

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

---

MAJESTIC STEEL CONSTRUCTION CORP.	:	
	:	July Term, 2005
Plaintiff,	:	No.3408
v.	:	
	:	Commerce Program
MARKET STREET CONSTRUCTORS et al.	:	
	:	Control No. 101289
Defendants.	:	

---

**ORDER and MEMORANDUM**

**AND NOW**, this 29<sup>TH</sup> day of December 2005, upon consideration of Defendants' Preliminary Objections, the response 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** that Defendants' Preliminary Objections pursuant to Pa.R.C.P. 1028 (a)(6) is **SUSTAINED** and Plaintiff's Complaint is **DISMISSED**, as this matter is subject to alternative dispute resolution as originally agreed by the parties.

**BY THE COURT:**

---

**C. DARNELL JONES, J.**

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

---

MAJESTIC STEEL CONSTRUCTION CORP.	:	
	:	July Term, 2005
Plaintiff,	:	No.3408
v.	:	
	:	Commerce Program
MARKET STREET CONSTRUCTORS et al.	:	
	:	Control No. 101289
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 Preliminary Objections 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 court finds that the parties possess a valid agreement to arbitrate which is contained within Section 23.0 of the contract between the parties (the “MSC Contract”). Plaintiff has failed to persuade the court to the contrary.

The pertinent inquiry then becomes whether the instant dispute falls within the scope of Section 23.0, which mandates that disputes between the parties submit to mediation before the American Arbitration Association (unless otherwise agreed between the parties), and in the event that such mediation is unsuccessful, “binding arbitration in accordance with the Construction Industry Rules of the American Arbitration Association.” MSC Contract at ¶¶ 23.2, 23.3. A review of the complaint, the exhibits attached thereto and the language of the contract itself reveals that the MSC Contract controls the relationship between the parties, including the circumstances giving rise to the instant dispute.<sup>1</sup> Plaintiff indeed concedes this dispute falls within Section 23.0. Pl. Resp. at n.1.

In the instant matter, this court finds that the MSC 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.

---

<sup>1</sup> 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., 1998 Pa. Super. LEXIS 830, 713 A.2d 635, 637 (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, 455 Pa. Super. at 276, 687 A.2d at 1171.

## **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.**