

Commonwealth of Kentucky

Court of Appeals

NO. 2007-CA-001185-MR

INTER-TEL, INC., and INTER-TEL
TECHNOLOGIES, INC

APPELLANTS

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE KATHLEEN VOOR MONTANO, JUDGE
ACTION NO. 03-CI-005485

LINN STATION PROPERTIES, LLC AND
INTEGRATED TELECOM SERVICES
CORPORATION

APPELLEES

OPINION
AFFIRMING

** ** * ** * ** *

BEFORE: DIXON AND NICKELL, JUDGES; KNOPF,¹ SENIOR JUDGE.

DIXON, JUDGE: Appellants, Inter-Tel, Inc. (“Inter-Tel”) and Inter-Tel Technologies, Inc.

(“Technologies”) appeal from an order of the Jefferson Circuit Court vacating a prior

order compelling arbitration. Finding no error, we affirm.

Appellees, Linn Station Properties, LLC, and Integrated Telecom Services

¹ Senior Judge William L. Knopf sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statutes (KRS) 21.580.

Corporation² (“ITS”) entered into a real estate lease dated December 4, 1997, for a term of six years beginning January 1, 1998, and ending December 31, 2003. The leased premises was an office building located at 10160 Linn Station Road in Louisville, Kentucky. Pursuant to the lease, ITS, as tenant, was obligated to repair and maintain the interior of the premises, including the HVAC and other electrical/mechanical systems. Further, the lease contained the following arbitration clause:

ARBITRATION: Other than Landlord’s right to institute legal action with respect to default by Tenant in the payment of the rent required by this Lease, any dispute under this Lease shall be referred by the parties to binding arbitration by the American Arbitration Association under its rule relating to commercial disputes. Such arbitration shall be conducted in Jefferson County, Kentucky.

In February 2002, Linn Station learned of ITS’s failure to repair and maintain the premises. By letter dated March 1, 2002, Linn Station informed ITS that repair of the deficiencies would cost \$91,398.00. However, instead of curing the deficiencies, ITS vacated the premises in May 2002. Linn Station thereafter attempted to invoke the arbitration provision, as well as sent a letter to ITS regarding the non-payment of rent for the month of May.

By letter dated May 21, 2002, general counsel for Technologies and Inter-Tel responded with the following:

Inter-Tel Technologies, Inc. is the parent company of [ITS]. ITS, which is the only lessee on the lease dated December 4, 1997, is now a defunct corporation without any assets. ITS abandoned this space on or about May 31, 2002. For the entire period of time that ITS occupied the space, rental was timely paid. Being defunct and having no assets, there is no need for ITS to participate in an arbitration or legal proceeding. Accordingly, you may take a default against ITS in either proceeding. The parent company neither guaranteed the lease nor agreed to assume liability for same and will not pay the damages claimed.

² On July 2, 1998, ITS was bought by Appellant, Inter-Tel Technologies, Inc. (“Technologies”), which is a subsidiary of Appellant, Inter-Tel, Inc. (“Inter-Tel”).

Nevertheless, the American Arbitration Association attempted throughout the summer and fall of 2002 to process Linn Station's request for arbitration. During the same time, Linn Station filed a civil action against ITS in the Jefferson Circuit Court seeking damages for delinquent rent and failure to repair and maintain the leased premises. On August 12, 2002, the trial court entered a default judgment against ITS in the amount of \$332,900.

Linn Station apparently spent the next year engaging in discovery in an attempt to execute the judgment or establish that ITS was without assets to satisfy such. In June 2003, Linn Station filed the instant action against ITS, Technologies and Inter-Tel seeking to pierce the corporate veil of ITS in order to enforce the default judgment against its parent corporations.

On September 28, 2004, Technologies and Inter-Tel filed a motion to compel arbitration and stay all further proceedings. In granting the motion, the trial court ruled:

[T]he underlying issue in the current action is still the lease and whether it is enforceable against Defendant Technologies and Defendant Inter-Tel. As such, the arbitration agreement in the lease is applicable to its enforcement in this action. Defendant Technologies and Defendant Inter-Tel may still argue that the lease cannot be enforced against either, but said argument may be made in arbitration. This Court finds that this action must be stayed in favor of arbitration.

Linn Station thereafter filed a CR 52.02 motion to amend the trial court's prior order, on the grounds that the matter did not concern the lease agreement, but rather whether the corporate veil of ITS should be pierced. Linn Station pointed out that all issues regarding the lease between itself and ITS were resolved when the default judgment was entered in 2002.

