IN THE CIRCUIT COURT OF ST. LOUIS COUNTY
STATE OF MISSOURI

SC, Plaintiff, vs. UNIFIRST CORPORATION and MS Defendants.	)	Case No. Division No. 17

ORDER DENYING MOTION TO COMPEL ARBITRATION

On November 8, 2017, the Court heard oral argument on Defendants' Motion to Compel Arbitration and Stay Proceedings. Based on the arguments of counsel and the briefing and proposed orders submitted by the parties, the Court hereby DENIES Defendants' Motion. This matter may proceed to trial by jury.

FINDINGS OF FACT

1. Plaintiff SC is a former employee of Defendant UniFirst Corporation. His supervisor was Defendant MS. When SC started working for UniFirst, he signed an Employment Agreement and Restrictive Covenant ("Employment Agreement"). A representative of UniFirst also signed the agreement.

2. The Employment Agreement provided that Plaintiff was hired for a two-week period that automatically renewed every two (2) weeks, unless terminated by either party, for any reason, upon two (2) weeks' notice.

3. The short duration Employment Agreement contained an Arbitration Clause that provides, in relevant part:

> 9. Arbitration of Disputes
>
> Any controversy or claim arising out of or relating to this Agreement or the breach therefore or otherwise arising out of the

EMPLOYEE's employment or the termination of that employment (including, without limitation, any claims of unlawful employment discrimination whether based on age or otherwise) shall, to the fullest extent permitted by law, be settled by arbitration in any forum and form agreed upon by the parties or, in the absence of such an agreement, under the auspices of the American Arbitration Association ("AAA") in the city of the AAA office nearest the location of the EMPLOYEE's most recent employment with the COMPANY, in accordance with the Employment Dispute Resolution Rules of the AAA, including, but not limited to, the rules and procedures applicable to the payment and selection of arbitrators. Judgment upon the award rendered by the arbitrator may be entered by any court having jurisdiction thereof. This Section 9 shall be specifically enforceable. . . .

10. Injunctive Relief

The EMPLOYEE agrees that it would be difficult to measure any damages caused to the COMPANY which might result from any breach by the EMPLOYEE of the promises set forth in Sections 5, 6, and 7 [restrictive covenants], and that in any event money damages would be an inadequate remedy for any such breach. Accordingly, subject to Section 9 of this Agreement, the EMPLOYEE agrees that if the EMPLOYEE breaches, or proposes to breach, any portion of this Agreement, the COMPANY shall be entitled, in addition to all other remedies that it may have, to an injunction or other appropriate equitable relief to restrain any such breach without showing or proving any actual Damages to the COMPANY.

11. Miscellaneous

(a) This Agreement shall be governed by and construed under the laws of the Commonwealth of Massachusetts.

* * *

4. SC's employment with UniFirst was terminated in July 2015. He filed this lawsuit on June 21, 2017. Defendants moved to compel arbitration and stay proceedings pursuant to the Employment Agreement.

NO VALID LEGAL CONSIDERATION FOR ARBITRATION CLAUSE

1. In *Finger v. Brewing Co.*, 13 Mo. App. 310 (1883), the court acknowledged that "[a]n indefinite hiring, at so much per day, per month, or per year, is a hiring at will, and may be

terminated by either party at any time." Id. at 311. Defendant contends that it gave Plaintiff a contract for employment in consideration for him waiving his constitutional right to a jury trial. U.S. Const. Amend. 6; Mo. Const. art. 1, § 18(a).... Yet it does not even mention the fact that such promise of employment was for an ephemeral 2 week period. It appears to this Court that the only reason Defendant even presented the Plaintiff with a document entitled "Employment Agreement" was to attempt to deprive the Plaintiff of his constitutionally guaranteed right to a jury trial in exchange for a promise of 2 weeks employment. The opinion of *Jimenez v. Cintas Corporation, et al.*, 475 S.W. 3d 679 (E.D. Mo. 2015), instructs that an that an at-will employment position is not consideration to support any arbitration agreement. Id. at 684. Moreover, "***Missouri contract law applies to determine whether the parties have entered a valid agreement to arbitrate***." *State ex rel. Vincent v. Schneider*, 194 S.W.3d 853, 856 (Mo. banc 2006) (citing *State ex rel. PaineWebber, Inc. v. Voorhees*, 891 S.W.2d 126, 128 (Mo. banc 1995))[Emphasis Added].

2. In the case at bar, this court concludes that the employment of Plaintiff by Defendant created an at-will employment. Under Missouri law, such employment is not valid consideration to create "a valid agreement to arbitrate." Id. Accordingly, the Motion to Compel Arbitration is denied.

THE UNENFORCEABLE EMPLOYMENT AGREEMENT LACKS MUTUALITY

In *Frye v. Speedway Chevrolet Cadillac*, 321 S.W. 3d 429, 443 (Mo. App. W.D. 2010), the court concluded that a contractual obligation is illusory where one party reserves for itself a right that it denies to the other party. In Section 10, Defendant entitles itself to **"an injunction or other appropriate equitable relief to restrain any such breach without showing or**

proving any actual Damages to the COMPANY." Such broad grant of Injunctive Relief is unilateral in that only Defendant gets the benefit of such whether sought pursuant to arbitration or judicial equitable relief. This is the antonym of mutuality and constitutes another basis to deny arbitration.

WHEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED that the Defendants' Motion to Compel Arbitration and Stay the Proceedings is DENIED.

SO ORDERED.

Hon. Joseph Walsh, Circuit Judge, Div. 17 Date