

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

GE LANCASTER INVESTMENTS, LLC,	: NOVEMBER TERM, 2004
JE LANCASTER INVESTMENTS, LLC,	
ME LANCASTER INVESTMENTS, LLC,	: No. 4311
DE LANCASTER INVESTMENTS, LLC,	
LANCASTER INVESTMENTS PARTNERS.	:
GJMD INVESTORS, INC.,	
SPRING MILL INVESTORS, INC.,	:
ME SPRING MILL INVESTMENTS, LLC,	
AE SPRING MILL INVESTMENTS, LLC,	:
DE SPRING MILL INVESTMENTS, LLC,	
EE SPRING MILL INVESTMENTS, LLC,	:
JE SPRING MILL INVESTMENTS, LLC,	
SE SPRING MILL INVESTMENTS, LLC,	:
STEVEN H. ERLBAUM,	
SE MT. PLEASANT INVESTORS, INC.,	:
SE MT. PLEASANT INVESTMENTS, LLC,	
MT. PLEASANT PARTNERS,	:
RIDGEWOOD PARTNERS,	
RDH RIDGEWOOD INVESTORS, INC., and	: (Commerce Program)
RDH RIDGEWOOD INVESTMENTS LLC	:

v.

	: Superior Court Docket
AMERICAN EXPRESS TAX & BUSINESS	No. 599 EDA 2008
SERVICES, INC.	:

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OPINION

Albert W. Sheppard, Jr., J. May 27, 2008

This Opinion is submitted relative to defendant’s appeal of this court’s Order of January 9, 2008, that granted plaintiff’s Motion to Vacate this court’s decision of December 27, 2005 compelling plaintiffs Ridgewood Investors, Inc., RDH Ridgewood Investors, Inc. and RDH Ridgewood Investment, LLC (“Ridgewood Group”) to arbitrate their claims against defendant.

For the reasons discussed it is respectfully submitted that the court’s Order should be affirmed.

BACKGROUND

In addition to the Ridgewood Group, the plaintiffs included three different groups:

- a. The Lancaster Group;
- b. The Spring Mill Group; and
- c. The Mt. Pleasant Group.

This case relates to an arrangement between a Texas law firm, Jenkens & Gilchrist ("Jenkens"), and the defendant through which plaintiffs made what were supposed to be certain tax-sheltered investments. Jenkens provided the opinion letter which led plaintiffs to believe that the Internal Revenue Service would treat investments of the kind proposed on a favorable basis for tax purposes.

The defendant then prepared the income tax returns for the plaintiffs. These returns embodied the "tax shelters". Defendant was paid by the Jenkins law firm for this work.

Ultimately, however, the IRS decided not accord such treatment to the investments. Plaintiffs lost not only the amount of the tax savings they were supposed to have received, but also the amount of interest and penalties that they incurred, because the IRS and state taxing authorities determined that it should was clear to defendant when the tax returns were being prepared that there had been no basis for the position plaintiffs had taken in their tax returns.¹

¹ GE Lancaster Invs., LLC v. Am. Express Tax & Bus. Servs., Inc., 2006 Phila. Ct. Com. Pl. LEXIS 280, 1-2 (Pa. C.P. 2006).

Plaintiffs commenced this action by Writ of Summons in November 2004. Following several motions and hearings, this court permitted plaintiffs to engage in limited pre-complaint discovery.

By Order dated December 27, 2005, the court denied defendant, American Express Tax and Business Services, Inc.'s ("TBS") Motion to Compel Arbitration as to the Lancaster Group, the Sporting Mill Group and the Mt. Pleasant Group and denied a request to issue a stay as to these plaintiffs.²

However, by separate Order dated December 27, 2005, the court granted TBS's Motion to Compel with respect to the Ridgewood Group, since these plaintiffs had signed Arbitration Agreements.³

On January 10, 2006, TBS filed a Notice of Appeal of the court's Order denying TBS's Motion to Compel Arbitration with respect to the Lancaster, Spring Mill and Mt. Pleasant Groups.

On March 8, 2007, the Superior Court issued an Opinion, affirming this court's Order denying TBS's Motion to Compel Arbitration as to the three named plaintiff groups. In so holding, Superior Court held that TBS had waived its right to arbitration.

On March 22nd, TBS applied for reargument *en banc* alleging that the Superior Court failed to rule on the issue raised on appeal. That application was denied.

² This denial related to the following plaintiffs: GE Lancaster Investments LLC, JE Lancaster Investments LIC, ME Lancaster Investments LLC, DE Lancaster Investments LLC, Lancaster Investment Partners, GJMD Investors, Inc., Spring Mill Investors, Inc., ME Spring Mill Investments LIC, AE Spring Mill Investments, LLC, JE Spring Mill Investments LLC, SE Spring Mill Investments LLC, Steven H. Erlbaum, SE Mt. Pleasant Investors, Inc., SE Mt. Pleasant Investments, LLC and Mt. Pleasant Partners.

³ These plaintiffs are as follows: Ridgewood Partners, RDH Ridgewood Investors, Inc. and RDH Ridgewood Investments, LLC.

Upon remand and on April 27, 2007, the Ridgewood Group filed a Motion seeking to vacate this court's Order dated December 27, 2005 which compelled them to arbitrate their claims. They argued that the basis for the Superior Court's decision as to the three other plaintiff groups; that is, that defendants waived their right to arbitration, applied with equal force to the Ridgewood Group. This court agreed and granted the Ridgewood Group's Motion and vacated the December 27, 2005 Order. This appeal followed.

DISCUSSION

In reaching the decision to vacate its December 27, 2005 Order (requiring the Ridgewood Group to arbitrate) this court relied upon the Superior Court's decision in GE Lancaster Invs., LLC v. Am. Express Tax & Bus. Servs., Inc., 920 A.2d 850 (Pa. Super. 2007), relating to the other three plaintiff groups. In that Opinion, the Superior Court held that TBS accepted legal process even though plaintiffs had not filed a complaint by attempting to win favorable rulings from the trial court on pre-complaint discovery motions so as to undermine the opposing party's ability to file a proper complaint. The Superior Court submitted that allowing TBS to pursue arbitration would unfairly prejudice the plaintiffs who "in addition to the cost incurred ...to date, [they] would be required to re-initiate legal proceedings before the American Arbitration Association incurring additional costs[.]"⁴

The Superior Court's conclusion that TBS waived its right to arbitration as to the three plaintiff groups because it accepted legal process is equally applicable to the Ridgewood Group. Indeed, from one perspective it streamlines this litigation in that all

⁴ GE Lancaster Invs., LLC v. Am. Express Tax & Bus. Servs., Inc., 920 A.2d 850 (Pa. Super. 2007) (quoting Goral v. Fox Ridge, Inc., 683 A.2d 931, 933 (Pa. Super. 1996).

plaintiffs are now in this case and court, instead of some plaintiffs here and others in arbitration.

This court was encouraged by the Superior Court's decision, in that this court believes it is inappropriate for litigants to engage in meaningful activity with a court until disappointed by a court ruling, and to then seek implementation of an arbitration clause.

CONCLUSION

This court respectfully submits that its Order should be affirmed.

BY THE COURT,

ALBERT W. SHEPPARD, JR., J.