RHODE ISLAND Lawyers Weekly



# Arbitration – Forum selection clause

*Superior Court*

By: R.I. Lawyers Weekly Staff December 21, 2019

Where two petitions have been filed seeking arbitration of disputes concerning the cannabis industry, a motion to dismiss should be denied despite a Maine forum selection clause contained in one of the parties' agreements, but a defendant who was not a signatory to any agreement containing an arbitration clause is entitled to dismissal without prejudice.

"While the Respondents have conceded that they are parties to the arbitration agreements in the 2015 [Wellness and Pain Management Connection Operating Agreement (WPMC OA)] and the CanWell OAs …, they contend that the disputes involving the alleged termination of the [Alternative Dosage Services Agreement (ADA)] and the alleged violation of the non-competition provision in the ADA (the ADA Disputes) are, as a matter of law, not subject to arbitration because of the forum selection clause in the ADA. Thus, they have moved to dismiss the Petitions to the extent the Petitions seek arbitration under those provisions. …

"The only matters before the Court are the two Petitions to Arbitrate pursuant to the 2015 WPMC OA or the CanWell OAs in congruence with the ADA, not the ADA alone. The Petitioners cite the 2015 WPMC OA and CanWell OAs as a legal basis for their Demand for Arbitration in Rhode Island. The CanWell OAs and the 2015 WPMC OA leave no doubt that arbitration under those agreements is a Rhode Island matter. … Thus, the parties explicitly consented to venue in this Court. Whether the ADA Disputes are subject to arbitration is a different matter, but it does not go to the issue of venue. …

"All Respondents in this case have moved to dismiss under Rule 12(b)(6) for failure to state a claim upon which relief can be granted. …

"Respondents assert that the ADA grants the courts of Maine exclusive jurisdiction 'with respect to any dispute between the parties pertaining to this Agreement,' ADA §13.7, and therefore, as a matter of law, the Court must dismiss both Petitions to the extent they seek to arbitrate the ADA Disputes.

"Further, Respondents contend that Acreage [Holdings, Inc.] and [Kevin] Murphy were not signatories to the ADA, so they cannot be compelled to arbitrate the ADA Disputes. …

"As a signatory to the 2015 WPMC OA, the basis for the Second Petition, Acreage is subject to the arbitration provision contained therein. …

"Since CanWell offers no specific basis in the First or Second Petition to bind Murphy to the operative agreements, Respondents' Motion to Dismiss both Petitions as it pertains to Murphy is granted. …

"The Court finds that the parties, other than Murphy and Acreage, have entered into valid arbitration agreements and, for purposes of the Rule 12(b)(6) Motions, there is a valid claim that the ADA Disputes are subject to arbitration. For the reasons stated herein, the Court denies the Motions to Dismiss the First and Second Petitions, except that it is granted as to Murphy without prejudice.

"However, the Court is not currently sending the ADA Disputes to arbitration. The Court finds that the next step in this litigation is for it to determine who decides whether the ADA Disputes are arbitrable: the Court or the arbitrator.

In light of the stay in the Maine litigation, which expires on January 3, 2020, the Court wants memoranda submitted by December 23, 2019 addressing this issue. The memoranda should also address what would be the next steps after a decision on who decides arbitrability. Reply memoranda may be submitted by December 30, 2019."

*CanWell, LLC, et al. v. High Street Capital Partners, LLC, et al. (Lawyers Weekly No. 61-125-19) (34 pages) (Licht, J.) (Kent Superior Court) Vincent A. Indeglia, John C. Revens Jr., William M. Russo and Thomas A. Tarro III for the plaintiffs; Preston W. Halperin and Jeffrey S. Brenner for the defendants (C.A. Nos. KM-2019-0948 and KM-2019-1047) (Dec. 16, 2019).*

Click here to read the full text of the opinion.

Issue: DEC. 30 2019 ISSUE

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