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

CRAIG A. COHEN, et al.,	:	July Term, 2000
Plaintiffs	:	
	:	No. 923
v.	:	
	:	Commerce Case Program
DAVID P. McLAFFERTY,	:	
Defendant	:	Control No. 072088

MEMORANDUM OPINION

Defendant David P. McLafferty ("McLafferty") has filed Preliminary Objections ("Objections") to the complaint ("Complaint") of Craig A. Cohen and Lawrence M. Stein (collectively, "Plaintiffs") on six discrete grounds. For the reasons set forth in this Opinion, the Court is issuing a contemporaneous Order overruling the Objections.

From May 1, 1993 until April 1, 1997, the Plaintiffs and McLafferty practiced law together as partners in the firm of McLafferty, Cohen & Stein ("Partnership"). The terms of the partnership were set forth in a general partnership agreement ("Agreement") dated May 1, 1993 and signed by the three parties.

Article Eight of the Agreement addresses termination of the Partnership:

> In the event that any Partner wishes to terminate his relationship with the Partnership, he shall give all of the Partners ninety days[']written notice of his intent to do so. In any event, other than that described in paragraph 11.01[1] where a Partner notifies the other Partners in writing of his intent to terminate his relationship with the Partnership, then the Partnership shall be terminated ninety days following the date of the notice ("the Termination Date") and shall be liquidated as provided in paragraph 8.02.

[1] Paragraph 11.01 of the Agreement addresses death, disability and retirement.

Agreement at ¶ 8.01. According to the Complaint, McLafferty gave notice of his intent to terminate the Partnership pursuant to Paragraph 8.01 on April 1, 1997.

Over two years later, on May 24, 1999, McLafferty filed a demand with the American Arbitration Association ("AAA") for the appointment of a liquidator to aid in winding up the affairs of the Partnership.[2] In response, the AAA appointed Louis Coffey ("Coffey") as liquidator on August 13, 1999.

After Coffey's appointment, McLafferty requested that he resolve a dispute over the interpretation of Paragraph 8.02(g)(iii) of the Agreement, which addresses the distribution of post-dissolution contingency fees:

> [F]ifty percent (50%) of the remaining balance [after the deduction of costs and expenses due the Partnership and the handling attorney] shall be paid to the Partnership to be distributed as Partnership property by the liquidator as provided in paragraph 8.02(b)[3] hereof and fifty percent (50%) of the remaining balance shall be paid directly to the handling attorney.

McLafferty recognized that the handling attorney should receive fifty percent of any balance, but argued that the other two partners were to divide the Partnership's fifty percent of the balance. The Plaintiffs

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[2] McLafferty's demand for arbitration, as attached to the Complaint, requests, as relief, "[a] complete accounting of the former [P]artnership contingency and hourly fee files in the possession of Cohen and Stein, and a complete accounting of all fees received on former partnership cases by Cohen and Stein, including reimbursement of costs, which may be approximately $50,000 or greater." No reference is made to an interpretation of the Agreement.

[3] Paragraph 8.02(b) of the Agreement sets forth the order of priority for distribution of Partnership assets. According to the provision, after assets are used to pay creditors, to establish contingent reserves, to repay partner loans and to return capital, each partner will receive one-third of the remaining amount.

disputed this interpretation, maintaining that the fifty percent paid to the Partnership was to be treated as all other Partnership assets and divided equally among all three partners.

The Plaintiffs objected to Coffey adjudicating the dispute and asserted that the Agreement does not authorize the arbitration of disputes. According to the Complaint, Coffey nonetheless indicated that he would proceed with interpreting Section 8.02(g)(iii) and scheduled a liquidation hearing ("Hearing") for June 20, 2000. In response, the Plaintiffs filed a petition for a preliminary injunction to enjoin the arbitration ("Petition") on November 24, 1999.[4] The Court denied the Petition on January 11, 2000.[5]

Four days before the Hearing was to be held, McLafferty's counsel sent a letter to Coffey withdrawing McLafferty's request for an interpretation of Paragraph 8.02(g)(iii). At the Hearing, Coffey announced that he would abstain from reviewing the provision in question, as McLafferty had withdrawn his request that he do so. The Complaint alleges, however, that, at the Hearing, McLafferty's counsel once again stated that his client disputed the Plaintiffs' interpretation of Paragraph 8.02(g)(iii) but suggested no alternative ways of resolving the dispute. According to the Complaint, McLafferty has not filed any action to establish the rights of the parties.

