

**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION**

SUMMIT PARK EAST ASSOCIATES, and HOTWIRE COMMUNICATIONS LTD., Plaintiffs,	: SEPTEMBER TERM 2004 : No. 0139
v.	: Commerce Program
URBAN CABLE WORKS OF PHILADELPHIA Defendant.	: Superior Court Docket No. 3167 EDA 2004

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OPINION

ALBERT W. SHEPPARD, JR., J. January 26, 2005

This Opinion is submitted relative to plaintiffs’ appeal of this court’s Order of October 20, 2004 which denied plaintiffs’ Motion to Stay Arbitration Proceedings.

In entering the appealed-from Order on October 20, 2004 this court issued an Opinion explaining the reasons for doing so. Further, when this court denied plaintiffs’ Motion for Reconsideration by Order of December 8, 2004, a second Opinion was issued. These two Opinions are attached as Appendix “A” and Appendix “B”, respectively.

This court will rely on those two Opinions and respectfully submits them for purposes of this appeal. Further, for the reasons discussed in those Opinions this court urges that its Order should be affirmed.

BY THE COURT,

ALBERT W. SHEPPARD, JR., J.

**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION**

SUMMIT PARK EAST ASSOCIATES, and HOTWIRE COMMUNICATIONS LTD.,	: SEPTEMBER TERM 2004
Plaintiffs,	: No. 0139
v.	: Commerce Program
URBAN CABLE WORKS OF PHILADELPHIA	: Control Number 090312
Defendant.	

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O P I N I O N

Albert W. Sheppard, Jr., J. October 20, 2004

Presently before the court is plaintiffs’ Motion seeking an Order to stay of arbitration proceedings initiated by defendant before the American Arbitration Association pending final resolution of this matter. For the reasons discussed, plaintiffs’ Motion is Denied.

BACKGROUND

Plaintiff, Summit Park East Associates (“Summit”), is a Pennsylvania general partnership owned and/or operated by the Summit Park Apartments (“Summit Park”). Michael Karp (“Karp”) is Summit’s general partner. Hotwire Communications, LTD (“Hotwire”) is a telecommunications company that provides cable television access to the public including many residents of Summit Park.¹ Urban Cableworks of Philadelphia (“Urban”) is a cable television operator franchised by the City of Philadelphia.

APPENDIX “A”

¹ Summit Park and Hotwire are wholly owned by Michael Karp.

This action arises from a demand by Urban to Summit and Hotwire to provide access to Summit Park to install equipment and provide cable TV services to certain tenants. Although Summit acknowledges Urban's demand for access to install CATV, Summit refuses to provide Urban with access claiming it has a right to receive the identity of the residents of Summit Park who requested cable service, including apartment numbers and building designations, the date the requests were made and the date Urban made the decision to offer CATV services to these Summit Park residents. Plaintiffs' further contend that Urban's proposal to provide compensation to Summit is neither appropriate, justified nor consistent.

Urban refuses to furnish the identity of the requesting tenants, claiming that such disclosure is not required by the Tenant's Rights to Cable Television Act, Article V-B 68 P.S. § 250.501-B *et. seq.* ("the Act") and that the identity of the tenants is "of a proprietary business nature, and its disclosure could cause competitive harm to the cable operator."

The parties were unable to reach an agreement, and on June 29, 2004, Urban filed a demand for arbitration with the American Arbitration Association. On August 17, 2004, an amended demand for arbitration was submitted adding Summit Park East Associates as a respondent.

On September 3, 2004, Summit filed this action seeking declaratory and injunctive relief claiming that Urban is not entitled to demand access to Summit Park since it has failed to comply with certain provisions and prerequisites of the Act. Moreover, Summit contends that Urban's demand for arbitration was not properly provided to the landlord. Summit then filed the instant motion seeking to stay the arbitration proceeding pending before the American Arbitration Association.

DISCUSSION

Summit argues that it will suffer severe harm and prejudice if the pending arbitration is not stayed. Specifically, Summit argues that: 1) it will be forced to spend time, money and resources in defending the defendant's claim in an arbitration proceeding that should not occur, 2) that the arbitration will be completed and access may be ordered before the issues before this court will be decided and 3) it will be deprived of meaningful, effective and timely access to the courts to have their case heard on the merits. Urban denies Summit's contentions. After taking into consideration the parties' respective positions, the court denies Summit's motion.

