IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY

FIRST JUDICIAL DISTRICT OF PENNSYLVANIA

CIVIL TRIAL DIVISION

LEHIGH COAL & NAVIGATION CO.	:	MARCH TERM 2008
	:	
v.	:	No. 3575
	:	
	:	(Commerce Program)
COALDALE ENERGY LLC and	:	
COALDALE ENERGY LLP	:	
	:	
	:	
JAMES J. CURRAN	:	MARCH TERM 2008
	:	
v.	:	No. 4947
	:	
	:	(Commerce Program)
COALDALE ENERGY LLC and	:	
COALDALE ENERGY LLP	:	Superior Court Docket
	:	No. 1641 EDA 2008

O P I N I O N

Albert W. Sheppard, Jr., J……September 10, 2008

This Opinion is submitted relative to the appeal of Coaldale Energy LLC and Coaldale Energy LLP (collectively, "Coaldale") from this court's Order dated June 11, 2008, granting Lehigh Coal and Navigation Company and James J. Curran, Jr.'s Petitions to Vacate the March 19, 2008 Award of Arbitrator Edward N. Cahn.

For the reasons discussed, this court respectfully submits that its decision should be affirmed.

Background

Lehigh Coal & Navigation Company ("Lehigh") is in the business of mining anthracite coal by the surface method. James J. Curran, Jr. ("Curran") is the sole shareholder of Lehigh. Lehigh operates an anthracite coal surface mine in Schuylkill and Carbon Counties pursuant to a permit issued by the Commonwealth of Pennsylvania (the "Lehigh Permit").

On April 5, 2006, the Pennsylvania Department of Environmental Protection ("PA DEP") issued a Notice of Permit Suspension to Lehigh and suspended the Lehigh Permit for a period of six months because, *inter alia*, Lehigh's "financial and management deficiencies render[ed] it unable to comply with the statutes, regulations, orders and permits referenced [in the Notice of Permit Suspension]."[1] The Notice of Permit Suspension provided that Lehigh could request that the PA DEP lift the suspension before the end of the six-month period if Lehigh agreed to the appointment of a new independent management team, acceptable to the PA DEP, that would have the complete authority to operate under the Lehigh Permit and conduct all necessary business.[2]

On April 17, 2006, Lehigh entered into a Management Agreement with Coaldale. In the Management Agreement, Coaldale agreed to "provide general management and advisory services" to Lehigh and was given "power and authority for the day-to-day operational and financial control" of Lehigh.[3] The Management Agreement did **not** provide for arbitration of disputes arising under that agreement. Rather, the Management Agreement stated that "[e]ach party irrevocably consents and agrees that any legal action

[1] See Notice of Permit Suspension, at ¶ X.
[2] Id. at ¶ 4.
[3] See Management Agreement, at ¶ 2.

or proceeding with respect to this Agreement and any action for enforcement of any judgment in respect thereof may be brought in the courts situated in the City of Philadelphia, Pennsylvania…."[4] The PA DEP subsequently lifted the suspension of the Lehigh Permit on April 26, 2006 pursuant to an agreement among Lehigh, Coaldale, and the PA DEP.

On November 28, 2006, Lehigh, Coaldale, StoneGate Partners, LLC ("StoneGate"),[5] James J. Curran, Jr., and certain additional members of the Curran family employed by Lehigh entered into an agreement (the "November 28, 2006 Agreement"), in which StoneGate agreed to assist Lehigh in seeking funds for a bridge loan.[6] The November 28, 2006 Agreement contained an arbitration clause, which provided, in pertinent part:

> The Parties shall initially attempt in good faith to resolve any significant controversy, claim, or allegation of breach or dispute arising out of or relating to this Agreement (hereinafter collectively referred to as a "Dispute") through negotiations. If the Dispute is not resolved within thirty (30) days (or such other period of time mutually agreed upon in writing by the Parties) of notice of the Dispute (the "Resolution Period"), then the Parties agree to submit the Dispute to binding arbitration as provided herein. Unless otherwise mutually agreed by the Parties, only if the Dispute is not resolved through negotiations as set forth herein, may a Party resort to Arbitration. All Disputes relating in any way to this Agreement shall be resolved exclusively through binding arbitration as provided herein.[7]

The November 28, 2006 Agreement further provided that "[t]he arbitration hearing shall be held in Philadelphia, Pennsylvania…."[8]

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[4] Id. at ¶ 13.
[5] StoneGate is a Delaware limited liability company, which provides placement services, on a best-efforts basis, to permit third parties to raise financing. See November 28, 2006 Agreement, at p. 2.
[6] See November 28, 2006 Agreement, at p. 3.
[7] Id. at p. 14.
[8] Id.