[4] C.P. Phila., November 1999, No. 3631.

[5] The docket indicates that the Plaintiffs filed an appeal on February 7, 2000. However, the appeal was withdrawn on July 31, and the matter discontinued on August 29.

The Complaint seeks a declaratory judgment as to the rights of the Parties under Paragraphs 8.02(g)(iii), 8.02(b) and 3.01(a)[6] of the Agreement, as well as the effect on the distribution of post-dissolution contingency fees.[7] On August 1, McLafferty filed Objections based on six grounds:

1. Lack of subject matter jurisdiction;

2. Lack of equitable jurisdiction;

3. Improper service;

4. Lack of personal jurisdiction;

5. Improper venue; and

6. Pendency of a prior action.

A resolution of the Objections is complicated by the seeming aversion of both parties to case law.[8] However, upon review, the Objections range from baseless to frivolous. As a result, they are overruled.

DISCUSSION

I. SUBJECT MATTER JURISDICTION

McLafferty first argues that "the Court of Common Pleas of Philadelphia [C]ounty does not have subject matter jurisdiction in this instant case as all parties have previously agreed, in the General

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[6] Section 3.01(a) states that one-third of all profits and losses is to be allocated to each of the three partners.

[7] The Complaint does not request that the Court distribute post-dissolution contingency fees. Rather, the Complaint contemplates the Court interpreting the Agreement to allow the liquidator to distribute the relevant amounts in accordance with the Court's interpretation.

[8] The Plaintiffs cite only two cases in their memorandum of law, both of which are irrelevant, while McLafferty does not cite a single case to support his arguments.

Partnership Agreement, that such disputes would be resolved by a liquidator selected by the arbitration pursuant to the provisions of the American Arbitration Association."[9] Defendant's Memorandum at 3. The Court cannot agree.

Pennsylvania law defines subject matter jurisdiction as "the capacity to pronounce a judgment of the law on an issue brought before the court through due process of law. It is the right to adjudicate the subject matter in a given case." Bernhard v. Bernhard, 447 Pa. Super. 118, 124, 668 A.2d 546, 548 (1995) (citations omitted). A ruling on an objection to subject matter jurisdiction hinges on "whether the law will bar recovery due to the lack of such jurisdiction." Wagner v. Wagner, 731 A.2d 632, 635 (Pa. Super. Ct. 1999) (quoting Philadelphia Housing Auth. v. Barbour, 405 Pa. Super. 140, 143, 592 A.2d 47, 48 (1991), aff'd, 532 Pa. 212, 615 A.2d 339 (1992)).

With certain exceptions not applicable here, Pennsylvania Courts of Common Pleas are courts of unlimited jurisdiction. 42 Pa. C.S. § 931. In addition, Pennsylvania's Declaratory Judgments Act allows a Court to grant relief in the form of a declaration of rights available under a contract. 42 Pa. C.S. § 7532. This generally is sufficient to allow the exercise of subject matter jurisdiction over declaratory judgment actions such as this.

McLafferty maintains that "the Court of Common Pleas of Philadelphia County lacks jurisdiction over the subject matter of this action as this subject matter is governed by the provisions of the American Arbitration Association, pursuant to the Partnership Agreement." Objections at ¶ 9. This argument appears to be based on Pennsylvania courts' deference to and respect for arbitration

[9] This argument is separate from and in addition to McLafferty's claim of a prior pending action, discussed infra.

agreements. See Dickler v. Shearson Lehman Hutton Inc., 408 Pa. Super. 286, 290-91, 596 A.2d 860, 862 (1991).[10] However, McLafferty does not develop this argument or even suggest the test to be used in evaluating the Objection.

Pennsylvania cases hold that "[i]f a valid arbitration agreement exists between the parties and [the] claim is within the scope of the agreement, the controversy must be submitted to arbitration." Smith v. Cumberland Group, Ltd., 455 Pa. Super. 276, 284, 687 A.2d 1167, 1171 (1997). However, "[a]greements to arbitrate are to be strictly construed and should not be extended by implication." PBS Coal, Inc. v. Hardhat Mining, Inc. 429 Pa. Super. 372, 377, 632 A.2d 903, 905 (1993). See also Midomo Co. v. Presbyterian Housing Dev. Co., 739 A.2d 180, 190 (Pa. Super. Ct. 1999) (arbitration agreements are to be confined to the "clear, express and unequivocal intent of the parties as manifested by the writing itself"); Brown v. D. & P. Willow Inc., 454 Pa Super. 539, 546-47, 686 A.2d 14, 18 (1996) (noting that forcing a party into arbitration without its consent is "violative of common law and statutory principles" and a "curtailment of one's substantive and due process rights").[11]

Paragraph 8.02(a) of the Agreement reads as follows:

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[10] It is significant to note that nowhere does McLafferty assert that disputes regarding interpretation of the Agreement are subject to arbitration.

