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

ODYSSEY CAPITAL, L.P. and JEFFREY SHAPIRO,	:	June Term, 2002
Plaintiffs,	:	No. 2893
v.	:	Commerce Program
SASHI REDDI and APPLABS, INC. d/b/a/ APPLABS TECHNOLOGIES,	:	Control Nos. 081054
Defendants.	:	

ORDER AND MEMORANDUM

AND NOW, this 14th day of November 2002, upon consideration of the Preliminary Objections of Defendants Sashi Reddi and Applabs, Inc. d/b/a Applabs to the Complaint of Plaintiffs Odyssey Capital, L.P. and Jeffery Shapiro, any responses thereto, and in accordance with the Memorandum Opinion being filed contemporaneously with this Order, it is hereby **ORDERED** and **DECREED** as follows:

1. Defendants' first Preliminary Objection pursuant to Rule 1028 (a)(6) is **SUSTAINED** and Plaintiff's Complaint hereby is **DISMISSED**;

2. Defendants' second Preliminary Objection pursuant to 1028(a)(2) hereby is **DISMISSED** as **MOOT**.

BY THE COURT:

_____
GENE D. COHEN, J.

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

ODYSSEY CAPITAL, L.P. and JEFFREY SHAPIRO,	:	June Term, 2002
Plaintiffs,	:	No. 2893
v.	:	Commerce Program
SASHI REDDI and APPLABS, INC. d/b/a/ APPLABS TECHNOLOGIES,	:	Control Nos. 081054
Defendants.	:	

ORDER AND MEMORANDUM

GENE D. COHEN, J.

Before the Court are the Preliminary Objections of Defendants Sashi Reddi and AppLabs, Inc. d/b/a AppLabs Technologies ("App Labs") to the Complaint of Plaintiffs Odyssey Capital, L.P. and Jeffery Shapiro. For the reasons fully set forth below, Defendants' first Preliminary Objection pursuant to Rule 1028 (a)(6) hereby is **SUSTAINED** and Plaintiffs' Complaint **DISMISSED**. Defendants' second Preliminary Objection pursuant to 1028(a)(2) hereby is **DISMISSED** as **MOOT**.

BACKGROUND

The instant action arises out of Defendants' alleged breach of certain oral and written agreements between the parties. Compl. ¶ 6. As set forth in Plaintiffs' Complaint, on April 25, 2000, Plaintiffs invested $250,000 (collectively) in Icoop, Inc., a company owned by Defendant Reddi, and, in return, received 500,000 shares (collectively) of Icoop. Id. at ¶¶ 7, 8. Following the stock purchase, Reddi expressed a desire to merge Icoop with another company he owned,

AppLabs, Inc. (the "Merger"). Id. at ¶ 9. As a condition of the Merger, Plaintiffs were required to exchange their Icoop shares for shares in AppLabs Software Private Limited ("ASPL"), the parent company of AppLabs. Id. at ¶ 10.

Plaintiffs claim that in order to induce them to consent to the Merger, Reddi orally promised them the right to sell their shares of ASPL (to be acquired through the Merger) back to Reddi at a price of $1.00 per share at anytime between the 13th month (July 2001) and 24th month (June 2002) following the Merger. Id. As a result of Reddi's alleged representations, Plaintiffs agreed to the Merger and the conversion of their shares of Icoop. Id. at ¶ 12.

On June 30, 2000, the parties' agreement was memorialized in two separate "Put Agreements" with Odyssey and Shapiro, respectively. Compl. Exh. "A" and "B."[1] In addition to the foregoing terms, the Put Agreements also stated that "[p]ursuant to the Merger Agreement[2], [Plaintiffs] were receiving **options** to purchase stock of [ASPL]. . . such shares, when issued upon exercise of the option are called the 'Issued Stock'." Id. at ¶ 2 (emphasis added). The Put Agreements only entitled Plaintiffs to exercise the Put with respect to "Issued Stock." Id. On the same day the Put Agreements were executed, Plaintiffs and Reddi, *inter alia*, executed the Shareholder Agreement. Def. Mem. Exh. "A." The Shareholder Agreement purports to govern the relationship by and between the shareholders of ASPL, but, perhaps most importantly, it defines the nature of Plaintiffs' stock ownership in ASPL.

On November 8, 2001, Odyssey and Shapiro served Reddi with formal notices purporting

[1]Plaintiffs further claim that Reddi orally promised to personally guarantee payment.

[2]By its own terms, the Put Agreements "were entered into in connection with [a] certain Agreement and Plan of Merger between [Icoop] and [AppLabs]" (the "Merger Agreement"). The Merger Agreement is not discussed by counsel, nor is it attached to any of the pleadings.

to exercise their respective rights under the Put Agreements. Compl. Exh. "C" and "D". On November 30, 2002, counsel for Reddi responded, stating that such rights could no longer be exercised, as the ASPL stock had since been converted to cash. Id. at Exh. "E". As a result of this dispute, litigation ensued.

Plaintiffs' Complaint in this matter asserts the following causes of action against Defendants: Count I -Breach of Contract (Put Agreements); Count II - Breach of Contract (Personal Guarantee - Oral); Count III - Promissory Estoppel; Count IV - Unjust Enrichment; and Count V - Fraudulent Inducement and Misrepresentation. Id.

