

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

AMERICAN GRAPHICS INSTITUTE, INC.,	:	CIVIL ACTION
Plaintiff,	:	
	:	
v.	:	NO. 03-374
	:	
EDWARD O. DARLING,	:	
Defendant.	:	

**MEMORANDUM AND ORDER**

LEGROME D. DAVIS, J.

MAY \_\_\_\_, 2003

Presently before the Court is “Defendant’s Motion to Dismiss Pursuant to Fed. R. Civ. P. 12(b)(2), (3), and (6), for a More Definite Statement Pursuant to Fed. R. Civ. P. 12(e), and to Stay or Dismiss Pending Arbitration,” filed by Edward O. Darling (“Defendant”) on February 4, 2003. For the reasons stated herein, the Court will: (1) deny the Motion to Dismiss Pursuant to Fed. R. Civ. P. 12(b)(2), and (3); (2) deny Defendant’s Motion to Stay; (3) order the parties to arbitrate all of the claims in this action, and therefore dismiss the action without prejudice; and (4) deny as moot Defendant’s Motion to Dismiss Pursuant to Fed. R. Civ. P. 12(b)(6), or, in the alternative, for a More Definite Statement Pursuant to Fed. R. Civ. P. 12(e).

**I. Background Facts and Procedural History**

American Graphics Institute, Inc. (“Plaintiff” or “AGI”) commenced this action in the Court of Common Pleas for Lancaster County, Pennsylvania by filing a Writ of Summons in September, 2002. Defendant’s Notice of Removal, Ex. A. Plaintiff then filed the Complaint on January 7, 2003. *Id.*, Ex. B (“Complaint”). AGI is a Pennsylvania corporation with its principal

place of business in Lancaster, Pennsylvania. Complaint at ¶ 1. Defendant resides in Cape Elizabeth, Maine. Complaint at ¶ 2. The Complaint alleges the following facts.

Defendant was a member, manager, and part-owner (along with Joseph Cooper) of iSET Educational Services, LLC (“iSET”), a Maine company, subsequently known as Cooper & Darling Business Ventures, LLC (“C&D”). On October 24, 2001, AGI entered into an Asset Purchase and Sale Agreement (“Purchase Agreement”) with C&D, Defendant Darling, and Mr. Cooper. On November 1, 2001, Plaintiff also entered into an Employment Agreement with Defendant Darling individually, pursuant to which Defendant would be employed by Plaintiff to maintain, develop and grow accounts with existing and prospective iSET clients, as well as new clients. Complaint at ¶¶ 4, 6-8.

According to the Complaint, Defendant allegedly failed to comply with the practices and procedures of AGI, failed to comply with the terms of the Employment Agreement, mishandled certain accounts, and engaged in misconduct with respect to certain accounts. Complaint at ¶¶ 10-14. In addition, Defendant allegedly made intentional and/or negligent misrepresentations to Plaintiff regarding an account with Verizon Directories Corp., upon which Plaintiff allegedly relied in entering into the Purchase Agreement with C&D and the Employment Agreement with Defendant. Complaint at ¶ 15. The Complaint sets forth one count alleging fraud/misrepresentation (Count I), and one count alleging breach of contract (Count II). Complaint at ¶¶ 16-21.

On January 27, 2003, Defendant filed a Notice of Removal pursuant to 28 U.S.C. §§ 1441 and 1446, alleging that this Court has original subject matter jurisdiction under 28 U.S.C. § 1332(a) because the matter in controversy exceeds the sum of \$75,000 and is between citizens of

different states. See Notice of Removal ¶¶ 6-10. On February 4, 2003, Defendant filed the instant Motion to Dismiss, contending: (1) that the case should be dismissed pursuant to Fed. R. Civ. P. 12(b)(2) because the Court does not have personal jurisdiction over Defendant; (2) that the case should be dismissed pursuant to Fed. R. Civ. P. 12(b)(3) because venue is improper; (3) that Count I (fraud/misrepresentation) should be dismissed pursuant to Fed. R. Civ. P. 12(b)(6), or, in the alternative, that Plaintiff should be required pursuant to Fed. R. Civ. P. 12(e) to set forth a more definite statement of the factual allegations that form the basis for Count I; and (4) that all of Plaintiff's claims should be stayed under Section 3 of the Federal Arbitration Act ("FAA"), 9 U.S.C. § 3, pursuant to the arbitration clause contained in the Purchase Agreement.

