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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
NORTHEASTERN DIVISION

DALTON JOHNSON *
and ALABAMA WOMEN'S CENTER *
for REPRODUCTIVE *
ALTERNATIVES, L.L.C., *
Plaintiffs, * 14-cv-1358IPJ
vs. * August 27, 2014
* Florence, Alabama
* 9:56 a.m.
DIRECTORY ASSISTANTS, INC., *
Defendant. *

TRANSCRIPT OF MOTION HEARING
BEFORE THE HONORABLE INGE P. JOHNSON
SENIOR UNITED STATES DISTRICT JUDGE

FOR THE PLAINTIFFS:

MS. KIMBERLY ADINA FORD, ESQ.
FORDUMAS, LLC
P O Box 18054
Huntsville, AL 35804
256-886-6240

FOR THE DEFENDANT:

MR. EDWARD THOMAS ROWE, ESQ.
McDOWELL KNIGHT
ROEDDER & SLEDGE
11 North Water Street, Ste 13290
Mobile, AL 36602
251-432-5300

P R O C E E D I N G S

THE COURT: Good morning. Have a seat.

Let the record show that this is CV-14-1358, Dalton Johnson, doing business as Alabama Women's Center, L.L.C. also known as Alabama Women's Center for Reproductive Alternatives, L.L.C., versus Directory Assistants, Inc.

The plaintiff -- are you Mr. Johnson?

MR. JOHNSON: Yes, ma'am, I am.

THE COURT: Are you Dr. Johnson?

MR. JOHNSON: No. Just Mr. Johnson.

THE COURT: Mr. Johnson is here in person, represented by Kimberly Ford.

And defendants are represented by Edward Thomas Rowe.

Good morning.

And this is a hearing on the defendant's motion to compel arbitration. And the reason I set it for a hearing is, first of all, I want to find out who the plaintiff is. Because the contract to arbitrate or the contract between the plaintiff and defendant or whichever plaintiff --

1 I'm not sure who it is -- says Alabama Women's
2 Center, L.L.C. by Dalton Johnson. And Alabama
3 Women's Center, L.L.C. is not a legal entity. It
4 is not registered with the Secretary of State.
09:57:50 5 And there is no such entity.

6 MS. FORD: Correct, Your Honor.
7 Mr. Johnson signed in that capacity for, one, to
8 limit space -- limited space on the contract
9 itself. The company's name is The Alabama
09:58:04 10 Women's Center for Reproductive Alternatives,
11 L.L.C.

12 Even on his city business license, they
13 shorten it to Alabama Women's Center, L.L.C.

14 THE COURT: I know. But I need to
09:58:16 15 know who is the plaintiff in this case.

16 MS. FORD: Yes. The plaintiffs in
17 this case are Dalton Johnson and The Alabama
18 Women's Center for Reproductive Alternatives,
19 L.L.C.

09:58:22 20 THE COURT: Why is Dalton Johnson
21 a plaintiff?

22 MS. FORD: Because in the
23 arbitration action with DAI, they named
24 Mr. Johnson individually as being liable.

09:58:34 25 THE COURT: Okay. In the original

1 case?

2 MS. FORD: Correct.

3 THE COURT: Where they asked for
4 arbitration against Alabama Women's Center for
09:58:42 5 Reproductive Alternatives, L.L.C. and
6 Mr. Johnson?

7 MS. FORD: Yes, Your Honor.
8 That's correct.

9 THE COURT: So can I take out the
09:58:50 10 nonexisting Alabama Women's Center, L.L.C.?

11 MS. FORD: Yes, Your Honor.

12 THE COURT: All right.

13 MS. FORD: Just wanted to make it
14 clear and consistent from the previous matter to
09:58:58 15 try to address the issue.

16 THE COURT: Well, I don't want to
17 deal with a nonexisting L.L.C., frankly.

18 MS. FORD: Okay.

19 THE COURT: Second thing I want to
09:59:06 20 know is from the defendant.

21 When you filed your motion to compel
22 arbitration, are you saying that the first
23 arbitration should be vacated?

24 MR. ROWE: No, Your Honor.

09:59:16 25 THE COURT: Are you saying that

1 these claims in this case should be arbitrated?