The November 28, 2006 Agreement also contained a Tolling Agreement. The Tolling Agreement provided as follows:

> [James J. Curran, Jr.], [Lehigh] and the members of the Curran Family signing below in their individual capacity…agree that they will not pursue, initiate, or cause to be initiated or pursued, either directly or indirectly, any cause of action, claim or legal or administrative proceeding, or any appeal of any of the foregoing, whatsoever, of any nature, known or unknown, which currently exists or may arise in the future, against the Parties hereto or their Related Parties…[9]

On March 14, 2008, Lehigh terminated the Management Agreement pursuant to a resolution of its Board of Directors and intended to seek a new management company that was acceptable to the PA DEP. Lehigh contends that it terminated the Management Agreement because it was dissatisfied with, *inter alia*, Coaldale's performance and results in achieving environmental compliance. Thereafter, Coaldale sent a letter to Arbitrator Edward N. Cahn ("Cahn") seeking "immediate emergency relief allegedly due to James J. Curran, Jr.'s unlawful interference with Lehigh operations and Coaldale's responsibility to manage Lehigh."[10] At Coaldale's request, Cahn scheduled a telephonic hearing for March 19, 2008. Lehigh contends that during this telephonic hearing, it objected to Cahn's jurisdiction to hear any dispute arising under any agreement other than the November 28, 2006 Agreement and specifically objected to expanding the scope of the hearing to include any conduct that allegedly violated the separate Management Agreement, under which disputes were not arbitrable.

After the telephonic hearing, Cahn found that Curran had violated the parties' agreements. Specifically, Arbitrator Cahn held:

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[9] Id. at p. 9.
[10] See March 14, 2008 Letter from Coaldale's counsel to Cahn.

> A. Mr. Curran wrongly held himself out to various third parties as being an officer of Lehigh, and being empowered to act for and bind Lehigh in its operations…;
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> B. By wrongfully holding himself out to third parties as a duly authorized Lehigh officer, Mr. Curran…induced a customer of Lehigh, South Tamaqua Coal Products, to tender to Mr. Curran payment of a Lehigh invoice in the approximate amount of $154,000;
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> C. Mr. Curran, without authority from Lehigh or Coaldale, filed a lawsuit in the Commonwealth Court of Pennsylvania purportedly on behalf of Lehigh against the [PA DEP].[11]

After finding the foregoing violations by Curran, Arbitrator Cahn granted the following relief in his March 19, 2008 Award:

> I. That James J. Curran, Jr.…be enjoined and restrained immediately from holding himself out to any third party…as a Lehigh officer or as holding any authority to bind Lehigh in the conduct of its operations or finances;
>
> II. That James J. Curran, Jr.…not take any action relative to Lehigh, or institute or cause to be instituted, either directly or indirectly, any additional attachments, levies, or other legal process against or involving Lehigh or any of the Coaldale Entities, without the express prior written consent of this Arbitrator;
>
> III. That James J. Curran, Jr. immediately return to Lehigh the check tendered to him by South Tamaqua Coal Products under false pretenses, in the approximate amount of $154,000.00; or James J. Curran, Jr. pay to Lehigh on or before the close of business today, in the form of a certified bank check, the amount of $154,000.00;
>
> IV. That James J. Curran, Jr. does not have the power or authority to interfere with the operational or financial control of Lehigh, and thus does not have the power or authority to bring, file or otherwise authorize the filing of any lawsuits on behalf of Lehigh;
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> V. That the within order does not waive or in any way foreclose claims for money damages or other relief that Coaldale and/or

[11] See Arbitration Award dated March 19, 2008.

> [Lehigh] may have against James J. Curran and/or those acting in concert with him.[12]

Lehigh and Curran subsequently filed Petitions to Vacate the March 19, 2008 Arbitration Award of Arbitrator Cahn (the "Petitions to Vacate"). This court held a full hearing on the Petitions to Vacate on June 4, 2008. On June 11, 2008, this court issued an Order stating that Arbitrator Cahn exceeded the scope of his authority constituting an irregularity and ordered that the Arbitrator's Award be vacated pursuant to 42 Pa. C.S.A. § 7341.[13] Specifically, the Order stated that: (1) the November 28, 2006 Agreement did not embody the Management Agreement for purposes of application of the arbitration provision; (2) the conduct of the Lehigh Board was appropriate under 15 Pa. C.S.A. § 1721; and (3) the Tolling Agreement was not pertinent to the issue presented since the disputed issue was not the result of a "claim against Coaldale" by Lehigh.[14] This timely appeal followed.

Discussion

I. The November 28, 2006 Agreement Did Not Embody the Management Agreement for Purposes of Application of the Arbitration Provision.

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.[15] 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.[16] The fundamental rule in construing a contract is to ascertain and give effect to the intention of

[12] Id.
[13] See Order dated June 11, 2008.
[14] Id.
[15] Smith v. Cumberland Group Ltd., 687 A.2d 1167, 1171 (Pa. Super. 1997).
[16] Shadduck v. Christopher J. Kaclik, Inc., 713 A.2d 635, 637 (Pa. Super. 1998).

the parties.[17] "[A] court must be careful not to extend an arbitration agreement by implication beyond the clear, express and unequivocal intent of the parties as manifested by the writing itself."[18] Indeed, "[b]ecause arbitration is a matter of contract, a particular issue cannot be arbitrated absent an agreement between the parties to arbitrate that issue."[19]

