

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

RAYMOND J. BATTAGLIA, SR. : CIVIL ACTION
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v. : :
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: :
MARYANN MCKENDRY, et al. : NO. 98-5321

MEMORANDUM AND ORDER

HUTTON, J.

February 20, 2002

Presently before the Court are the Motion of Plaintiff, Raymond J. Battaglia, for Summary Judgment (Docket No. 32), the Cross-Motion of Defendants Mary Ann McKendry, Mary Anne Battaglia, James Doorcheck, Inc., Raymond Battaglia, Jr., and James Battaglia ("Defendants") for Summary Judgment (Docket No. 33), Plaintiff's Response to Defendants' Cross-Motion for Summary Judgment (Docket No. 34), and the Defendants' Response to Plaintiff's Motion for Summary Judgment (Docket No. 35). For the reasons stated below, Plaintiff's Motion for Summary Judgment is **GRANTED** and Defendants' Cross-Motion for Summary Judgment is **DENIED**.

I. BACKGROUND

A. Procedural History

Plaintiff, Raymond J. Battaglia, Sr. ("Battaglia") filed his Complaint requesting declaratory and injunctive relief extending from an arbitration venued in Philadelphia with the American Arbitration

Association, styled Raymond Battaglia and Mariann McKendry and Maryann Battaglia, AAA Case No. 14-199-0000898-C/J. That arbitration proceeding stems from a civil action originally filed in the United States District Court for the Eastern District of Pennsylvania, styled Battaglia v. Brantz, et al., Civ.A. No. 90-1511 (the "Litigation").

On December 20, 1990, an Order upon Settlement was entered dismissing with prejudice the Litigation as against Maryann McKendry, Mary Anne Battaglia, James Doorcheck, Inc., Raymond Battaglia, Jr. and James Battaglia. This Settlement was memorialized in two separate agreements: (1) a Consulting Agreement entered into by Battaglia and James Doorcheck, Inc. on September 1, 1990; and (2) a Settlement Agreement entered into by Battaglia and James Battaglia, Maryann McKendry, Mary Anne Battaglia, Raymond Battaglia, Jr. and James Doorcheck, Inc. on November 29, 1990.

B. Facts

Battaglia is the father of Defendants, Maryann McKendry, Raymond Battaglia, Jr., and James Battaglia, and the father-in-law of Defendant Mary Anne Battaglia. Battaglia is the widower of Mary A. Battaglia. Battaglia also was the long time president of James Doorcheck, Inc. (the "Company"), prior to control of the company passing first to his wife, Mary Battaglia, now deceased, and then to his son, Raymond Battaglia, Jr.. Defendants Maryann McKendry and Mary Anne Battaglia (the "Trustees") are co-Trustees under the Agreement of Trust of Mary Battaglia, deceased, dated March 12, 1985 (the "Trust").

Defendant Raymond Battaglia, Jr. is President and a one-third shareholder of Defendant James Doorcheck, Inc. Defendant James Battaglia is Secretary/Treasurer and a one-third shareholder in the Company, and Defendant Mary Ann McKendry is also a one-third shareholder. These Defendants held the same ownership interests and control of the Company in November 1990, at the time of the Settlement at issue in this case.

The subject matter of Battaglia's claims in the Litigation against the Trustees arose from a dispute related to the administration of the Trust, which provided that the Trustees were to distribute all of the net income from the Trust to Battaglia during his lifetime, the remainder being distributed to the children of Mary A. Battaglia, including the Trustees, James Battaglia and Raymond Battaglia, Jr. The Settlement Agreement provides at paragraph 2 that, "[t]he Trustees shall invest the Trust assets in a way as to maximize the income to Battaglia during his lifetime." The Settlement Agreement further provides at paragraph 9 that, "[t]his Settlement Agreement and the obligations created hereunder shall be interpreted under the laws of the Commonwealth of Pennsylvania and the parties hereto further agree that in the event that any controversy arises hereunder, venue in Philadelphia, Pennsylvania with the American Arbitration Association is appropriate for the resolution of such controversy." The Consulting Agreement does not contain an arbitration clause.

