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**IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO**

FORCE INDOOR SPORTS LLC, ET AL
Plaintiff

Case No: CV-15-849957

Judge: JOHN P O'DONNELL

DOMESTIC LINEN SUPPLY COMPANY, INC.
Defendant

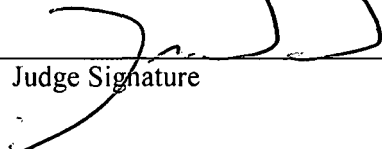
JOURNAL ENTRY

96 DISP.OTHER - FINAL

JUDGMENT ENTRY AFTER AN EVIDENTIARY HEARING ON THE UNCONSCIONABILITY OF THE PARTIES' ARBITRATION AGREEMENT.

O.S.J.

COURT COST ASSESSED TO THE PLAINTIFF(S).
PURSUANT TO CIV.R. 58(B), THE CLERK OF COURTS IS DIRECTED TO SERVE THIS JUDGMENT IN A MANNER
PRESCRIBED BY CIV.R. 5(B). THE CLERK MUST INDICATE ON THE DOCKET THE NAMES AND ADDRESSES OF ALL
PARTIES, THE METHOD OF SERVICE, AND THE COSTS ASSOCIATED WITH THIS SERVICE



Judge Signature Date 10/15/2018

FILED
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CLERK OF COURTS
CUYAHOGA COUNTY

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

FORCE INDOOR SPORTS, LLC <i>et al.</i>)	CASE NO. CV 15 849957
)	
Plaintiffs,)	JUDGE JOHN P. O'DONNELL
)	
vs.)	<u>JUDGMENT ENTRY AFTER</u>
)	<u>AN EVIDENTIARY HEARING ON</u>
DOMESTIC LINEN SUPPLY)	<u>THE UNCONSCIONABILITY OF</u>
CO., INC.)	<u>THE PARTIES' ARBITRATION</u>
)	<u>AGREEMENT</u>
Defendant.)	
)	
)	
)	

John P. O'Donnell, J.:

On November 28, 2012, the parties entered into four identical contracts (one for each plaintiff entity) for the defendant to provide the plaintiff with toiletries, paper goods, soap and mats for the defendants' four indoor sports facilities. After the plaintiffs allegedly breached the agreements, the defendant Domestic Linen Supply Company, Inc. filed a demand for arbitration on August 5, 2015. The plaintiffs responded by filing this lawsuit two weeks later. The complaint asserts a cause of action for breach of contract and a claim for a declaratory judgment. For the declaratory judgment cause of action, the plaintiffs seek a declaration that the arbitration agreement in the contract is unconscionable and therefore unenforceable. For its part, the defendant asked to stay this lawsuit and compel arbitration. That motion was denied at least until the unconscionability of the arbitration agreement is decided. A hearing was held on that issue on October 3, 2018, and this judgment follows.

The parties and their contract¹

Each plaintiff entity – Force Indoor Sports LLC, Force Indoor Sports Fairlawn LLC, Force Indoor Sports Richmond LLC, and Force Indoor Sports Rocky River LLC – operates an indoor sports facility in Northeast Ohio. The buildings require floor mats and bathroom supplies. Greg Rodenfels is the manager of the plaintiffs' facilities. On November 28, 2012, he signed four contracts with Domestic Linen Supply Co., Inc. to provide the mats, soap and paper goods.

The contracts are on identical preprinted forms provided by the defendant. The only differences among the contracts are the Force location covered by the agreement and the details on the particular items and quantities required at each location. The contract has two sides, both of which are stuffed with words. The front side contains the discretionary terms – item description, price, quantity, etc. – and includes, in bold print at the top, this sentence: **THE PARTIES HEREBY AGREE UPON THE TERMS SET FORTH BELOW AND UPON THE REVERSE SIDE HEREOF.** At the bottom of the front side, just above the line for the customer's signature, the following legend appears in bold print: **Customer also warrants that he has read the entire contract, front and back[.]** That language notwithstanding, Rodenfels testified at the hearing that he did not read each side before signing.

The arbitration agreement

The reverse side of the contract has 17 paragraphs, numbered 5 through 21. Four of those paragraphs are printed in bold, but the arbitration provision, at paragraph 15, is not. That paragraph takes up nine of the 72 total lines of text and reads as follows:

In the event of any controversy or claim in excess of \$10,000.00 arising out of or

¹ Since the terms of the four contracts which are applicable to the current dispute are identical, I will refer in this decision to the four contracts together as one contract.

relating to this agreement, including but not limited to questions regarding the authority of the persons who have executed this agreement and enforcement of any guarantee that is related to this agreement, the question, controversy or dispute shall be submitted to and settled by arbitration to be held in the city closest to the city in which the branch office of the Company which serves the Customer is located. Said arbitration shall be held in accordance with the then prevailing commercial arbitration rules of the American Arbitration Association except any rules which require the parties to use the American Arbitration Association as their sole Arbitration Administrator. Judgement (*sic*) upon and (*sic*) award rendered by the Arbitrator may be entered in any court having jurisdiction thereof. The filing party may use either court or arbitration where the claim is less than \$10,000.00. Venue for any court proceeding shall be in the county of the Company's branch office servicing the Customer. The judge or arbitrator shall include as part of the award all costs including reasonable attorney fees and arbitration fees of the non-breaching party where it is determined that one of the parties has breached the agreement.