2 MR. ROWE: Our position is that I
3 think that there will be arguments in -- let me
4 put it this way: The clearest way to put it is
09:59:34 5 that these claims that they have brought against
6 my client should be submitted to arbitration.
7 If --

8 THE COURT: Is that what you're
9 claiming by your motion?

09:59:44 10 MR. ROWE: Yes. They should be
11 compelled to arbitrate the claims that they have
12 brought against my client.

13 THE COURT: Okay.

14 MR. ROWE: I think there will be
09:59:52 15 plenty --

16 THE COURT: But, see, in this
17 lawsuit that you have filed a motion to compel
18 arbitration in, there is also a request or prayer
19 for relief by the plaintiffs that the arbitration
10:00:04 20 award that you got in Connecticut should be
21 vacated. So by filing the motion to compel
22 arbitration on these claims, you're including
23 that claim.

24 So are you saying that plaintiff's motion
10:00:18 25 to vacate the arbitration award that was rendered

1 earlier in favor of your client should be
2 arbitrated, as well?

3 MR. ROWE: That's an important
4 distinction that I may not have made clear in my
10:00:32 5 motion. My position is that the contract claims,
6 the fraud claims, should be arbitrated and that
7 the way that the process works is that this case
8 would be stayed in that process.

9 So I'm not asking for an arbitrator to
10:00:48 10 decide whether the underlying previous
11 arbitration is valid or not. But I'm asking this
12 Court to stay the decision on that matter until
13 the arbitration can be -- the second arbitration
14 can be had.

10:01:02 15 THE COURT: Okay. That's not what
16 you're saying in the motion.

17 MR. ROWE: That's not? I
18 apologize if that's not clear.

19 THE COURT: That's not how I read
10:01:08 20 it. And I wasn't the only one who read it. I
21 made somebody else read it, too, to make sure I
22 understood it right.

23 MR. ROWE: I apologize. I don't
24 think there's any basis to have a new arbitrator
10:01:20 25 decide the validity of the initial arbitration.

1 THE COURT: Okay. Now, let's then
2 go to -- well, it's your motion so you get to
3 argue it.

4 MR. ROWE: Your Honor,
5 essentially, the plaintiff's complaint is
6 predicated on allegations of the misconduct that
7 are related to a contract between the parties.
8 And I think that the --

9 THE COURT: Well, is there a valid
10 contract?

11 MR. ROWE: Yes.

12 THE COURT: How is it? It's
13 signed by a nonexisting entity. Dalton Johnson
14 on behalf of a nonexisting entity. There is no
15 such thing as a -- as Alabama Women's Center,
16 L.L.C. And that's how it's signed.

17 MR. ROWE: Yes. However,
18 Mr. Johnson, on behalf of an undisclosed --
19 although he was acting as an agent for -- I guess
20 it's properly put the Alabama Women's Center for
21 Reproductive Alternatives -- because there's an
22 undisclosed principal there, he's personally
23 liable on that contract.

24 THE COURT: And where do you get
25 that from?

1 MR. ROWE: Just from general
2 agency principles of undisclosed --

3 THE COURT: You say an individual
4 can act on behalf -- I mean, in lieu of a
10:02:46 5 nonexisting entity?

6 MR. ROWE: I'm saying that when
7 one does, they can be held personally bound by
8 that contract.

9 THE COURT: Okay.

10:02:54 10 MR. ROWE: Just because they sign
11 on behalf of a nonexisting entity or on a
12 misnamed entity doesn't mean --

13 THE COURT: He signs on behalf of
14 a nonexisting entity. And I'm asking you: Does
10:03:04 15 that mean that there is not a contract?

16 MR. ROWE: No, ma'am. I think
17 there's two ways to look at that. One, there's a
18 contract between my client and him personally
19 because, although he named the wrong parties, as
10:03:16 20 principal, he's personally bound by that contract
21 under general agency principles.

