IN THE SUPREME COURT OF OHIO
CASE NO. 08-1307

CARI BUTCHER, Appellee, v. BALLY TOTAL FITNESS CORPORATION, JEFFREY PATTERSON and SANTINO DiBERARDINO, Appellants.	:	On Appeal from The Cuyahoga County Court Of Appeals, Eighth Appellate District EIGHTH DISTRICT CASE NO.: 07-90216 CUYAHOGA COUNTY COURT OF COMMON PLEAS CASE NO.: 02-CV-45834

CITATION TO SUPPLEMENTAL AUTHORITY

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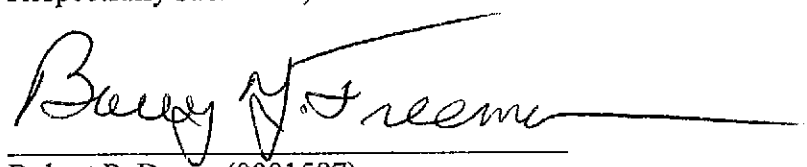
Pursuant to Supreme Court Practice Rule III, Section 3(A), Appellants cite to the United States Court of Appeals for the Third Circuit's August 28, 2008 decision in Morales v. Sun Constructors, Inc., 2008 U.S. App. LEXIS 18513, as supplemental authority in support of their Proposition of Law No. 3.

Respectfully submitted,



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A copy of the foregoing *Citation to Supplemental Authority* was served upon the following, by e-mail and regular U.S. mail, this 8th day of September 2008:

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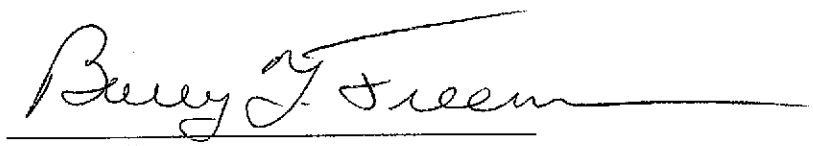

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*2008 U.S. App. LEXIS 18513, **

JUAN **MORALES** v. **SUN CONSTRUCTORS,** INC., Appellant.

No. 07-3806

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

2008 U.S. App. LEXIS 18513

May 6, 2008, Argued
August 28, 2008, Filed

PRIOR HISTORY: [*1]
Appeal from the District Court of the Virgin Islands. (No. 07-cv-00005). District Judge: Honorable Raymond L. Finch.

CASE SUMMARY

PROCEDURAL POSTURE: Appellee former employee filed a wrongful termination suit against appellant employer, which filed a motion to stay the proceedings pending arbitration. The District Court of the Virgin Islands denied the motion. The employer appealed.

OVERVIEW: At the time of his orientation, the employee, who spoke Spanish, signed an English-language employment agreement that contained an arbitration clause. A bilingual applicant who knew the employee was asked to help him complete the documents. The court stated that the Federal Arbitration Act, 9 U.S.C.S. §§ 1-16, provided that arbitration agreements were enforceable to the same extent as other contracts. In the absence of fraud, the fact that an offeree could not read, write, speak, or understand the English language was immaterial to whether an English-language agreement the offeree executed was enforceable. Here, the employee was not alleging fraud or misrepresentation. It was the employee's obligation to ensure that he understood the agreement before signing. He did not ask the bilingual applicant to translate the document word-for-word or ask to take the agreement home and have it translated, although he had paid someone in the past to translate documents for him. Moreover, in the almost one year that the employee worked for the employer, he never questioned the terms of the agreement. Thus, he was bound by the arbitration clause therein.

OUTCOME: The court reversed the judgment. It remanded the case to the trial court for it to enter a stay pending arbitration.

CORE TERMS: arbitration clause, arbitration agreements, assent, ignorant, pending arbitration, mutual assent, arbitration, illiterate, formation, offeree, enforceable, restatements, orientation, translation, translate, arbitration provisions, manifestation, signing, employment agreement, foreign language, absence of fraud, misrepresented, interpreter", heightened, ignorance, reiterate, bargain, purport, executes, misread

LEXISNEXIS® HEADNOTES Hide

Civil Procedure > Alternative Dispute Resolution > Arbitrations > Federal Arbitration Act > Stays Pending Arbitration

