

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge Robert E. Blackburn**

Civil Action No. 15-cv-00063-REB-KLM

FITNESS TOGETHER FRANCHISE CORPORATION, a Arizona corporation,

Plaintiff,

v.

PETER PIRANIO, an individual,
ANNETTE PIRANIO, an individual, and
PIRANIO FITNESS SYSTEMS, INC., a Wisconsin Corporation,

Defendants.

ORDER GRANTING MOTION TO RECONSIDER

Blackburn, J.

The matter before me is defendants' **Motion To Reconsider the Court's Order Denying Defendants' Emergency Motion To Stay Proceedings Pending Arbitration Pursuant to 9 U.S.C. § 3** [#30],¹ filed January 29, 2015. I grant the motion, deny plaintiff's motion for preliminary injunction, and stay these proceedings pending arbitration.

I previously denied defendants' request to stay these proceedings in favor of arbitration, noting that even where all claims between the parties are subject to arbitration, as here, the court has authority to issue a preliminary injunction to preserve the status quo pending arbitration. (**See Order Denying Emergency Motion To Stay Proceedings Pending Arbitration Pursuant to 9 U.S.C. § 3** [#29], filed January 28,

¹ "[#30]" is an example of the convention I use to identify the docket number assigned to a specific paper by the court's case management and electronic case filing system (CM/ECF). I use this convention throughout this order.

2015 (citing ***Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Dutton***, 844 F.2d 726, 727-28 (10th Cir. 1988).) That ruling was based on my tacit but mistaken understanding that a demand for arbitration had been filed or was imminent. ***See Servants of the Paraclete v. Does***, 204 F.3d 1005, 1012 (10th Cir. 2000) (bases for granting reconsideration include, *inter alia*, court's misapprehension of the facts). In fact, while acknowledging that any relief the court could grant would be limited and provisional, plaintiff did not file a demand for arbitration until this afternoon, after I forced the issue. (See Minute Order [#31], filed January 29, 2015; Plaintiff's Status Report [#32], filed January 29, 2015.)

Nevertheless, now that plaintiff has initiated proceedings in arbitration, the motion to stay is well-taken.² Under the terms of the contracts, all matters, including any entitlement to injunctive relief, are within the purview of the administrator to hear and determine. The court sees nothing to be gained at this juncture by having the issues raised by and inherent to the motion for preliminary injunction vetted twice. Indeed, such a course of action seems to contravene the very reasons the parties chose to resolve their disagreements in arbitration.

THEREFORE, IT IS ORDERED as follows:

1. That defendants' **Motion To Reconsider the Court's Order Denying Defendants' Emergency Motion To Stay Proceedings Pending Arbitration Pursuant to 9 U.S.C. § 3** [#30], filed January 29, 2015, is **GRANTED**;

² I also adopt and incorporate by references the arguments made and authorities cited by defendants in their motion for reconsideration.

2. That the court's **Order Denying Emergency Motion To Stay Proceedings Pending Arbitration Pursuant to 9 U.S.C. § 3** [#29], filed January 28, 2015, is **VACATED**;

3. That defendants' **Emergency Motion To Stay Proceedings Pending Arbitration Pursuant to 9 U.S.C. § 3** [18], filed January 21, 2015, is **GRANTED**;

4. That plaintiff's **Motion for Preliminary Injunction** [#3], filed January 9, 2015, is **DENIED WITHOUT PREJUDICE**;

5. That the motion hearing scheduled for **Friday, January 30, 2015, at 10:30 a.m.**, is **VACATED**;

6. That all currently pending deadlines are **VACATED**;

7. That this matter is **STAYED**; and

8. That within **ten (10) days** of the conclusion of the arbitration, the parties **SHALL FILE** a joint status report apprising the court of the status of the matter and indicating what, if any, further action is required.

Dated January 29, 2015, at Denver, Colorado.

BY THE COURT:



Robert E. Blackburn
United States District Judge