22 And I think that there's secondarily a
23 dispute about -- I think that the plaintiff has
24 even said today that the intent of using that
10:03:30 25 name is to cover a different entity. So we may

1 have --

2 THE COURT: An argument about
3 that, I think.

4 MR. ROWE: Yes, ma'am.

10:03:38 5 THE COURT: Okay. So why are you
6 saying that their claim should be submitted --
7 their claims against your client should be
8 submitted to arbitration?

9 MR. ROWE: Well, we have a
10:03:48 10 contract. And the contract clearly states that
11 any dispute under the contract related to the
12 contract should be arbitrated. And under federal
13 law, such a provision is binding.

14 And there's a strong federal preference
10:04:06 15 for submitting disputes that are subject to
16 arbitration to arbitration for obvious reason of
17 preserving judicial resources and the interest of
18 upholding what the parties to the contract have
19 agreed to.

10:04:24 20 And I think that there's -- the only
21 argument that I see in the plaintiff's response
22 to our motion is that the punitive damages --
23 that there's a clause in there that disallows
24 punitive damages.

10:04:38 25 And I'll note to the Court, just

1 historically maybe, a clarification that was
2 never raised in the previous arbitration by the
3 plaintiffs although they didn't plead these same
4 claims in the previous arbitration.

10:04:52 5 THE COURT: Well, they withdrew
6 from the arbitration because they didn't want to
7 pay the cost. They said they couldn't afford to
8 pay the cost and travel to Connecticut.

9 MR. ROWE: Yes, Your Honor. But
10:05:02 10 all I was trying to say is they didn't raise them
11 at that time, and we didn't raise them because we
12 weren't requesting any punitive damages. That
13 was never an issue in the underlying arbitration.

14 And I don't know that I'm -- that I want
10:05:18 15 to say that the law that the plaintiff has
16 provided to the Court is not accurate on the
17 punitive damages issue. However, the -- as
18 that's the only argument that I see in response
19 to our motion, I would just point out that the
10:05:32 20 contract also has a severability clause.

21 And so if the Court decides that that
22 provision shouldn't be binding, then it doesn't
23 render invalid the rest of the arbitration
24 agreement. And that is, even if the Court
10:05:48 25 decides that it has jurisdiction to decide that

1 issue rather than submit that actual question of
2 the interpretation of the language of the
3 arbitration clause to an arbitrator, which we
4 would argue is the proper way to do that; that
10:06:04 5 this case should be submitted to the arbitrator.

6 And even the language of the *Moses H. Cone*
7 case discusses that the -- that the
8 interpretation of the arbitration clause is a
9 proper consideration, in the first instance at
10:06:20 10 least, for an arbitrator.

11 THE COURT: Well, there's a
12 decision by the Southern District of Alabama,
13 *Campbell versus Catastrophe Services, Inc.*, which
14 basically says that the --

10:06:34 15 MR. ROWE: Which basically says
16 that --

17 THE COURT: It should be severed
18 out. The punitive damages issue should be
19 severed out.

10:06:40 20 MR. ROWE: Sure.

21 THE COURT: The remainder of the
22 arbitration agreement would be enforceable.

23 MR. ROWE: Yes, Your Honor. And
24 we wouldn't argue against that.

10:06:50 25 THE COURT: And what do you say in

1 opposition to the arbitration clause?

2 MS. FORD: Well, our position is
3 that because the punitive damages are not
4 allowable via the clause, that the arbitration
10:07:04 5 provision is not valid. Because we do have a
6 claim for fraud against DAI in its actions -- in
7 the contract actions with Alabama Women's Center
8 for Reproductive Alternatives.

9 And we just -- we feel that by keeping
10:07:26 10 this arbitration provision intact the way it is
11 that my client is not going to be able to
12 exercise his rights under public policy to seek
13 punitive damages from DAI.

