

SUPERIOR COURT
OF THE
STATE OF DELAWARE

RICHARD F. STOKES
JUDGE

1 THE CIRCLE, SUITE 2
SUSSEX COUNTY COURTHOUSE
GEORGETOWN, DE 19947

David J. Weidman, Esquire
Hudson, Jones, Jaywork & Fisher, LLC
100 N. Bedford Street
Box 359
Georgetown, DE 19947

Basil C. Kollias, Esquire
Cooch & Taylor, P.A.
1000 West Street, 10th Floor
Wilmington, DE 19801

RE: *P&A, LLC (Maryland) v. Yorkshire Realty, LLC*
C.A. No. 09L-02-079 RFS

Plaintiff's Motion for Specific Performance to Arbitrate.
Granted.

Submitted: March 8, 2012
Decided: March 9, 2012

Dear Counsel:

Plaintiff P&A, LLC filed a motion in the above-referenced case for an order for specific performance of an agreement between the parties to proceed to arbitration. Plaintiff argues that defense counsel exercised authority to bind his client to arbitration. Defendant Wilmington Savings Fund Society, FSB argues that defense counsel conditioned his agreement to arbitrate on obtaining his consent from his client.

The discussion about arbitration took place during a pre-trial conference that was not recorded. Thus, a hearing was conducted to take testimony from the two attorneys who participated in the pre-trial. At the hearing, each party presented one witness. Plaintiff called David J. Weidman, Esquire ("Mr. Weidman"), who represented Plaintiff in the proceedings leading up to the hearing. Defendant called Basil C. Kollias, Esquire

(“Mr. Kollias”), who similarly represented Defendant.

Mr. Weidman testified that arbitration was discussed at the pre-trial conference held by Superior Court Judge Joseph R. Slights, III. Mr. Weidman was present in chambers, while defense counsel, Mr. Kollias, participated by phone.

Mr. Weidman stated that both attorneys were enthusiastic about arbitration. The issue of client consent was raised by Mr. Weidman. According to Weidman, Mr. Kollias stated the he had authority to agree to arbitration on his client’s behalf. Mr. Weidman told Judge Slights that he favored arbitration but that he would check with his client before committing to it. He also stated that he would inform the Court and defense counsel as soon as he received word. Mr. Kollias made no such arrangements.

After obtaining his client’s consent, Mr. Weidman called Judge Slights that same afternoon. Judge Slights then removed the case from the trial calendar.

Later that afternoon, Mr. Weidman was informed by Mr. Kollias that arbitration was rejected by someone higher in authority than his primary client contact. Mr. Weidman concluded his testimony by stating that he had not previously doubted Mr. Kollias’s authority and that Mr. Kollias had placed no conditions on it during the pre-trial conference.

The defense called Mr. Kollias. He testified that at the end of the pre-trial conference with Judge Slights, he said he favored arbitration but needed to get confirmation from his client. His primary contact was an attorney at the title company, who had accompanied him to mediation in March 2011. She also preferred arbitration, but her superior wanted to go to trial because he had a bad experience with arbitration in another case.¹ Mr. Kollias received this information at 4:45 p.m., and immediately informed Mr. Weidman of the turn of events.

The next morning, Mr. Kollias received notice from the Court that the trial was cancelled. He concluded his testimony by stating that he did not “purposely” exercise authority to bind his client.

While an attorney lacks inherent authority to bind his client to an agreement, he acquires lawful authority to accept an offer on his client’s behalf when the client either

¹Because neither of these individuals was present, this testimony was admitted over objection to show Mr. Kollias’s state of mind, not for the truth of the matter asserted.

gives special authority or subsequently ratifies the agreement² An attorney who accepts an offer is presumed to have the authority to make such an agreement.³ When a client repudiates counsel's exercise of authority, the client bears the burden of rebutting the presumption of lawful authority.⁴ This case differs in that defense counsel argues that he did not exercise authority but stated to the Court and to opposing counsel that he needed client consent.

Thus, where a plaintiff moves the court to enforce an agreement, the plaintiff bears the burden of showing by a preponderance of the evidence that defense counsel exercised authority to consent to arbitration. If that showing is made, the burden shifts to the defendant to rebut the evidence that counsel exercised authority.

Based on the testimony of Mr. Weidman, as presented above, I find that Plaintiff has shown by a preponderance that Mr. Kollias exercised authority to bind his client to arbitration. Mr. Weidman raised the question of client consent, and Mr. Kollias stated that he had such authority. Mr. Weidman told the Court that he too favored arbitration but needed to obtain client approval. Mr. Weidman arranged to inform the Court and Mr. Kollias as soon as he had confirmation, but Mr. Kollias made no such arrangements. Later that day, Mr. Weidman reported client consent to Judge Slights, who cancelled the trial. At 4:45 p.m., Mr. Weidman was informed by Mr. Kollias that he had not obtained authority to arbitrate, although Mr. Weidman had the distinct impression that Mr. Kollias had already exercised authority to agree.

I further find that Defendant did not meet the shifting burden of showing that Mr. Kollias did not bind his client to arbitration. Mr. Kollias acknowledged that he was busy putting things in order in preparation for vacation, and his final statement from the stand was that he did not "purposely" exercise authority. Defendant did not present testimony from Mr. Kollias's client contact or her superior, who made the final decision. Mr. Kollias's testimony as to what these individuals said was admitted to show state of mind, but not for the truth of the matter asserted. Such testimony could have supported counsel's assertions that he called his client contact to obtain consent to arbitrate.

For these, reasons, I conclude that Plaintiff has met its burden, which was

²*Aiken v. Nat'l Fire Safety Counsellors*, 127 A.2d 473, 475 (Del.Ch.1956).

³*Williams v. Chancellor Care Center of Delmar*, 2009 WL 1101620, at *3 (Del.Super.).

⁴*Prevar Co. v. Hawthorne*, 2010 WL 1367755, at *3 (2010)(citing *Aiken* and *Hawthorne*, *supra*).

unrebutted by Defendant. Plaintiff's motion for specific performance of the arbitration is **GRANTED.**

IT IS SO ORDERED.

Very truly yours,

Richard F. Stokes

Original to Prothonotary