J-S08043-13

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

STRAUSSER ENTERPRISES, INC.,	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
Appellant	:	
v.	:	
SEGAL AND MOREL, INC. and SEGAL AND MOREL AT FORKS TOWNSHIP VII, LLC,	:	
Appellees	:	No. 2380 EDA 2012

Appeal from the Order entered on July 31, 2012
in the Court of Common Pleas of Northampton County,
Civil Division, No. C0048CV2006-001108

BEFORE: FORD ELLIOTT, P.J.E., LAZARUS and MUSMANNO, JJ.

MEMORANDUM BY MUSMANNO, J.: **FILED MAY 16, 2013**

Strausser Enterprises, Inc. ("SEI" or "Plaintiff") appeals from the Order denying its Petition to Strike and/or Open ("Petition to strike/open") the judgment entered against it and in favor of Segal and Morel, Inc., and Segal and Morel at Forks Township VII, LLC (collectively "S&M" or "Defendants"). We affirm.

The trial court set forth the relevant underlying facts and procedural history in its Opinion, which we adopt herein by reference. ***See*** Trial Court Opinion, 7/31/12, at 2-4. Contemporaneously with the issuance of its Opinion, the trial court entered an Order denying [SEI's] Petition to strike/open. SEI filed a Motion for reconsideration, which the trial court denied. Thereafter, SEI timely filed a Notice of appeal. In response, the trial court ordered SEI to file a concise statement of errors complained of on

appeal pursuant to Pa.R.A.P. 1925(b). SEI timely filed a Concise Statement, raising twelve separate claims of trial court error.

On appeal, SEI raises the following issues for our review:

> 1. Is an enforceable written agreement between the parties required to confer subject matter jurisdiction on a Court to employ the summary procedures and remedies set forth in the Pennsylvania [Uniform] Arbitration Act, 42 Pa.C.S.A. § 7301, *et seq*[.] ("the Act" [or "PUAA"]), including but not limited to the confirmation of, and entry of judgment on, an arbitration award under Sections 7341 and 7342 [of the Act]?
>
> 2. Did the Lower Court commit error by denying a [P]etition to open based on fraud on the Court where, in an action to confirm an arbitration award under … [section] 7342(b) [of the PUAA], [S&M] did not disclose to the Lower Court that it was no longer a party to the written arbitration agreement[?]
>
> 3. Did the Lower Court err when it decided disputed issues of fact in connection with a [P]etition to open against [SEI] without allowing [SEI] the opportunity to proceed under Pa.R.C.P. 206.7(c)[?]
>
> 4. Where [SEI] filed a [P]etition to strike[/]open, and [S&M] raised disputed issues of fact in the response to the [P]etition, and the parties and the Lower Court agreed that the determination of factual disputes in the [P]etition to open would be bifurcated from the resolution of preliminary legal issues in the [P]etition to strike, and determined, if necessary, in a subsequent proceeding after the legal issues were resolved, did the Lower Court err in determining the factual issues without permitting [SEI] a separate proceeding?

Brief for Appellant at 4.

Our standard of review of SEI's claims is well settled:

> A petition to strike a judgment raises a question of law and relief thereon will only be granted if a fatal defect appears on the face of the record. Alternatively, a petition to open rests within

> the discretion of the trial court, and may be granted if the petitioner (1) acts promptly, (2) alleges a meritorious defense, and (3) can produce sufficient evidence to require submission of the case to a jury. The decision of the trial court on a petition to strike or open judgment will not be disturbed unless there is an error of law or a manifest abuse of discretion.

Rait P'ship, L.P. v. E Pointe Props. I, Ltd., 957 A.2d 1275, 1277 (Pa. Super. 2008) (citations omitted).