14 THE COURT: Well, can you tell me
10:07:48 15 how under federal law -- why that arbitration
16 agreement should not be enforced? I mean, it's
17 signed. Granted, it's signed by a nonexisting
18 entity -- by Dalton Johnson on behalf of a
19 nonexisting entity, but he has stated and you
10:08:04 20 have stated here in open court that that was
21 because there was not room to write out the whole
22 name.

23 MS. FORD: Correct.

24 THE COURT: So there's a strong
10:08:14 25 presumption in favor of arbitration when there's

1 an arbitration clause in the agreement in federal
2 law.

3 And what are you saying specifically other
4 than the punitive damages claim that renders it
10:08:28 5 unenforceable?

6 MS. FORD: We're also saying
7 because of the actions of DAI in the first
8 arbitration and in the -- just basically the
9 course of conduct, even in getting to the
10:08:44 10 arbitration, that they should not be allowed to
11 benefit from the award of that initial
12 arbitration.

13 THE COURT: Well, I understand. I
14 understand that's part of your claim, in addition
10:08:54 15 to breach of contract and fraud.

16 MS. FORD: Yes, Your Honor.

17 THE COURT: You want this Court to
18 vacate. And those are two separate issues.

19 MS. FORD: Yes, Your Honor.

10:09:02 20 THE COURT: Which is why I asked
21 the defendant when he had filed his motion to
22 compel am I to understand he is saying okay; go
23 ahead and vacate the old arbitration award, and
24 let's just arbitrate the whole blooming thing
10:09:18 25 and -- new arbitration.

1 And I believe Alabama law applies. I
2 think the arbitrator was wrong in applying
3 Connecticut law. The contract was executed in
4 Alabama. And it was signed in Alabama. And I
10:09:32 5 think he made -- well, he did something that was
6 not correct when he applied Connecticut law. I
7 do think so.

8 MS. FORD: That was argued to the
9 arbitrator by the plaintiff.

10:09:42 10 THE COURT: Well, but you stopped.
11 You stopped because you had filed -- it's not
12 completely correct when you say in your pleadings
13 that you didn't have anything to do with the
14 first arbitration. Because you did.

10:09:56 15 MS. FORD: Yes. We did file
16 because it had been started. We filed an answer
17 and included our counterclaim. But the
18 arbitration center's cost associated with even
19 having a counterclaim were not feasible for my
10:10:08 20 client at that time as he was going through some
21 things with his industry in the state and regards
22 to his state of finances after the supposed work
23 that was done by DAI, of course, advertising that
24 cost him a significant amount of business.

10:10:22 25 So he was trying to hold on to those funds

1 to possibly try to work with DAI. So the
2 addition of the cost -- the arbitration's cost
3 even filing the counterclaims -- they threw those
4 out because he was not able to pay that.

10:10:36 5 THE COURT: And what was that
6 cost?

7 MS. FORD: It was a couple
8 thousand dollars at the minimum. I don't have
9 that exact figure in front of me. But I could
10:10:44 10 locate that. But it was more than just a couple
11 hundred dollars definitely. It was several
12 thousand dollars. At least two.

13 THE COURT: Okay.

14 MS. FORD: To file a counterclaim.
10:10:56 15 And at that time, we also were not
16 comfortable with the center that was chosen on
17 behalf of my client. I had asked the center how
18 many arbitrations they had done for DAI. And
19 they refused to tell me.

10:11:10 20 THE COURT: Well, I understood
21 what you said in your pleadings is that the
22 defendant started sending you copies of awards in
23 other cases that the arbitrator had awarded in
24 their favor. What do you have to say about that?

10:11:20 25 MR. ROWE: I didn't represent our

1 client in the underlying arbitration.

2 THE COURT: Okay.

3 MR. ROWE: So I was not involved
4 in that.

10:11:28 5 THE COURT: Okay. That's all
6 right.

7 Let me just tell you what I think, in all
8 fairness, should be done.

9 MS. FORD: Okay.

10:11:32 10 THE COURT: I think, even though
11 the arbitration agreement is pretty vague -- I
12 think it is due to be enforced. I think it is
13 due to be enforced in the State of Alabama with
14 an Alabama arbitrator using Alabama law.