Following a hearing on Linn Station's motion, the trial court entered a second order setting aside its prior order compelling arbitration:

It was Defendant's assertion, which was opposed by Plaintiff, that this matter should be determined in arbitration, as set forth in the Lease Agreement. The lease in question did contain a valid arbitration agreement. This Court determined that the matter must be arbitrated and the court action should be stayed pending the outcome of said arbitration. At that time, this Court was operating under the belief that [Plaintiffs] were attempting to pierce the corporate veil and proceed under a contract claim based upon the Lease Agreement. However, in Plaintiff's motion to amend this Court's order, Plaintiff makes it clear that it seeks to pierce the corporate veil and, thereafter, attempt to collect on the default judgment obtained against Defendant ITS As such, this Court finds it appropriate to set aside its order entered December 29, 2005.

Technologies and Inter-Tel thereafter appealed to this Court.

Technologies and Inter-Tel argue on appeal that the trial court's denial of arbitration is contrary to Kentucky public policy. Further, they contend that because they were not parties to the lease agreement between Linn Station and ITS, the default judgment is void against them. We disagree.

Kentucky Law is clear that arbitration agreements are valid and enforceable. *See Kodak Mining Company v. Carr Fork Corporation*, 699 S.W.2d 917 (Ky. 1984). In fact, in 1984, Kentucky adopted the Uniform Arbitration Act (UAA), codified at KRS Chapter 417. KRS 417.050 provides that "a written agreement to submit any existing controversy to arbitration between the parties is valid, enforceable and irrevocable, save upon such grounds as exist at law for the revocation of any contract." However, the UAA is premised upon a written agreement *between the parties* to submit an existing controversy to arbitration. KRS 417.050. And the court's power to compel arbitration is conditioned upon the "application of the party showing an

agreement as described in KRS 417.050” KRS 417.060. There simply is no such agreement between the parties herein.

Linn Station’s Complaint contained four counts. Counts One through Three asked the trial court to pierce ITS’s corporate veil and order the 2002 default judgment paid by Technologies and/or Inter-Tel. Count Four alleged unlawful transfers by ITS to Technologies, Inter-Tel or affiliated entities with the intent to delay, hinder or defraud ITS creditors. Linn Station has never claimed that Technologies or Inter-Tel is liable under the terms of the lease. Quite simply, Technologies and Inter-Tel were not parties to the lease agreement. In fact, in his May 2002 letter, their general counsel made it very clear that ITS was the sole lessee, and that neither parent company assumed any liability.

Linn Station sued Technologies and Inter-Tel on a legal theory of piercing the corporate veil, which does not impose liability based upon the law of contracts. Rather, in the context of multiple corporate entities, liability is imposed upon corporate parents for the debts of a subsidiary corporation where the subsidiary is operated by the parents with insufficient funds to meet its obligations, and the parent used the subsidiary to damage a third party. Campbell, "Limited Liability for Corporate Shareholders: Myth or Matter-of-Fact," 63 Ky.L.J. 23, 48 (1975); *see also generally White v. Winchester Land Development Corporation*, 584 S.W.2d 56 (Ky. App. 1979).

Technologies and Inter-Tel contend that had they been parties to the 2002 action which resulted in the default judgment, they would have been able to invoke the arbitration clause. As such, they argue that because Linn Station failed to name them in the prior action, they have the right to compel arbitration in this action. Such theory is clearly misplaced. Technologies and Inter-Tel would have had no more right to invoke

the arbitration provision in 2002 as they do in the instant action because they were not parties to the lease agreement. KRS 417.050

Finally, Technologies and Inter-Tel argue that the default judgment entered against ITS is void as it relates to them because they were not parties to the 2002 action. See *Brewer v. Burch*, 306 Ky. 339, 207 S.W.2d 562 (1947); *Proctor v. Mitchell*, 302 KY. 179, 194 S.W.2d 177 (1946). Again, however, Technologies and Inter-Tel miss the point. As Linn Station points out, it is not trying to enforce the default judgment on the grounds that Technologies and Inter-Tel are debtors in that judgment. Rather, it is seeking to impose liability by piercing the corporate veil of ITS. Linn Station has maintained that it is entitled to equitable relief based upon the dealings of ITS's parent companies which rendered it defunct and unable to satisfy its obligations.

In reaching the decision herein, we express no opinion as to the validity of Linn Station's claims against Technologies and Inter-Tel. Rather, we simply conclude that this litigation must be pursued in the trial court rather than through arbitration proceedings.

The order of the Jefferson Circuit Court is affirmed.

ALL CONCUR.

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