Civil Procedure > Appeals > Standards of Review > Clearly Erroneous Review

Civil Procedure > Appeals > Standards of Review > De Novo Review

HN1 An appellate court has jurisdiction over an appeal from a denial of a motion to stay proceedings pending arbitration pursuant to 28 U.S.C.S. § 1291 and 9 U.S.C.S. § 16 and exercises plenary review over a district court's denial of the motion to stay proceedings pending arbitration. To the extent that the district court based its decision on findings of fact, however, the appellate court reviews for clear error. More Like This Headnote

Civil Procedure > Alternative Dispute Resolution > Arbitrations > Federal Arbitration Act > Arbitration Agreements

HN2 The Federal Arbitration Act, 9 U.S.C.S. §§ 1-16, provides that arbitration agreements are enforceable to the same extent as other contracts, and establishes a strong federal policy in favor of the resolution of disputes through arbitration. However, arbitration provisions may be attacked under such grounds as exist at law or in equity for the revocation of a contract. More Like This Headnote

Civil Procedure > Alternative Dispute Resolution > Arbitrations > Arbitrability

HN3 When determining whether the parties agreed to arbitrate a certain matter, courts generally should apply ordinary state-law principles that govern the formation of contracts. In the absence of contrary Virgin Islands law, the case is governed by the rules of the common law, as expressed in the restatements of law approved by the American Law Institute. V.I. Code Ann. tit. 1, § 4 (2007). More Like This Headnote

Contracts Law > Formation > Meeting of Minds

HN4 Under the Restatement (Second) of Contracts, mutual assent between parties is necessary for the formation of a contract. While mutual assent is sometimes referred to as a "meeting of the minds," this phrase must not be construed too literally. Acceptance is measured not by the parties' subjective intent, but rather by their outward expressions of assent. The parties to most contracts give actual as well as apparent assent, but it is clear that a mental reservation of a party to a bargain does not impair the obligation he purports to undertake. More Like This Headnote

Contracts Law > Formation > General Overview

HN5 It will not do for a man to enter into a contract, and, when called upon to respond to its obligations, to say that he did not read it when he signed it, or did not know what it contained. The integrity of contracts demands that this principle be rigidly enforced by the courts. More Like This Headnote

Contracts Law > Formation > Acceptance > General Overview

HN6 According to the objective theory of contract formation, what is essential is not assent, but rather what the person to whom a manifestation is made is justified as regarding as assent. Thus, if an offeree, in ignorance of the terms of an offer, so acts or expresses itself as to justify the other party in inferring assent, and this action or expression was of such a character that a reasonable person in the position of the offeree should have known it was calculated to lead the offeror to believe that the offer had been accepted, a contract will be formed in spite of the

offeree's ignorance of the terms of the offer. The most common illustration of this principle is the situation when one who is ignorant of the language in which a document is written, or who is illiterate, executes a writing proposed as a contract under a mistake as to its contents. Such a person is bound, in the absence of fraud, if the person does not require the document to be read to him. More Like This Headnote

Contracts Law > Formation > General Overview

HN7 It is true that an illiterate man may bind himself by contract by negligently failing to learn the contents of an instrument which he has executed. More Like This Headnote

Civil Procedure > Alternative Dispute Resolution > Arbitrations > Arbitrability
Contracts Law > Formation > General Overview
Labor & Employment Law > General Overview

HN8 Every contracting party has the duty to learn and know the contents of a contract before he signs and delivers it. Arbitration agreements in the employment context are not exempt from this principle. Failure to read or understand an arbitration agreement, or an employer's failure to explain it, simply will not constitute special circumstances warranting relieving an employee from compliance with the terms of an arbitration agreement that she signed. More Like This Headnote

Contracts Law > Formation > General Overview

HN9 In the absence of fraud, the fact that an offeree cannot read, write, speak, or understand the English language is immaterial to whether an English-language agreement the offeree executes is enforceable. More Like This Headnote

Civil Procedure > Alternative Dispute Resolution > Arbitrations > Federal Arbitration Act > Arbitration Agreements

HN10 Applying a heightened "knowing and voluntary" standard to arbitration agreements would be inconsistent with the Federal Arbitration Act, 9 U.S.C.S. §§ 1-16. A "knowing and voluntary" standard meaning "more than with an understanding that a binding agreement is being entered and without fraud or duress" should not be applied to arbitration agreements. More Like This Headnote

HEADNOTES / SYLLABUS ⊟ **Hide**

SUMMARY:

Appeal by employer from denial of its motion to stay proceedings pending arbitration. The Third Circuit, Chagares, J., reversed and remanded.