SEI's first two issues on appeal are closely related, and we will thus address them simultaneously.[1] SEI argues that the trial court lacked subject matter jurisdiction to enforce the arbitration agreements contained in the contracts that formed the basis for the underlying breach of contract action, or to enter judgment against SEI on the arbitration award. ***See*** Brief for Appellant at 14, 26. SEI asserts that jurisdiction was lacking because S&M never had standing to enforce the contracts' arbitration provisions, or to assert claims for breach of contract against SEI in the arbitration proceedings, because S&M had assigned its interest in the contracts and was thus not a party to those contracts when this case was initiated. ***Id.*** at 26-27, 28. SEI further argues that the judgment must be stricken or opened because it was obtained through fraud; *i.e.*, S&M allegedly had perpetrated a fraud upon SEI and the trial court by failing to disclose that S&M was no longer a party to the contracts in question. ***Id.*** at 31-32. Finally, SEI contends that "[t]he remedies employed by [S&M] and the Lower Court were exclusively created by the Act[,]" and "[w]ithout standing under the Act, the

[1] We note that SEI does not divide its Argument section into as many parts as there are questions to be argued, in violation of Pa.R.A.P. 2119(a).

Lower Court had no subject-matter jurisdiction." ***Id.*** at 15, 30. According to SEI, the trial court erred in concluding that the proceedings were not governed by the Act since the arbitration agreements involved in this case allegedly provided for common law arbitration. ***See id.*** at 15-18.

In its Opinion, the trial court thoroughly addressed SEI's claims, set forth the applicable law, and determined that these claims lack merit. ***See*** Trial Court Opinion, 7/31/12, at 4-13. After review of the certified record and the parties' briefs, we find that the sound rationale advanced by the trial court is supported by the record and the law, and we thus affirm on this basis with regard to these issues. ***See id.***

As an addendum, we note that Pennsylvania law mandated that the trial court deny SEI's Petition to strike/open since, at the time of filing the Petition, the judgment against SEI had *already been satisfied*.[2] The Judicial Code provides that the satisfaction of a judgment "forever discharge[s] the judgment." 42 Pa.C.S.A. § 8104(a). Accordingly, "a judgment that has been satisfied no longer exists and *cannot be attacked either by a motion to strike or by a motion to open*." ***Kalman v. Muzikar***, 450 A.2d 1025, 1026 (Pa. Super. 1982) (emphasis added). This Court has stated that

> [b]ecause the law contemplates an end to litigation, further proceedings may not commence upon a judgment which has been satisfied. Where a judgment has been satisfied, there no longer exists an obligation which may be opened or stricken, and all questions of liability and damages are deemed extinguished.

[2] On January 17, 2012, satisfaction of the judgment was entered on the trial court's docket, *at the request of counsel for SEI*. SEI filed its Petition to strike/open approximately three months later.

> Satisfaction of a judgment, however, may be stricken where it has been obtained through fraud or mistake.

Wilk v. Kochara, 647 A.2d 595, 596-97 (Pa. Super. 1994) (citations omitted).

In the instant case, SEI never asserted that the satisfaction had been obtained due to fraud or mistake. Rather, SEI argues that the judgment was void *ab initio*, based upon the trial court's purported lack of jurisdiction to enter a judgment against SEI on the arbitration award. ***See*** Reply Brief for Appellant at 17. Thus, according to SEI, the general rule regarding the inviolability of satisfied judgments is inapplicable. ***See id.*** (arguing that "the Courts have been consistently clear in their instruction that void judgments remain subject to attack indefinitely." (footnote omitted)). However, since we have already determined that the trial court did not lack jurisdiction and the judgment against SEI is not void, SEI's claim in this regard lacks merit.

Next, in SEI's closely related remaining two issues, SEI argues, in the alternative, that

> assuming, *arguendo*, that waiver was an issue[, *i.e.*, SEI's waiver of its challenge to S&M's standing], it was a disputed issue of fact. As such, since it was disputed, it should have been decided according to [Pennsylvania Rule of Civil Procedure]

> 206.7(c).[3] The Lower Court erred by not following that procedure.

Brief for Appellant at 33 (footnote added; citation to record omitted). SEI points out that the trial court's Rule to show cause explicitly stated that it was to be decided pursuant to the provisions of Rule 206.7. ***Id.*** at 36 (citing Rule to Show Cause, 4/25/12, at ¶ 3). According to SEI, S&M's response to the trial court's Rule to show cause raised disputed issues of material fact regarding whether SEI was aware of S&M's assignment of its rights under the contracts at issue and, relatedly, S&M's standing to sue under those contracts. ***See*** Brief for Appellant at 33-34, 36. Therefore, SEI asserts, pursuant to the clear language of Rule 206.7(c), it was entitled to conduct discovery on these issues. ***Id.*** at 36.