## **II. Personal Jurisdiction and Venue**

Defendant's first argument is that this action should be dismissed pursuant to Fed. R. Civ. P. 12(b)(2) due to lack of personal jurisdiction over Defendant. In a second, related argument, Defendant contends that, because the Court does not have personal jurisdiction over Defendant, the action should also be dismissed pursuant to Fed. R. Civ. P. 12(b)(3) due to improper venue. Defendant contends that the Court does not have personal jurisdiction (1) because Defendant does not have sufficient minimum contacts with the Commonwealth of Pennsylvania, and (2) because, even if sufficient minimum contacts exist, personal jurisdiction is improper based upon consideration of principles of fair play and substantial justice.

"When a defendant raises the defense of the court's lack of personal jurisdiction, the burden falls upon the plaintiff to come forward with sufficient facts to establish that jurisdiction is proper." Mellon Bank (East) PSFS, Nat. Ass'n v. Farino, 960 F.2d 1217, 1223 (3d Cir. 1992).

"The plaintiff meets this burden and presents a prima facie case for the exercise of personal

jurisdiction by ‘establishing with reasonable particularity sufficient contacts between the defendant and the forum state.’” Id. (citation omitted). “Although the plaintiff bears the burden of demonstrating the facts that establish personal jurisdiction, in reviewing a motion to dismiss under Rule 12(b)(2), we ‘must accept all of the plaintiff’s allegations as true and construe disputed facts in favor of the plaintiff.’” Pinker v. Roche Holdings Ltd., 292 F.3d 361, 368 (3d Cir. 2002) (citations omitted).

Whether personal jurisdiction may be exercised over an out-of-state defendant is a question of law. Vetrotex Certaineed Corp. v. Consolidated Fiber Glass Products Co., 75 F.3d 147, 150 (3d Cir. 1996). The applicable analysis for resolving this legal question is well-established:

A district court sitting in diversity applies the law of the forum state in determining whether personal jurisdiction is proper. Fed. R. Civ. P. 4(e). Pennsylvania’s long-arm statute provides that its reach is coextensive with the limits placed on the states by the federal Constitution. 42 Pa. Cons. Stat. Ann. § 5322(b). We therefore look to federal constitutional doctrine to determine [Defendant’s] susceptibility to personal jurisdiction in Pennsylvania. The due process clause of the Fourteenth Amendment places limits on the power of a state to assert personal jurisdiction over a nonresident defendant.

The due process limit to the exercise of personal jurisdiction is defined by a two-prong test. First, the defendant must have made constitutionally sufficient “minimum contacts” with the forum. The determination of whether minimum contacts exist requires an examination of “the relationship among the forum, the defendant and the litigation,” in order to determine whether the defendant has “purposefully directed” its activities toward residents of the forum. There must be “some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws.” Second, if “minimum contacts” are shown, jurisdiction may be exercised where the court determines, in its discretion, that to do so would comport with “traditional notions of fair play and substantial justice.”

Vetrotex, 75 F.3d at 150-51.

Here, Plaintiff alleges that this Court has specific jurisdiction over Defendant.<sup>1</sup> Specific jurisdiction “is invoked when the claim is related to or arises out of the defendant’s contacts with the forum,” Dollar Sav. Bank v. First Sec. Bank of Utah, N.A., 746 F.2d 208, 211 (3d Cir. 1984), “such that the defendant ‘should reasonably anticipate being haled into court there,’” Vetrotex, 75 F.3d at 151.