HEADNOTES

VIRGIN ISLANDS OFFICIAL REPORTS HEADNOTES
[Headnotes classified to Virgin Islands Digest]

VI(1)±1. **Arbitration § 11.10—Consent To Arbitrate—Generally** When determining whether the parties agreed to arbitrate a certain matter, courts generally should apply ordinary state-law principles that govern the formation of contracts. In the absence of contrary Virgin Islands law, the case is governed by the rules of the common law, as expressed in the restatements of law approved by the American Law Institute. 1 V.I.C. § 4.

VI(2)±2. **Contracts § 23.30—Offer and Acceptance—Mutual Assent** Mutual assent between parties is necessary for the formation of a contract. While mutual assent is sometimes referred to as a "meeting of the minds," this phrase must not be construed too literally. Acceptance is measured not by the parties' subjective intent, but rather by their outward expressions of assent. **Restatement (Second) of Contracts** § 17.

VI(3)±3. **Contracts § 23.10—Offer and Acceptance—Generally** The parties to most contracts give actual as well as apparent assent, but it is clear that a mental reservation of a party to a bargain does not impair the obligation he purports to undertake. **Restatement (Second) of Contracts** § 17 cmt. c.

VI(4)±4. **Contracts § 23.10—Offer and Acceptance—Generally** It will not do for a man to enter into a contract, and, when called upon to respond to its obligations, to say that he did not read it when he signed it, or did not know what it contained. The integrity of contracts demands that this principle be rigidly enforced by the courts.

VI(5)±5. **Contracts § 23.10—Offer and Acceptance—Generally** It is true that an illiterate man may bind himself by contract by negligently failing to learn the contents of an instrument which he has executed.

VI(6)±6. **Arbitration § 11.40—Consent To Arbitrate—Enforceability** Every contracting party has the duty to learn and know the contents of a contract before he signs and delivers it. Arbitration agreements in the employment context are not exempt from this principle: failure to read or understand an arbitration agreement, or an employer's failure to explain it, simply will not constitute special circumstances warranting relieving an employee from compliance with the terms of an arbitration agreement that she signed.

VI(7)±7. **Contracts § 23.10—Offer and Acceptance—Generally** According to the objective theory of contract formation, what is essential is not assent, but rather what the person to whom a manifestation is made is justified as regarding as assent. Thus, if an offeree, in ignorance of the terms of an offer, so acts or expresses itself as to justify the other party in inferring assent, and this action or expression was of such a character that a reasonable person in the position of the offeree should have known it was calculated to lead the offeror to believe that the offer had been accepted, a contract will be formed in spite of the offeree's ignorance of the terms of the offer. The most common illustration of this principle is the situation when one who is ignorant of the language in which a document is written, or who is illiterate, executes a writing proposed as a contract under a mistake as to its contents. Such a person is bound, in the absence of fraud, if the person does not require the document to be read to him.

VI(8)±8. **Contracts § 23.10—Offer and Acceptance—Generally** In the absence of fraud, the fact that an offeree cannot read, write, speak, or understand the English language is immaterial to whether an English-language agreement the offeree executes is enforceable.

VI(9)±9. **Arbitration § 11.50—Consent To Arbitrate—Particular Cases** A Spanish-speaking employee was bound by an arbitration clause in an English-language employment agreement. The employee was not alleging fraud or misrepresentation on the part of the employer, and it was the employee's obligation to ensure he understood the agreement before signing; moreover, in the almost one year that he worked for the employer, he never

questioned the terms of the agreement.

VI(10)±10. **Arbitration § 13.30—Federal Law—Federal Arbitration Act** Applying a heightened "knowing and voluntary" standard to arbitration agreements would be inconsistent with the Federal Arbitration Act. A "knowing and voluntary" standard meaning "more than with an understanding that a binding agreement is being entered and without fraud or duress" should not be applied to arbitration agreements. 9 U.S.C. §§ 1-16.

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Emile A. Henderson III (Argued), Law Offices of Yvette D. Ross-Edwards, U.S. Virgin Islands, *Counsel for Appellee*.

JUDGES: RENDELL, FUENTES, and CHAGARES, *Circuit Judges*.

OPINION BY: CHAGARES

OPINION

OPINION OF THE COURT

(August 28, 2008)

This case requires us to determine whether an arbitration clause in an employment agreement is enforceable where one party is ignorant of the language in which the agreement is written.