Pennsylvania's common law arbitration statute states that "[t]he award of an arbitrator in a nonjudicial arbitration…is binding and may not be vacated or modified unless it is clearly shown that a party was denied a hearing or that fraud, misconduct, corruption or other irregularity caused the rendition of an unjust, inequitable or unconscionable award."[20] An irregularity refers to the process employed in reaching the result of the arbitration, not the result itself.[21] In addition, "the arbitrator's authority is restricted to the powers the parties have granted [him] in the arbitration agreement."[22]

Here, as set forth above, Arbitrator Cahn's authority was derived from the arbitration provision in the November 28, 2006 Agreement. By the plain language of the arbitration provision in the November 28, 2006 Agreement, the parties agreed to arbitrate **only** disputes "relating in any way to this Agreement." The November 28, 2006 Agreement was a separate contract from the Management Agreement. Significantly, the Management Agreement did not provide for arbitration of disputes arising under that agreement. Further, although it referenced the Management Agreement among other

[17] Lower Frederick Township v. Clemmer, 543 A.2d 502, 510 (Pa. 1988).
[18] Hazleton Area School Dist. v. Bosak, 671 A.2d 277, 282 (Pa. Commw. 1996).
[19] Id.
[20] 42 Pa. C.S. § 7341.
[21] McKenna v. Sosso, 745 A.2d 1, 4 (Pa. Super. 1999).
[22] Gargano v. Terminix Int'l Co., L.P., 784 A.2d 188, 193 (Pa. Super. 2001).

agreements, the November 28, 2006 Agreement, by its terms, did not encompass disputes arising out of the Management Agreement.

Moreover, although some of the same parties were involved in both contracts, the parties had different intentions in regards to each contract. While the Management Agreement addressed Coaldale's promise to provide day-to-day management and operational services to Lehigh, the November 28, 2006 Agreement was designed for StoneGate to assist Lehigh in obtaining financing for a bridge loan.

When Coaldale sought emergency relief from Arbitrator Cahn, it did so because of "James J. Curran, Jr.'s unlawful interference with Lehigh operations and Coaldale's responsibility to manage Lehigh."[23] The essence of the dispute before Arbitrator Cahn on March 19, 2008 was based on the Management Agreement, and not the financing arrangement as provided for in the November 28, 2006 Agreement. Accordingly, when Arbitrator Cahn ruled on an issue that arose out of the Management Agreement, he exceeded the authority the parties invested in him through the November 28, 2006 Agreement. Since this constituted an irregularity, the March 19, 2008 Arbitration Award was properly vacated pursuant to 42 Pa.C.S.A. § 7341.

II. The Conduct of the Lehigh Board Was Appropriate Under 15 Pa. C.S.A. § 1721.

Under Pennsylvania law, a board of directors has the authority over the business management and affairs of the corporation and has fiduciary duties to the corporation. Specifically, 15 Pa.C.S.A. § 1721, which governs the authority of the board of directors, provides:

> Unless otherwise provided by statute or in a bylaw adopted by the shareholders, all powers enumerated in section 1502 (relating to general powers) and elsewhere in this subpart or otherwise

[23] See March 14, 2008 Letter from Coaldale's counsel to Cahn.

> vested by law in a business corporation shall be exercised by or under the authority of, and the business and affairs of every business corporation shall be managed under the direction of, a board of directors. If any such provision is made in the bylaws, the powers and duties conferred or imposed upon the board of directors by this subpart shall be exercised or performed to such extent and by such person or persons as shall be provided in the bylaws. Persons upon whom the liabilities of directors are imposed by this section shall to that extent be entitled to the rights and immunities conferred by or pursuant to this part and other provisions of law upon directors of a corporation.

While Lehigh delegated certain operational authority to Coaldale in the Management Agreement, Lehigh's Board of Directors maintained ultimate responsibility for the business and affairs of Lehigh pursuant to 15 Pa.C.S.A. § 1721. Thus, Lehigh's Board of Directors properly exercised its powers when it decided that terminating the Management Agreement was in the best interests of Lehigh. Accordingly, the conduct of the Lehigh Board was appropriate under 15 Pa.C.S.A. § 1721.

III. The Tolling Agreement Was Not Pertinent to the Issue Presented Since the Disputed Issue Was Not the Result of a "Claim Against Coaldale" by Lehigh.

As noted, the Tolling Agreement contained within the November 28, 2006 Agreement precluded Lehigh, Curran, and certain members of the Curran family from initiating any cause of action, claim or legal or administrative proceeding against the parties to the agreement. Coaldale contends that Lehigh violated the Tolling Agreement when it terminated the Management Agreement with Coaldale.

When Lehigh's Board of Directors terminated the Management Agreement, it did not bring a cause of action or claim against Coaldale. Rather, it simply exercised its authority over Lehigh. Significantly, the Tolling Agreement did not preclude the Board of Directors from acting in what it believed was in the corporation's best interests. Instead, the Tolling Agreement only precluded the initiation of claims. Since the issue

before the court was not the result of a "claim against Coaldale" by Lehigh, the Tolling Agreement was not applicable to the present dispute.

Conclusion

For these reasons, this court respectfully submits that its decision should be affirmed.

BY THE COURT:

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ALBERT W. SHEPPARD, JR., J.