Here, any dispute regarding the issue of S&M's standing was irrelevant, as the trial court determined, *as a matter of law*, that SEI had waived any challenge to S&M's standing. ***See*** Trial Court Opinion, 7/31/12,

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[3] By means of background, in response to SEI's April 25, 2012 Petition to strike/open, the trial court filed a Rule to show cause on that same date, directing S&M to show cause why SEI's Petition should not be granted. Rule 206.7, governing the procedure after a trial court's issuance of a Rule to show cause, provides, in relevant part, as follows:

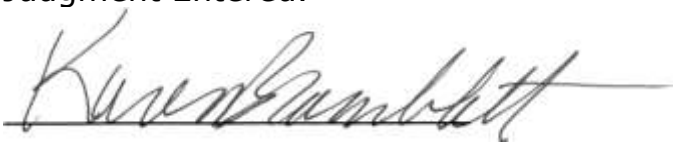
> (c) *If an answer is filed raising disputed issues of material fact, the petitioner may take depositions on those issues, or such other discovery as the court allows*, within the time set forth in the order of the court. If the petitioner does not do so, the petition shall be decided on petition and answer and all averments of fact responsive to the petition and properly pleaded in the answer shall be deemed admitted for the purpose of this subdivision.

Pa.R.C.P. 206.7(c) (emphasis added).

at 5 (wherein the court stated that "*[w]e need not examine the record* in order to determine whether or not Defendants had standing to enforce any portion of the relevant contracts, or, in particular, the arbitration agreements therein. The simple, well settled rule of Pennsylvania law is that a lack of standing is waived if it is not timely raised in an objection." (emphasis added)). Accordingly, the trial court did not err in denying SEI's Petition to strike/open.

Order affirmed.

Judgment Entered.



Prothonotary

Date: 5/16/2013

J-S08043/13

IN THE COURT OF COMMON PLEAS OF NORTHAMPTON COUNTY
COMMONWEALTH OF PENNSYLVANIA
CIVIL DIVISION

STRAUSSER ENTERPRISES, INC.,	:	
	:	**No. C-48-CV-2006-1108**
Plaintiff,	:	
	:	
v.	:	
	:	
SEGAL AND MOREL, INC. and	:	
SEGAL AND MOREL AT FORKS	:	
TOWNSHIP VII, LLC,	:	
	:	
Defendants.		

FILED
2012 JUL 31 P 3:34
COURT OF COMMON PLEAS
CIVIL DIVISION
NORTHAMPTON COUNTY, PA

OPINION OF THE COURT

This matter is before the Court on Plaintiff's Petition to Strike and/or Open Void Judgment. In its petition, Plaintiff asserts that this Court must strike or open the judgment entered against it and in favor of Defendants, a judgment which has been satisfied, on the grounds of fraud and/or a want of subject matter jurisdiction. The essence of Plaintiff's arguments in support thereof is, first, that this Court lacked subject matter jurisdiction to enforce arbitration agreements contained in the contracts made between the parties or enter judgment on the award made thereunder because Defendants, no longer being parties to said contracts, lacked standing to enforce them in any manner. This argument derives from the undisputed fact that Defendants had assigned their rights to the contracts at issue prior to demanding arbitration. Second, Plaintiff argues that the judgment must be stricken or opened because it was obtained through fraud, i.e. Defendant perpetrated fraud upon Plaintiff and the Court by

failing to disclose that they were no longer parties to the contracts which formed the basis for the grievances arbitrated and the judgment entered. For the reasons set forth below, we find that the judgment entered by this Court in favor of Defendants must stand, and that Plaintiff's petition must be denied.

I. Factual and Procedural History

The relevant factual and procedural background of this case, which has a lengthy and complex history, is as follows: Plaintiff Strausser Enterprises, Inc. was the owner of certain real estate in Forks Township, Pennsylvania, which was purchased by Defendants Segal & Morel, Inc. and Segal & Morel at Forks Township VII n/k/a Segal & Morel at Forks Township X, Defendants being builders and developers of that real estate. The sale of the subject real estate was accomplished through the execution of a series of contracts, including three agreements of sale executed in July 2001, June 2002, and February 2003, three addenda executed in July 2003, March 2004, and February 2005, and the assignment of an existing contract between Plaintiff and a third party, to Defendant Segal & Morel at Forks Township VII n/k/a Segal & Morel at Forks Township X, which was executed in February 2003.

