INDUSTRIES, INC.,
Appellant,
v.
IVETH RODRIGUEZ LOPEZ,
Appellee.

J U D G M E N T

The Court has considered this cause on the record and concludes there was error in the judgment. We therefore reverse the judgment of the court below and remand the cause to the trial court with instructions to enter an order granting ReadyOne's motion to compel arbitration, in accordance with this Court's opinion. We further order that the Appellant recover from Appellee all costs of this appeal, for which let execution issue, and this decision be certified below for observance.

IT IS SO ORDERED THIS 25th DAY OF APRIL, 2018.

ANN CRAWFORD McCLURE, Chief Justice

Before McClure, C.J., Rodriguez, J., and Larsen, J. (Senior Judge), sitting by assignment

Rodriguez, J., Dissent

551 S.W.3d 305(Tex. App.–El Paso 2018, pet. denied)

COURT OF APPEALS

EIGHTH DISTRICT OF TEXAS

EL PASO, TEXAS

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Appellant,

v.

IVETH RODRIGUEZ LOPEZ,

Appellee.

O P I N I O N

This is an interlocutory appeal from the denial of a motion to compel arbitration pursuant to Section 51.016 of the Texas Civil Practices and Remedies Code. TEX.CIV. PRAC.&REM.CODE ANN. § 51.016 (West 2015) (permitting an interlocutory appeal from the denial of a motion to compel arbitration under the Federal Arbitration Act). ReadyOne Industries, Inc. Raises one issue contending the trial court abused its discretion in denying its motion to compel arbitration and stay proceedings pending arbitration. For the reasons that follow, we reverse and remand with instructions to enter an order compelling arbitration.

FACTUAL SUMMARY

ReadyOne is a garment manufacturer located in El Paso,Texas. Pursuant to a contract with the

United States Government, ReadyOne manufactures and supplies apparel for the United States Military. ReadyOne's involvement in interstate commerce includes purchasing goods and services from out-of-state that are shipped to it in Texas, and manufacturing goods that are then shipped and used out of state.

ReadyOne employed Iveth Rodriguez Lopez in May 2011 as a sewing machine operator. On May 31, 2011, she signed a document entitled "Receiptand Arbitration Acknowledgment." Her signature acknowledged that she received and read, or had the opportunity to read, the following documents: the Mutual Agreement to Arbitrate (MAA), the Benefits Schedule, and the Summary Plan Description (SPD) for the Employee Injury Benefit Plan. She further acknowledged by her signature that claims and disputes covered under the MAA "must be submitted to an arbitrator, rather than a judge and jury in court;" that she and ReadyOne were mutually "agreeing to comply with [the] arbitration requirements;" that all covered claims would be subject to the MAA; and that "any decision of an arbitrator will be final and binding."

The MAA signed by the parties provided that all covered claims would be exclusively resolved by binding arbitration under the Federal Arbitration Act (FAA). The MAA set out all arbitration procedures, contained an integration clause providing that it constituted the complete agreement and superseded any prior agreement regarding arbitration; and indicated that any oral representations made before or after Lopez was hired did not alter the MAA.

In October 2013, Lopez claimed that she suffered injuries resulting from "repetitive sewing tasks." In her affidavit submitted to the trial court, Lopez did not deny signing the MAA, but rather, insisted that she did not remember signing the document. She stated that she signed numerous documents related to her employment and hiring, but ultimately did not know why she was signing them. According to her affidavit, ReadyOne told her that the documents were for benefits if she got hurt on the job. She further claimed to have been misled into believing that the documents were not important and were only routine documents that ReadyOne needed to complete its paperwork for her employment. She did not know that: (1) she was signing an arbitration agreement; (2) she was waiving her rights; (3) she could seek the advice of counsel before signing the documents; or (4) she was permitted to decline to sign the documents. She also claimed that ReadyOne never told her that the arbitration agreement was a "stand-alone" document and she was not given any time to review the documents before signing them. Finally, Lopez contended that ReadyOne never told her that the arbitration agreement was a "stand-alone" document and she was not given any time to review the document before signing them. Finally, Lopez contended that ReadyOne never told her that she was signing an arbitration agreement or what that meant, no one ever explained to her the contents of the documents or their effect, she was never provided with an orientation session, and no one ever translated the documents for her. She insisted that she never would have signed the arbitration agreement had she been advised that it meant she

was waiving her right to a jury trial.

