

CAUSE NO. 2018-27762

STEFANI BAMBACE

Plaintiff,

v.

BERRY Y&V FABRICATORS, LLC

Defendant.

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IN THE DISTRICT COURT

OF HARRIS COUNTY, TEXAS

234th JUDICIAL DISTRICT

**DEFENDANT’S PLEA IN ABATEMENT AND MOTION TO COMPEL
CONTRACTUALLY AGREED ADR**

TO THE HONORABLE JUDGE OF SAID COURT:

Defendant Berry Y & V Fabricators, LLC files Defendant’s Plea in Abatement and Motion to Compel Contractually Agreed ADR and would respectfully show the Court as follows:

I.

On November 14, 2016, Plaintiff and Defendant, entered into an “Arbitration Agreement.” A copy of the Arbitration Agreement signed by the Plaintiff, along with an affidavit of Mara Bosch, Human Resource Manager of Berry Y & V Fabricators, LLC, is attached hereto as Exhibit “A and incorporated fully into this motion. The Arbitration Agreement binds Plaintiff, Stefani Bambace (referred to as “Employee” in the Agreement) and Defendant Berry Y & V Fabricators (“referred to as “Company” in the Agreement) to arbitration in the event a dispute should arise between the parties:

In exchange for Company accepting and considering the application, or if applicable, as part of the consideration for Company tendering an offer for employment, or if applicable, retaining Employee's services, Employee and

Company agree that upon the demand of either or upon the demand of any Third Party Beneficiary, all disputes, claims, damages, injuries, losses, and causes of action (hereinafter collectively known as "Claims") that Employee, his/her family, heirs, representatives and assigns may have or to which any of the foregoing may be entitled against the Company, any client of Company, any Owner of property upon which Employee has performed services on behalf of Company, any Owner or supplier of equipment, materials or labor, any other entity providing services or materials at the jobsite where Employee has worked, the insurers of any of the above, or any of their affiliates, employees, officers, directors, shareholders, agents or representatives (each of which, other than Company, previously and hereinafter referred to as "Third Party Beneficiary") shall be submitted to binding arbitration according to the rules of the Commercial Arbitration Section of the American Arbitration Association.

Ignoring this dispute resolution procedure required under the Arbitration Agreement, Plaintiff filed this retaliation action on or about April 25, 2018, asserting causes of action for sexual harassment, discrimination and retaliation against Defendant. Prior to this filing, Elizabeth B. Pratt, in her capacity as counsel for Berry Y & V Fabricators, LLC corresponded with Todd Slobin, attorney of record for Plaintiff, regarding Plaintiff's commitments under the Arbitration Agreement. A copy of Elizabeth Pratt's Declaration is attached hereto as Exhibit "B" and is fully incorporated herein. Despite receipt of this correspondence and supporting documents, Plaintiff wrongfully filed this action, rather than initiating arbitration.

II.

This litigation should be in all things abated. Plaintiff's claims for sexual harassment, discrimination and retaliation are subject to the alternative dispute resolution process prescribed in Paragraph 6 of the Arbitration Agreement, which expressly covers "Claims of discrimination or harassment, labor disputes, Title VII claims, libel, slander, and disparagement, personal injury and death, Wrongful Death claims by related persons, infliction of emotional distress, breach of contract or quasi-contract, commission of torts,

quasi-tortious conduct, and violation of a constitution, statute, rule, regulation, ordinance or common law of the United States of America, any foreign country or state, and/or any state of the United States of America” *See* Paragraph 6 of Exhibit “A.” As such, Plaintiff was and is bound to submit this dispute for determination in accordance with the alternative dispute resolution procedure provided for in the Arbitration Agreement. Accordingly, this Court is without jurisdiction to hear this dispute because the parties by contract elected to have it resolved by non-binding mediation or, in the event the parties are unable to resolve the dispute in mediation, binding arbitration governed by the stipulated procedures of the American Arbitration Association.

III.

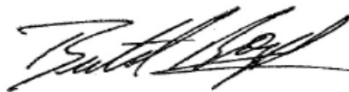
In view of the compulsory nature of the procedure for resolution of disputes binding Plaintiff, Defendant further requests that the Court not only abate this lawsuit, but also compel Plaintiff to proceed with the contractually agreed alternative dispute resolution process specified in Paragraphs 1 through 8 of the Arbitration Agreement.

IV. PRAYER

For the foregoing reasons, Defendant respectfully request that this suit be abated, that the Court compel Plaintiff to proceed with the contractually agreed alternative dispute resolution process, and that the Court award Defendant any other relief, whether at law or equity, to which they may justly be entitled.

Respectfully submitted,

THE BUTCH BOYD LAW FIRM



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**ATTORNEYS FOR DEFENDANT, BERRY Y & V
FABRICATORS, LLC**

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document was served on all counsel of record by method indicated below on the 1st day of June, 2018 in accordance with T.R.C.P.

Via Email: tslobin@eeoc.net

Todd Slobin

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