Juan **Morales (Morales)** was employed by **Sun Constructors,** Inc. (Sun). The employment relationship between **Morales** and Sun was governed by a signed employment agreement (the Agreement) that contained an arbitration clause. **Morales** was terminated by Sun, and he filed a wrongful termination suit against his former employer in the District Court of the Virgin Islands. Sun moved to stay the proceedings pending arbitration, but the District Court denied the motion, finding that **Morales** signed the Agreement without realizing it **[*2]** contained an arbitration clause. The Agreement was written in English, a language **Morales** cannot understand, and the District Court concluded that the arbitration clause was unenforceable because **Morales** did not assent to the clause. On appeal, Sun argues that **Morales** is bound by the entire Agreement, even if he is ignorant of its terms. We agree and will reverse the decision of the District Court and remand the case with instructions to enter a stay pending arbitration.

I.

Appellee **Morales** is a Spanish-speaking welder who resides in St. Croix, United States Virgin Islands. Welders like **Morales** were in high demand by appellant Sun, and **Morales** acknowledged: "[Sun] needed me. It was an emergency ... .They needed to start work, so they were under pressure." Appendix (App.) 114, 121. On April 15, 2004, after **Morales** had passed a written exam, in English, Sun hired him and required him to attend a 2 1/2-hour orientation conducted entirely in English and to sign an hourly employment agreement. Five paragraphs of the Agreement (paragraphs 12 through 16) pertained to arbitration and covered nearly 8 of the 13 pages of the Agreement. App. 126-38. The Sun employee who conducted the orientation, **[*3]** Mr. Langner, asked Jose Hodge (Hodge), a bilingual

applicant who was also present at the orientation, and whom **Morales** knew, to explain to **Morales** what Langner was saying and help him fill out the documents. App 83, 69. Hodge testified that he generally understands about eighty-five percent of what is said and written in English. App. 94. He also stated that **Morales** did not ask him what he was signing and that he did not specifically explain the arbitration clause to **Morales.** App. 69, 94. Mr. Langner stated that he did explain the arbitration provisions in English and that, during the orientation, Hodge was speaking to **Morales** in a foreign language. App. 82-83. The Agreement governed the employment relationship between **Morales** and Sun for the entirety of the relationship.

On April 6, 2005, Sun fired **Morales** for allegedly dumping a bottle of urine from a great height on another contractor's employees in violation of safety standards. **Morales** filed a wrongful termination suit against Sun in the District Court on December 20, 2006, seeking relief under eight causes of action all covered by the Agreement's arbitration clause. The District Court determined that mutual assent to the arbitration **[*4]** clause did not exist and denied Sun's motion to stay the proceedings pending arbitration. This appeal followed.

II.

*HN1*We have jurisdiction over this appeal pursuant to 28 U.S.C. § 1291 and 9 U.S.C. § 16 and exercise plenary review over the District Court's denial of Sun's motion to stay proceedings pending arbitration. To the extent that the District Court based its decision on findings of fact, however, we review for clear error. *See Medtronic AVE, Inc. v. Advanced Cardiovascular Sys., Inc.,* 247 F.3d 44, 53-54 (3d Cir. 2001).

III.

*HN2*The Federal Arbitration Act (FAA), 9 U.S.C. §§ 1-16, provides that arbitration agreements are "enforceable to the same extent as other contracts," and "establishes a strong federal policy in favor of the resolution of disputes through arbitration." *Alexander v. Anthony Int'l, L.P.,* 341 F.3d 256, 263 (3d Cir. 2003) (quotation marks and citation omitted). However, "arbitration provisions may be attacked under 'such grounds as exist at law or in equity for the revocation of a contract.'" *Plaskett v. Bechtel Int'l, Inc.,* 243 F. Supp. 2d 334, 339 (D.V.I. 2003) (quoting 9 U.S.C. § 2).

*VI(1)***[1]** *HN3*When determining "whether the parties agreed to arbitrate a certain matter ... courts **[*5]** generally ... should apply ordinary state-law principles that govern the formation of contracts." *First Options of Chicago, Inc. v. Kaplan,* 514 U.S. 938, 944, 115 S. Ct. 1920, 131 L. Ed. 2d 985 (1995). In the absence of contrary Virgin Islands law, this case is governed by the rules of the common law, as expressed in the restatements of law approved by the American Law Institute. *See* 1 V.I. Code Ann. § 4 (2007); *Barclays Invs., Inc. v. St. Croix Estates,* 399 F.3d 570, 577 (3d Cir. 2005).

A.

