

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR KENT COUNTY

DEBRA LANGSHAW and	:	
CHARLES LANGSHAW,	:	C.A. No. 06C-01-012 WLW
	:	
Plaintiffs,	:	
	:	
v.	:	
	:	
APPLEBY SYSTEMS, INC.,	:	
	:	
Defendant.	:	

Submitted: May 19, 2006
Decided: August 11, 2006

ORDER

Upon Defendant's Motion to Dismiss.
Denied.

Maggie Clausell, Esquire of Law Office of Maggie Clausell, LLC, Dover, Delaware,
attorneys for the Plaintiffs.

John S. Grady, Esquire of Grady & Hampton, LLC, Dover, Delaware; attorneys for
the Defendant.

WITHAM, R.J.

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Defendant, Appleby Systems, Inc., filed a Motion to Dismiss arguing that Counts I - IV and VI should be dismissed because, pursuant to the contract at issue, those claims are subject to arbitration.¹ Defendant also asserts that Count V should be dismissed because it alleges violations of the Deceptive Trade Practices Act, which does not govern disputes between consumers and businesses. Plaintiffs, Debra and Charles Langshaw, concede that they do not have standing to bring claims under the Deceptive Trade Practices Act. However, Plaintiffs assert that paragraphs 25-26 and 35-38 state a claim for a violation 6 *Del. C.* §2511, *et seq* (the Consumer Fraud Act), which does provide Plaintiffs with standing to pursue a claim. Plaintiffs also filed a Motion to Amend their complaint seeking to delete the count for a Deceptive Trade Practices Act violation and replace it with a cause of action for violation of the Consumer Fraud Act, which was subsequently granted.

For the reasons set forth below, Defendant's Motion to Dismiss is *denied*.

Discussion

Because the Motion to Amend was granted, the question becomes what to do

¹The "Agreement to Arbitrate" clause of the contract states, "You and we agree to submit any dispute arising under this agreement, with exception of disputes alleging criminal or statutory violations, to binding arbitration in accordance with the 'Arbitration Rules of the Better Business Bureau (Binding).' A volunteer BBB arbitrator will render a decision that the arbitrator considers to be fair; in doing so the arbitrator is not required to apply legal principals. The arbitrators decision will be final and binding on both you and us, and judgement on the decision may be entered in any court having jurisdiction. All the administrative fees for the arbitration will be paid by the business. Further information about the arbitration may be obtained by calling the BBB of Eastern PA at (215) 893-9235. This agreement to arbitrate affects important legal rights. Neither of us will be able to go to court for disputes that must be arbitrated."

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with the remaining counts; specifically, whether they are permitted to remain since there is a claim for a statutory violation. Unfortunately, the contract does not explain whether cases that consist of both statutory claims and non-statutory claims are subject to arbitration. In Delaware, ambiguities are construed against the drafter, which is Defendant in this case.² However, Defendant argues that the policy in Delaware is to honor arbitration agreements and, therefore, request that either the non-statutory claims be arbitrated and the claim under the Consumer Fraud Act stayed, or else arbitrate all of the claims before the arbitrator so that there are no inconsistent verdicts.

It is the decision of this Court that jurisdiction will be retained over the Consumer Fraud Act claim. The non-statutory claims will be decided by an arbitrator. The Consumer Fraud Act claim will be stayed in this Court until the other claims are resolved by the arbitrator.

Based on the foregoing, Defendant's Motion to Dismiss is *denied*.

IT IS SO ORDERED.

/s/ William L. Witham, Jr.
R.J.

WLW/dmh
oc: Prothonotary
xc: Order Distribution

²See *Twin City Fire Ins. Co. v. Delaware Racing Ass'n*, 840 A.2d 624, 630 (Del. 2003).