

IN THE CHANCERY COURT FOR THE STATE OF TENNESSEE
TWENTIETH JUDICIAL DISTRICT, DAVIDSON COUNTY

LPS INTEGRATION, INC.,)
)
 Plaintiff,)
)
 VS.)
)
 INGENUITY ASSOCIATES, LLC,)
)
 Defendant.)

NE
NO. 15-1532-BC

2016 JUL 14 PM 4:10
DAVIDSON CO. CHANCERY CT.
SRS
D.C. & H.

FILED

**MEMORANDUM AND ORDER: (1) DENYING DEFENDANT'S
MOTION TO COMPEL ARBITRATION, (2) LIFTING STAY
ON LITIGATION IN THIS FORUM, AND (3) SETTING 7/29/16 NOON
RULE 16 CONFERENCE**

The Court finds that the Defendant has not carried its burden of proof that the parties mutually assented to arbitrate the disputes in this case. It is therefore ORDERED that the Defendant's motion to compel arbitration, filed February 19, 2016, is denied; the April 22, 2016 stay on litigation in this forum is lifted; and this matter shall proceed with a Rule 16 Conference, on July 29, 2016, at noon, to select a trial date and enter trial preparation deadlines.

The findings of fact for this decision denying arbitration are as follows.

There is no agreement signed by the parties which contains an arbitration clause. Instead, the Defendant bases its claim to arbitration on the undisputed fact that on April 20, 2015, the Plaintiff emailed the Defendant a Master Services Agreement ("MSA") which

contained an arbitration clause. The Defendant adds to this fact testimony from the evidentiary hearing conducted July 12, 2016, of its CEO Mr. Adams, that he had no objection to the MSA, including no objection to the arbitration clause. The weight of that testimony, however, is substantially undercut by his admission that he never told or communicated to anyone at the Plaintiff's organization his agreement to the MSA and/or arbitration. Mr. Adams also admitted that he was unaware of anyone in Defendant's organization who communicated that Mr. Adams, or for that matter, any authorized representative of Defendant, assented to the MSA, including the arbitration provision. On these facts, the Defendant's position was that because the Plaintiff sent to the Defendant an MSA with an arbitration agreement, the Plaintiff obviously assented, and because the Defendant never objected, mutual assent to arbitrate is established. Other facts, however, rebut this argument.

First, the Court finds that the parties had signed and were operating under a Statement of Work ("SOW"). At paragraph 1, the MSA (Exhibit 11), containing the arbitration provision in issue, provides that the MSA is not operable for an SOW unless the SOW states, "that it is made pursuant to this Agreement [MSA] and signed by both parties." The evidence in this case is that the SOW the parties operated under did not say it was made pursuant to the MSA. Thus, the MSA, including the arbitration provision, never became a part of the parties' contract.

Further, deposition testimony provided as evidence at the July 12, 2016 hearing is that the absence of a reference to the MSA in the parties' SOW is not just form over substance.

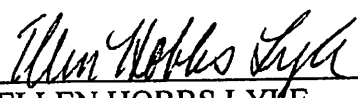
The deposition testimony of Mr. Sanford, the Plaintiff's representative, established that the MSA is a governing document only if signed by both parties because the job can change and other matters can occur while the MSA is being circulated that might change its provisions. In this case the MSA was never signed.

Further, the deposition testimony, particularly of Todd Stanford, was that the course of the parties' dealings is different from the MSA and, therefore, shows the MSA was not part of the parties' agreement. There also was testimony that the payment terms of the SOW were not in conformity with the MSA.

Additionally, there was testimony by Plaintiff to the effect that the MSA in issue was originally prepared for another project and that explains its date out of sequence to the Sharon project in issue.

All of this proof by Plaintiff is evidence that there was no mutual assent to the MSA and, therefore, no mutual assent to the arbitration agreement. This proof was un rebutted.

Based upon the foregoing findings of fact, the Court concludes the Defendant failed to carry its burden to prove assent to arbitration. For these reasons, the Court denies the motion to compel arbitration.



ELLEN HOBBS LYTE
CHANCELLOR
TENNESSEE BUSINESS COURT
PILOT PROJECT

cc: Thor Urness
R. Brandon Bundren
C. Timothy Gary
Jack R. Dodson, III
Joshua L. Burgener

 **MAILED** *faxed*
7-14-10