Battaglia alleges that since 1991, he has realized a significant reduction in the amount of income paid to him as life income beneficiary

under the Trust. In an effort to enforce the provisions of the Settlement Agreement, Battaglia filed Demands for Arbitration with the American Arbitration Association against the Trustees, alleging that the Trustees had failed to abide by the terms of the Settlement Agreement. In response to Battaglia's Demands for Arbitration, the Trustees, along with James Doorcheck, Inc., Raymond Battaglia, Jr. and James Battaglia filed an Arbitration Counterclaim requesting that the Settlement Agreement and the Consulting Agreement be declared void from inception based on claims of "egregious duress" allegedly committed by Battaglia prior to the execution of those Agreements.

Based on the express language of the Agreements, in the Arbitration forum, Battaglia challenged the propriety of the Arbitration Counterclaim, particularly whether the arbitration clause contained in the Settlement Agreement was broad enough in scope to encompass challenges to the formation of the Settlement Agreement itself. The Arbitrator selected to arbitrate the dispute among the parties pursuant to the Commercial Arbitration Rules of the American Arbitration Association. Timothy B. Barnard, Esq. (the "Arbitrator") requested that the parties submit briefs in support of their positions regarding the scope of the authority of the Arbitrator to hear claims related to the formation of the Settlement Agreement itself, and scheduled a hearing date. Subsequently, the Arbitrator entered an Order dismissing Battaglia's challenges to the propriety of the Counterclaim and determining that it was within the scope of the arbitration clause for the Arbitrator

to consider the claim of duress raised in the Arbitration Counterclaim. Battaglia asked for reconsideration of the ruling. The Arbitrator denied that request.

On October 6, 1998, Battaglia filed the present civil action and sought a temporary restraining order enjoining the arbitration. Plaintiff's request was denied by this Court. Plaintiff then moved for summary judgment, essentially arguing that he was entitled to summary judgment based on the language of the settlement documents. Plaintiff also raised arguments about the merits of the duress claim. The Defendants opposed Plaintiff's motion and cross-motivated for summary judgment. By Order dated July 29, 1999, this Court denied the Plaintiff's Motion for Summary Judgment and granted the Defendant's Cross-Motion for Summary Judgment. Specifically, this Court found that: 1) the arbitration clause in the Settlement Agreement was sufficiently broad to reach disputes regarding the formation of the agreement, and 2) the Settlement Agreement and the Consulting Agreement were intended to be interdependent and interrelated documents and, as such, the arbitration clause in the Settlement Agreement should also apply to disputes arising out of the Consulting Agreement. Accordingly, this Court ordered that the parties' claims be arbitrated without further delay.

In its opinion dated November 30, 2000, the Third Circuit Court of Appeals affirmed in part and reversed in part this Court's Order granting Defendant's Motion and denying Plaintiff's Motion for

Summary Judgment. Specifically, the Third Circuit affirmed this Court's ruling that the arbitration clause in the Settlement Agreement was sufficiently broad to reach disputes regarding the formation of the agreement.

The Third Circuit, however, reversed this Court's ruling that the Settlement Agreement and the Consulting Agreement were intended to be interrelated and interdependent documents, from which this Court concluded that the arbitration clause in the Settlement Agreement would also apply to disputes arising out of the Consulting Agreement. The Third Circuit found that there were issues of fact as to whether the Settlement Agreement and the Consulting Agreement were intended to be a single integrated agreement, and remanded this issue back to this Court for further proceedings.

Additional discovery was exchanged on the issue of the interrelatedness of the two Agreements and whether the Arbitration Clause in the Settlement Agreement should also apply to the Consulting Agreement. On July 16, 2001, the Plaintiff filed a Motion for Summary Judgment and the Defendant filed a Cross-Motion for Summary Judgment on this issue, which is the only remaining issue before this Court. The Court now considers these filings.