*VI(2)***[2]** It is well-settled *HN4*under the Restatement (Second) of Contracts (the Restatement) that mutual assent between parties is necessary for the formation of a contract. *See* Restatement § 17; *see also Univ. of V.I. v. Petersen-Springer,* 232 F. Supp. 2d 462, 469 (D.V.I. 2002) ("[T]he formation of a contract requires 'a bargain in which there is a manifestation of mutual assent to the exchange and a consideration.") (quoting Restatement § 17). While mutual assent "is sometimes referred to as a 'meeting of the minds,'" Restatement § 17 cmt. c, this phrase must not be construed too literally. Acceptance is measured not by the parties' subjective intent, but rather by their outward expressions of assent. As the Restatement explains:

> VI(3)[3] The parties [*6] to most contracts give actual as well as apparent assent, but it is clear that a mental reservation of a party to a bargain does not impair the obligation he purports to undertake. The phrase used here, therefore, is "manifestation of mutual assent."

Id.

VI(4)[4-6] The Supreme Court has observed: HN5"It will not do for a man to enter into a contract, and, when called upon to respond to its obligations, to say that he did not read it when he signed it, or did not know what it contained." *Upton v. Tribilcock*, 91 U.S. 45, 50, 23 L. Ed. 203 (1875). The "integrity of contracts demands" that this principle "be rigidly enforced by the courts." 1 Richard A. Lord, *Williston on Contracts* § 4:19 (4th ed. 2008). As one noted treatise explains:

> VI(7)[7] HN6According to the objective theory of contract formation, what is essential is not assent, but rather what the person to whom a manifestation is made is justified as regarding as assent. Thus, if an offeree, in ignorance of the terms of an offer, so acts or expresses itself as to justify the other party in inferring assent, and this action or expression was of such a character that a reasonable person in the position of the offeree should have known it was calculated to lead the offeror [*7] to believe that the offer had been accepted, a contract will be formed in spite of the offeree's ignorance of the terms of the offer. The most common illustration of this principle is the situation when one who is ignorant of the language in which a document is written, or who is illiterate, executes a writing proposed as a contract under a mistake as to its contents. Such a person is bound, in the absence of fraud, if the person does not require the document to be read to him ... .

Id. See *New York Life Ins. Co. v. Kwetkauskas*, 63 F.2d 890, 891 (3d Cir. 1933) (recognizing that HN7"[i]t is true that an illiterate man may bind himself by contract by negligently failing to learn the contents of an instrument which he has executed"); *Hoshaw v. Cosgriff*, 247 F. 22, 26 (8th Cir. 1917) (holding that HN8every contracting party has the duty "to learn and know the contents of a contract before he signs and delivers it"). Arbitration agreements in the employment context are not exempt from this principle. *See e.g.*, *Booker v. Robert Half Int'l, Inc.*, 315 F. Supp. 2d 94, 101 (D.D.C. 2004) (stating that "[f]ailure to read or understand an arbitration agreement, or an employer's failure to explain it, [*8] simply will not constitute 'special circumstances' warranting relieving an employee from compliance with the terms of an arbitration agreement that she signed").

VI(8)[8] **Morales,** in essence, requests that this Court create an exception to the objective theory of contract formation where a party is ignorant of the language in which a contract is written. We decline to do so. HN9In the absence of fraud, the fact that an offeree cannot read, write, speak, or understand the English language is immaterial to whether an English-language agreement the offeree executes is enforceable. *See* *Paper Express, Ltd. v. Pfankuch Maschinen*, 972 F.2d 753, 757 (7th Cir. 1992) (addressing a contract dispute between an Illinois corporation and a German corporation and holding that parties should be held to contracts, even if the contracts are in foreign languages or the parties cannot read or understand the contracts due to blindness or illiteracy); *Shirazi v. Greyhound Corp.*, 145 Mont. 421, 401 P.2d 559, 562 (Mont. 1965) (holding Iranian student subject to limitation contained in baggage receipt and stating that "[i]t was incumbent upon [the plaintiff], who knew of his own inability to read the English language, to acquaint himself [*9] with the contents of the ticket"); *Paulink v. Am. Express Co.*, 265 Mass. 182, 163 N.E. 740, 741 (Mass. 1928) (stating that "plaintiff was bound by the[] terms [of foreign bills of exchange], in the absence of deceit on the part of the defendant, even though not understanding their

purport and ignorant of the English language"); *Wilkisius v. Sheehan*, 258 Mass. 240, 155 N.E. 5, 6 (Mass. 1927) (holding that Lithuanian husband and wife, who did not speak or understand English and used an interpreter to contract for an exchange of real estate, were bound by the terms of the agreement because "their failure to understand these details was not due to fraudulent acts on the part of the defendant but to their own inability to read, write, speak or understand the English language, and to the incapacity of the interpreter").