Article V-B, Tenant's Right to Cable Television, 68 P.S. § 250.501-B 250.510-B states that landlords must allow the cable-company of their tenant's choice to install its equipment on the landlord's property. The Act provides in pertinent part:

A landlord may not discriminate in rental or other charges between tenants who subscribe to the services of a CATV system and those who do not. The landlord may, however, require reasonable compensation in exchange for a permanent taking of his property resulting from the installation of CATV system facilities within and upon his multiple dwelling premises, to be paid by an operator. The compensation shall be determined in accordance with this article.

68 P.S. § 250.502-B.

Upon a tenant's request for and the cable operator's decision to provide service, the operator must notify the landlord within ten days after its decision. The notification triggers a forty five day period for negotiation between the operator and the landlord. 68 P.S. § 250.504-B. If there is no agreement between the landlord and the operator during this period, the matter proceeds to arbitration. Id. The arbitrator's decision is limited to the issues of just compensation for loss of value of the property resulting from permanent installation of cable television system facilities and reasonableness of the terms of the proposal involving the work to be performed.

Weinberg v. Comcast Cablevision of Philadelphia, 759 A.2d 395, 402 (Pa. Super. 2000). Once a tenant requests cable television service, the cable operator has the right to provide service over the objection of the property owner. 68 P. S. § 250.501-B, *et. seq.*

Thus, the negotiation period and arbitration process under the Act are not concerned with the issue whether a cable operator may have access to the property, but rather concern only matters of compensation and how access will be effectuated. Weinberg, *supra.* at 402.

[Emphasis added]. The arbitrator cannot order access to the premises. A landlord may seek a judicial determination of the “right to access” issue.

A review of the demand for arbitration filed by Urban demonstrates that it does not seek as relief access to Summit Park. Rather, the demand for arbitration implicates solely the issue of reasonableness and just compensation. Indeed, Urban concedes that it may not obtain access to the premises through arbitration and may only do so through a proceeding in this court.

Thus, Summit will not be denied its right to argue the issue of access, since this is the only forum for this dispute. Moreover, although Summit argues that it will be expending unnecessary costs if the arbitration is not stayed, this court does not believe that such an expense is unnecessary since Summit also objects to Urban’s proposal for just compensation which can only be decided at arbitration. Proceeding simultaneously with arbitration to decide the issue of just compensation and the instant proceeding to determine access will serve to expedite the process and effectuate the legislative purpose of the Act. *See e.g.* 68 P.S. § 250.502-B, Historical and Statutory Note (It is in the general interest of the public to afford apartment residents and other tenants of leased residential dwellings the opportunity to obtain cable television service of their choice and to prevent landlords from treating such residents and tenants as a captive market for sale of television service of their choice and to prevent landlords

from treating such residents as a captive market for the sale of television reception services selected or provided by the landlord). Accordingly, plaintiffs' Motion is **Denied**.

CONCLUSION

For these reasons, plaintiffs' Motion for Stay of the Arbitration Proceeding is Denied. The court will enter a contemporaneous Order consistent with this Opinion

BY THE COURT,

ALBERT W. SHEPPARD, JR., J.

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION

SUMMIT PARK EAST ASSOCIATES, and HOTWIRE COMMUNICATIONS LTD., Plaintiffs,	: SEPTEMBER TERM 2004
vi.	: No. 0139
URBAN CABLE WORKS OF PHILADELPHIA Defendant.	: Commerce Program
	: Control Number 090312

ORDER

AND NOW, this 20th day of October 2004, upon consideration of plaintiffs' Motion to Stay Arbitration Proceedings, defendant's response in opposition, the respective memoranda, all matters of record and in accord with the contemporaneous Opinion being filed of record, it hereby is **ORDERED** that plaintiffs' Motion is **Denied**.

BY THE COURT,

ALBERT W. SHEPPARD, JR., J.