II. DISCUSSION

A. Summary Judgment Standard

Rule 56(c) of the Federal Rules of Civil Procedure provides that summary judgment is appropriate if "the pleadings, depositions,

answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c); see also Celotex Corp. v. Catrett, 477 U.S. 317, 322-23, 106 S. Ct. 2548 (1986). The party moving for summary judgment "bears the initial responsibility of informing the district court of the basis for its motion, and identifying those portions of 'the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any,' which it believes demonstrate the absence of a genuine issue of material fact." Celotex, 477 U.S. at 323.

Once the moving party has filed a properly supported motion, the burden shifts to the nonmoving party to "set forth specific facts showing that there is a genuine issue for trial." Fed. R. Civ. P. 56(e). The nonmoving party "may not rest upon the mere allegations or denials of the [nonmoving] party's pleading," id., but must support its response with affidavits, depositions, answers to interrogatories, or admissions on file. See Celotex, 477 U.S. at 324; Schoch v. First Fidelity Bancorporation, 912 F.2d 654, 657 (3d Cir. 1990).

To determine whether summary judgment is appropriate, the Court must determine whether any genuine issue of material fact exists. An issue is "material" only if the dispute "might affect the outcome of the suit under the governing law." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248, 106 S. Ct. 2505 (1986). An issue is "genuine"

only "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." Id. If the evidence favoring the nonmoving party is "merely colorable," "not significantly probative," or amounts to only a "scintilla," summary judgment may be granted. See id. at 249-50, 252; see also Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586, 106 S. Ct. 1348 (1986) ("When the moving party has carried its burden under Rule 56(c), its opponent must do more than simply show that there is some metaphysical doubt as to the material facts." (footnote omitted)). Of course, "[c]redibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of a judge." Anderson, 477 U.S. at 255; see also Big Apple BMW, Inc. v. BMW of N. Am., Inc., 974 F.2d 1358, 1363 (3d Cir. 1992). Moreover, the "evidence of the non-movant is to be believed, and all justifiable inferences are to be drawn in his favor." Anderson, 477 U.S. at 255; see also Big Apple BMW, 974 F.2d at 1363. Thus, the Court's inquiry at the summary judgment stage is only the "threshold inquiry of determining whether there is the need for a trial," that is, "whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law." Anderson, 477 U.S. at 250-52.

Moreover, the mere fact that the parties have filed cross-motions under Rule 56(c) does not mean that the case will necessarily be resolved at the summary judgment stage." See Reading Tube Corp. v. Employers

Ins. of Wausau, 944 F. Supp. 398, 401 (E.D. Pa.1996) "Where cross-motions for summary judgment are presented, each side essentially contends that there are no issues of material fact from the point of view of that party." See Lencivenqa v. Western Pa. Teamsters, 763 F.2d 574, 576 n.2 (3d Cir. 1985) Accordingly, [e]ach side must still establish that no genuine issue of material fact exists and that it is entitled to judgment as a matter of law.

B. Analysis of the Parties' Motions

The sole contention between the parties is whether their dispute concerning the Consulting Agreement should be arbitrated. The merits of the disputes and the ultimate consequences of their resolution are not before this Court. In that regard, the Plaintiff requests an Order enjoining the Defendants from arbitrating any disputes arising out of the Consulting Agreement. Conversely, the Defendants request that the Plaintiff's Motion for Summary Judgment be denied, and summary judgment be entered for all Defendants so that all claims relating to the Consulting Agreement can proceed to a hearing before the arbitrator. As discussed below, based on the additional evidence presented by the parties, the Court finds in favor of the Plaintiff that the parties' claims relating to the Consulting Agreement should not be decided in arbitration.