In addition to her claims concerning the MAA, Lopez's affidavit also provided the trial court with a description of several learning disorders from which she suffers, including: a dysthymic disorder, reading disorder, disorder of written expression, and a language disorder. She further related to the trial court that she had a reading ability below the second grade level and experienced difficulties with her memory.

Lopez filed her original petition in April 2014 and alleged that no valid MAA existed. She provided the following reasons, relevant to this appeal, as to why the MAA and Injury Benefit Plan were void and invalid:

- The Federal Arbitration Act (FAA) is inapplicable to the MAA.
- The documents are procedurally and substantively unconscionable.
- The MAA is unenforceable because the FAA is unconstitutional under the Tenth Amendment of the United States for hourly employees involved in a labor job.
- The MAA is void in violation of the Texas Labor Code Sections 406.033(e) and 406.035. TEX. LAB. CODE ANN. §§ 406.033(e), 406.035 (West 2015).
- The MAA is illusory and unenforceable.
- The MAA is unenforceable under Texas law, specifically Section 171.002(a)(3) of the Texas Civil Practices and Remedies Code. TEX. CIV. PRAC. & REM. CODE ANN. § 171.002(a)(3) (West 2011).

In response, ReadyOne filed its original answer as well as a motion to compel arbitration. In support of its motion, ReadyOne submitted the affidavit of its Director of Human Resources and Compliance, Guadalupe Madrid, and the following five documents: (1) the MAA (Exhibit A); (2) the Receipt and Arbitration Acknowledgment (Exhibit B); (3) the Employee Injury Benefit Plan (Exhibit C); (4) the Summary Plan Description (SPD) (Exhibit D); and (5) the Employee Orientation PowerPoint Presentation (Exhibit E). Following a hearing in August 2014, the trial courtdenied the motion to compel. ReadyOne now appeals.

DENIAL OF ARBITRATION

In its sole issue, ReadyOne challenges the order refusing to compel arbitration. Lopez raised several arguments in opposition to the motion to compel arbitration and the trial court denied the motion without specifying the basis for the ruling. ReadyOne has addressed each of these arguments and defenses on appeal.

Standard of Review and Relevant Law

We review a trial court's decision to grant or deny a motion to compel arbitration for an abuse of discretion. Ellman v. JC General Contractors, 419 S.W.3d 516, 520 (Tex. App.–El Paso 2013, no pet.). Under this standard, we defer to a trial court's factual determinations if they are supported by evidence, but we review a trial court's legal determinations de novo. In re Labatt Food Serv., L.P., 279 S.W.3d 640, 643 (Tex. 2009); Ellman, 419 S.W.3d at 520.

A party seeking to compel arbitration must (1)

establish the existence of a valid arbitration agreement; and (2) show that the claims asserted are within the scope of the agreement. See In re AdvancePCS Health L.P., 172 S.W.3d 603, 605 (Tex. 2005); Delfingen US-Texas, L.P. v. Valenzuela, 407 S.W.3d 791, 797 (Tex. App.–El Paso 2013, no pet.). We apply state contract principles to determine whether a valid arbitration agreement exists. J.M. Davidson, Inc. v. Webster, 128 S.W.3d 223, 227 (Tex. 2003); Delfingen, 407 S.W.3d at 797. Once the party seeking to compel arbitration proves that a valid arbitration agreement exists, a presumption attaches favoring arbitration and the burden shifts totheparty resisting arbitration to establish a defense to enforcement. Delfingen, 407 S.W.3d at 797. In the context of enforcement, defenses refer to unconscionability, duress, fraudulent inducement, and revocation. In re FirstMerit Bank, N.A., 52 S.W.3d 749, 756 (Tex. 2001); Delfingen, 407 S.W.3d at 797. Because the law favors arbitration, the burden of proving a defense to arbitration is on the party opposing it. IHS Acquisition No. 171, Inc. v. Beatty-Ortiz, 387 S.W.3d 799, 807 (Tex.App.–El Paso 2012, no pet.), citing J.M. Davidson, 128 S.W.3d at 227.