[11] In those cases where Pennsylvania courts have deferred to arbitration, the agreement to arbitrate is broad and clearly addresses the dispute in question. See, e.g., Shadduck v. Christopher J. Kaclik, Inc., 713 A.2d 635 (Pa. Super. Ct. 1998); Dickler v. Shearson Lehman Hutton, Inc., 408 Pa. Super. 286, 596 A.2d 860 (1991); Sanitary Sewer Auth. of the Borough of Shickshinny v. Dial Assocs. Constr. Group, Inc., 367 Pa. Super. 207, 532 A.2d 862 (1987); Giant Markets, Inc. v. Sigma Mktg. Sys., Inc., 313 Pa. Super. 115, 459 A.2d 765 (1983).

> In the event that the Partnership is terminated as described in paragraph 8.01, one or more liquidators shall be appointed who shall have authority to wind up the affairs of the Partnership and to make distribution to the creditors of the Partnership and the Partners as provided in this paragraph. The liquidator(s) shall be any person or persons who the Partners unanimously designate to serve in that capacity. In the event that no such unanimous agreement is reached by the termination date, then a liquidator shall be selected by arbitration pursuant to the provisions of the American Arbitration Association whose decision shall be binding, final and not appealable. In the event any liquidator selected pursuant to this process shall resign or be unable to serve, then a replacement liquidator shall be selected by the same process. The fees of the liquidator shall be paid by each partner, pro rata, in accordance with the Partnership percentages set out in paragraph 3.01(a) of this Agreement.

It is clear that the parties have agreed to arbitration to resolve disputes over who the liquidator will be. As such, the Court does not have jurisdiction to address the selection of a liquidator. In contrast to McLafferty's claims, however, nothing in Section 8.02(a) requires arbitration over interpretations of the Agreement. Since an agreement to arbitrate must be narrowly construed, the provisions mandating arbitration to select a liquidator cannot be blurred into the preceding sentences of the paragraph. Consequently, the arbitration provision does not require the arbitration of disputes over either the winding up process or interpretation of the Agreement. Because the issue in controversy does not fall within the scope of the parties' agreement to arbitrate, nothing precludes the Court from exercising subject matter, and McLafferty's Objection is overruled.

II. EQUITY JURISDICTION

McLafferty next argues that case law and the Pennsylvania Rules of Civil Procedure preclude the Court from exercising equity jurisdiction over this matter. There is no merit to this argument.

In objecting to equity jurisdiction, McLafferty relies first on Pennsylvania Rule of Civil Procedure 2129 ("Rule 2129"), which deals with actions between partnerships and partners:

> An action may be prosecuted at law by a partnership against one or more of the partners thereof, or against such partners together with persons not partners; or by one or more partners, or by such partners together with other persons not partners, against the partnership. No such action may be prosecuted in equity unless there is ground for equitable jurisdiction other than the fact that the action is between a partnership and one or more partners.

However, Rule 2129 does not "divest equity of such jurisdiction with respect to actions by partners against their copartners." Donatelli v. Carino, 384 Pa. 582, 585, 122 A.2d 36, 37-38 (1956). Rather, "there is concurrent jurisdiction of law and equity in actions by partners against copartners in connection with partnership affairs." Id. As a result, Rule 2129 does not bar the instant action as McLafferty claims.

McLafferty also asserts that the "Complaint sounds in breach of contract and specifically refers to an alleged contract between the partnership. Plaintiffs' complaint improperly seeks declaratory relief through this Court as other equitable remedies at law [sic] are available to Plaintiffs[]."[12] Defendant's Memorandum at 6. McLafferty does not state what these remedies are.