Interpreting the parties' arbitration agreement involves competing principles of contractual interpretation. Generally, in determining the scope of an arbitration clause,

courts operate under a "presumption of arbitrability in the sense that '[a]n order to arbitrate the particular grievance should not be denied unless it may be said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute.'" AT & T Techs. v. Communications Workers, 475 U.S. 643, 650, 106 S.Ct. 1415, 1419, 89 L.Ed.2d 648 (1986) (quoting Steelworkers v. Warrior & Gulf Navigation Co., 363 U.S. 574, 5B2-83, 80 S.Ct. 1347, 1353, 4 L.Ed.2d 1409 (1960)). Of course, where an agreement to arbitrate is limited in its substantive scope, courts ought not allow this "policy favoring arbitration ... to override the will of the parties by giving the arbitration clause greater coverage than the parties intended." PaineWebber v. Hartmann, 921 F.2d 507, 513 (3d Cir. 1990) (quoting National R.R. Passenger Corp. v. Boston & Maine Corp., 850 F.2d 756, 760-61 (D.C. Cir. 1988)); see also First options of Chicago, Inc. v. Kaplan, 514 U.S. 938, 943, 115 S.Ct. 1920, 1924, 131 L.Ed.2d 985 (1995) (deeming arbitration "a way to resolve those disputes--but only those disputes--that the parties have agreed to submit to arbitration").

The Third Circuit analyzed the record as it then existed on the issue of the relatedness of the two Agreements, and found evidence that supported both the Defendants' and the Plaintiff's claim. See Battaglia v. McKendry, 233 F.3d 720, 728 (3d Cir. 2000). The Third Circuit found that, on the one hand, there

existed evidence that the Agreements were intended to be interpreted as a single integrated agreement. First, it was undisputed that both Agreements memorialized the terms of the settlement of a single litigation. Id. According to the terms of the Agreements, the Agreements were executed concurrently. Id. Furthermore, a form of Consulting Agreement was attached to the Settlement Agreement as Exhibit A, and the Agreements contained some references to each other. Id. Specifically, the Settlement Agreement obligated all parties thereto to "act in good faith to secure to Battaglia ... all of the amounts due to him under the Consulting Agreement, and will cause the Company to do likewise." Id.

On the other hand, the Third Circuit found that the Agreements could be viewed as independent agreements, in which case the Arbitration Clause would not apply to disputes arising under the Consulting Agreement. Id. First, the parties to the Agreements are not the same. While all the Defendants are parties to the Settlement Agreement, only the Company is a party to the Consulting Agreement. Id. In Battaglia's Verified Complaint, he states that "[i]n order to resolve the dispute between Battaglia and the Trustees, paragraph 2 of the Settlement Agreement provides in pertinent part that: '[The] Trustees shall invest the trust assets in such a way as to maximize the income to Battaglia during his lifetime.'" Id. Battaglia further

explains that "[i]n order to resolve the dispute between Battaglia and Doorcheck, the Consulting Agreement was drafted and provided in part that Battaglia would provide consulting services to Doorcheck in exchange for compensation." Id.

Based on this language, the Third Circuit held that it would be possible to conclude that the settlement was memorialized using two separate agreements because the relief sought against the Company was different from that sought against the other Appellees. Id. Moreover, the Third Circuit found that the Consulting Agreement is a valid contract on its face and could well be the product of a settlement of claims relating to Battaglia's alleged "ouster" as President of the Company. Id. at 729. Based on the Third Circuit's decision, this Court issued a revised scheduling order and allowed the parties to engage in additional discovery on the issue of the independence/interdependence of the Settlement and Consulting Agreements. The Court bases its analysis below on the record as supplemented by this additional discovery.

As the Defendants point out, the mere fact that the parties to the two Agreements were different does not resolve the issue before the Court. Under Pennsylvania law, "when interpreting a contract a court must determine the intent of the parties and effect must be given to all provisions of the contract." See Western United Life Assurance Co. v. Hayden, 64

F.3d 833, 837 (3d Cir. 1995). To determine the parties' intentions, the court may consider, among other things, "the words of the contract, the alternative meaning suggested by counsel, and the nature of the objective to be offered in support of that meaning." See Sanford Investment Co., Inc. v. Ahlstrom Machinery Holdings, Inc., 198 F.3d 415, 421 (3d Cir. 1999).