Because the trial court here did not enter specific findings of fact or conclusions of law to explain its denial of the motion to compel arbitration, we must uphold the trial court's decision on any appropriate legal theory urged below. Shamrock Foods Co. v. Munn & Assocs., Ltd., 392 S.W.3d 839, 844 (Tex. App.–Texarkana 2013, no pet.); Inland Sea, Inc. v. Castro, 420 S.W.3d 55, 57-59 (Tex.App.–El Paso 2012, pet. denied) (affirming denial of motion to

compel arbitration on alternative ground where order did not specify the basis for the ruling); In re Weeks Marine, Inc., 242 S.W.3d 849, 854 (Tex.App.–Houston [14th Dist.] 2007 (orig. proceeding).

The FAA Applies

We begin our review by examining whether the FAA is applicable. Citing Bernhardt v. Polygraphic Company of America, 350 U.S. 198, 76 S.Ct. 273, 100 L.Ed. 199 (1956), Lopez argues that the FAA does not govern the MAA because there is no evidence she was personally engaged in commerce. In Bernhardt, the plaintiff entered into an employment contract with Polygraphic to become superintendent of the company's lithograph plant in Vermont. Bernhardt v. Polygraphic Company of America, 218 F.2d 948, 949 (2nd Cir. 1955). The employment contract contained an arbitration provision. Id. Following his discharge, Bernhardt sued Polygraphic in a Vermont state court for breach of contract. Id. The Second Circuit Court of Appeals held that the FAA applied to the employment contract. Bernhardt, 218 F.2d at 949-50, but the Supreme Court reversed because it concluded that the contract did not evidence a transaction involving commerce within the meaning of section 2 of the FAA, and there was no evidence that Bernhardt, while performing his duties under the employment contract, was working in commerce, producing goods for commerce, or was engaging in activity that affected commerce. Bernhardt, 350 U.S. at 200-01, 76 S.Ct. at 275.

The instant case is distinguishable from Bernhardt because the MAA specifically provides that ReadyOne is engaged in commerce as that term is defined in

Section 2 of the Federal Arbitration Act and the "FAA governs all aspects of this Agreement." It is well established that parties may expressly agree to arbitrate under the FAA. In re Rubiola, 334 S.W.3d 220, 223 (Tex. 2011); Lucchese, Inc. v. Solano, 388 S.W.3d 343, 348 (Tex.App.–El Paso 2012, no pet.). Further, ReadyOne submitted evidence that it was regularly engaged in interstate commerce in that it purchases and receives goods and services from outside the state of Texas and it manufactures goods that are shipped and used outside of the state. We conclude that the FAA applies to the MAA. See In re Border Steel, Inc., 229 S.W.3d 825, 830-31 (Tex. App. –El Paso 2007) (orig. proceeding) (holding that the FAA applied where the defendant presented evidence that it engaged in interstate commerce and the arbitration agreement contained a provision that the FAA governed). Therefore, to the extent the trial court denied ReadyOne's motion on this basis, it erred in doing so.

The MAA is not Ambiguous or Illusory

[Court of Appeals' discussion and resolution of state law issue not pertinent to the petition]

Procedural Unconscionability

[Court of Appeals' discussion and resolution of state law issue not pertinent to the petition]

Other Defenses to Enforcement of the Arbitration Agreement

Lopez raised several other defenses to enforcement of the Arbitration Agreement. First, she alleged that the Arbitration Agreement is unenforceable under Section 406.033(a) of the Texas Labor Code. This

statute provides that a non-subscriber negligence cause of action may not be waived by an employee before the employee's injury and any pre-injury agreement by an employee to waive a cause of action is void and unenforceable. TEX.LAB.CODE ANN. § 406.033(e) (West 2015). Section 406.033(a) does not render the Arbitration Agreement void because it is not a pre-injury waiver of her non-subscriber negligence cause of action. See In re Odyssey Healthcare, Inc., 310 S.W.3d 419, 423 (Tex. 2010); In re Golden Peanut Co., LLC, 298 S.W.3d 629, 631 (Tex. 2009). Accordingly, to the extent the trial court denied ReadyOne's motion to compel arbitration on this basis, it erred.

