

**THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION**

ATLANTIC CONCRETE CUTTING, INC.	:	
	:	June Term, 2004
Plaintiff,	:	No. 00830
v.	:	
	:	Commerce Program
TURNER CONSTRUCTION CO., et al.	:	
	:	Control No. 081751
Defendants	:	

ORDER and MEMORANDUM

AND NOW, this 5TH day of January 2005, upon consideration of Defendants' Preliminary Objections, all responses in opposition, the respective memoranda, all matters of record and in accordance with the Memorandum Opinion being contemporaneously filed with this Order, it hereby is **ORDERED** and **DECREED** that Defendants' Preliminary Objection pursuant to Pa.R.C.P. 1028 (a)(6) is **SUSTAINED** and Plaintiff's Complaint is **DISMISSED**, as this matter is subject to arbitration as originally agreed by the parties.

BY THE COURT:

C. DARNELL JONES, J.

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Plaintiff,	:	No. 00830
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	:	Commerce Program
TURNER CONSTRUCTION CO., et al.	:	
	:	Control No. 081751
Defendants	:	

MEMORANDUM OPINION

C. DARNELL JONES, J.

Before the Court are Defendants' Preliminary Objections to Plaintiff's Complaint. For the reasons fully set forth below, Defendants' Preliminary Objections are **sustained**.

DISCUSSION

Defendants have filed, *inter alia*, a Preliminary Objection to Plaintiff's Complaint pursuant to **Pa.R.C.P. 1028 (a)(6) – Existence of Agreement for Alternative Dispute**

Resolution. 42 Pa.C.S.A. § 7303, which governs such matters, states:

A written agreement to subject any existing controversy to arbitration or a provision in a written agreement to submit to arbitration any controversy thereafter arising between the parties is valid, enforceable and irrevocable, save upon such grounds as exist at law or in equity relating to the validity, enforceability or revocation of any contract.

42 Pa.C.S.A. § 7303. Judicial inquiry in determining whether a suit must proceed to arbitration requires a determination as to whether: (1) a valid agreement to arbitrate exists between the parties and, if so, (2) whether the dispute involved is within the scope of the arbitration provision. Smith v. Cumberland Group Ltd., 455 Pa. Super. 276, 284, 687 A.2d 1167, 1171 (1997); Messa v. State Farm Insurance Company, 433 Pa. Super. 594, 597, 641

A.2d 1167, 1168 (1994); PBS Coal, Inc. v. Hardhat Mining, Inc., 429 Pa. Super. 372, 376-77, 632 A.2d 903, 905 (1993).

In the instant matter, the parties possess a valid agreement to arbitrate which is contained within Article II of the contract between the parties (the “TKM/Atlantic Contract”). The pertinent inquiry then becomes whether the instant dispute falls within the scope of Article II, which requires the parties to “participate in good faith in voluntary and non-binding Alternative Dispute Resolution (ADR) procedures.” Compl. at Art. II. The court finds that, despite Plaintiff’s argument to the contrary, the TKM/Atlantic Contract controls the relationship between the parties, including the circumstances giving rise to the instant dispute. A review of the complaint, the exhibits attached thereto and the language of the contract itself reveals that the TKM/Atlantic Contract controls the relationship between the parties, including the circumstances giving rise to the instant dispute.

It is well-settled that the issue of whether a particular dispute falls within a contractual arbitration provision is a matter of law for the court to decide. Shaddock v. Christopher J. Kaclik, Inc., 713 A.2d 635, 637 (Pa. Super. 1998). Pennsylvania law advocates strict construction of arbitration agreements and dictates that any doubts or ambiguity as to arbitrability be resolved in favor of arbitration. Smith v. Cumberland Group, Ltd., 455 Pa. Super. 276, 687 A.2d 1167, 1171 (1997). The fundamental rule in construing a contract is to ascertain and give effect to the intention of the parties. Lower Frederick Township v. Clemmer, 518 Pa. 313, 543 A.2d 502, 510 (1988). In order to determine the meaning of the agreement, the court must examine the entire contract, taking into consideration “. . . the surrounding circumstances, the situation of the parties when the contract was made, the

objects they apparently had in view and the nature of the subject matter.” Huegel v. Mifflin Const. Co., Inc., 796 A.2d 350 (Pa. Super. 2002).

In the instant matter, this court finds that the TKM/Atlantic Contract defines the rights and obligations of the parties, including the requirement that the parties submit their disputes to Alternative Dispute Resolution. As such, it is clear that the instant dispute is beyond the jurisdiction of this court. Article II of the TKM/Atlantic Contract further provides:

...in the event that such disputes are not resolved by mediation or another ADR procedure as TKM and the Subcontractor may agree, then such disputes shall be resolved at TKM’s sole option either in the manner and forum pursuant to which disputes between the Owner and TKM are to be resolved under the General Contract or according to law.

Id. Thus, based on the language of the contract, if the parties can not agree on an appropriate ADR forum, TKM gets to choose the forum itself.

CONCLUSION

For the above-stated reasons, Defendants’ Preliminary Objections are **sustained** and Plaintiff’s Complaint **dismissed**, as this matter is subject to arbitration as originally agreed by the parties.

The court will enter a contemporaneous Order consistent with this Opinion.

BY THE COURT:

C. DARNELL JONES, J.