In support of his contention that the Court lacks personal jurisdiction over him, Defendant has filed an affidavit setting forth the following factual averments: that although Defendant entered into a contract with Plaintiff, a Pennsylvania corporation, the parties intended that Defendant would provide services under the contract solely outside of Pennsylvania, specifically maintaining a sales and training office in Maine, and maintaining and developing accounts for Plaintiff in New England; that Defendant communicates with Defendant’s Lancaster, Pennsylvania offices by telephone and email; that Defendant has had no contacts related to this action with clients of Plaintiff since November 1, 2001 (the alleged execution date of the Purchase Agreement and Employment Agreement), and that any contact with clients of Plaintiff prior to that date are irrelevant; and that Defendant’s employment with Plaintiff has brought him into direct contact with Pennsylvania on only one occasion, in March, 2002, when he attended a meeting in Lancaster lasting three to four hours. See Defendant’s Amended Exhibits in Support of Memorandum of Law (“Def.’s Exhibits”), Ex. 2 (“Darling Affidavit”).

---

<sup>1</sup> Where a plaintiff’s cause of action arises from the defendant’s *non-forum related activities*, the plaintiff may establish general jurisdiction by showing that the defendant has maintained “continuous and systematic” contacts with the forum. Here, both parties agree that the Court does not have general jurisdiction over Defendant.

In response, Plaintiff has submitted the affidavit of Christopher G. Smith, the President of AGI, alleging the following facts (which the Court must accept as true for purposes of resolving the motion to dismiss, see Pinker, 292 F.3d at 368): the parties intended that Defendant would conduct certain business in Pennsylvania and work with Pennsylvania clients; Defendant regularly communicated in writing and by telephone with Plaintiff's home office in Lancaster, Pennsylvania in connection with his employment; Defendant submitted reimbursement requests, sales reports, and other reports to Plaintiff's home office in Lancaster; Defendant was, on numerous occasions, reimbursed for his travel-related expenses when traveling to and from Pennsylvania; Defendant specifically provided services to three customers of Plaintiff all located in Pennsylvania, namely Verizon (in Valley Forge), SmartMail Services (in West Chester) and Adobe Systems, Inc. (in Lower Gwynedd); Defendant conducted conference calls with Pennsylvania clients in connection with his employment; Defendant sold several weeks of training services to Verizon, which training occurred in Pennsylvania in January and February of 2002; Verizon paid \$40,000 to Plaintiff for these services, resulting in a commission of \$6,000 to Defendant; Defendant was reimbursed approximately \$12,000 for services he provided to Verizon and travel to and from Pennsylvania<sup>2</sup>; and all payments to Defendant were mailed from Pennsylvania and drawn on Pennsylvania accounts. See Plaintiff's Reply ("Pl.'s Reply"), Ex. A at ¶ 19.

---

<sup>2</sup> The affidavit states: "In connection with the services he provided to Verizon and travel to and from Pennsylvania, AGI was reimbursed \$12,074.23 in travel related expenses." Plaintiff's Reply, Ex. A at ¶ 19. The Court assumes that the affiant intended to state that Defendant, not Plaintiff, was reimbursed for travel-related expenses.

The issue here is whether the facts as alleged by Plaintiff are sufficient to establish personal jurisdiction over Defendant. “The fact that a non-resident has contracted with a resident of the forum state is not, by itself, sufficient to justify personal jurisdiction over the nonresident.” Mellon Bank, 960 F.2d at 1223. However, “with respect to interstate contractual obligations, . . . parties who ‘reach out beyond one state and create continuing relationships and obligations with citizens of another state’ are subject to regulation and sanctions in the other State for the consequences of their activities.” Burger King Corp. v. Rudzewicz, 471 U.S. 462, 473 (1985) (citation omitted). Moreover,

[j]urisdiction in these circumstances may not be avoided merely because the defendant did not physically enter the forum State. Although territorial presence frequently will enhance a potential defendant’s affiliation with a State and reinforce the reasonable foreseeability of suit there, it is an inescapable fact of modern commercial life that a substantial amount of business is transacted solely by mail and wire communications across state lines, thus obviating the need for physical presence within a State in which business is conducted. So long as a commercial actor’s efforts are “purposefully directed” toward residents of another State, we have consistently rejected the notion that an absence of physical contacts can defeat personal jurisdiction there.

Id. at 476. Here, taking Plaintiff’s allegations as true, as the Court is required to do, it is clear that Defendant “purposefully established ‘minimum contacts’” in Pennsylvania, and that Defendant’s “conduct and connection with [Pennsylvania] are such that he should reasonably anticipate being haled into court [here].” Id. at 474.