Following the execution of these agreements of sale and addenda thereto, and prior to the closing of the sales, Defendants over time assigned their interests in the agreements of sale, "along with any conditions or amendments" to a number of single-purpose LLCs, including Segal & Morel at Forks Township, LLC, Segal & Morel at Forks Township II, LLC, Segal & Morel at Forks Township

III, LLC, and Segal & Morel at Forks Township IV, LLC. (Defendants' Memorandum in Opposition, Exhibit 2). The sales were closed and deeds transferred at various times thereafter, between December 2001 and February 2005. When those deeds were transferred, they were transferred from Plaintiff to the pertinent LLCs, rather than from Plaintiff to Segal & Morel, Inc. In May 2004, Defendant Segal & Morel at Forks Township VII changed its name with the Pennsylvania Department of State to Segal & Morel at Forks Township X.

In February 2006, upon learning that Segal & Morel, Inc. intended to transfer the ownership interests of the LLCs to builder K. Hovnanian, Plaintiff filed the Complaint in this matter, as well as a Praecipe for *Lis Pendens*, alleging in the Complaint that the intended transfer triggered Plaintiff's right of first refusal under the parties' various agreements. In response to the Complaint, Defendants filed a petition seeking the dismissal of both the Complaint and the Praecipe for *Lis Pendens*, on the grounds that the dispute raised by Plaintiff was subject to arbitration, in accordance with arbitration agreements contained in the parties' various contracts. Thereafter, Plaintiff agreed to proceed to arbitration and the Court dismissed the *lis pendens*. The parties then submitted the matter to arbitration, and also submitted to arbitration a number of counterclaims raised by Defendants pursuant to the parties' contracts, and in particular pursuant to the third addendum dated February 2005. In time, the arbitrators determined that Plaintiff's right of first refusal was not triggered by the intended LLC transfer, which did not in fact take place, and the arbitrators

awarded judgment in favor of Defendants. The final award was made in December 2008. Judgment was entered in September 2009, and thereafter paid by Plaintiff. The judgment was marked as satisfied on January 17, 2012.

On April 25, 2012, Plaintiff filed the instant motion, arguing that the panel of arbitrators was without jurisdiction to hear the matter, and that this Court was without jurisdiction to enter judgment on the arbitration award because Defendants, no longer parties to the contracts containing the arbitration agreements, did not have standing to enforce same, and that Plaintiff was defrauded into believing that Defendants were in fact parties to those contracts. Plaintiff further asserts in its petition that it "recently" learned of the assignments. Oral argument was heard by the undersigned on July 12, 2012. Both parties have submitted briefs and replies thereto. The Court having reviewed the record and the applicable law, Plaintiff's petition is now ready for disposition.

II. Discussion

A. The parties' various disputes were properly submitted to common law arbitration on the basis of a written agreement to arbitrate, as Plaintiff waived any objection to Defendants' lack of standing to enforce the agreements they had assigned.

The first of Plaintiff's several arguments in support of its Petition to Strike and/or Open Judgment is that the Defendants, Segal & Morel, Inc. and Segal & Morel at Forks Township VII, lacked standing to enforce the arbitration agreements contained in the contracts at issue, and to bring their counterclaims

thereunder. The basis for this argument is the fact that the Defendants were no longer parties to the relevant contracts, having assigned all of their rights thereunder to various of the Segal & Morel LLCs prior to the initiation of this litigation.

We need not examine the record in order to determine whether or not Defendants had standing to enforce any portion of the relevant contracts, or, in particular, the arbitration agreements contained therein. The simple, well settled rule of Pennsylvania law is that a lack of standing is waived if it is not timely raised in an objection. *Erie Indem. Co. v. Coal Operators Cas. Co.*, 272 A.2d 465, 466 (Pa. 1971). This matter having been brought before the Court and submitted to arbitration over six years ago, innumerable proceedings having taken place since that time, and a judgment having been entered and satisfied, an objection to lack of standing at this juncture is clearly untimely, and the objection is waived.