A general assertion in preliminary objections that alternative remedies are available does not satisfy the requirement under the Pennsylvania Rules of Civil Procedure that a party specify what those remedies are. Hall v. Moon Valley Park, Inc., 66 D. & C.2d 401, 404 (1974) (citing Pa. R. Civ. P. 1028 and Brennan v. Smith, Sec'y of the Dept. of Labor and Indus., 6 Pa. Commw. 342, 344-45, 299 A.2d 683, 684-85 (1972)). Accordingly, McLafferty's failure to specify what "other equitable

[12] McLafferty introduces this section by stating that "Pennsylvania Rule of Civil Procedure 1028[(a)](4) also limits the filing of preliminary objections when there is 'legal insufficiency in a pleading.'" Defendant's Memorandum at 6. It is unclear what relevance this statement has to the availability of other remedies.

remedies at law" are available to the Plaintiffs is fatal, and the Objections based on a lack of equity jurisdiction are overruled.

III. SERVICE OF PROCESS

The Objections continue, asserting that the service of process made on McLafferty in Philadelphia was improper because he "is a resident of Montgomery County and has not, to date, been properly served by the Sheriff of that county." This argument is preposterous.

While Pennsylvania Rule of Civil Procedure 400.1(a)[13] provides for service of process in other counties, it also allows service in Philadelphia County "by the sheriff or a competent adult." Process may be served by handing a copy of the relevant complaint to the defendant in person. Pa. R. Civ. P. 402(a)(1). There is no restriction on where within the Commonwealth a defendant may be served, and certainly no requirement that a defendant be served in his county of residence.[14]

Here, McLafferty was served in person by Frank Kelly ("Kelly")[15] on July 12, 2000 at 325 Chestnut Street, Philadelphia, Pennsylvania.[16] Such service of process comports with the Pennsylvania

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[13] Rule 400.1(a) addresses service of process for actions commenced in Philadelphia County.

[14] In contrast, if process is not served directly on a defendant, it must be effected at either the residence or office of the defendant. Pa. R. Civ. P. 402(a)(2).

[15] In the certificate of service, Kelly certifies that he is over eighteen and is not a party to the action at hand.

[16] If McLafferty were to claim that service was not made on him personally, it would be appropriate for the Court to hold a hearing to ascertain the veracity of his claim. See, e.g., Frycklund v. Way, 410 Pa. Super. 347, 350, 599 A.2d 1332, 1333-34 (1991) (allowing hearings to resolve issues of fact related to service). However, McLafferty makes no such claim.

Rules of Civil Procedure, regardless of what relation, if any, the Defendant has to that address. Consequently, the Objections based on improper service are overruled.

IV. PERSONAL JURISDICTION OVER MCLAFFERTY

McLafferty argues that he is a resident of Montgomery County, Pennsylvania, and that the "attempt to serve Defendant at an address that is not his residence or business office is not sufficient to confirm [personal] jurisdiction in this Court."[17] Defendant's Memorandum at 4. No reasonable reading of Pennsylvania law supports this conclusion.

A person's presence or domicile in Pennsylvania "constitute[s] a sufficient basis of jurisdiction to enable the tribunals of this Commonwealth to exercise general personal jurisdiction over such person . . . . When jurisdiction is based on this [principle] any cause of action may be asserted against him." 42 Pa. C.S. § 5301. See also McFarland v. Weiland Packing Co., 416 Pa. 277, 279, 206 A.2d 18, 19 (1965) (where the defendant is properly served and the court has jurisdiction over the underlying action, the court may exercise personal jurisdiction over the defendant). There is no requirement that a person be domiciled or work in a particular county for the courts of that county to have personal jurisdiction over him or her. As a result, the fact that McLafferty lives in Montgomery County is irrelevant for the purposes of personal jurisdiction, and the Objections on this basis are overruled.

[17] This argument appears best suited to support objections to venue or service, not personal jurisdiction. However, this section of the Defendant's Memorandum relates to the Court's "jurisdiction" and subject matter jurisdiction is dealt with elsewhere. Thus, it is logical to infer that McLafferty is resisting the Court's exercise of personal jurisdiction over him.

V. VENUE

McLafferty next argues that Philadelphia County constitutes an improper venue for a resolution of this matter. However, a cursory review of the Pennsylvania Rules of Civil Procedure reveals that this is not the case.

Under Pennsylvania Rule of Civil Procedure 1006(a),

> [A]n action against an individual may be brought in and only in a county in which the individual may be served or in which the cause of action arose or where a transaction or occurrence took place out of which the cause of action arose or in any other county authorized by law.[18]

See also Slezynger v. Bischak, 224 Pa. Super. 552, 554, 307 A.2d 405, 406 (1973) ("venue is proper when service of process is proper").