10:11:48 15 I don't think you can get out of it on the
16 grounds of vagueness or the -- who is going to
17 pay the cost and all the issues that might render
18 an arbitration agreement unenforceable under the
19 old -- you know, *Green Tree Financial Corporation*
10:12:06 20 *of Alabama* -- you know what I'm talking about?
21 That case?

22 So on the other hand, I think really and
23 truly -- and I know the case has not reached that
24 point, but I'm just going to lay it out here in
10:12:20 25 front of you.

1 I think the only arbitration agreement --
2 I mean, only arbitration award is -- should be
3 set aside, in all fairness and equity. I think
4 his math is extremely hazy. And I think in
10:12:36 5 rendering an award against Mr. Johnson personally
6 and individually he completely disregarded
7 Alabama corporate law. And I'm not saying that
8 it's completely the arbitrator's fault that his
9 math was the way it is. And to put it mildly, it
10:13:02 10 is hazy.

11 It may have been contributed to by the
12 plaintiff not showing up and participating, but
13 we're still stuck with this counterclaim that
14 plaintiff never had adjudicated in arbitration.

10:13:14 15 And I think if you're going to get this
16 issue resolved between the two of y'all, the
17 simplest thing is to vacate the original
18 arbitration agreement and present it -- both the
19 counterclaim and the original claim, your claim
10:13:26 20 against Mr. Johnson and the legal entity, to an
21 arbitrator here in Alabama. Or you can go to
22 mediation. Whichever you want to do.

23 MS. FORD: Okay.

24 THE COURT: Now, that's -- I'm not
10:13:42 25 sure that's what's going to be my legal order if

1 y'all have issues with that suggestion because
2 it's not really in front of me right now to
3 vacate -- that's part of your case.

4 MS. FORD: Yes, Your Honor.

10:13:54 5 THE COURT: They're saying that
6 should not go to arbitration, although I think
7 their motion says everything should go to
8 arbitration.

9 I'm not sure an arbitrator in Alabama
10:14:04 10 needs to rule on whether or not arbitration in
11 Connecticut should be vacated. I think that's a
12 question for the Court. And in all fairness to
13 the defendant, they have not briefed that.
14 Neither have you, for that matter. You have sued
10:14:18 15 for it.

16 MS. FORD: Correct.

17 THE COURT: But I just think, in
18 fairness to both sides, the whole thing should be
19 arbitrated. And I don't know who the arbitrator
10:14:26 20 should be. I don't know if you've even talked
21 about it. Or whether you've talked about just
22 going to mediation and let a mediator deal with
23 it.

24 MS. FORD: We have not. But we
10:14:34 25 will be willing and open to do so.

1 MR. ROWE: Sure. That's what
2 we -- Your Honor, the only thing -- I think you
3 addressed this part of the issue the right way.
4 It's not exactly -- it's not really squarely
5 before the Court, but I do appreciate on behalf
6 of my client your candor with the suggestion of
7 how the best way forward to resolving things may
8 be.

9 I would just -- as you said, it may not be
10 part of the legal order that you enter, but I
11 would like the opportunity to take this back to
12 my client in terms of the issue with the -- on
13 the first arbitration.

14 THE COURT: Okay.

15 MR. ROWE: And whether -- my view
16 was that this -- the claims that are currently
17 brought would be stayed; that the arbitrable
18 claims that they brought against us would be
19 compelled to arbitration. And then I can at this
20 point bring to my client the suggestion that
21 there may be some value in submitting our claims
22 as counterclaims to their claims in the Alabama
23 arbitration under Alabama law, as the Court has
24 set out today and leaving the --

25 THE COURT: Well, the reason I

1 suggested what I suggested is that the
2 arbitration of the plaintiff's counterclaims,
3 which are now the plaintiff's claims in this case
4 for fraud and breach of contract, are going to be
10:15:58 5 skewed because there's that arbitration award out
6 there.

7 And I'm just telling you I think, in all
8 fairness, my decision in this case, based on what
9 I have researched so far, is that that
10:16:10 10 arbitration award is going to be set aside.