DISCUSSION

Defendants originally filed Preliminary Objections on two grounds, but have since withdrawn their second Preliminary Objection.[3] Thus, solely before the court is a Preliminary Objection based upon **Rule 1028 (a)(6) - Existence of Agreement for Alternative Dispute Resolution**. Defendants argue that Plaintiffs' Complaint must be dismissed because this matter is subject to arbitration. In support of their argument, Defendants rely upon 42 Pa.C.S.A. § 7303 which 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.

[3] Initially, Defendants also argued that Plaintiffs violated Pa.R.C.P. 231(a) which states, in pertinent part: ". . . [a]fter a discontinuance or voluntary nonsuit, the plaintiff may commence a second action upon the same cause of action upon payment of costs of the former action." Pa.R.C.P. 231(a). Plaintiffs had filed a prior action styled, ***Odyssey Capital, L.P. et. al., v. Sashi Reddi, et. al.***, *(CCP Phila. No. 0102-000307)*, which was discontinued (without prejudice) on June 7, 2002. Defendants have since withdrawn this Preliminary Objection, admitting that Plaintiffs sent defense counsel a check for costs of the first action on July 17, 2002. Def. Mem., n.1.

42 Pa.C.S.A. § 7303. Defendants assert that the current dispute is subject to the Article XIV of the Shareholder Agreement between the parties which states:

> All disputes, differences, claims, questions and controversy ***arising in connection with and/or in relation to this [Shareholder] Agreement*** which the parties are unable to settle between themselves shall be finally settled by arbitration by three arbitrators...The arbitration shall be held in accordance with the Rules of the International Chamber of Commerce. The arbitration proceeding shall be held in the English language and shall be held at the registered office of ASPL [in Hyderabad, India]...

Def. Mem. Ex. "A")(emphasis added). Defendants take the position that "it is impossible to determine whatever dispute may exist under the Put Agreements without resolving the issue under the Shareholder Agreement." Defendants are correct.

When one party to an agreement seeks to prevent another from proceeding to arbitration, judicial inquiry is limited to determining: (1) whether 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.2d1167, 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, it is undisputed that the parties possess a valid agreement to arbitrate, which is contained in the Shareholder Agreement. Thus, the pertinent inquiry is whether the instant dispute falls within the scope of Article XIV of the Shareholder Agreement. A review of the Complaint, coupled with the language of both the Shareholder and Put Agreements, reveals that the instant dispute "arises in connection with and/or in relation to" the Shareholder Agreement and is, therefore, subject to arbitration.

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. Shadduck v. Christopher J. Kaclik, Inc., - - Pa. Super. - -, 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 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) (*plurality opinion*). 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., – Pa. Super. –, 796 A.2d 350 (2002) (*quoting* In re Mather's Estate, 410 Pa. 361, 189 A.2d 586, 589 (1963)).

The Complaint, at first glance, appears to be specific and limited in scope; all pleaded facts relate solely to the Put Agreements and the events surrounding same. However, despite the narrow language of the Complaint, a careful review of the agreements at issue unequivocally reveals that the scope of the instant dispute relates to the nature of the ASPL stock issued to Plaintiffs, rather than their rights under the Put Agreements. In their Complaint, Plaintiffs assert that they "agreed to the merger and the conversion of their shares of Icoop into **an equal number of shares of [ASPL]**." Compl. ¶12 (emphasis added). Conversely, Defendants appear to take the position that Plaintiffs never owned any "Issued Stock," and therefore, could not have exercised their rights under the Put Agreement. It was the attempt to exercise their rights under the Put Agreement, rather than the actual terms of the Put Agreement itself, which revealed the true

nature of the dispute between the parties. To that end, it is the Shareholder Agreement that offers guidance concerning Plaintiffs' stock ownership interest in ASPL, rather than the Put Agreements alone.

The fact that the Put Agreements do not integrate, incorporate or otherwise reference the Shareholder Agreement is not determinative here, nor is the fact that the Put Agreements contain the following integration clause: "[t]his Agreement is the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements and understandings, whether written or oral with respect thereto." Compl. Ex. "A" and "B" at ¶¶ 6. Normally, "[i]f a written contract is unambiguous and held to express the embodiment of all negotiations and agreements prior to its execution, neither oral testimony nor prior written agreements or other writings are admissible to explain or vary the terms of that contract." Lenzi v. Hahnemann University, 445 Pa. Super. 187, 664 A.2d 1375, 1379 (1995). However, Pennsylvania law recognizes that two contracts may be construed together to represent a complete transaction even where the subsequent contract contains an integration clause. Neville v. Scott, 182 Pa. Super. 448, 127 A.2d 755 (1956). Upon further review of the both the Put Agreements and the Shareholder Agreement, it is clear that the intent of the parties can not be determined without analyzing and interpreting both documents together.

CONCLUSION

For the above-stated reasons, this Court hereby sustains Defendants' Preliminary Objections. Plaintiffs' Complaint will be dismissed and the matter subject to arbitration as originally agreed by the parties. This Court will enter a contemporaneous Order consistent with this Opinion.

BY THE COURT:

_____

GENE D. COHEN, J.

Dated: November 14, 2002