



subterranean termites.” Terminix agreed that it would “periodically reinspect the identified property and any further treatments found necessary will be performed free.” Mr. Rimel continued to make the necessary payments to keep the Termite Service Plan in effect until 1994 when the property was sold to Ross and Maryanne Fasco. The Fascos also continued to make the necessary payments to keep the Termite Service Plan in effect through 1999.

When Barbieri purchased the property in July, 1999, the Termite Service Plan was still in effect. It appears that Barbieri’s claim or claims arise from the Termite Service Plan. The Termite Service Plan contains an arbitration provision, the front of which states the following:

Any other shown provisions attached hereto including the general conditions on the reverse side and the inspection graph dated 11/2/87 are part of this plan.

On its reverse side, under the heading “Terms and Conditions,” the Termite Service Plan states as follows:

**10. ARBITRATION.** The Purchaser and Terminix agrees that any controversy or claim between them arising out of or relating to the interpretation, performance or breach of any provision of this agreement shall be settled exclusively by arbitration. Such arbitration shall be conducted in accordance with the Commercial Arbitration Rules then in force of the American Arbitration Association before three arbitrators appointed by the American Arbitration Association. The arbitration award shall be final and binding on both parties. Judgment upon such arbitration award may be entered in any court having jurisdiction.

On July 3, 2001, Terminix filed a Demand for Arbitration in this matter with the American Arbitration Association. On July 5, 2001, Terminix filed a revised Demand for Arbitration in this manner with the American Arbitration Association. On July 23, 2001, the American Arbitration Association determined that Terminix had met the requirements of the rules by the filing of its Demand for Arbitration in this matter. Accordingly, absent an agreement

by the parties or a court order staying the arbitration, the American Arbitration Association would proceed with this matter in arbitration.

## **II. DISCUSSION**

Two matters must be resolved in this case. First, whether the parties entered into a valid agreement; and second, whether the dispute between the parties falls within the language of the arbitration agreement.

The answer to the second question is, in my judgment, clear. The dispute in this case does fall within the language of the arbitration agreement.

The first question is a great deal more difficult. Clearly, Barbieri never entered into a contract with Terminix. The Termite Service Plan was, however, in full effect when Barbieri purchased the property and Barbieri's claim against Terminix, it seems to me, only exists because of the contract which was initially entered into between Terminix and previous homeowner, William P. Rimel, and the Termite Service Plan which subsequent owners maintained under the original contract.

It is also clear that one need not have signed a contract to be bound by its terms. Barbieri does not dispute this but claims that she is not a third-party beneficiary under the contract. Whether technically a third-party beneficiary or not, I believe that since her claims arise from services provided or not provided by Terminix under the contract, she is bound by the arbitration clause. Even though Barbieri's claims "sound in tort", they nevertheless "arise out of or relate to" the agreement and are arbitrable.

The following order is entered:

**ORDER**

**AND NOW**, this 15<sup>th</sup> day of October, 2001, it is hereby **ORDERED** that Respondent's Motion to Reconsider (Docket No. 5) is **DENIED**, and Petitioner's Motion to Compel Arbitration and to Stay Judicial Proceedings (Docket No. 4) is **GRANTED**.

Respondent, Christine Barbieri, shall proceed to arbitrate her claims against Petitioner, The Terminix International Company, L.P., in accordance with the express terms of the arbitration provisions contained in the Termite Service Plan. All judicial proceedings in the state court case of Christine Barbieri v. The Terminix International Company, L.P., et al., CCP Delaware County, Case No. 01-7702 are hereby **STAYED** until the arbitration of Ms. Barbieri's claims against Terminix are concluded.

BY THE COURT:

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RONALD L. BUCKWALTER, J.