Even if we were able to consider an objection to standing on the basis of alleged fraud that would have prevented Plaintiff from being in a position to raise the issue of standing before now, the record belies any suggestion that they defrauded Plaintiff into believing that Defendants remained parties to the contracts at issue at the time this case was submitted to arbitration. Numerous documents submitted to this Court clearly illustrate that, *prior to the time that this matter came before the panel of arbitrators*, Plaintiff was or should have been aware that Defendants were no longer parties to the contracts at issue.

These documents include: the deeds transferring the various tracts of land from Plaintiff, signed by Gary Strausser, President of Plaintiff Strausser Enterprises, Inc., which shows that the land was transferred to the assignee LLCs and not to Defendants (Defendants' Memorandum in Opposition, Exhibits 4, 5, 7, and 8); a letter from Defendants' counsel, L. Stephen Pastor, to Plaintiff's counsel, Leonard Mellon, indicating on page two that the premises were then held by LLCs II, III, IV, and X (Defendants' Memorandum in Opposition, Exhibit 9) and most importantly, a draft Memorandum of Understanding, *authored by Plaintiff's counsel*, which *expressly recognizes* that the assignees of Defendants' rights and obligations under the subject agreements were LLCs II, III, IV, and X (Defendants' Memorandum in Opposition, Exhibit 35) and a draft Stipulation of Facts, *authored by Plaintiff's counsel*, which *expressly recognizes* that the assignees of Defendants' rights and obligations under the subject agreements were LLCs II, III, IV, and X (Defendants' Memorandum in Opposition, Exhibit 38).

Furthermore, we find Plaintiff's claim that it "recently" became aware that Defendants' rights had been transferred to the LLCs to be without merit, based not only on this evidence, but upon Plaintiff's own pleadings: On October 29, 2009, Plaintiff filed an Answer and Counterclaim in Federal Court, responsive to a Complaint setting forth a malicious prosecution claim by Defendants in connection with this case, in which Plaintiff expressly states in paragraph five of its counterclaim:

> Upon information and belief, Segal and Morel, Inc. assigned its rights under the agreements and amendments to various limited liability company affiliates known as Segal & Morel at Forks Township II, LLC, Segal & Morel at Forks Township III, LLC, Segal & Morel at Forks Township IV, LLC, and Segal & Morel at Forks Township X, LLC.

While it may be the case that it only "recently" occurred to Plaintiff to assert the arguments in the Petition now before the Court, Plaintiff *clearly and unequivocally* knew years ago, not only before the judgment in this case was satisfied, but before the arbitration commenced, that Defendants were no longer parties to the contracts at issue, and it agreed to proceed to arbitration nonetheless. Plaintiff's claim of fraud is, accordingly, implausible.

Notwithstanding that an objection to standing is waived when not timely raised, Plaintiff has argued, in its memoranda and at oral argument, that Defendants' lack of standing to enforce the arbitration clause in the written arbitration agreement deprived this Court of subject matter jurisdiction to enforce that arbitration agreement or to enter judgment on the award. We find Plaintiff's analysis to be incorrect. In Pennsylvania, "the question of standing is distinguishable from that of subject matter jurisdiction," and a lack of standing does not equate with a lack of subject matter jurisdiction. *Hill v. Divecchio*, 625 A.2d 642, 645 (Pa. Super. 1993). Only where "a statute creates a cause of action and designates who may bring an action or appeal a decision [does] the issue of standing [become] interwoven with that of subject matter jurisdiction and [become] a jurisdictional prerequisite to an action or appeal." *Beverly*

Healthcare-Murrysville v. Department of Public Welfare, 828 A.2d 491, 496 (Pa. Cmwlth. 2003).

Plaintiff has argued that the Pennsylvania Uniform Arbitration Act (PUAA) confers jurisdiction upon this Court to enforce arbitration agreements and enter judgments on arbitration awards in certain limited circumstances not present in this case, and that in the absence of said circumstances this Court is without jurisdiction to so act. We find this argument to be of no merit, as a statutory cause of action is not at issue here. A statutory cause of action is one in which the legislature has designated who may bring an action under a particular statute. *K.B. II v. C.B.F.*, 833 A.2d 767, 774 (Pa. Super. 2003). While it is certainly the case that the PUAA has designated what disputes may be arbitrated thereunder and who may bring a cause of action pursuant thereto, the agreement to arbitrate in this case was not one to proceed under the PUAA, not having specified the applicability of the PUAA, but was rather an agreement to common law arbitration, a fact which is undisputed. Accordingly, the PUAA does not come into play in determining standing or jurisdiction in this case – as explained at greater length below, the common law is what governs the arbitration in this matter. No statutory cause of action being at issue in this matter, the question of standing is therefore entirely unrelated to the question of subject matter jurisdiction.