“Once it has been decided that a defendant purposefully established minimum contacts within the forum State, these contacts may be considered in light of other factors to determine whether the assertion of personal jurisdiction would comport with ‘fair play and substantial

justice.’” *Id.* at 476 (citation omitted). Such factors include: the burden on the defendant; the forum State’s interest in adjudicating the dispute; the plaintiff’s interest in obtaining convenient and effective relief; the interstate judicial system’s interest in obtaining the most efficient resolution of controversies; and the shared interest of the several States in furthering fundamental substantive social policies. *Id.* at 476-77. “[W]here a defendant who purposefully has directed his activities at forum residents seeks to defeat jurisdiction, *he must present a compelling case* that the presence of some other considerations would render jurisdiction unreasonable.” *Id.* at 477 (emphasis added).

Defendant argues that requiring him to defend this action brought in Pennsylvania would not comport with “fair play and substantial justice” because Defendant fairly expected to have any disputes arising under the agreements resolved in Maine. Defendant’s only basis for this argument is the fact that the Purchase Agreement provides that it “shall be governed by and construed in accordance with the laws of the State of Maine,” Def.’s Exhibits, Ex. A (“Purchase Agreement”) at § 9.9, and that “any and all disputes with respect to any claim arising under this Agreement, shall be settled by arbitration . . . [which] shall be conducted in Portland, Maine,” Purchase Agreement at § 9.5.<sup>3</sup> While choice-of-law provisions are certainly one relevant factor that may be considered in determining whether a defendant has “purposefully invoked the benefits and protections of a State’s laws” for jurisdictional purposes, this factor is not dispositive. *See Burger King*, 471 U.S. at 482. Considering the factors listed above, and

---

<sup>3</sup> Defendant also reiterates his contention that the services he provided under the Agreements occurred only outside of Pennsylvania. However, as noted, the Court must take Plaintiff’s allegations as true, and, according to Plaintiff’s allegations, Defendant has provided significant services to Plaintiff’s Pennsylvania customers.

considering Defendant's significant and deliberate contacts with Pennsylvania as alleged by Plaintiff, the Court concludes that Defendant has failed to set forth a compelling argument that it would be unreasonable for this Court to assert personal jurisdiction over him. Defendant's motion for dismissal under Fed. R. Civ. P. 12(b)(2) is therefore denied.

As to the issue of venue, Defendant's sole argument is that venue is improper because, pursuant to 28 U.S.C. § 1391(a)(3), Defendant was not subject to personal jurisdiction in Pennsylvania at the time this action was commenced. Because the Court has concluded that it does have personal jurisdiction over Defendant, the Court also concludes that venue is proper in this Court. Defendant's motion for dismissal under Fed. R. Civ. P. 12(b)(3) is therefore also denied.

### **III. Arbitration**

Section 3 of the FAA requires a federal court to grant a motion to stay a proceeding pending the arbitration of "any issue referable to arbitration under an agreement in writing for such arbitration." 9 U.S.C. § 3.<sup>4</sup> Here, the parties disagree as to whether the claims raised in Plaintiff's Complaint are subject to arbitration. Whether a dispute is subject to arbitration simply "depends upon whether the parties agreed to arbitrate that dispute." First Options of Chicago, Inc. v. Kaplan, 514 U.S. 938, 943 (1995). The determination of whether the parties agreed to arbitrate a particular dispute is one that is made by the court (unless the parties agreed to submit the arbitrability question itself to arbitration) by employing the applicable state-law principles

---

<sup>4</sup> Both parties apparently acknowledge that this dispute falls within the ambit of the FAA, which applies to any "written provision in . . . a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction," and which provides that such written arbitration provision "shall be valid, irrevocable, and enforceable." 9 U.S.C. § 2.

that govern the formation of contracts generally. See id. at 943-44; see also Allied-Bruce Terminix Companies, Inc. v. Dobson, 513 U.S. 265, 281 (1995). However, “in applying general state-law principles of contract interpretation to the interpretation of an arbitration agreement within the scope of the [FAA], due regard must be given to the federal policy favoring arbitration, and ambiguities as to the scope of the arbitration clause itself resolved in favor of arbitration.” Volt Information Sciences, Inc. v. Board of Trustees of Leland Stanford Junior University, 489 U.S. 468, 475-76 (1989) (citation omitted). The parties do not dispute that Maine law applies to this action. Thus, the Court must examine Maine principles of contract law to determine whether the parties agreed to arbitrate this dispute, keeping in mind the general federal policy favoring arbitration.