The plaintiffs' arguments

The plaintiffs contend that numerous circumstances render the arbitration agreement unconscionable. These include: Domestic Linen drafted the contract with no input from Force; Domestic Linen imposed arbitration agreements on all of its customers; the arbitration agreement is inconspicuous on the reverse side of the form; the agreement does not include the language "you lose your right to go to court"; arbitration costs more than adjudication through court and the contract doesn't set forth the exact costs; arbitration is limited to the city where Domestic Linen is located and that could change at any time; the contract does not include the rules of the arbitration; the prevailing party in arbitration may be awarded attorney's fees; the "loser pays" provision is unfair; and the arbitration cannot be appealed.

Discussion

The arbitration agreement here is, in effect, a contract within a contract, and it is subject to being revoked on any of the grounds ordinarily available to nullify a contract. R.C. 2711.01(A). One of those grounds is that the contract is unconscionable. *Taylor Bldg. Corp. of Am. v. Benfield*,

117 Ohio St. 3d 352, 2008-Ohio-938, ¶33. A definition of unconscionability is often elusive. *Polster v. Park View Fed. of Savings & Loan Assoc.*, Cuyahoga App. No. 49103, 1985 Ohio App. LEXIS 8196, *7-8 (June 27, 1985). The United States Supreme Court has defined an unconscionable contract as one such as no man in his senses and not under delusion would make on the one hand, and as no honest and fair man would accept on the other. *Id.*, citation omitted. In Ohio, unconscionability has been described as onerous, oppressive or one-sided. *Id.*

Unconscionability includes both an absence of meaningful choice on the part of one of the parties together with contract terms which are unreasonably favorable to the other party. *Gaither v. Wall & Assocs.*, 2d Dist. No. 26959, 2017-Ohio-765, ¶18. As a result, the party asserting unconscionability of a contract bears the burden of proving that the agreement is both procedurally and substantively unconscionable. *Id.*

Procedural unconscionability considers the circumstances surrounding the contracting parties' bargaining, such as the parties' age, education, intelligence, business acumen and experience, who drafted the contract, whether alterations in the printed terms were possible, and whether there were alternative sources of supply for the goods in question. *Taylor Bldg. Corp.*, supra, at ¶ 44. Factors which may contribute to a finding of unconscionability in the bargaining process [i.e., procedural unconscionability] include the following: belief by the stronger party that there is no reasonable probability that the weaker party will fully perform the contract; knowledge of the stronger party that the weaker party will be unable to receive substantial benefits from the contract; knowledge of the stronger party that the weaker party is unable reasonably to protect his interests by reason of physical or mental infirmities, ignorance, illiteracy or inability to understand the language of the agreement, or similar factors. *Id.*

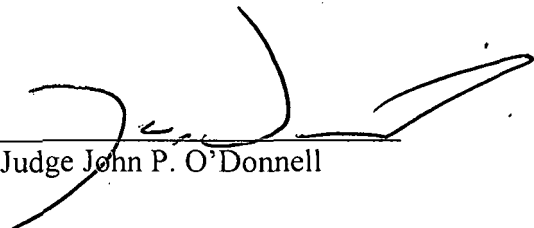
Both parties to the contract are commercial entities. Rodenfels testified that it was his job as Force's general manager to enter into contracts, and that he had executed contracts in the past such as facility leases, concessionaire agreements and beverage vendor contracts. This contract was worked out beginning with meetings between Rodenfels and Domestic Linen's sales teams at each of the four Force locations, where a Domestic Linen representative assessed the supply needs of each building. After those meetings the form contracts were mailed to Rodenfels for his signature. Nobody was breathing down his neck for a signature. He noted that he chose not to have an attorney review the Domestic Linen contract because it's a "standard contract" and "I fill out a lot of these." There was no urgency to enter into a supplier contract: Force already had a supplier of similar goods and Rodenfels was under the impression that one of Force's owners wanted him to talk to Domestic Linen because the Force owner and an owner of Domestic Linen were acquaintances.

None of these circumstances even hint at, much less demonstrate, procedural unconscionability. As just one example, even though this is a form contract, there is no evidence that Domestic Linen was not open to negotiating some of the preprinted terms, including the arbitration agreement. Since there was no procedural unconscionability it is not necessary to examine the record evidence for proof that the arbitration provision of the contract is substantively unconscionable, i.e. commercially unreasonable. Still, Force's primary argument why the arbitration agreement is substantively unconscionable is that it requires the loser in arbitration to pay the other side's attorney's fees, so it is worth noting, in passing, that "loser pays" provisions in non-consumer contracts in Ohio are not considered *per se* unconscionable.

Based upon the evidence of record, and for the reasons given here, judgment is entered on Force's claim for a declaratory judgment as follows: the parties' arbitration agreement is neither

procedurally nor substantively unconscionable and is therefore enforceable. Accordingly, Domestic Linen's motion to stay proceedings and compel arbitration is granted. This case will be placed upon the inactive docket and only returned to the active docket upon the affirmative request of one or both parties as warranted after an arbitration decision.

IT IS SO ORDERED:



Judge John P. O'Donnell

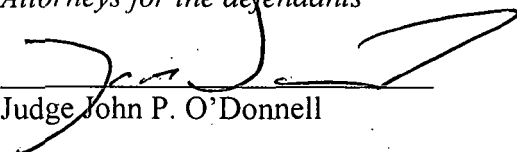
October 15, 2018

SERVICE

A copy of this judgment entry was sent by email on October 15, 2018, to the following:

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Judge John P. O'Donnell