

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

BASSETT EXPANSION CORP.	:	
	:	September Term, 2003
Plaintiff,	:	No. 00315
v.	:	
	:	Commerce Program
TDK HOLDINGS, et al.	:	
	:	Control No. 102020
Defendants	:	

ORDER and MEMORANDUM

AND NOW, this 18TH day of December, 2003, upon consideration of Defendants' Preliminary Objections, all responses in opposition, the respective memoranda, all matters of record and in accordance with the Memorandum Opinion being contemporaneously filed with this Order, it hereby is **ORDERED** and **DECREED** that Defendants' Preliminary Objection pursuant to Pa.R.C.P. 1028 (a)(6) is **SUSTAINED** and Plaintiff's Amended Complaint is **DISMISSED**, as this matter is subject to arbitration as originally agreed by the parties.

BY THE COURT:

C. DARNELL JONES, J.

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MEMORANDUM OPINION

C. DARNELL JONES, J.

Before the Court are Defendants' Preliminary Objections to Plaintiff's Amended Complaint. For the reasons fully set forth below, Defendants' Preliminary Objections are **sustained**.

DISCUSSION

Defendants have filed, *inter alia*, a Preliminary Objection to Plaintiff's Amended Complaint pursuant to **Pa.R.C.P. 1028 (a)(6) – Existence of Agreement for Alternative Dispute Resolution**. 42 Pa.C.S.A. § 7303, which governs such matters, states:

A written agreement to subject any existing controversy to arbitration or a provision in a written agreement to submit to arbitration any controversy thereafter arising between the parties is valid, enforceable and irrevocable, save upon such grounds as exist at law or in equity relating to the validity, enforceability or revocation of any contract.

42 Pa.C.S.A. § 7303. Judicial inquiry in determining whether a suit must proceed to arbitration requires a determination as to whether: (1) a valid agreement to arbitrate exists between the parties and, if so, (2) whether the dispute involved is within the scope of the arbitration provision. Smith v. Cumberland Group Ltd., 455 Pa. Super. 276, 284, 687 A.2d

1167, 1171 (1997); Messa v. State Farm Insurance Company, 433 Pa. Super. 594, 597, 641 A.2d 1167, 1168 (1994); PBS Coal, Inc. v. Hardhat Mining, Inc., 429 Pa. Super. 372, 376-77, 632 A.2d 903, 905 (1993). In the instant matter, it is undisputed that the parties possess a valid agreement to arbitrate. Thus, the pertinent inquiry is whether the instant dispute falls within the scope of the arbitration provision as set forth in ¶ 17 of the Franchise Agreement. A review of the Amended Complaint, coupled with the language Franchise Agreement itself, reveals that the instant dispute falls within the scope of the Franchise Agreement and is, therefore, subject to arbitration.

It is well-settled that the issue of whether a particular dispute falls within a contractual arbitration provision is a matter of law for the court to decide. Shaddock v. Christopher J. Kaclik, Inc., 713 A.2d 635, 637 (Pa. Super. 1998). Pennsylvania law advocates strict construction of arbitration agreements and dictates that any doubts or ambiguity as to arbitrability be resolved in favor of arbitration. Smith v. Cumberland Group, Ltd., 455 Pa. Super. 276, 687 A.2d 1167, 1171 (1997). The fundamental rule in construing a contract is to ascertain and give effect to the intention of the parties. Lower Frederick Township v. Clemmer, 518 Pa. 313, 543 A.2d 502, 510 (1988). In order to determine the meaning of the agreement, the court must examine the entire contract, taking into consideration “. . . the surrounding circumstances, the situation of the parties when the contract was made, the objects they apparently had in view and the nature of the subject matter.” Huegel v. Mifflin Const. Co., Inc., 796 A.2d 350 (Pa. Super. 2002).

In the instant matter, the Franchise Agreement, which defines the rights and obligations of the parties, clearly states:

(a) All disputes and claims relating to this Agreement, the rights and obligations hereto, or any other claims or causes of action relating to the performance of either party...shall be settled by arbitration at the offices of the American Arbitration Association in Philadelphia, Pennsylvania.

Compl Exh A., ¶ 17 (a). The Franchise Agreement carves out a specific exception which states that the arbitrator shall have no jurisdiction over “disputes relating to the ownership, validity or registration of any mark, copyright or patent of the company and shall have no authority to declare any mark, copyright, or patent invalid, abandoned, misused, abused or otherwise affect the registration thereof.” Id. at ¶ 17 (b).

Based upon the facts pled in the Amended Complaint, this court finds that the foregoing exception is not implicated here. The dispute at bar relates to Defendants’ alleged breach of the Franchise Agreement, including their alleged failure to pay fees due and owing pursuant to the agreement, their failure to operate the franchise in a manner consistent with Bassett’s standards (as set forth in the agreement) and their failure to permit Bassett’s representatives access to inspect the franchise (as required by the agreement). Compl. ¶¶ 20-30. All of these obligations clearly arise under the Franchise Agreement. The fact that this breach also includes Defendants’ apparent failure to cease using the Bassett’s trademark in light of the foregoing breaches is incidental to its breach of contract action; it is not a separate claim arising in connection with intellectual property or relating to the validity, registration or misappropriation of the mark itself. The real dispute here relates to the parties’ performance under the Franchise Agreement, which sets forth all the rights, obligations and requirements of the parties, including when and under what circumstances Defendants may use the Bassett’s’ trademark. As such, this dispute falls squarely within ¶ 17 of the Franchise Agreement and therefore, is beyond the jurisdiction of this court.

CONCLUSION

For the above-stated reasons, Defendants' Preliminary Objections are **sustained** and Plaintiff's Amended Complaint **dismissed**, as this matter is subject to arbitration as originally agreed by the parties.

The court will enter a contemporaneous Order consistent with this Opinion.

BY THE COURT:

C. DARNELL JONES, J.

Dated: December 18, 2003