Count I of the Complaint (fraud/misrepresentation) alleges that Defendant made misrepresentations to Plaintiff, upon which Plaintiff relied in entering into the Purchase Agreement with C&D, Defendant, and Mr. Cooper. See Complaint at ¶ 15. Count II (breach of contract claim) alleges that Defendant materially breached his obligations under the Employment Agreement. See id. at ¶ 20. The Court will address each of these two Counts in turn.

The question of whether the claim set forth in Count I is subject to arbitration is easily resolved. The Purchase Agreement provides, in pertinent part:

Notwithstanding any other provision of this Agreement to the contrary, the parties hereto agree that any and all disputes with respect to any claim arising under this Agreement, shall be settled by arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association, and judgment upon the award rendered by such arbitrator or arbitrators may be entered in any court having jurisdiction. . . . Such arbitration shall be conducted in Portland, Maine.

Purchase Agreement at § 9.5. It is clear that Plaintiff and Defendant are “parties” to the Purchase Agreement, and that Count I sets forth a “claim arising under” the Purchase Agreement.

Therefore, Count I is subject to arbitration in accordance with § 9.5 of the Purchase Agreement.

The question of whether the claim set forth in Count II is subject to arbitration is a slightly more complicated issue. Count II, alleging a breach of Defendant’s obligations under the Employment Agreement, is clearly a dispute arising most directly under the terms of the Employment Agreement. Unlike the Purchase Agreement, the Employment Agreement does not contain an arbitration clause. Nonetheless, Defendant contends that Count II is subject to arbitration pursuant to the arbitration clause contained in the Purchase Agreement. An analysis of Defendant’s argument requires a brief review of the terms of the two agreements in question.

The Purchase Agreement was entered into between AGI, as purchaser, and iSET (now C&D), Defendant Darling, and Mr. Cooper as sellers. This Purchase Agreement contains a type-written date of October 24, 2001. In Article III of the Purchase Agreement (entitled “Other Consideration”), there appears the following provision:

**Section 3.1 Darling Employment Agreement.** Buyer acknowledges that Darling’s knowledge of Seller’s business and his particular and unique skills are important to Seller’s business, and therefore, agrees to employ Darling pursuant to the Employment Agreement attached hereto as Exhibit H.

Purchase Agreement at § 3.1. Thus, the Purchase Agreement expressly references the Employment Agreement. The Purchase Agreement also states:

This Agreement (including any schedules and exhibits hereto) and the other agreements and instruments the forms of which are attached hereto as exhibits or which are being executed and delivered at the Closing contain the entire agreement between the parties with respect

to the subject matter of this Agreement and supersede all prior oral written [sic] agreements and understandings with respect hereto.

Purchase Agreement at § 9.9. Finally, the Purchase Agreement contains the arbitration clause set forth above (§ 9.5).

In accordance with the Purchase Agreement, the Employment Agreement is designated as “Exhibit H.” The Employment Agreement expressly references the Purchase Agreement (just as the Purchase Agreement expressly references the Employment Agreement), and, contrary to the type-written date on the Purchase Agreement itself, a hand-written date on the first page of the Employment Agreement indicates that the Purchase Agreement was signed on November 1, 2001. See Def.’s Exhibits, Ex. A (“Employment Agreement”) at 1 (“WHEREAS, Employer has purchased certain assets of iSET Educational Services, LLC pursuant to an Asset Purchase and Sale Agreement dated November 1, 2001.”). As noted above, unlike the Purchase Agreement, the Employment Agreement does not contain an arbitration clause. Finally, the Employment Agreement contains the following provision:

This Agreement constitutes the entire agreement of the parties, and no amendments or additions to this Agreement shall be binding unless in writing and signed by both parties.