Morales is not claiming fraud, *see* App. 78, 95, and he is not alleging that Sun misrepresented the contents of the Agreement to him. *Cf. Am. Heritage Life Ins. Co. v. Lang*, 321 F.3d 533, 538 (5th Cir. 2003) (recognizing that "[i]t is a widely accepted principle of contracts that one who signs or accepts a written instrument will normally be bound in accordance with its written terms," and that a defendant, **[*10]** "illiterate or not, would be bound by the terms of the arbitration agreements," but remanding for adjudication of a claim of fraud in the inducement); *Pimpinello v. Swift & Co.*, 253 N.Y. 159, 163, 170 N.E. 530 (1930) (stating that "[i]f the signer is illiterate, or blind, or ignorant of the alien language of the writing, *and the contents thereof are misread or misrepresented to him* by the other party ... unless the signer be negligent, the writing is void") (emphasis added). [1] Further, there is no evidence that Sun tried to hide the arbitration clause; indeed, it comprised about one-half of the Agreement.

FOOTNOTES

1 The dissent analogizes this case to *American Heritage Life Insurance Company v. Lang*. Unlike **Morales,** however, the illiterate plaintiff in *Lang* asked the defendant's agent to explain each of the documents Lang signed, and he submitted evidence that the agent deliberately mislead him as to what he was signing by claiming that the papers were loan or insurance documents rather than an arbitration agreement.

VI(9)∓**[9]** It was **Morales'** obligation to ensure he understood the Agreement before signing. **Morales** did not ask Hodge to translate the document word-for-word or ask to take the Agreement home and have it **[*11]** translated, notwithstanding the fact that he testified that, in the past, he had paid someone to translate documents for him. App. 32-33. **Morales** did not even request a copy of the employment contract, a demand Sun has indicated it would have granted without dispute. App. 84. Moreover, in the almost one year that **Morales** worked for Sun, he never questioned the terms of the Agreement. **Morales'** signature manifested his assent to the entire Agreement, and he is bound by the arbitration clause therein. [2]

FOOTNOTES

2 We disagree with the dissent's characterization of the circumstances in this case. The dissent suggests that "Sun assigned Hodge ... to translate the [Agreement] for **Morales;** [ ] Hodge ... neglected to translate the arbitration clauses; and [ ] as a result of Hodge's incomplete translation, **Morales** was not aware that the Agreement contained an arbitration clause." Dissent at 3. Sun requested that Hodge assist **Morales** in completing the pre-hire documents. **Morales** did not ask Hodge for an explanation of the Agreement, and Hodge testified that if **Morales** had asked questions, he "would have translated to him what [a specific] page [was] for." App. 90. Indeed, **Morales** initialed each page **[*12]** of the Agreement, including those containing the arbitration provisions, without requesting any specific translations. *See* App. 126-38.

While we are sympathetic to **Morales'** situation, Hodge did not misread or misrepresent the Agreement to **Morales,** and the "incomplete translation" was due to **Morales'** failure to request any explanation or translation. Furthermore, we reiterate that **Morales** worked

under this Agreement for almost a year without question or complaint.

B.

VI(10)[10] Sun also asserts that the District Court improperly applied a heightened standard of "knowing consent" to the Agreement's arbitration clause because of the valuable rights relinquished under the provision. Sun contends that, contrary to ordinary contract law principles, the District Court required that **Morales** have knowledge and understanding of the arbitration clause's terms in order for the provision to be enforceable. While it is unclear whether the District Court indeed took such action, we reiterate our holding in *Seus v. John Nuveen & Co., Inc.*, 146 F.3d 175 (3d Cir. 1998), *overruled on other grounds by Green Tree Financial Corp.-Alabama v. Randolph*, 531 U.S. 79, 121 S. Ct. 513, 148 L. Ed. 2d 373 (2000), that *HN10* applying a heightened "knowing and voluntary" **[*13]** standard to arbitration agreements would be inconsistent with the FAA. *See Seus*, 146 F.3d at 183-84 (explaining that a "knowing and voluntary" standard meaning "more than with an understanding that a binding agreement is being entered and without fraud or duress" should not be applied to arbitration agreements). **Morales** entered into the Agreement with Sun without fraud or duress, and he is bound by its arbitration clause.

IV.

For the foregoing reasons, the judgment of the District Court will be reversed and the case remanded for the District Court to enter a stay pending arbitration.

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