11 So I'm giving you a bird's-eye view of
12 what my ruling is going to be, more than likely,
13 in the future. And I don't normally do that.
14 But that's why I said -- and I'm not sure I'm
10:16:24 15 going to -- I can do that in an order. I
16 can't -- I don't think at this point I can say
17 that arbitration award should be set aside, in
18 equity and fairness. But I think that's going to
19 be the ultimate result.

10:16:38 20 And instead of spending times and
21 resources and money on that issue, I would prefer
22 that you go back to your client and say, hey.
23 Will you stipulate to that? And then let's just
24 go to arbitration on everything.

10:16:52 25 MR. ROWE: The whole purpose of

1 having an arbitration policy in the agreement is
2 to save judicial resources and avoid the exact
3 headache you're talking about. So I think that I
4 can bring that --

10:17:04 5 THE COURT: Do you have them on
6 call today? Are they on call today? Is that
7 something you can resolve by a telephone call?

8 MR. ROWE: I don't technically
9 have them on call, but I should be able to get in
10:17:14 10 touch with them today.

11 THE COURT: Why don't we just take
12 a little break and you talk to them about what we
13 have talked about this morning. And if they
14 don't agree to it, it's okay. I'm not going to
10:17:22 15 be mad at anybody.

16 We'll just -- I'm just going to stay that
17 issue, but it's going to affect the arbitration
18 because it's going to be hanging out there.

19 MR. ROWE: I understand.

10:17:32 20 THE COURT: They're going to say
21 to the Alabama arbitrator, they're saying this
22 and we can't -- and --

23 MR. ROWE: I would imagine that we
24 would bring that up -- we would obviously bring
10:17:42 25 that up.

1 THE COURT: Yeah. How about y'all
2 just --

3 MS. FORD: Well, we will stipulate
4 to that, Your Honor.

10:17:48 5 THE COURT: Okay. You will
6 stipulate to that?

7 MS. FORD: Yes. We will stipulate
8 to your suggestion.

9 THE COURT: Before you call them,
10:17:54 10 have y'all -- do you have an arbitrator in mind?

11 MR. ROWE: No. We have not looked
12 into that at this point.

13 THE COURT: You know, I don't know
14 if -- well, you can also talk to them -- I mean,
10:18:14 15 mediation would basically do the same thing. And
16 talk to them about it. And then come back in
17 when you have talked to them about it.

18 (Short recess.)

19 THE COURT: Okay. We're back on
10:39:46 20 the record.

21 MR. ROWE: Your Honor, against my
22 best efforts, I wasn't able to get my client on
23 the phone. I think he expects to hear from me
24 this afternoon. But I didn't anticipate having
10:39:58 25 to discuss anything with him on the hearing. I

1 haven't had him on call.

2 THE COURT: That's fine. I didn't
3 ask you to have them on call. That's fine.

4 MR. ROWE: That being said, I
10:40:12 5 can't stipulate to anything at this time.

6 THE COURT: I understand. What I
7 would like to do is maybe withhold -- not do my
8 written order until you talk to him or them or
9 her. Is it a lady or gentleman?

10:40:28 10 MR. ROWE: It is a gentleman.

11 THE COURT: Talk to them because
12 you know, if the arbitrator in -- of plaintiff's
13 claims, which you have asked to be arbitrated in
14 this case -- if the arbitrator finds that your
10:40:42 15 client breached the contract, we're going to have
16 a mess because they're going to have a claim
17 against you. And your arbitrator from
18 Connecticut is going to say no; they breached the
19 contract. So -- and you can't -- I mean, we
10:40:58 20 can't have them both ways. So -- and you filed a
21 motion to arbitrate, and I'm sending it to
22 arbitration. And I think the whole thing just --
23 I need to just wait until I hear back from your
24 client.

10:41:10 25 MR. ROWE: And I understand what

1 you've presented, and I appreciate that. I think
2 it is a good idea. A good way to resolve this.
3 And I think that I can express that properly to
4 my client.