Employment Agreement at ¶ 18.

It is also significant to note that the record contains a one-page document entitled “Index” dated November 1, 2001, which contains the heading “RE: iSET Educational Services, LLC (“iSET”) sale of assets to American Graphics Institute, Inc. (“AGI”),” and which lists twenty-one documents (including the Purchase and Employment Agreements). Def.’s Exhibits, Ex. A.

Plaintiff argues that, as a result of the merger clause in the Employment Agreement,<sup>5</sup> “[t]he Employment Agreement . . . is a fully integrated agreement,” that it “supersedes any and all other agreements” such as the Purchase Agreement, and that the two agreements should be “construed independently.” Pl.’s Reply at 17. Thus, Plaintiff argues, the claim set forth in Count II is not subject to arbitration because: it arises under the Employment Agreement; there is no arbitration clause in the Employment Agreement; and the arbitration clause in the Purchase Agreement does not apply to claims arising under the Employment Agreement.

Under Maine law, it is well-established that multiple instruments may be construed as a single contract under certain circumstances.

The general rule is that in the absence of anything to indicate a contrary intention, instruments executed at the same time, by the same contracting parties, for the same purpose, and in the course of the same transaction will be considered and construed together, since they are, in the eyes of the law, one contract or instrument.

Kandlis v. Huotari, 678 A.2d 41, 43 (Me. 1996) (citing 17A Am. Jur. 2d Contracts § 388). For two or more instruments to be construed together, they need not necessarily have been executed on the same day; even instruments executed within the same two-week period may be construed together. See id.; 17A Am. Jur. 2d Contracts § 388. “Moreover, all writings that form part of, or pertain to, the same transaction should be read together even though the writings are not all between the same parties.” Rosenthal v. Means, 388 A.2d 113, 115 (Me. 1978); see 17A Am. Jur. 2d Contracts § 388 (“The rule applies even where the parties are not the same, if the several

---

<sup>5</sup> Paragraph 18 of the Employment Agreement is a “merger clause.” See Sutton v. Stacey's Fuel Mart, Inc., 431 A.2d 1319, 1320-21 (Me. 1981) (provision stating “No Salesman’s verbal agreement is binding on the Company; all terms and conditions of this sale are covered in this agreement” is merger clause).

instruments were known to all the parties and were delivered at the same time to accomplish an agreed purpose.”). As with any issue of contract construction, separate instruments must be construed together as parts of the same single contract ““where necessary to carry into effect the agreement and intention of the parties.”” See Kandlis, 678 A.2d at 43 (quoting Alden v. Camden Anchor-Rockland Mach. Co., 78 A. 977 (Me. 1911)); see also 17A Am. Jur. 2d Contracts § 388 (“When instruments which are executed at the same time and relate to the same subject are treated and interpreted as one, this is done only to effectuate the intention and only where the provisions of the two instruments, if put together, will not be incompatible.”).

In the instance case, the following facts establish that the parties intended to execute the Employment Agreement and the Purchase Agreement as part of a single transaction: the two agreements each expressly refer to the other as being an essential part of the overall agreement between the parties; the Purchase Agreement expressly provides that the Employment Agreement is attached to it as Exhibit H, and that the overall agreement between the parties comprises all attached exhibits; the Index, dated November 1, 2001, contains a list of numerous documents, including both agreements, and appears to be a list of all documents to be included within the “sale of assets” transaction by iSET to AGI; both agreements were executed by Plaintiff and Defendant, and the additional party to the Purchase Agreement (Mr. Cooper) was clearly aware of the Employment Agreement as a result of the attachment of Exhibit H to the Purchase Agreement; the two Agreements either were executed on the same day (November 1, 2001), or, if the Purchase Agreement was executed on October 24, 2001 (as the type-written date states), were executed within a week of each other; and the merger clause in the Employment Agreement expressly allows for “amendments or additions” if “in writing and signed by both parties,” and

the Employment Agreement, including the arbitration clause therein, is in writing and signed by both parties. Thus, the circumstances dictate that the two agreements should be construed together.

