

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2010 CA 1160

WORLDWIDE ASSET PURCHASING, L.L.C.

VERSUS

VICKIE E. SANDERS

Judgment Rendered: MAR - 3 2011

APPEALED FROM THE TWENTY-SECOND JUDICIAL DISTRICT COURT
IN AND FOR ST. TAMMANY PARISH
STATE OF LOUISIANA
DOCKET NUMBER 2006-10817, DIVISION "A"

THE HONORABLE RAYMOND S. CHILDRESS, JUDGE

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BEFORE: WHIPPLE, McDONALD, AND McCLENDON, JJ.

*McCleendon, J. concurs and assigns reasons
(by jmm)*

McDONALD, J.

This matter is an appeal of a judgment granting summary judgment on behalf of Worldwide Asset Purchasing, L.L.C., confirming an arbitration award. For the following reasons, we reverse and remand this matter to the Twenty-Second Judicial District Court.

On February 23, 2006, plaintiff, Worldwide Asset Purchasing, L.L.C. filed a petition praying that the district court issue a judgment against defendant, Vickie E. Sanders, for an amount awarded in an arbitration proceeding, plus legal interest from the date of judicial demand, for all costs of the suit, and for all general and equitable relief. A motion for preliminary default was filed on behalf of plaintiff in June 2006, but was not entered because Ms. Sanders's had filed an answer, pro se, on June 2, 2006.

On July 7, 2009, plaintiff filed a motion for summary judgment. In support of its motion, Worldwide submitted an affidavit of Chelvis Bell, the plaintiff's record custodian, and the arbitration findings dated March 16, 2005. At this time, Ms. Sanders retained an attorney to represent her interests. After a continuance at Ms. Sanders's request, Worldwide's motion for summary judgment was heard on November 2, 2009, with the court granting Worldwide's motion. On November 10, 2009, the trial court signed a judgment in favor of Worldwide, and against Vickie E. Sanders, in the sum of \$27,426.46, plus legal interest from the date of the judicial demand until paid, 25% attorney's fees on the aggregate of principal and interest, and all costs.

A motion for a new trial and to annul the judgment was filed by Ms. Sanders on November, 19, 2009, which was denied after a hearing, on January 28, 2010. This appeal timely followed.

Ms. Sanders alleges five assignments of error asserting the trial court erred in granting the summary judgment because the arbitration award was invalid, due

to several specifically alleged errors regarding agreement to arbitrate, service of notice of the arbitration, and failure to grant a continuance. Errors were also alleged because of failure to grant the motion for a new trial and the denial of a motion to compel discovery.

Worldwide did not file a brief, but argued in the trial court that the summary judgment should be granted because nothing had been brought to vacate, modify, or amend the award within three months of the award being issued. It further asserted that there were no countervailing affidavits raising any issues of material fact.

DISCUSSION

Arbitration is favored, and arbitration awards are generally presumed to be valid. *See Pennington v. CUNA Brokerage Securities, Inc.*, 08-0589 (La. App. 1 Cir. 10/1/08), 5 So.3d 172, 175, *writ denied*, 08-2600 (La. 1/9/09), 998 So.2d 723. A court confines its determination regarding the validity of an arbitration award to whether there exists one or more specified grounds for impeachment as provided by statute. *Id.* at 176. Absent the existence of one of the specific grounds for vacating an arbitration award, the reviewing court is prohibited from reviewing the merits of the arbitrator's decision. *Id.* Thus, the grounds listed in LSA-R.S. 9:4210 do not include errors of law or fact, which are insufficient, to invalidate an award fairly and honestly made. *Id.* Nevertheless, an arbitrator must be vigilant in affording basic due process requirements. *Id.* The first and foremost requirement is the opportunity to present evidence and to be heard. *Id.*

Louisiana's arbitration law is found at LSA-R.S. 9:4201 *et seq.* and is virtually identical to the Federal Arbitration Act (FAA). *See Snyder v. Belmont Homes, Inc.*, 04-0445 (La. App. 1 Cir. 2/16/05), 899 So.2d 57, 60, *writ denied*, 05-1075 (La. 6/17/05), 904 So.2d 699. Whether a claim is based on state or federal law, courts must enforce arbitration agreements in contracts covered by the FAA.

The United States Supreme Court has made it clear that the substantive provisions of the FAA preempt state law and govern written arbitration agreements in contracts connected to transactions involving interstate commerce. *Aguillard v. Auction Management Corp.* 04-2804, 04-2857 (La. 6/29/05), 908 So.2d 1, 8. Courts are bound to construe contracts in favor of arbitration. *Id.* at 18. While the jurisprudence supporting arbitration is abundant, courts have a duty to see that the statutory law is followed and that the process is fundamentally fair. *See Montelepre v. Waring Architects*, 00-0671, 00-0672 (La. App. 4 Cir. 5/16/01), 787 So.2d 1127, 1131, *In re Arbitration Between U.S. Turnkey Exploration, Inc. and PSI, Inc.*, 577 So.2d 1131, 1134-35, (La. App. 1 Cir.), *writ denied*, 580 So.2d 676 (La. 1991).

Louisiana Revised Statutes 9:4214 provides:

Any party to a proceeding for an order confirming, modifying, or correcting an award **shall**, at the time the order is filed with the clerk for the entry of judgment thereon, also file the following papers with the clerk:

- (1) The agreement, the selection or appointment, if any, of an additional arbitrator or umpire, and each written extension of time, if any, within which to make the award.
- (2) The award.
- (3) Each notice, affidavit, or other paper used upon an application to confirm, modify, or correct the award, and a copy of each order of the court upon such an application.

The judgment shall be docketed as if it were rendered in an action.

The judgment so entered shall have the same force and effect, in all respects, as, and be subject to all the provisions of law relating to, a judgment in an action, and it may be enforced as if it had been rendered in an action in the court in which it is entered.

(Emphasis added.)

As noted heretofore, at the time of filing the motion for summary judgment to confirm the award, an affidavit and the award was attached. The agreement was not. It is essential to the validity of an arbitration award that there be proof of a valid agreement to arbitrate. *See NCO Portfolio Management, Inc. v. Walker*, 08-

1011 (La. App. 3 Cir. 2/4/09), 3 So.3d 628, 635. Ms. Sanders cites several cases for the proposition that an arbitration award cannot be confirmed without proof of a valid arbitration agreement. We agree. Because Worldwide did not conform to the statutory requirements, it is not entitled to judgment as a matter of law.

Accordingly, the judgment of the district court granting the motion for summary judgment is reversed, and the matter is remanded to the Twenty-Second Judicial District Court. This opinion is issued in compliance with Uniform Rules, Louisiana Courts of Appeal, Rule 2-16.1.B. Costs are assessed against Worldwide Asset Purchasing, L.L.C.

REVERSED AND REMANDED.

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2010 CA 1160

WORLDWIDE ASSET PURCHASING, LLC

VERSUS

VICKIE E. SANDERS

PMc by JMM

McCLENDON, J., concurs and assigns reasons.

While the credit card agreement was attached to appellee's memorandum in opposition to the motion for new trial, said agreement was not certified in any manner. Therefore, even if considered by the trial court it did not meet the requirements set forth in LSA-C.C.P. art. 967. Based on these facts, I am bound to concur with the result reached by the majority.