10:41:22 5 THE COURT: I'm sure you can.

6 MR. ROWE: The only thing I wanted
7 to mention, though, just as a clarification, I
8 guess, on technically what would be -- how the
9 order on this issue would be composed is I think
10:41:38 10 the location and the governing law are both part
11 of the agreement, part of the arbitration
12 provision in the agreement.

13 And so I would ask that the Court allow us
14 the opportunity to follow the terms of the
10:41:54 15 contract in determining where the arbitration
16 should be held.

17 THE COURT: Well, it's going to be
18 held in Alabama. I'm telling you. And it
19 doesn't say -- I know what the arbitration
10:42:08 20 agreement says about we both agree to resolve any
21 dispute arising out of and related to this
22 contract through a confidential binding
23 arbitration and agree to try to mutually choose
24 the arbitration service, the location, and which
10:42:28 25 state will govern. And I'm just telling you

1 already that I have found -- I'm going to find
2 that the arbitration in Connecticut -- that he
3 applied the wrong law. Alabama law applies. The
4 contract was executed in Alabama.

10:42:48 5 Now, where you want to do arbitration and
6 who you want to use, I'll let y'all figure out.
7 I don't have any problems with that.

8 MR. ROWE: That's really what I
9 was getting at. I know we talked earlier it
10:43:00 10 being an Alabama arbitration, and that may be the
11 end result. I don't want to stipulate anything
12 on the record that waives that --

13 THE COURT: It may be y'all end up
14 going to Tennessee or Mississippi or whatever.
10:43:12 15 As long as Alabama law is applied correctly by
16 the arbitrator, I don't have a problem with who
17 you pick. And I want y'all to work together. If
18 y'all do not agree on an arbitrator, you need to
19 come back to court. Okay?

10:43:24 20 MS. FORD: Okay.

21 THE COURT: I don't want y'all to
22 do what you did before.

23 MS. FORD: Okay.

24 THE COURT: I want you to come
10:43:30 25 back and say you cannot mutually agree. Because

1 I can find one that you can agree to. I can tell
2 you that.

3 MS. FORD: All right. Thank you.

4 MR. ROWE: Yes, Your Honor.

10:43:40 5 THE COURT: And in the meantime
6 also, y'all, have you talked -- have you been
7 outside, trying to reach your client the whole
8 time?

9 MR. ROWE: I was back there.

10:43:48 10 THE COURT: You may just want to
11 talk about going to mediation. It may be cheaper
12 to go to mediation. Get the whole thing
13 resolved.

14 MS. FORD: We would not be opposed
10:43:58 15 to discussing that option.

16 THE COURT: Well, just discuss it
17 among yourselves while you're here together. And
18 then you can discuss that with your client this
19 afternoon, too, and just let me know. Because
10:44:08 20 instead of doing -- ruling on the motion to
21 compel, I can say by agreement of the parties,
22 the case will go to mediation. And they can
23 resolve everything there if that's what you want
24 to do.

10:44:32 25 I will get a ruling out. But if you will

1 call counsel, opposing counsel, by conference
2 call and then call my office, that will be great.
3 And the number here is (256) 760-2062. And my
4 number in Birmingham is (205) 278-1973. And if
10:44:56 5 you cannot reach us, leave a message, please.

6 MR. ROWE: Yes, Your Honor.

7 THE COURT: All right. I don't
8 mind telling you it is my rotating law clerk's
9 last day, and we're going to have some fun this
10:45:10 10 afternoon.

11 Okay. Come in my office just a minute.

12 (The Proceedings were concluded at
13 approximately 10:45 a.m. on August 27, 2014.)
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C E R T I F I C A T E

I, the undersigned, hereby certify that the foregoing pages contain a true and correct transcript of the aforementioned proceedings as is hereinabove set out, as the same was taken down by me in stenotype and later transcribed utilizing computer-aided transcription.

This is the 15th day of December of 2014.

Cheryl K Powell

Cheryl Renae King Powell, CCR, RPR, FCRR
Federal Certified Realtime Reporter

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