Moreover, under Pennsylvania law, it is a general rule that when two writings are executed at the same time and are intertwined by the same subject matter, they should be construed together and interpreted as a whole. See LCI Communications, Inc. v. Wilson, 700 F.Supp. 1390, 1395 (W.D.Pa. 1988); See also Hayden, 64 F.3d at 842. This general rule also applies where several agreements are made as part of one transaction even though they are executed at different times. Id. Moreover, this rule applies even though the parties to the separate writings may not be the same as long as the writings pertain to the same transaction and interpretation is aided by reading them together. See LCI Communications, Inc. v. Wilson, 700 F.Supp. 1390, 1395 (W.D.Pa. 1988). Therefore, the fact that the Settlement Agreement was between Battaglia and the Children, and the Consulting Agreement was between Battaglia and the Company, does not end our inquiry.

However, it is in reading the two Agreements together that supports the Plaintiff's claim that the two Agreements are

separate and independent. As the Plaintiff notes in his Motion, the Settlement Agreement and the Consulting Agreement contain different remedy provisions. The Court notes that this issue was raised by the Plaintiff on appeal, but the issue was not addressed by the Third Circuit in its opinion. However, because this Court believes that the evolution of the drafting of the Agreements and the differing remedy provisions are relevant in determining the intent of the parties, we will address this issue raised by the Plaintiff.

On or around November 1, 1990, Oliver Frey, one of Plaintiff's attorneys, sent James Greenfield, one of Defendant's attorneys, a letter and draft settlement agreement. See November 1, 1990 letter to Greenfield, attached to Pl.'s Motion as Exh. K. The draft settlement agreement contains a confession of judgment clause but no arbitration clause. Id. On or around November 21, 1990, in response to Frey's draft settlement agreement, Greenfield sent Frey a draft settlement agreement and consulting agreement. See November 21, 1990 letter to Frey, attached to Pl.'s Motion as Exh. L. The draft consulting agreement contained a confession of judgment clause, but no arbitration clause. Id. Moreover, the November 21 draft settlement agreement did not contain a confession of judgment clause or an arbitration clause. Based on the evidence submitted to this Court, it appears that the arbitration clause was added in the final draft of the

Settlement Agreement dated November 29, 1990. See Def.'s Mot. Summ. J. at Exh. M. The final draft of the Consulting Agreement remained unchanged and did not include an arbitration clause.

This evidence of the evolution of the drafting of the agreements seems to indicate that the parties intended for each agreement to have a separate remedy. Moreover, as the Plaintiff points out, the Arbitration Clause and the Confession of Judgment Clause appear to be inconsistent with one another, which supports the Plaintiff's argument that the Arbitration Clause was not intended to apply to the Consulting Agreement. The Arbitration Clause in the Settlement Agreement states as follows:

This Settlement Agreement and the obligations created hereunder shall be interpreted under the laws of the Commonwealth of Pennsylvania, and the parties hereto further agree that in the event that any controversy arises hereunder, venue in Philadelphia, Pennsylvania with the American Arbitration Association is appropriate for the resolution of such controversy.

See Settlement Agreement, attached to Def.'s Mot. Summ. J. as Exh. M (emphasis added).

The Confession of Judgment Clause contained in the Consulting Agreement states in relevant part as follows:

The Company shall be in default under this agreement if any installment of compensation is not paid to the Consultant within 15 days of the date due and the Company fails to cure the default within 10 days of written notice of such default by the Consultant to the Company . . . in the event of a default by the Company, the Company hereby authorizes and empowers any attorney

of any court of record within the Commonwealth of Pennsylvania to appear on its behalf in the Court of Common Pleas of Philadelphia, and to confess a judgment in favor of the Consultant and against the Company ... See Consulting Agreement, attached to Def.'s Mot. Summ. J. as Exh. M.

