

IN THE CIRCUIT COURT OF THE NINETEENTH JUDICIAL CIRCUIT IN AND FOR
MARTIN COUNTY, FLORIDA

CASE NO.: 2022-928CA

ERICA HERMAN,

CIVIL DIVISION

Plaintiff,

v.

JUPITER ISLAND IRREVOCABLE
HOMESTEAD TRUST,

Defendant.

**MOTION FOR DETERMINATION THAT CLAIMS ARE NOT SUBJECT
TO 9 U.S.C. § 402 AND FOR ORDER COMPELLING ARBITRATION**

Christopher J. Hubman, as trustee of the Defendant Jupiter Island Irrevocable Homestead Trust (the “Trust”), moves this Court for a determination that (i) the pending claims are not subject to 9 U.S.C. §§ 401-402 because they do not constitute a “sexual assault dispute” or a “sexual harassment dispute,” and (ii) the claims are subject to the parties’ arbitration agreement.

I. Introduction

In response to the Defendant’s motion to compel arbitration [D.E. 19] of Plaintiff’s landlord-tenant claims in this action, Plaintiff Erica Herman asserts that this Court has exclusive jurisdiction over the claims pursuant to 9 U.S.C. §§ 401-402, which states, among other things, that a party to an arbitration agreement cannot be compelled to arbitrate a “sexual assault dispute” or a “sexual harassment dispute.” [D.E. 21] Ms. Herman alleges, “once the Plaintiff invoked this statute, it requires the Court to decide whether Plaintiff’s claim is arbitrable.” [D.E. 21, ¶ 4]

Yet Ms. Herman does nothing more than cite 9 U.S.C. §§ 401-402 and its salacious title, “The Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act.” She has never asserted any claims for sexual assault or sexual harassment, does not do so in this landlord-tenant

action, and, if she is truthful, can never do so. Ms. Herman’s bare reference to the statute, without any allegations to support its application to the facts of this case, is insufficient to relieve Ms. Herman from her contractual obligation to arbitrate. Rather, it is a transparent abuse of the judicial process that undermines the purpose of the federal statute and those whom the statute seeks to protect. Accordingly, Defendant requests that this Court (i) review the allegations in Ms. Herman’s self-titled Complaint For Violation Of Florida Residential Landlord Tenant Act, (ii) determine that this action is not “a case which is filed under Federal, Tribal, or State law and relates to [a] sexual assault dispute or [a] sexual harassment dispute”; and (iii) order the parties to arbitrate the claims asserted in this action.

II.
Background

The named Defendant in this action is a Trust owning a remainder interest in a Jupiter Island residence (the “Residence”) occupied by Eldrick “Tiger” Woods.¹ Mr. Woods and the Plaintiff, Ms. Herman, commenced a romantic relationship roughly six years ago, though they never married. Shortly after commencing the relationship, Mr. Woods and Ms. Herman entered a Non-Disclosure And Acknowledgement Agreement (the “Agreement”) dated August 9, 2017. In the Agreement, Ms. Herman agreed that “the exclusive manner of resolution of any and all disputes, claims or controversies arising between [Ms. Herman and Mr. Woods] of any nature whatsoever . . . shall be resolved by mandatory BINDING confidential Arbitration to the greatest extent permitted by law.” (capitalization in original)

¹ As reflected in the public records of Martin County, Florida, Mr. Woods owns a life interest in the Residence and the Defendant Trust owns a remainder interest. *See* Special Warranty Deed, recorded March 29, 2017, CFN 2626860, Book O 2915, Page 753.

During their relationship, Mr. Woods invited Ms. Herman to live with him in the Residence as his guest. On October 13, 2022, however, Mr. Woods notified Ms. Herman that he was ending their relationship and that Ms. Herman was no longer welcome in the Residence. Though Mr. Woods provided Ms. Herman with temporary lodging and financial support after the breakup, Ms. Herman filed this action against the Trust.

In her complaint, Ms. Herman claims that as consideration for her performing “valuable services” for Mr. Woods that were “extensive and of an extraordinary nature,” she negotiated an “oral tenancy agreement” relating to the Residence with an “agent” of the Defendant. (Compl., ¶¶ 5-6.) According to Ms. Herman’s complaint, for the past six years, Ms. Herman performed services and lived in the Residence pursuant to the oral tenancy agreement, which allegedly had approximately five years remaining at the time Mr. Woods broke off their relationship. (Compl., ¶¶ 5-6.) Ms. Herman seeks injunctive and monetary relief from the Trust, including damages in excess of \$30 million, arising from (i) Mr. Woods’ refusal to permit Ms. Herman to continue to occupy the Residence; (ii) the removal of Ms. Herman’s personal belongings from the Residence; and (iii) the alleged misappropriation of \$40,000 cash purportedly belonging to Ms. Herman. (Compl., ¶¶ 8-9.)

