

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

MBNA AMERICA BANK, N.A.,	:	APPEAL NO. C-060937
	:	TRIAL NO. A-0603758
Plaintiff-Appellant,	:	
	:	<i>DECISION.</i>
vs.	:	
MOSES HARPER, a/k/a MOSES A.	:	
HARPER,	:	
	:	
Defendant-Appellee.	:	

Civil Appeal From: Hamilton County Court of Common Pleas

Judgment Appealed From Is: Reversed and Cause Remanded

Date of Judgment Entry on Appeal: September 28, 2007

Javitch, Block & Rathbone, LLP, William M. McCann, and James Oh, for Plaintiff-Appellant,

Moses Harper, pro se.

Please note: This case has been removed from the accelerated calendar.

RALPH WINKLER, Judge.

{¶1} On April 25, 2006, plaintiff-appellant MBNA America Bank, N.A., (“MBNA”) filed an application pursuant to R.C. 2711.09 to confirm an arbitration award for \$6071.65 on a credit-card debt owed to it by defendant-appellee Moses Harper. Attached to MBNA’s application were a copy of the January 6, 2006, arbitration award and a copy of a generic credit-card agreement. The agreement was not signed. Harper did not appear. No motion to vacate, modify, or correct the award was filed on his behalf. The magistrate denied the application to confirm the award and dismissed the application without prejudice. The magistrate determined that R.C. 2711.14(A), which states that a copy of the agreement to arbitrate must be filed with an application to confirm an arbitration award, required a signed agreement. The magistrate stated in his decision that, in the absence of an agreement to arbitrate signed by the debtor, he could not determine whether the arbitrator had had “jurisdiction” to make an award. Because MBNA had not filed any document signed by Harper, the magistrate ruled that R.C. 2711.14(A) had not been satisfied. The magistrate stated that MBNA was required to file some document containing Harper’s signature, even if it was the signed credit-card application.

{¶2} MBNA filed objections. The trial court overruled the objections and adopted the magistrate’s decision. MBNA has appealed. Harper has not filed a brief or appeared to argue in this court.

{¶3} MBNA’s sole assignment of error alleges that the trial court erred in dismissing its application to confirm the arbitration award.

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{¶4} R.C. 2711.09 states in part, “At any time within one year after an award in an arbitration proceeding is made, any party to the arbitration may apply to the court of common pleas for an order confirming the award. Thereupon the court shall grant such an order and enter judgment thereon, unless the award is vacated, modified, or corrected as prescribed in sections 2711.10 and 2711.11 of the Revised Code.”

{¶5} R.C. 2711.14(A) requires that a copy of the arbitration agreement be filed with an application to confirm an arbitration award. The question in this case is whether the generic credit-card agreement filed by MBNA satisfied that requirement. The trial court ruled that the requirement was not satisfied because the credit-card agreement did not contain Harper’s signature. Therefore, the court concluded, the application had to be dismissed.

{¶6} The jurisdiction of a court to review an arbitration award is narrow, limited, and restricted by statute.¹ “[W]hen a motion is made pursuant to R.C. 2711.09 to confirm an arbitration award, the court must grant the motion * * * unless a timely motion for modification or vacation has been made and cause to modify or vacate is shown.”²

{¶7} In *MBNA America Bank, N.A. v. Cooper*,³ MBNA had filed an application to confirm an arbitration award and had attached the generic credit-card agreement. The Third Appellate District held that the trial court had no jurisdiction to vacate the arbitration award based on the lack of a signed agreement, where the debtors had not filed a proper motion under R.C. 2711.13 to vacate the award.

¹ See *Warren Edn. Assn. v. Warren City Bd. of Edn.* (1985), 18 Ohio St.3d 170, 480 N.E.2d 456.

² See *id.* at syllabus.

³ 3rd Dist. No. 17-05-33, 2006-Ohio-2793.

{¶8} The trial court in *NCO Portfolio Management, Inc. v. McGill*⁴ denied NCO Portfolio Management’s (“NCO”) application for confirmation of an arbitration award because a generic, unsigned copy of the credit-card agreement was attached. NCO’s counsel had submitted an affidavit stating that the filed agreement was a “true, authentic and accurate copy” of the arbitration agreement between the parties. In making the award, the arbitrator had expressly determined that the parties had entered into an agreement for binding arbitration. Further, the agreement stated that its applicability and validity were to be resolved through arbitration.

{¶9} The Second Appellate District reversed the trial court’s decision, holding that because NCO had attached the award and the agreement as required by R.C. 2711.14, the trial court had no discretion to deny the application to confirm the award. The appellate court held that NCO was not required to submit any additional evidence to establish that the parties had entered into an arbitration agreement, “particularly in the absence of any challenge by McGill as to the authenticity of the attached document.”⁵

{¶10} The Ninth Appellate District reversed the decision of a trial court that had dismissed an application to confirm an arbitration award in *NCO Portfolio Management, Inc., Assignee of MBNA v. Lewis*.⁶ NCO had filed a motion to confirm the arbitration award and had attached the award and a photocopy of “[t]hat portion of the card-member agreement governing terms and conditions constituting the arbitration agreement[.]”⁷ The attached agreement was unsigned and undated. NCO’s counsel had filed an affidavit asserting that the agreement was a “true,

⁴ 2nd Dist. No. 21229, 2006-Ohio-3758.

⁵ See id. at ¶15.

⁶ 9th Dist. No. 06CA009001, 2007-Ohio-3965.

⁷ See id. at ¶10.

authentic, and accurate” copy of the “governing arbitration agreement.” Further, the arbitration award stated that the arbitrator had determined that the parties had entered an agreement for binding arbitration. The arbitration clause attached to the application provided that the applicability and validity of the agreement was to be resolved by binding arbitration.

{¶11} The Ninth Appellate District held that the trial court had erred in concluding that NCO had failed to establish that the parties had entered into an arbitration agreement. Further, the appellate court held that the trial court did not have discretion to deny the application to confirm the award because NCO had attached the award and the arbitration agreement as required by R.C. 2711.14.⁸

{¶12} The arbitration award filed by MBNA in this case stated that the arbitrator had determined that the parties had entered into an agreement for binding arbitration. The card-member agreement attached by MBNA stated that it governed the terms and conditions constituting the arbitration agreement. The arbitration clause in the agreement attached to MBNA’s application for confirmation of the award provided that the applicability and validity of the agreement were to be resolved by arbitration. Harper did not file a motion to vacate, correct, or modify the award. Under these circumstances, MBNA was not required to submit any additional evidence of the arbitration agreement.⁹ The assignment of error is sustained.

{¶13} The judgment of the trial court is reversed and the cause is remanded with instructions to the trial court to grant MBNA’s application for confirmation of

⁸ See *id.*

⁹ See *MBNA America Bank, N.A. v. Cooper*, *supra*; *NCO Portfolio Management, Inc. v. McGill*, *supra*; *NCO Portfolio Management, Inc., Assignee of MBNA v. Lewis*, *supra*.

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its arbitration award, and for further proceedings consistent with law and this decision.

Judgment reversed and cause remanded.

PAINTER, P.J., and HILDEBRANDT, J., concur.

RALPH WINKLER, retired, from the First Appellate District, sitting by assignment.

Please Note:

The court has recorded its own entry on the date of the release of this decision.