

**IN THE COURT OF COMMON PLEAS  
COUNTY OF PHILADELPHIA  
CIVIL TRIAL DIVISION**

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**Le Vin Company, LLC,**  
*Plaintiff*

v.

**Blue Star Wine Company, et al.,**  
*Defendants.*

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:  
: **May Term, 2016**  
: **No. 03492**  
:  
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: **1062 EDA 2017**  
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**OPINION**

**DJERASSI, J.**

**August 14, 2017**

This is an appeal of an Order dated March 10, 2017, sustaining preliminary objections in part and overruling preliminary objections in part. The Order denied defendants' request to compel arbitration by a beth din, an orthodox Jewish religious court. Transfer to a beth din was sought by defendants who have now filed this appeal.

The parties in this case are in the kosher wine business. On May 30, 2016 an agreement of sale was signed for transfer of ownership of a kosher wine store and business known as Rosenberg's in Bala Cynwyd, Pa. The corporate buyer is plaintiff Le Vin Company, LLC ("Le Vin"); the corporate seller is defendant Blue Star Wine Company ("Blue Star").

Disputes occurred before closing and plaintiff Le Vin filed this Complaint claiming breach of contract, fraud, violation of a restrictive covenant, and tortious interference with contract.<sup>1</sup> Le Vin avers that Blue Star breached the sale agreement by misrepresenting its compliance with local and state tax authorities. According to Le Vin, Blue Star failed to disclose substantial sums owed to Pennsylvania's Department of Revenue and the Township of Lower Merion. Le Vin also claims Blue Star overstated the value of its kosher wine inventory.

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<sup>1</sup> An amended complaint was filed August 25, 2016.



In its preliminary objections, Blue Star states an alleged side agreement with Le Vin removes jurisdiction from this court to a beth din. The alleged side agreement is not written and there are no terms or apparent agreement between the parties on whether plaintiff's tort claims remain in this court or go to the beth din.

We view the issue before us as one akin to compelling arbitration by agreement. Pennsylvania courts employ a two-part test to determine whether the parties must be compelled to arbitrate.<sup>2</sup> “First, we examine whether a valid agreement to arbitrate exists. Second, we must determine whether the dispute is within the scope of the agreement.”<sup>3</sup> “[A]rbitration is a matter of contract and, as such, it is for the court to determine whether an express agreement between the parties to arbitrate exists.”<sup>4</sup> “Even though law favors settlement of disputes by arbitration to promote swift and orderly disposition of claims, arbitration agreements are nonetheless strictly construed and an agreement to arbitrate should not be extended by implication.”<sup>5</sup>

The first question is whether a beth din is a permissible forum for common law arbitration under Pennsylvania law. This is an issue that has not been reported in Pennsylvania's state courts. In *East Mark Intern., LTD v. ADAR, LLC*, the Third Circuit implicitly held parties may choose a beth din to arbitrate disputes. The Court sent a property dispute to a beth din for resolution by enforcing a stipulation that the sale of a property must have beth din approval.<sup>6</sup> In a related unreported Pennsylvania Superior Court case, *Faibish v. Lincoln on Locust, L.P.*, the court similarly recognized the validity of a beth din as a binding arbitrator, though we recognize the case is not precedential.<sup>7</sup> Outside of Pennsylvania, New York state courts have addressed this

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<sup>2</sup> *Fellerman v. PECO Energy Co.*, 159 A.3d 22, 26–27 (Pa. Super. 2017).

<sup>3</sup> *Id.*

<sup>4</sup> *Levy v. Lenenberg*, 795 A.2d 419, 422–23 (Pa. Super. 2002)

<sup>5</sup> *Elwyn v. DeLuca*, 2012 PA Super 136, 48 A.3d 457, 461 (2012).

<sup>6</sup> *East Mark Intern., LTD v. ADAR, LLC*, 2013 WL 5786182 (3d Cir. 2013).

<sup>7</sup> *Faibish v. Lincoln on Locust, L.P.* 2015 WL 753089 (Pa. Super. 2015, Wecht, J.)

issue and hold that signed agreements between parties to submit to a beth din can be an enforceable arbitration agreements by statute or common law.<sup>8</sup>

We agree that a beth din is a valid arbitration forum and hold that a proper agreement to arbitrate legal disputes is enforceable in Pennsylvania.

