

Third District Court of Appeal

State of Florida, January Term, A.D. 2013

Opinion filed May 15, 2013.

Not final until disposition of timely filed motion for rehearing.

No. 3D12-3077

Lower Tribunal No. 12-17187-25

MetroPCS Communications, Inc., et al.,
Appellant,

vs.

Jorge Porter,
Appellee.

An Appeal from the Circuit Court for Miami-Dade County, Jorge E. Cueto,
Judge.

Carlton Fields and Aaron S. Weiss and David L. Luck; Drinker Biddle &
Reath LLP and Michael J. Stortz (California), pro hac vice, for appellant.

Gonzalo R. Dorta and Christian W. Waugh, for appellee.

Before ROTHENBERG and EMAS, JJ., and SCHWARTZ, Senior Judge.

SCHWARTZ, Senior Judge.

The order under review denying arbitration is reversed for a determination after an evidentiary hearing of the threshold issue of whether the arbitration clause was contained in a binding agreement between the parties. See *Travelers Ins. Co. v. Irby Constr. Co.* 816 So. 2d 829, 830 (Fla. 3d DCA 2002); *Merrill Lynch Pierce Fenner & Smith, Inc. v. Melamed*, 425 So. 2d 127, 129 (Fla. 4th DCA 1982); *Krutchik v. Chase Bank USA, N.A.*, 531 F. Supp. 2d 1359, 1365 (S.D. Fla. 2008). We express no view as to the result of any other issue which may arise from that ruling. See *McKenzie Check Advance of Fla., LLC v. Betts*, 38 Fla. L. Weekly S223a (Fla. Apr. 11, 2013); *Hancock v. AT&T, Inc.*, 701 F. 3d 1248 (10th Cir. 2012); *Rampersad v. Primeco Personal Commc'ns, L.P.*, No. 01-6640, 2001 WL 34872572 (S.D. Fla. Oct. 16, 2001); *Schafer v. AT&T Wireless Servs., Inc.*, No. 04-419, 2005 WL 850459 (S.D. Ill. Apr. 1, 2005); *Briceño v. Sprint Spectrum, L.P.*, 911 So. 2d 176, 178 (Fla. 3d DCA 2005).

Reversed and remanded.