

STATE OF MAINE  
CUMBERLAND, ss.

SUPERIOR COURT  
CIVIL ACTION  
DOCKET NO: CV-10-645  
RAC - CUM - 4/28/2011

CAROLINE IRWIN and  
ELIZABETH OSMER,

Plaintiffs,

v.

PINETREE RETIREMENT  
PLANNING, P.A.,

Defendant

**ORDER**

STATE OF MAINE  
Cumberland, SS. Clerk's Office  
APR 28 2011  
RECEIVED

Plaintiffs Caroline Irwin and Elizabeth Osmer worked as insurance agents for defendant Pinetree Retirement Planning, P.A., pursuant to identical Agency Agreements governing the terms of the commercial relationship. The plaintiffs filed this action against Pinetree seeking a declaration that the written Agency Agreements are unconscionable, illegal, and void or voidable, and that the plaintiffs were employees rather than independent contractors as specified in those Agreements. They also allege violations of the Title 26, section 629 prohibition against unfair employment agreements, various wage violations, and fraud.

Defendant Pinetree now moves to stay these proceedings and compel arbitration pursuant to the clause contained in the Agency Agreements. Ms. Irwin and Ms. Osmer oppose arbitration on a number of grounds. First, they claim that the Agreements are unenforceable so the arbitration clause should have no legal effect. Similarly, they contend that they were fraudulently induced to enter the Agreements so they should not be compelled to arbitrate. They argue

that their claims under Maine's employment law should be substantively exempt from arbitration, and that the plain language of the arbitration clause does not reach their claims because the claims do not "arise out of or relate to" the Agreements.

Maine's Uniform Arbitration Act instructs:

[A] provision in a written contract to submit to arbitration any controversy thereafter arising between the parties is valid, enforceable and irrevocable, save upon such grounds as exist at law or in equity for the revocation of any contract. This chapter also applies to arbitration agreements between employers and employees . . . unless otherwise provided in the agreement.

14 M.R.S. § 5927 (2010).

Whether a contract or agreement exists is a separate question from whether it is valid and enforceable. *Sleeper Farms v. Agway, Inc.*, 211 F. Supp. 2d 197, 201 (D. Me. 2002); see *Prima Paint Corp. v. Flood & Conklin Mfg. Co.*, 388 U.S. 395, 403–04 (1967) (claim of fraud in the inducement of contract generally does not necessarily invalidate an arbitration clause where the clause itself was not procured by fraud). The Agency Agreements at issue in this case indisputably did exist, so "Maine's 'broad presumption favoring substantive arbitrability governs further consideration of the action.'" *Macomber v. MacQuinn-Tweedie*, 2003 ME 121, ¶ 13, 834 A.2d 131, 136 (quoting *V.I.P., Inc. v. First Tree Dev., LLC*, 2001 ME 73, ¶ 4, 770 A.2d 95, 96).

The court has not been directed to any law or authority indicating that wage and employment actions are not arbitrable, and the plain language of section 5927 strongly indicates that the plaintiffs' claims are subject to the Arbitration Act. While Maine does have "a broad presumption in favor of arbitration," however, it is also a fundamental principle of contract law that "ambiguities in a contract are to be interpreted against the drafter." *Barrett v.*

*McDonald Investments, Inc.*, 2005 ME 43, ¶ 15, 870 A.2d 146, 149. The Agreements' arbitration clause provides:

Any dispute or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by binding arbitration conducted in Auburn, Maine, in accordance with the rules of the American Arbitration Association . . . .

(Compl. Ex. A § 25.)

The substance of the plaintiffs' complaint is that they were deceived about the precise scope and meaning of certain clauses in the Agreements, that the Agreements are unenforceable, that contrary to the terms of the Agreements the plaintiffs were employees and not independent contractors, and that they are therefore entitled to recover unpaid wages and overtime. While the plaintiffs do not allege breach of contract, it would be disingenuous to say that their claims do not relate to the Agency Agreements.

The Agreements purportedly governed the working relationship between the plaintiffs and the defendant. The question of whether the Agreements are valid and controlling, or whether they are unenforceable and the laws governing employment relationships generally should apply, is central to the plaintiffs' case. The plaintiffs' claims are inextricably related to the substance of the Agreement and plainly fall within the ambit of the arbitration clause. *See Barrett*, 2005 ME 43, ¶ 21, 870 A.2d at 151 (where arbitration clause was contained in contract of adhesion, clause's broad language did not encompass claims unrelated to the substance of the contract).

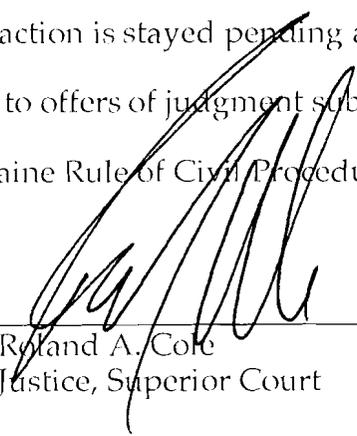
Finally, the plaintiffs' claim for fraud in the inducement of the Agreement as a whole does not prevent the action from being submitted to an arbitrator. The United States Supreme Court squarely addressed this question under the analogous Federal Arbitration Act in 1967 by requiring "that when a contract

contains a mandatory arbitration clause, a claim of fraud in the inducement of the contract must be resolved by an arbitrator, not the courts." *Barrett*, 2005 ME 43, ¶ 26, 870 A.2d at 152 (Alexander, J., concurring) (citing *Prima Paint Corp.*, 388 U.S. at 403-04); see *Maxwell v. Greentree Fin. Servicing Corp.*, 1997 Me. Super. LEXIS 162 (May 19, 1997) (Brennan, J.); *Murphy v. Miley*, 1992 Me. Super. LEXIS 47 (Apr. 8, 1993) (Fritzsche, J.); *Sleeper Farms*, 211 F. Supp. 2d 197, 201 (D. Me. 2002). The court notes that this is not a case in which the arbitration clause would divert the plaintiffs' claims into a tribunal that is controlled by the defendant or is otherwise inherently suspect. See *Barrett*, 2005 ME 43, ¶ 3, 870 A.2d at 148 (arbitration to be conducted by defendant's affiliate organization); *id.* ¶ 30, 870 A.2d at 154 (Alexander, J., concurring) (discussing the danger of limiting arbitration to internal industry forums); *Hooters of America, Inc. v. Phillips*, 173 F.3d 933, 938-40 (4th Cir. 1999) (arbitration clause unenforceable where employer controlled forum and process).

**The entry is:**

The defendant's motion to compel arbitration pursuant to Section 25 of the Agency Agreements is granted. This action is stayed pending arbitration, except that the parties may file and respond to offers of judgment submitted within ten (10) days of this order pursuant to Maine Rule of Civil Procedure 68.

DATE: April 28, 2011

  
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Roland A. Cole  
Justice, Superior Court

CAROLINE IRWIN ET AL VS PINETREE RETIREMENT PLANNING PA

UTN:AOCSSr -2010-0133246

CASE #:PORSC-CV-2010-00645

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<u>F</u>	<u>PINETREE RETIREMENT PLANNING PA</u>	<u>DEF</u>	<u>RTND</u>	<u>02/28/2011</u>