B. Even if no written agreement to arbitrate had been in place at the time the parties submitted their various disputes to common law arbitration, their unwritten agreement to

proceed to arbitration would have properly placed the matter before the panel of arbitrators and this Court.

Even assuming *arguendo* that the written agreement to arbitrate contained in the parties' contracts had not been enforceable by Defendants for whatever reason, the fact that Plaintiff and Defendants *agreed in some manner*, upon Defendants' demand, to arbitrate the various disputes between them conferred jurisdiction on the panel of arbitrators to hear the matter, and upon this Court to enter judgment upon the arbitrators' award.

There are two forms of arbitration available for the resolution of disputes in Pennsylvania that are relevant to our inquiry here – common law arbitration and statutory arbitration. Statutory arbitration is that which is subject to the rules contained in the Pennsylvania Uniform Arbitration Act (PUAA), 42 Pa.C.S.A. § 7301 *et seq*. In order for the PUAA to apply to an arbitrable dispute, the parties' agreement to arbitrate must be in writing and must *specifically* reference the applicability of the PUAA. *Dearry v. Aetna Life & Cas. Ins. Co.*, 610 A.2d 469, 471 (Pa. Super. 1992). In the absence of a written agreement between the parties that specifically states that the PUAA is applicable to the dispute to be arbitrated, common law arbitration is presumed to apply. *Borgia v. Prudential Life Ins. Co.*, 750 A.2d 843, 846 (Pa. 2000).

Plaintiff would have this Court interpret the statutes which pertain to *common law* arbitration in such a manner that would prohibit this Court from enforcing an agreement for arbitration, or entering judgment on an award made

thereunder, if the agreement is not in writing. In support of its position, Plaintiff argues that 42 Pa.C.S.A. § 7342 incorporates by reference the entirety of 42 Pa.C.S.A § 7318, a definitional statute contained within the PUAA, and that by virtue of said incorporation, a writing is required in order to submit a dispute to *either* statutory or common law arbitration. Plaintiff has cited no case law in support of its position, nor has our own research revealed any. On the contrary, our research and our interpretation of the relevant statutes compel us to reach the opposite conclusion. While certainly atypical, oral agreements to arbitrate are made, and are enforceable.

In 42 Pa.C.S.A. §§ 7341 and 7342, our legislature has set forth certain limited provisions pertaining to common law arbitration, which, as its name would suggest, is governed largely by common law principles. Section 7341 provides for a limited scope of review when courts are asked to evaluate common law arbitration awards. Section 7342 sets forth some procedural guidelines to be applied to common law arbitration, and incorporates by reference some portions of the PUAA. One such incorporated section is § 7318, which defines two terms: "court" and "jurisdiction." Prior to defining those terms, that section states: "The following words and phrases when used in this subchapter shall have, unless the context clearly indicates otherwise, the meanings given to them in this section." The term "court" is defined thus: "As used in this subchapter means any court of competent jurisdiction of this Commonwealth." We would note that a court of competent jurisdiction is one

which "is competent to hear or determine controversies of the general nature of the matter involved *sub judice* [e.g., the arbitrability of a dispute]. Jurisdiction lies if the court had power to enter upon the inquiry, not whether it might ultimately decide that it could not give relief in a particular case." *Drafto Corp. v. National Fuel Gas Distribution Corp.*, 806 A.2d 9, 11 (Pa. Super. 2002). The term "jurisdiction" is then defined in § 7318, incorporating by reference § 7303 of the PUAA, and states that a written agreement "providing for arbitration in this Commonwealth confers jurisdiction on the courts of this Commonwealth to enforce the agreement under this subchapter and to enter judgment on an award made thereunder." 42 Pa.C.S.A. § 7318.