The Arbitration Clause contained in the Settlement Agreement states that it applies to "any controversy." Therefore, if the Defendant is correct that this Arbitration Clause also applies to disputes under the Consulting Agreement, then the confession of judgment clause in the Consulting Agreement would essentially be without force or effect should the Company default on its payments. This interpretation would run afoul of the well-settled law of Pennsylvania, which requires that "when interpreting a contract a court must determine the intent of the parties and effect must be given to all provisions of the contract." See Hayden, 64 F.3d at 837 (emphasis added).

A further review of the supplemented record also supports the Plaintiff's argument that the two Agreements are separate and independent. As the Third Circuit found, the terms of the Consulting Agreement are fully set forth therein, and the Consulting Agreement does not rely on the Settlement Agreement for its terms. See Battaglia, 233 F.3d at 729. Furthermore, a letter dated December 3, 1990 and written by Greenfield, Defendants attorney, demonstrates that each Agreement was separately signed and executed. See Greenfield letter dated December 3, 1990, attached to Pl.'s Motion as Exh. R. Greenfield

stated that "[w]ith regard to the separate Consulting Agreement, each of the four copies need to be signed on page 8 by the President and Secretary of the corporation." Id. The letter goes on to state that "[i]t is not necessary that anyone sign the form of Consulting Agreement attached to the Settlement Agreement as Exhibit A." Id.

Moreover, by letter dated November 27, 1990, Frey requested that the language "[T]he Settlement Agreement does not merge into the Consulting Agreement" be inserted in the Settlement Agreement. See Frey's letter dated November 27, 1990, attached to Pl.'s Motion as Exh. M. The Third Circuit found, and this Court agrees, that the Consulting Agreement's only reference to the Settlement Agreement -- in Paragraph 11 that "[t]he Settlement Agreement ... does not merge into this Consulting Agreement" -- suggests a finding that the parties intended to treat the Agreements independently. Id. By placing into the Consulting Agreement an anti-merger concept, it appears that the parties were trying to underscore the independence of each Agreement. As the Third Circuit noted, "Battaglia especially had every incentive to assure that the payment provisions of the Consulting Agreement were independent beyond peradventure from the Settlement Agreement." See Battaglia, 233 F.3d at 729.

Perhaps the most compelling evidence of the independence of the two agreements was the discovery of the

purpose of the two Agreements. The additional discovery conducted has revealed that Battaglia did not seek separate relief from the Company, as was hypothesized by the Third Circuit's opinion. See Battaglia, 233 F.3d at 728. The depositions of Battaglia and his attorney reveal that Battaglia simply wanted a certain sum of money, and he did not care about the structure of the settlement or from which party the money came. See Battaglia, Sr. Dep. at 126:1-12; Frey Dep. at 77:13-78:2.

However, while the record reveals that the Plaintiff did not seek a separate remedy from the Company, the additional testimony taken reveals that the purpose of the two Agreements was different. It is undisputed that the settlement was structured through two separate Agreements so that the Defendants could realize a tax benefit from the settlement. See Pl.'s Mot. Summ. J. at 13; Def.'s Mot. Summ. J. at 11. These two Agreements were set up for the purpose of structuring the payments in such a way that would allow for tax benefits to be realized by the Defendants, and was apparently done at the insistence of the Defendants.

By structuring the transaction in such a way as to have the Company, James Doorcheck, Inc., make the payments to the Plaintiff, thereby allowing for the corporate tax benefit, the parties are asserting to the Internal Revenue Service that these

are, in fact and in substance, separate Agreements effectuated for a separate purpose, thereby entitling them to separate tax treatment. The Defendant cannot now take the opposite position with this Court in claiming that, in effect, the two Agreements are in substance the same. Given the different purpose of each of the two Agreements, if the parties wanted both Agreements to be subject to the Arbitration Clause, such a clause should have been included in each agreement.