Lopez also asserted that the Arbitration Agreement is unenforceable under Section 171.002 of the Texas Civil Practices and Remedies Code because her attorney did not sign it. This statute provides that Chapter 171 (the Texas General Arbitration Act) does not apply to a claim for personal injury unless the arbitration agreement is signed by each party and each party's attorney. TEX.CIV.PRAC.&REM.CODE ANN. § 171.002(a)(3), (c) (West 2011). Section of the FAA preempts state law that could otherwise render arbitration agreements unenforceable in a contract involving interstate commerce. 9 U.S.C.A. § 2 (West 2009); Southland Corp. v. Keating, 465 U.S. 1, 10-11, 104 S.Ct. 852, 858, 79 L.Ed. 2d 1 (1984). This preemption has been applied to Section 171.002 of the Civil Practices and Remedies Code. See In re Olsham Foundation Repair Company, LLC, 328 S.W.3d 883, 890 (Tex. 2010) (holding that the FAA preempts the provisions of Section 171.002 that would otherwise render an arbitration agreement

unenforceable). Therefore, to the extent the trial court denied the motion on this basis, it erred in doing so.

Finally, Lopez argued in the trial court that compliance with the FAA violates the Tenth Amendment by interfering with the Workers' Compensation Act. The Texas Supreme Court has decided this contention adversely to Lopez. See In re Odyssey Healthcare, Inc., 310 S.W.3d at 423-24 (holding that the FAA does not violate the Tenth Amendment by encroaching on a state power to enact and regulate its own workers' compensation system). Thus, to the extent the trial court denied the motion on this basis, it erred.

ReadyOne carried its burden of establishing the existence of an agreement to arbitrate the claims raised by Lopez in her suit. Lopez did not establish any valid defenses to enforcement of the Arbitration Agreement. Because the trial court erred by denying ReadyOne's motion to compel arbitration, we sustain Issue One. We reverse and remand the cause to the trial court with instructions to enter an order granting ReadyOne's motion to compel arbitration.

April 25, 2018

ANN CRAWFORD McCLURE, Chief Justice

Before McClure, C.J., Rodriguez, J., and Larsen, J. (Senior Judge), sitting by assignment

Rodriguez, J., Dissent

551 S.W.3d 305(Tex. App.–El Paso 2018, pet. denied)

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Appellee.

DISSENTING OPINION

I, respectfully, dissent. I find the arbitration agreement is unenforceable based on the affirmative defense of procedural unconscionability.

[Dissenting Opinion's discussion of state law issue not pertinent to the petition]

Lopez states she was not given time to review the documents. Further, she was told "'that the documents are for benefits if you get hurt on the job, just sign them' or words to that effect. I was misled into believing that the documents were not important and were just routine documents that the company needed to complete their paperwork on my

employment and so I could receive benefits if I was hurt on the job. I did not know that what I was signing was an arbitration agreement or anything other than papers required to be signed for my job." This is sufficient evidence to support a legal conclusion that Lopez was affirmatively misled into signing the arbitration agreement. We must uphold the trial court's decision on an applicable legal theory and she clearly acted in accordance with guiding rules or principles. The trial court did not abuse her discretion in refusing to compel arbitration, because her conclusion is not arbitrary or unreasonable.

April 25, 2018

YVONNE T. RODRIGUEZ, Justice

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O R D E R

The Appellee's motion for rehearing, having been duly considered, is denied. Accordingly, it is ORDERED that said motion be and it is hereby denied.

IT IS SO ORDERED THIS 31ST DAY OF JULY, 2018.

ANN CRAWFORD McCLURE, Chief Justice

Before McClure, C.J., Rodriguez, J., and Larsen, J. (Senior Judge), sitting by assignment
Rodriguez, J., Dissent

NO. 18-0887

SUPREME COURT OF TEXAS

RE: Case No. 18-0887 Date: 10/26/2018

COA #: 08-15-00157-CV TC#: 2014-DCV1252

STYLE: LOPEZ v. READYONE INDUSTRIES, INC.

Today the Supreme Court of Texas denied the petition for review in the above-referenced case.

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