Construing contemporaneous instruments together means simply that if there are any provisions in one instrument limiting, explaining, or otherwise affecting the provisions of another, they will be given effect as between the parties themselves and all persons charged with notice so that the intent of the parties may be carried out and the whole agreement actually made may be effectuated.

17A Am. Jur. 2d Contracts § 388.

Here, because it is clear that the two agreements were part of a single transaction, and because there is nothing appearing in the Employment Agreement which is incompatible with the arbitration clause in the Purchase Agreement, the Court concludes that the arbitration clause in the Purchase Agreement should be given effect as to the entire agreement between the parties. The breach of contract claim in Count II of the Complaint, alleging that Defendant materially breached his obligations under the Employment Agreement, clearly involves a “claim arising under” this entire Agreement between the parties. Therefore, the Court concludes that the parties have agreed to arbitrate the claim in Count II.<sup>6</sup>

---

<sup>6</sup> In resolving this issue, the Court is mindful of the federal policy favoring arbitration, which provides that “ambiguities as to the scope of the arbitration clause itself [must be] resolved in favor of arbitration.” Volt, 489 U.S. at 475-76.

Having determined that the parties agreed to arbitrate all of the claims in the Complaint, the Court will dismiss the Complaint in its entirety without prejudice,<sup>7</sup> and will order the parties to arbitrate their dispute as required by the FAA.

#### **IV. Count I of Plaintiff's Complaint**

Defendant argues that Count I of Plaintiff's Complaint, asserting fraud/misrepresentation, should be dismissed pursuant to Fed. R. Civ. P. 12(b)(6) because it fails to satisfy the requirements for pleading claims of fraud as set forth in Fed. R. Civ. P. 9(b). In the alternative, Defendant argues that Plaintiff should be required to set forth a more definite statement of the factual allegations that form the basis for Count I pursuant to Fed. R. Civ. P. 12(e). Because the Court will dismiss this entire matter without prejudice, including Count I, and will order the parties to submit their dispute to arbitration, the Court will not address the sufficiency of the pleadings in Count I, and will deny as moot Defendant's Motion to dismiss Count I pursuant to Rule 12(b)(6), or, in the alternative, for a more definite statement of the factual allegations that form the basis for Count I pursuant to Rule 12(e).

---

<sup>7</sup> The Third Circuit Court of Appeals has indicated on multiple occasions that, for reasons of judicial efficiency, it is appropriate for a district court to dismiss (rather than stay) proceedings when all of the claims involved in the action are arbitrable. See Blair v. Scott Specialty Gases, 283 F.3d 595, 600-02, & n.1 (3d Cir. 2002); Seus v. John Nuveen & Co., Inc., 146 F.3d 175, 179 (3d Cir. 1998); Smith v. The Equitable, 209 F.3d 268, 272 (3d Cir. 2000).

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

AMERICAN GRAPHICS INSTITUTE, INC.,	:	CIVIL ACTION
Plaintiff,	:	
	:	
v.	:	NO. 03-374
	:	
EDWARD O. DARLING,	:	
Defendant.	:	

**ORDER**

AND NOW, this day of May, 2003, upon consideration of Defendant's Motion to Dismiss Pursuant to Fed. R. Civ. P. 12(b)(2), (3), and (6), for a More Definite Statement Pursuant to Fed. R. Civ. P. 12(e), and to Stay or Dismiss Pending Arbitration, filed on February 4, 2003 (**Docket Entry No. 3**), it is hereby ORDERED as follows:

1. Defendant's Motion to Dismiss Pursuant to Fed. R. Civ. P. 12(b)(2), and (3) is DENIED.
2. Defendant's Motion to Stay is DENIED.
3. The parties are ORDERED to submit their dispute to arbitration.
4. This action is DISMISSED without prejudice because all claims are subject to arbitration.
5. Defendant's Motion to Dismiss Pursuant to Fed. R. Civ. P. 12(b)(6), or, in the alternative, for a More Definite Statement Pursuant to Fed. R. Civ. P. 12(e), is DENIED as moot.

BY THE COURT:

Legrome D. Davis