

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO. 09-20848-CV-KING

EQUIMED, S.A.,

Plaintiff,

v.

PROMEDCO, INC.;
ALEJANDRO ALAN AZPURA;
and CARMEN AZPURA,

Defendants.

ORDER DENYING DEFENDANTS' MOTION TO COMPEL ARBITRATION

THIS CAUSE comes before the Court upon Defendants Promedco, Inc.'s, Alejandro Alan Azpura's, and Carmen Azpura's Motion to Compel Arbitration (D.E. #11), filed June 4, 2009. The Plaintiff filed a response on June 22, 2009 (D.E. #12), to which the Defendants replied on July 16, 2009 (D.E. #14).

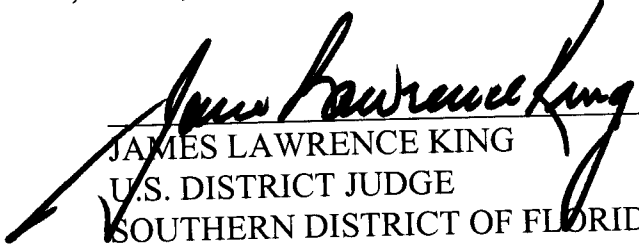
In the instant Motion, the Defendants asks this Court to compel arbitration in the above-styled case pursuant to two documents: 1) an "International Distributor Agreement" allegedly made between the Parties (D.E. #11, Ex. A); and 2) Defendant Promedco's sales terms and conditions (D.E. #11, Ex. B). Both documents contain binding arbitration provisions to which the Defendants allege that the Plaintiff agreed to be bound. The Plaintiff argues that it neither signed nor agreed to the documents offered by the Defendants (D.E. #12). The Plaintiff contends, instead, that the documents at issue

contain “no signatures, initials or any writings which would indicate assent by anyone. . . . [and] are devoid of any authenticity” (D.E. #12).

“[I]t is well-established that ‘parties cannot be forced to submit to arbitration if they have not agreed to do so’” *Magnolia Capital Advisors, Inc. v. Bear Stearns & Co.*, 272 F. App’x 782, 785 (11th Cir. 2008). Prior to compelling arbitration, a district court “must decide whether a challenged agreement to arbitrate is enforceable against the parties in question.” *Id.* After a review of the documents offered by the Defendants in support of binding arbitration, the Court determines that the validity of the binding arbitration provisions is at issue. As such, the case will proceed to trial as previously scheduled for May 10, 2010 (D.E. #9), at which point the Parties will be able to present evidence as to the validity and authenticity of the documents offered by the Defendants, purporting to bind the Parties to arbitration. *See, e.g., Magnolia Capital Advisors, Inc.*, 272 F. App’x at 785; *Garcia v. Mason Contract Prods., LLC*, No. 08-23102-Civ., 2009 WL 1851131, at *2 (S.D. Fla. Jun. 29, 2009).

Accordingly, after careful review and the Court being otherwise fully advised, it is **ORDERED, ADJUDGED, and DECREED** that the Defendants Motion to Compel Arbitration be, and the same is hereby, **DENIED**. The above-styled case shall proceed in accordance with this Court’s May 20, 2009 Amended Scheduling Order (D.E. #9), setting final pretrial conference on April 9, 2010, and trial to commence on the Court’s two-week trial calendar of May 10, 2010.

DONE and ORDERED in chambers at the James Lawrence King Federal Justice Building and United States Courthouse, Miami, Florida, this 20th day of July, 2009.


JAMES LAWRENCE KING
U.S. DISTRICT JUDGE
SOUTHERN DISTRICT OF FLORIDA

cc:

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