The next question is whether Le Vin and Blue Star have entered into an enforceable agreement to arbitrate. To start, nothing is in writing in the contract; there is no alternative dispute resolution clause in the Asset Purchase Agreement which is the relevant agreement of sale document that form the basis for plaintiff's complaint.<sup>9</sup>

Notwithstanding the absence of an alternative dispute resolution in the agreement of sale, Blue Star argues that both parties agreed to submit their dispute to a beth din through an alleged separate agreement. According to Blue Star, circumstantial evidence of this agreement exists in correspondence between non-parties. These are Rabbi Dov Aaron Brisman, a representative of the Orthodox Beth Din of Philadelphia and an attorney, Jerome Marcus, Esquire, who represents plaintiff Le Vin, Inc.<sup>10</sup> Mr. Marcus has not entered an appearance in the Philadelphia Court of Common Pleas. This correspondence is not persuasive that there was an actual meeting of the minds between the named parties in this case, particularly when the agreement terms are not defined.<sup>11</sup>

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<sup>8</sup> *E.g., Kozlowski v. Seville Syndicate, Inc.*, 314 N.Y.S.2d 439, 445 (N.Y. Sup. Ct. 1970). For a discussion of Jewish law in secular courts see 81 A.L.R. 6th 1 (2013) and for a general discussion of religious tribunals as a form of alternative dispute resolution see 4 Am. Jur. 2d Alternative Dispute Resolution § 12.

<sup>9</sup> "Asset Purchase Agreement" between Le Vin Company, LLC, Blue Star Wine Co., Inc., and Reuvain Ribiat. This agreement is attached to the amended complaint as Exhibit A.

<sup>10</sup> See letter from the Orthodox Beth Din of Philadelphia to Jack Levin dated October 13, 2015 at Exhibit 2 to defendants' Preliminary Objections. ("Reuvain Ribiat has requested that the Orthodox Beth Din of Philadelphia summon you for clarification of sale issues re: sale of his business to you."); See letter from Jerome Marcus, Counsel for Plaintiff, to Rabbi Brisman dated March 28, 2016 at Exhibit 3 to defendant's Preliminary Objections ("Dear Rabbi Brisman: I wrote to advise you that efforts to settle this dispute have failed. I must therefore request that a date for the Din Torah be set.").

<sup>11</sup> *Helpin v. Trustees of Univ. of Pennsylvania*, 969 A.2d 601, 610 (Pa. Super. 2009), *aff'd*, 10 A.3d 267 (Pa. 2010) ("We will find the parties' agreement enforceable as a contract 'when the parties to it 1) reach a mutual understanding, 2) exchange consideration, and 3) delineate the terms of their bargain with sufficient clarity.'")

Exhibits before the court confirm that there was discussion by a rabbi and a lawyer about a role for a beth din in resolving the parties' dispute. However, nothing was finalized.<sup>12</sup> The scope of the beth din's jurisdiction and whether the parties would proceed by an arbitration panel in Philadelphia or elsewhere is unknown.<sup>13</sup> Proof of a complete agreement is lacking as the exhibits show a negotiating process with misunderstandings and no definite agreement terms.<sup>14</sup>

Because there is insufficient proof of an enforceable agreement to arbitrate, we denied the motion to compel. A beth din is an appropriate venue for parties to privately agree to resolve civil disputes. The orthodox community, however, should be mindful that Pennsylvania courts can only compel arbitration before a beth din if the parties have clearly agreed to resolve their dispute in such a manner. The legal enforceability of a beth din order may sometimes be necessary as when a party is required to vacate possession of premises but refuses to do so. A beth din for example may not order a sheriff or anyone to physically remove a person from a house without a court order or the person's permission. Accordingly, a beth din is best served to insist on written agreements executed by the parties when assuming jurisdiction over civil dispute.

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<sup>12</sup> See letter from the Orthodox Beth Din of Philadelphia to Jack Levin dated October 13, 2015 at Exhibit 2 to defendants' Preliminary Objections. ("Reuvain Ribiat has requested that the Orthodox Beth Din of Philadelphia summon you for clarification of sale issues re: sale of his business to you."); See letter from Jerome Marcus, Counsel for Plaintiff, to Rabbi Brisman dated March 28, 2016 at Exhibit 3 to defendant's Preliminary Objections ("Dear Rabbi Brisman: I wrote to advise you that efforts to settle this dispute have failed. I must therefore request that a date for the Din Torah be set.").

<sup>13</sup> See letter from Jerome Marcus to Rabbi Dov Brisman dated August 26, 2016 at Exhibit 5 to defendants' Preliminary Objections. ("For all of these reasons we believe that it makes sense to seek a beit din which has the logistical capacity to hear testimony of this kind. I do want to assure you, however, that my client has no intention of failing to appear for a din torah... We intend to contact the Beit Din of America to determine whether they would be able to hear this dispute.").

<sup>14</sup> Letter from the Orthodox Beth Din of Philadelphia to Jerome Marcus dated September 18, 2017 at Exhibit 7 to defendants' Preliminary Objections. ("There was clearly a misunderstanding. We had different impression of what to expect. Your intention is totally acceptable and we may proceed as you wish. I am sorry that I misunderstood.").

Conclusion

For the reasons stated here, we respectfully request the Court to affirm our May 10, 2017 Order.

BY THE COURT:

A handwritten signature in black ink, appearing to read 'Ramy A. Djerassi', written over a horizontal line.

Ramy A. Djerassi, J.