**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION**

SUMMIT PARK EAST ASSOCIATES	:	September Term 2004
And HOTWIRE COMMUNICATIONS	:	
LTD.,	:	
	:	
Plaintiffs,	:	No. 0139
	:	
v.	:	
URBAN CABLE WORKS OF	:	COMMERCE PROGRAM
PHILADELPHIA,	:	
	:	
Defendant.	:	Control Number 112615

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OPINION

Albert W. Sheppard, Jr., J. December 8, 2004

Presently before the court is plaintiffs' Summit Park East Associates and Hotwire Communications, Ltd. ("plaintiffs") Petition for Reconsideration of this court's October 20, 2004 Order. Plaintiffs have also petitioned for Certification of the Order for Immediate Appeal. For the reasons discussed, both Petitions are Denied.

On September 2, 2004, plaintiffs sued Urban Cable Works of Philadelphia, ("Urban") seeking declaratory and injunctive relief claiming that Urban is not entitled to demand access to the Summit Park apartment complex because it has failed to comply with the provisions of the Tenant's Right to Cable Television Act, Article V-B 68 P.S. § 250.501-B *et. seq.* ("the Act") (i.e., failure to identify the tenant who requested Urban's service). Plaintiffs further contended that Urban's demand was not properly provided the landlord (plaintiff).

APPENDIX "B"

Plaintiffs filed a concomitant motion seeking to stay an arbitration proceeding pending before the American Arbitration Association. On October 20, 2004, this court denied plaintiffs motion to stay the arbitration proceeding. It is this order which plaintiffs now ask this court to reconsider. For those reasons discussed in the October 20, 2004 Order and Opinion, this court denies plaintiffs' Motion for Reconsideration.

Contrary to plaintiffs' assertion, this court's Opinion did address whether Urban is entitled to demand arbitration in the first place. As discussed in the October 20, 2004 Opinion, under the Act, a landlord must allow the cable company of their tenant's choice to install its equipment on the landlord's property. 68 P.S. § 250.501. The Act delineates the process which must be followed to effectuate the tenant's request which includes a notification period, a negotiation period and arbitration if necessary. The Act specifically limits the arbitration to the issues of just compensation for loss of value of the property resulting from installation of the cable television system and reasonableness of the terms proposal involving the work to be performed. See Weinberg v. Comcast Cablevision of Philadelphia, 759 A.2d 395, 402 (Pa. Super. 2000). Whether a cable operator may have access, including whether a cable company may demand access in the first place, is within the jurisdiction of this court. (See Summit Park East Associates and Hotwire Communications, Ltd. v. Urban Cable Works of Philadelphia, September 2004 No. 00139, p. 4 (October 20, 2004) (Sheppard, J.).

As concluded in the October 20, 2004 submissions, allowing the arbitration and this proceeding to proceed simultaneously will only serve to expedite the process and effectuate the legislative process of the Act. Id. p. 5. Further, it is submitted that to

certify the Order for immediate appeal would not be appropriate under these circumstance and at this time.

CONCLUSION

For these reasons, plaintiffs' Petition for Reconsideration of this court's Order dated October 20, 2004 is denied. It is further ordered that plaintiffs' Petition for Certification is also denied.

An Order consistent with this Opinion will be entered of record.

BY THE COURT,

ALBERT W. SHEPPARD, JR. J.

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY

FIRST JUDICIAL DISTRICT OF PENNSYLVANIA

CIVIL TRIAL DIVISION

SUMMIT PARK EAST ASSOCIATES	:	September Term 2004
And HOTWIRE COMMUNICATIONS	:	
LTD.,	:	
	:	
Plaintiffs,	:	No. 0139
	:	
v.	:	
URBAN CABLE WORKS OF	:	COMMERCE PROGRAM
PHILADELPHIA,	:	
	:	
Defendant.	:	Control Number 112615

ORDER

AND NOW, this 8TH day of December 2004, upon consideration of plaintiffs Summit Park East Associates and Hotwire Communication, LTD's Petition for Reconsideration and its Petition for Certification of that Order for Immediate Appeal, with supporting memorandum, all matters of record and in accord with the Opinion filed of record, it is **ORDERED** that plaintiffs' Petition for Reconsideration is **Denied**.

It is further **ORDERED** that plaintiffs' Petition for Certification of the Order for Immediate Appeal is also **DENIED**.

BY THE COURT,

ALBERT W. SHEPPARD, JR., J.