Returning then to §§ 7341 and 7342, which pertain to common law arbitration, we see that the term "jurisdiction" is used nowhere in those two statutes. Only the term "court" is used. That term is used in subsection (b) of § 7342, which, when combined with the definition of "court" in § 7318, reads thus: "On application of a party made more than thirty days after an award is made by an arbitrator [pursuant to common law arbitration], [any court of competent jurisdiction of this Commonwealth] shall enter an order confirming the award and shall enter a judgment or decree in conformity with the order." While inserting the definition of the term "court" does import the term "jurisdiction" into § 7342, and by Plaintiff's suggestion the requirement of a writing, we do not believe that an accurate interpretation of the statute so read would in fact require a written agreement in order to provide a court with

jurisdiction to enforce an agreement to arbitrate or enter judgment on an award made thereunder.

As stated above, the text of § 7318 plainly states that the definitions of "court" and "jurisdiction" contained therein are applicable *unless the context clearly indicates otherwise.* Under facts such as those herein, that is, when speaking of common law arbitration, we believe that the context clearly indicates that the jurisdiction of this Court to enforce an arbitration agreement and enter judgment upon an award made thereunder would not be circumscribed by the lack of a writing. We reach this conclusion on the basis of established decisional law which indicates that a writing is not required when submitting a dispute to common law arbitration. *McManus v. McCulloch*, 6 Watts 357, 357 (Pa. 1837). See *Gay v. Waltman*, 89 Pa. 453 (Pa. 1879); *Lobb v. Lobb*, 26 Pa. 327 (Pa. 1856); *Gratz v. Gratz*, 4 Rawle 411 (Pa. 1834); *Scholler Bros. v. Otto A.C. Hagen Corp.*, 44 A.2d 321, 322 (Pa. Super. 1945). See also 21 Williston, Contracts § 57:51 (4th ed. 2001).

Moreover, the notion that a written agreement is required to proceed with common law arbitration is belied by the stated scope of the PUAA. In § 7302, the PUAA provides:

> An agreement to arbitrate a controversy on a nonjudicial basis shall be conclusively presumed to be an agreement to arbitrate [under the common law] unless the agreement to arbitrate is in writing and expressly provides for arbitration pursuant to this subchapter [pertaining to statutory arbitration] or any other similar statute, in which case the arbitration shall be governed by this subchapter.

A fair reading of this section of the PUAA clearly indicates that an agreement to submit a dispute to statutory arbitration requires that the agreement both (a) be in writing and (b) clearly state that the PUAA is to govern the arbitration. Any other agreement to arbitrate is to be governed by the common law. Thus, this section leaves open the possibility of entering into a valid agreement to arbitrate that may either (a) fail to be in writing, while containing an agreement to proceed under the PUAA, (b) be in writing but fail to contain an express agreement to proceed under the PUAA, or (c) fail to be in writing and fail to contain an express agreement to proceed under the PUAA, and that any of these agreements would be proper agreements to submit a dispute to common law arbitration.

Finally, we acknowledge that § 7342, which pertains to common law arbitration, also incorporates by reference § 7303 of the PUAA, which provides that a "written agreement [to arbitrate] is valid, enforceable, and irrevocable[.]" However, we do not believe that this section discounts the possibility of a valid, unwritten agreement to submit a dispute to common law arbitration. Rather, we find that it merely indicates the characteristics of those agreements which are in writing. To interpret the statute otherwise would deprive the long-standing decisional law permitting oral agreements for arbitration of all meaning.

WHEREFORE, we enter the following:

IN THE COURT OF COMMON PLEAS OF NORTHAMPTON COUNTY
COMMONWEALTH OF PENNSYLVANIA
CIVIL DIVISION

STRAUSSER ENTERPRISES, INC.,	:	
	:	**No. C-48-CV-2006-1108**
Plaintiff,	:	
	:	
v.	:	
	:	
SEGAL AND MOREL, INC. and	:	
SEGAL AND MOREL AT FORKS	:	
TOWNSHIP VII, LLC,	:	

Defendants.

OPINION OF THE COURT

AND NOW, this 31st day of July 2012, upon consideration of Plaintiff's Petition to Strike and/or Open Void Judgment, it is hereby **ORDERED** that the petition is **DENIED**.

BY THE COURT:

Paula A Roscioli

PAULA A. ROSCIOLI, J.