McLafferty claims that "there is no indication as to where the transaction arose or that there were any transaction and/or occurrences that took place in Philadelphia County." Defendants' Memorandum at 5. However, proper service was made on McLafferty in Philadelphia County. This alone renders venue in Philadelphia proper, regardless of where other events may have occurred.[19] As a result, the Objections based on improper venue are overruled.

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[18] There are certain exceptions to Rule 1006(a), none of which are applicable here.

[19] The Plaintiffs allege additional facts, including McLafferty's request that the hearing be held in Philadelphia, the Partnership having its principal office in Philadelphia and the deposit of disputed funds into Philadelphia escrow accounts. However, the fact that proper service was made on McLafferty in Philadelphia adequately supports the Court's conclusion. Accordingly, there is no need to make a factual determination as to these additional allegations.

VI. PENDING PRIOR ACTION

Last, McLafferty argues that the ongoing liquidation process being conducted by Coffey constitutes a prior action that prevents the Court from addressing this matter.[20] However, McLafferty has presented no support for this argument, and it must be rejected.

Rule 1018(a)(6) allows a party to raise a preliminary objection based on "pendency of a prior action or agreement for alternative dispute resolution." This protects "a defendant from harassment by having to defend several suits on the same cause of action at the same time." Penox Techs., Inc. v. Foster Med. Group, 376 Pa. Super. 450, 453, 546 A.2d 114, 115 (1988).

Under Pennsylvania law, the question of a pending prior action "is purely a question of law determinable from an inspection of the pleadings." Davis Cookie Co. v. Wasley, 389 Pa. Super. 112, 121, 566 A.2d 870, 874 (1989) (quoting Hessenbruch v. Markle, 194 Pa. 581, 592, 45 A. 669, 671 (1900)). To sustain a preliminary objection based on a pending prior action, "the objecting party must demonstrate to the court that in each case the parties are the same, and the rights asserted and the relief prayed for are the same." Virginia Mansions Condominium Ass'n v. Lampl, 380 Pa. Super. 452, 456, 552 A.2d 275, 277 (1988). This test must be applied strictly, Norristown Auto. Co. v. Hand, 386 Pa.

[20] McLafferty states that "Pennsylvania Rule of Civil Procedure 1028[(a)](6) also limits the filing of preliminary objections when there is 'pendency of a prior action or agreement for alternative dispute resolution.' In the instant case, as of August 13, 1999 the American Arbitration Association [a]dministratively appointed Louis Coffey, Esquire as the liquidator. Therefore, Plaintiffs' Complaint is improperly filed as a declaratory judgment." Defendant's Memorandum at 6. From this, the Court infers that McLafferty claims that the ongoing liquidation process being conducted by Coffey constitutes a prior action that prevents the Court from addressing this matter.

Super. 269, 274, 562 A.2d 902, 904 (1989), and "a mere assertion that prior actions are pending will not satisfy the burden." Feigley v. Jeffes, 104 Pa. Commw. 540, 546, 522 A.2d, 179, 182 (1987).

The only documents attached to the Objections are McLafferty's Memorandum and copies of the Complaint and the Agreement. There is no information, either in the form of an affidavit or otherwise, from which to draw the conclusion that there is, in fact, a prior pending action. Furthermore, the Agreement itself does not include a provision requiring the parties to submit to alternative dispute resolution for interpretations of the Agreement.[21] As a result, McLafferty has not met the burden imposed on him, and the Objections are overruled.

CONCLUSION

Each of the Objections is without merit and is overruled.

BY THE COURT:

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JOHN W. HERRON, J.

Dated: September 29, 2000

[21] To the extent that this argument is based on the agreement to arbitrate in Paragraph 8.02(a) of the Agreement, it is groundless, as discussed supra.

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DAVID P. McLAFFERTY,	:	
Defendant	:	Control No. 072088

ORDER

AND NOW, this 29th day of September, 2000, upon consideration of Defendant David P. McLafferty's Preliminary Objections to the Complaint of Craig A. Cohen and Lawrence M. Stein, individually and as former partners of McLafferty, Cohen & Stein, and Plaintiffs' response thereto and in accordance with the Memorandum Opinion being filed contemporaneously with this Order, it is hereby ORDERED and DECREED that the Preliminary Objections are OVERRULED. The Defendant is directed to file an Answer within twenty days of the date of entry of this Order.

BY THE COURT:

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JOHN W. HERRON, J.