

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

MEMORANDUM AND ORDER

HUTTON, J.

July 29, 1999

Presently before the Court are the Motion of Plaintiff, Raymond J. Battaglia, for Summary Judgment (Docket No. 11), Plaintiff's Amended Certificate of Service (Docket No. 12), 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. 13), the Defendants' Brief in Opposition to Plaintiff's Motion for Summary Judgment and In Support of Defendants' Cross-Motion for Summary Judgment (Docket No. 14), Plaintiff's Brief in Opposition to Defendants' Cross-Motion for Summary Judgment (Docket No. 15). For the reasons stated below, Plaintiff's Motion for Summary Judgment is **DENIED** and Defendants' Cross-Motion for Summary Judgment is **GRANTED**.

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. 14-199-00008-98-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, 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."

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 has now moved for summary judgment, essentially arguing that he is entitled to summary judgment based on the language of the settlement documents. Plaintiff also raises arguments about the merits of the duress claim. The Defendants oppose Plaintiff's motion and have cross-motined for summary judgment. The Defendants contend that any argument concerning the merits of their claims is irrelevant to the matter before this Court. They request that summary judgment be entered in their favor so that arbitration

can proceed without further delay. Because the motions for summary judgment are ripe for review, the Court now considers the two motions for summary judgment.

II. DISCUSSION

A. Summary Judgment Standard

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). The party moving for summary judgment has the initial burden of showing the basis for its motion. Celotex Corp. v. Catrett, 477 U.S. 317, 323, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986). Once the movant adequately supports its motion pursuant to Rule 56(c), the burden shifts to the nonmoving party to go beyond the mere pleadings and present evidence through affidavits, depositions, or admissions on file to show that there is a genuine issue for trial. Id. at 324. A genuine issue is one in which the evidence is such that a reasonable jury could return a verdict for the nonmoving party. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986).

When deciding a motion for summary judgment, a court must draw all reasonable inferences in the light most favorable to the non-movant. Big Apple BMW, Inc. v. BMW of N. Am., Inc., 974 F.2d

1358, 1363 (3d Cir.1992), cert. denied, 507 U.S. 912, 113 S.Ct. 1262, 122 L.Ed.2d 659 (1993). Moreover, a court may not consider the credibility or weight of the evidence in deciding a motion for summary judgment, even if the quantity of the moving party's evidence far outweighs that of its opponent. Id. Nonetheless, a party opposing summary judgment must do more than rest upon mere allegations, general denials, or vague statements. Trap Rock Indus., Inc. v. Local 825, 982 F.2d 884, 890 (3d Cir. 1992).

"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." 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." Bencivenga 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. Therefore, the court must consider the motions separately." Reading Tube Corp., 944 F. Supp. at 401 (citing Rains v. Cascade Indus. Inc., 402 F.2d 241, 245 (3d Cir. 1968)).

B. Analysis of the Parties' Motions

In their respective motions for summary judgment, the parties have raised many issues.¹ The only issue before the Court, however, is whether the parties' dispute 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 and the Settlement Agreement. Conversely, the Defendants request that the Plaintiff's motion for summary judgment be denied, and summary judgment entered for all Defendants so that all claims can proceed to a hearing before the arbitrator. As discussed below, the Court finds in favor of the Defendants that the parties' claims should be decided in arbitration.

¹The Plaintiff raises six arguments in his motion for summary judgment. First, the Plaintiff contends that the determination of the arbitrability of the issues raised in the arbitration counter-claim is for a court, not the arbitrator in the underlying arbitration. Second, the Plaintiff claims that the Consulting Agreement and the Settlement Agreement are separate agreements subject to exclusive review. Third, the Plaintiff asserts that the Consulting Agreement does not provide for arbitration of disputes. Fourth, the Plaintiff argues that the arbitration clause is limited to the arbitration of disputes related to interpretation and performance under the contract. Fifth, the Plaintiff contends that the duress claims raised in the Arbitration Counterclaim are substantively barred based on the doctrine of laches, and procedurally barred based on applicable statute of limitations. Sixth, and finally, the Plaintiff claims that arbitration of the duress claims is unreasonable based on the facts surrounding the creation of the Agreements.

On the other hand, the Defendants assert that the substantive and procedural merits of the claim are irrelevant to the issue before this Court of whether the claim is arbitrable. The Defendants also assert that the broad arbitration clause encompasses Defendants' duress claim; that the Settlement and Consulting Agreements are interdependent and interrelated documents resulting from one settlement; that the Settlement Agreement includes the Consulting Agreement and creates Defendants' obligations with respect to the Consulting Agreement; and that all of the parties' claims should be decided in arbitration without further delay.