On December 20, 2022, Defendant moved to compel arbitration of Ms. Herman’s claims. [D.E. 19] Citing the arbitration provision in the Agreement, and noting Mr. Woods’ involvement in the claims, Defendant’s motion argued that Ms. Herman had agreed to arbitrate all disputes with Mr. Woods in a confidential proceeding before the American Arbitration Association. In response, Ms. Herman argues that she cannot be required to arbitrate her claims because a new federal statute—9 U.S.C. § 402—provides that a party to an arbitration agreement cannot be required to arbitrate a “sexual assault dispute” or a “sexual harassment dispute.” [D.E. 21]

Ms. Herman's position is utterly meritless. Nevertheless, 9 U.S.C. § 402(b) makes it clear that whether the federal statute applies and thus bars an arbitration "shall be determined by a court, rather than an arbitrator." Accordingly, Defendant asks this Court for an order determining that 9 U.S.C. § 402 does not apply to the claims in this case.

III. **The Federal Statute Does Not Apply**

The federal statute at issue, 9 U.S.C. § 402(a)², states:

Notwithstanding any other provision of this title, at the election of the person alleging conduct constituting a sexual harassment dispute or sexual assault dispute . . . , no **predispute arbitration agreement** . . . shall be enforceable with respect to a case which is filed under Federal, Tribal, or State law and relates to the **sexual assault dispute** or the **sexual harassment dispute**. (emphasis added)

Under the statute, a "**predispute arbitration agreement**" is "any agreement to arbitrate a dispute that had not yet arisen at the time of the making of the agreement." A "**sexual harassment dispute**" means "a dispute relating to conduct that is alleged to constitute sexual harassment under applicable Federal, Tribal, or State law." *Id.* The term "**sexual assault dispute**" means "a dispute involving a nonconsensual sexual act or sexual contact, as such terms are defined in section 2246 of title 18 or similar applicable Tribal or State law, including when the victim lacks capacity to consent."

Tellingly, when completing the Civil Cover Sheet for this action, Plaintiff's counsel checked the box for "NO" when asked, "DOES THIS CASE INVOLVE ALLEGATIONS OF SEXUAL ABUSE." Consistent with this acknowledgement, Ms. Herman's self-titled "Complaint

² Plaintiff also makes a passing reference to The Speak Out Act, 42 U.S.C. 19403 in her opposition. [D.E. 21, ¶ 5]. This Act provides that, "[w]ith respect to a sexual assault dispute or sexual harassment dispute, no nondisclosure clause . . . agreed to before the dispute arises shall be judicially enforceable in instances in which conduct is alleged to have violated Federal, Tribal, or State law." 42 U.S.C. § 19403. The definitions of "sexual harassment dispute" and "sexual assault dispute" are identical to those in 9 U.S.C. §§ 401-402. For the same reasons 9 U.S.C. § 402 is inapplicable to the instant action, the Speak Out Act is also inapplicable.

For Violation Of Florida Residential Landlord Tenant Act” does not contain any allegation remotely suggesting sexual harassment or sexual assault. Nor does it contain any reference to a Federal, Tribal, or State law relating to sexual harassment or sexual assault. Rather, Ms. Herman’s complaint alleges that the Trust breached a purported oral tenancy agreement and seeks damages in excess of \$30 million under Florida’s Residential Landlord Tenant-Act, citing Fla. Stat. §§ 83.48, 83.54, 83.55, and 83.67.

By enacting 9 U.S.C. § 402, Congress intended to prevent those accused of sexual harassment or sexual assault from relying on arbitration agreements to force sexual harassment and sexual assault disputes into confidential proceedings outside the public eye. But the statute is not implicated merely because a party to an arbitration agreement makes reference to it in a court filing. Rather, the statute is implicated only if the underlying claims relate to either (i) “a dispute relating to conduct that is alleged to constitute sexual harassment under applicable Federal, Tribal, or State law,” or (ii) “a dispute involving a nonconsensual sexual act or sexual contact, as such terms are defined in section 2246 of title 18 or similar applicable Tribal or State law”

Here, Ms. Herman’s claims relate to a lease dispute under Florida’s landlord-tenant act, not a sexual harassment or sexual assault dispute under Federal, Tribal, or state law. No reasonable reading of Ms. Herman’s complaint implicates 9 U.S.C § 402. Ms. Herman is a not a victim of sexual assault or abuse sought to be protected by Congress when enacting the statute. Rather, Ms. Herman is a jilted ex-girlfriend who wants to publicly litigate specious claims in court, rather than honor her commitment to arbitrate disputes in a confidential arbitration proceeding.

WHEREFORE, Defendant respectfully requests that this Court (i) determine that the pending claims are not subject to 9 U.S.C. §§ 401-402 because they do not constitute a “sexual assault dispute” or a “sexual harassment dispute,” (ii) determine that the claims are subject to the

parties' arbitration agreement, and (iii) enter an order compelling Ms. Herman to arbitrate her claims in this action.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on March 13, 2023 a true and correct copy of the foregoing document was filed and served via e-mail through the Florida Court's E-Filing Portal to all counsel of record.

/s/ J.B. Murray _____
John B.T. Murray, Jr.

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