

Old Precedent is Alive and Kicking

This case which is a Fair Labor Standards Act case cites to the author's seminal victory in *Par-Knit Mills, Inc. vs. Stockbridge Fabrics Co., Ltd.*, 636 F.2d 51 (3rd Cir. 1980). This case also has implications for Pennsylvania's new Arbitration Act.

Plaintiff asserted a claim for violation of FLSA in violation of Pennsylvania law and of violation of Pennsylvania Wage Payment and Collection Law as well. In response, Defendants filed a Motion to compel arbitration and stay proceedings. The court denied Defendant's Motion to Compel Arbitration without prejudice to renew the motion as a summary judgment after discovery to see whether there is existence of valid agreement to arbitrate.

Whether there is an agreement to arbitrate in the first place is oftentimes forgotten. In analyzing motions to compel, the *Fox* court noted the position of the Third Circuit:

In *Guidotti vs. Legal Helpers Debt Resolution, L.L.C.*, 716 F.3d 764 (3rd Cir. 2013), the Third Circuit clarified the standards to be applied to motions to compel arbitration, specifically explaining the circumstances when District Courts should apply the standard for a motion to dismiss pursuant to *Fed. R. Civ. P. 12(b)(6)* and when the District Courts should apply the summary judgment standard of *Fed. R. Civ. P. 56*. The Court began by acknowledging the long-standing rule that arbitration is a matter of contract between the parties and that "a judicial mandate to arbitrate must be predicated upon the parties' consent." *Guidotti*, 716 F.3d at 771 (citing *Par-Knit Mills, Inc. vs. Stockbridge Fabrics Co. Ltd.*, 636 F.2d 51, 54 (3rd Cir. 1980)). Further, the Circuit Court noted that the *Federal Arbitration Act*, 9 U.S.C. §1, et. seq., while providing for the enforcement of a contract to arbitrate, "requires that a court shall be satisfied that the making of the agreement for arbitration...is not an issue before it orders arbitration." *Id* (internal quotation marks omitted). The Court also noted that, in accordance with *Par-Knit Mills*, "the party who is contesting the making of the agreement has the right to have the issues presented to a jury." *Id*.

Therefore, *Par-Knit Mills* is obviously alive and well. The intent of the parties as to whether there is to be arbitration must control. Especially in the consumer context, this will be very difficult to prove on the part of the corporate entity asserting arbitration.

The take away points are as follows:

- Question is whether there is arbitration under the Fair Labor Standards Act.
- Court relies upon the 1980 decision in *Par-Knit Mills, Inc. v. Stockbridge Fabrics Co., Ltd.*, 636 F.2d 51, 54 (3rd Cir. 1980).
- In accordance with *Par-Knit Mills*, "The party who is contesting the making of the agreement has the right to have the issue presented to a jury."

My client in *Par-Knit Mills* is now deceased, but Larry Pollack, who was a client I represented for many years at *Par-Knit Mills* and other companies. Never did I even once find his representations to me wanting. He was a truly lovely person and his business acumen and ethics will be sorely missed.

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