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, 582-83, 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 Court finds that this dispute falls within the scope of the Settlement Agreement's arbitration provision. The parties

intended, as evidenced by the provision, to submit any controversy whatsoever to arbitration. To this end, the parties used expansive, all-encompassing language: "any controversy arises hereunder, venue in Philadelphia, Pennsylvania with the American Arbitration Association is appropriate for the resolution of such controversy." (Settlement Agreement, p.4, ¶ 9.) The dispute at issue here plainly falls within the galactic scope of this arbitration provision. Cf. Mastrobuono, 514 U.S. at 61 n. 7 (quoting Raytheon Co. v. Automated Bus. Sys., Inc., 882 F.2d 6, 10 (1st Cir. 1989)).

Moreover, the parties intended for the Settlement and Consulting Agreements to be interdependent and interrelated documents. Section 1 of the Settlement Agreement provides that:

Simultaneously with the execution of this Settlement Agreement, Battaglia and the Company have entered into a Consulting Agreement ...

(Id., p.2, § 1.) The Settlement Agreement further directly obligates all of the Defendants to secure for Plaintiff monies due under the Consulting Agreement as follows:

All parties to this Settlement Agreement will act in good faith to secure to Battaglia the benefits of this Settlement Agreement and all of the amounts due to him under the Consulting Agreement, and will cause the Company to do likewise. In the event of a transfer of Company assets under Article 6 of the Pennsylvania Uniform Commercial Code, or of a transfer of a controlling interest in the stock of the Company, the Company shall take whatever steps are necessary to ensure that the obligations due to Battaglia under the Consulting Agreement are paid by the transferee.

(Id., p.4, § 8.) The Consulting Agreement, in turn, acknowledges the Settlement Agreement and makes clear that the Settlement Agreement's terms remain operative, and do not "merge" into the Consulting Agreement:

The Settlement Agreement executed concurrently with this Consulting Agreement, to which Settlement Agreement the company and the consultant, among others, are parties, does not merge into this Consulting Agreement.

(Consulting Agreement p.7, ¶ 11.) Indeed, without the Settlement Agreement, the parties would have no obligation to execute the Consulting Agreement. It is the Settlement Agreement, which sets forth the terms of the Consulting Agreement. Evidence and arguments as to the merits of both parties' claims will be presented in the arbitration and evaluated by the arbitrator. Plaintiff's attempts to raise the actual merits of the claims here are completely irrelevant to the issue of arbitrability, which is the only issue before the Court. See AT & T Technologies, Inc. v. Communications Workers of America, 475 U.S. 643, 649, 106 S.Ct. 1415, 89 L.Ed.2d 648 (1986) (arbitrability of a dispute is for the court to decide).

Finally, Plaintiff's argument that Defendants' duress claim cannot be arbitrable because it goes to the formation or validity of the entire Settlement Agreement is without merit. This argument has been rejected by the Pennsylvania Supreme Court in Flightways Corp. v. Keystone Helicopter Corp., 459 Pa. 660, 331 A.2d 184 (1975). The Court in Flightways explained:

As the Court of Appeals for the Third Circuit accurately surmised in Merritt-Chapman & Scott Corp. v. Pennsylvania Turnpike Commission, 387 F.2d 768 (3d Cir. 1967), we are satisfied with the soundness of the federal rule under the United States Arbitration Act of 1925 as established by the Supreme Court of the United States, viz., 'that a general attack on a contract for fraud is to be decided under the applicable arbitration provision as a severable part of the contract and that only where the claim of fraud in the inducement goes specifically to the arbitration provision itself should it be adjudicated by the court rather than the arbitrator', 387 F.2d at 771. Prima Paint Corporation v. Flood & Conklin Manufacturing Co., 388 U.S. 395, 87 S.Ct. 1801, 18 L.Ed.2d 1270 (1967). (footnote omitted).

Flightways, 459 Pa. at 663. Thus, the arbitration clause of a contract is considered severable when a claim is brought to void the contract itself, and the claim proceeds under the arbitration clause. See Anderson v. Erie Ins. Group, 384 Pa. Super. 387, 394-95, 558 A.2d 886, 890 (1989). Accordingly, Plaintiff's motion for summary judgment is denied and Defendants' motion for summary judgment is granted.

An appropriate Order follows.

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O R D E R

AND NOW, this 29th day of July, 1999, upon consideration of the Motion of Plaintiff, Raymond J. Battaglia, for Summary Judgment (Docket No. 11), Plaintiff's Amended Certificate of Service (Docket No. 12), 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. 13), the Defendants' Brief in Opposition to Plaintiff's Motion for Summary Judgment and In Support of Defendants' Cross-Motion for Summary Judgment (Docket No. 14), and Plaintiff's Brief in Opposition to Defendants' Cross-Motion for Summary Judgment (Docket No. 15), IT IS HEREBY ORDERED that:

(1) Plaintiff's Motion for Summary Judgment is **DENIED**;

and

(2) Defendants' Cross-Motion for Summary Judgment is

GRANTED.

IT IS FURTHER ORDERED that the Parties' claims **SHALL BE**
ARBITRATED without further delay.

BY THE COURT:

HERBERT J. HUTTON, J.