The parties chose, however, to include an arbitration clause only in the Settlement Agreement, and to include a confession of judgment clause only in the Consulting Agreement. Aside from the language in the Agreements that the two agreements were executed concurrently and the few references that the Agreements make to each other, there is little evidence from which this Court can conclude that the Plaintiff should be forced to arbitrate disputes relating to the Consulting Agreement. In spite of the parties awareness to include the anti-merger clause in the Consulting Agreement, there is no language of integration or any indication that the provisions of one Agreement should apply to the other.

The only case cited by the Defendants that warrants discussion is Neal v. Hardee's Food Systems, Inc., 918 F.2d 34 (5th Cir. 1990). In Neal, the parties entered into two separate agreements, a "Purchase Agreement" which covered the sale of the

physical buildings, land and personal property of the Hardee's Stores, and a separate "License Agreement" which covered all aspects of the licensor-licensee relationship which allowed the Plaintiff to operate the stores under the Hardee's name. See Neal, 918 F.2d at 36. The Purchase Agreement expressly provided that the purchaser would contemporaneously enter into a License Agreement with Hardee's. Id.

The License Agreement contained a broad arbitration clause, which stated that "the parties agree that any and all disputes between them shall be determined solely and exclusively by arbitration" Id. at 36. The Purchase Agreement did not contain an arbitration clause. Id. at 37. In holding that the arbitration clause in the License Agreement would also apply to the Purchase Agreement, the Court noted that the obvious purpose of the individual transactions was to transfer the rights to a business. Id. Although the parties used multiple agreements to delineate their relationship, each agreement was dependent upon the entire transaction. Id. It existed to further the single goal of making Neal a Hardee's franchisee. Id. Without the franchise rights, the parties conceded that they would not have executed the Purchase Agreements. Id. at 38.

Neal is clearly distinguishable from the instant case. It was clear in Neal that the Purchase Agreement by itself was meaningless without the License Agreement, and vice versa. Both

Agreements were necessary to effectuate the end goal of allowing Neal to operate the Hardee's franchise. It was clear, therefore, that the two agreements were interdependent and interrelated. In the instant case, however, the Settlement and Consulting Agreements were not dependent upon one another in effectuating a common goal. The parties have jointly represented to this Court that the sole reason for entering into two agreements was to provide the Defendants with a tax benefit. Moreover, both agreements are valid contracts on their face and do not depend upon one another for their terms. Although the two agreements represent the settlement of a single litigation, it cannot be said that one agreement would be meaningless without the other, as was the case in Neal.

Therefore, based on the above analysis, this Court cannot compel the Plaintiff to arbitrate disputes arising out of the Consulting Agreement. Accordingly, the Court grants the Plaintiff's Motion for Summary Judgment and denies the Defendant's Motion for Summary Judgment.

An appropriate Order follows.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

RAYMOND J. BATTAGLIA, SR.	:	CIVIL ACTION
	:	
	:	
v.	:	
	:	
	:	
MARYANN MCKENDRY, et al.	:	NO. 98-5321

O R D E R

AND NOW, this 20th day of February, 2002, upon consideration of the Plaintiff's Motion for Summary Judgment (Docket No. 32), the Defendants' Cross-Motion for Summary Judgment (Docket No. 33), Plaintiff's Response to Defendants' Cross-Motion for Summary Judgment (Docket No. 34), and the Defendants' Response to Plaintiff's Motion for Summary Judgment (Docket No. 35), IT IS HEREBY ORDERED that:

1) Plaintiff's Motion for Summary Judgment (Docket No. 32) is **GRANTED**; and

2) Defendants' Cross-Motion for Summary Judgment (Docket No. 33) is **DENIED**.

IT IS FURTHER ORDERED that the Consulting Agreement entered into between Defendant James Doorcheck, Inc. and Plaintiff, Raymond J. Battaglia, Sr., does not include a provision for arbitration of disputes

arising thereunder; and any issues raised by the Arbitration Counterclaim pertaining to the Consulting Agreement are not properly before the Arbitrator in the underlying arbitration.

BY THE COURT:

HERBERT J. HUTTON, J.