

**UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT**

DOCTOR’S ASSOCIATES INC.,	:	
	:	Case No.:
Plaintiff,	:	
	:	
v.	:	
	:	
Ivars Repins,	:	
	:	
Defendant.	:	October 2, 2015

PETITION TO COMPEL ARBITRATION

1. This is an action to compel arbitration pursuant to Section 4 of the Federal Arbitration Act, 9 U.S.C. § 4.

2. Plaintiff Doctor’s Associates Inc. (“DAI”), the franchisor of Subway® sandwich shops in the United States, is a Florida corporation with a principal place of business in Connecticut.

3. Upon information and belief, defendant Ivars Repins (“Repins”) is a resident of Wisconsin.

4. This Court has diversity jurisdiction under 28 U.S.C. § 1332, because this is an action between citizens of different states in which the amount in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs.

5. Venue is proper under 28 U.S.C. § 1391(a)(3) because, under 9 U.S.C. § 4, this is the only district court that can compel arbitration in Connecticut. Repins also agreed to the jurisdiction of this Court because, among other reasons, he agreed to arbitrate in Connecticut.

6. On or about May 13, 2002, DAI and Repins executed a written Franchise Agreement, #903, permitting Repins to operate a Subway® store in a specified location. *See* Franchise Agreement, attached hereto as Exhibit A.

7. The Franchise Agreement contains a dispute resolution clause requiring the parties to arbitrate any dispute or claim arising out of or relating to the agreement. Exhibit A, ¶ 10.¹ The arbitration must be in accordance with the Commercial Rules of the American Arbitration Association and is to take place in Bridgeport, Connecticut. *Id.*

8. Repins agreed that if he violated his obligation to mediate or arbitrate, he would be responsible for paying DAI's costs and legal fees. Exhibit A, ¶ 10.

9. On or about September 12, 2015, the Hon. Richard J. Sankovitz, Circuit Court Judge for Milwaukee County, Wisconsin, issued an order granting to DAI's leasing affiliate, Subway Real Estate, LLC ("SRE"), a judgment of eviction (the "Wisconsin Court Order") in *Subway Real Estate, LLC v. Ivars Repins*, Case No. 15-SC-17459 (the "Wisconsin Litigation").² A copy of the Wisconsin Court Order is attached hereto as Exhibit C. SRE also requests recovery of the amounts owed under its sublease with Repins in the Wisconsin Litigation, which request remains pending.

10. On the same day the Wisconsin Court Order issued, Repins filed an "Answer and Affirmative Defenses/Claims" ("Repins's Wisconsin Claims") in the Wisconsin Litigation. A copy of Repins's Wisconsin Claims is attached hereto as Exhibit D. Repins's Wisconsin Claims allege that DAI "is an indispensable party which must be joined in this action, without which, a

¹ Paragraph 10 of the Franchise Agreement was amended pursuant to ¶ 14 of a September 22, 2010 Franchise Agreement that Repins executed. A copy of the September 22, 2010 Franchise Agreement is attached hereto as Exhibit B. Please note that ¶ 10 of Exhibit B would control in any conflict with ¶ 10 of Exhibit A.

² As Paragraph 10 of the Franchise Agreement makes clear, the obligation to arbitrate does not apply to eviction claims brought by SRE.

full adjudication of all rights, claims, and causes of action by the parties cannot be afforded.” Exhibit D, p.1, ¶1.

11. Repins’s Wisconsin Claims further allege that Repins “invested upwards of over \$150,000 to improve” his Subway® store and that DAI allowed other Subway® stores to open nearby, which harmed his existing store. Exhibit D, pp. 4-5.

12. Repins’s Wisconsin Claims also allege that DAI acted improperly with respect to its promotions and advertising and include allegations relating to DAI’s collection of the franchise fees, royalties, and advertising contributions that the Franchise Agreement requires. Exhibit D, pp. 5-6.

13. Repins’s Wisconsin Claims appear to blame DAI for his eviction and loss of his Subway® store and also allege that DAI is liable for breach of contract, for “the value of his improvements under his contractual agreements,” recoupment and set-off, and “unfair trade practices and/or methods of competition” entitling Repins to various remedies, including double damages and attorneys’ fees. Exhibit D, pp. 5-7.

14. All of Repins’s allegations against DAI involve claims arising out of or relating to his Franchise Agreement. Repins’s claims clearly fall within the broad scope of the Franchise Agreement’s arbitration clause.

15. On September 25, 2015, in-house counsel for DAI sent a letter to Repins’s counsel reminding him of Repins’s obligation to arbitrate. A copy of that letter is attached hereto as Exhibit E. That letter stated, among other things:

Please be advised, if Mr. Repins asserts claims against DAI in the . . . litigation or any other litigation, DAI will immediately initiate an action to compel arbitration, and will seek to collect any expenses it incurs (including attorney’s fees) from Mr. Repins in accordance with its rights under Paragraph 10(g) of the Franchise Agreement.

16. DAI's in-house counsel followed up by email on October 2, 2015 asking Repins's counsel if he intended to respond to her letter. Repins's counsel responded by email the same day stating, among other things that:

Mr. Repins advises he intends to join Subway Corporate (DAI) into the pending lawsuit filed by Subway Real Estate, LLC likely as an involuntary plaintiff and then let the chips fall where they may. Please advise whether your local counsel will be permitted to accept service on behalf of Subway Corp (DAI) and/or other Subway entities who may also be joined in the local Milwaukee County litigation to facilitate the issue of service.

A copy of this email exchange is attached hereto as Exhibit F.

17. By seeking to raise or assert claims and defenses, or otherwise compel DAI to participate in litigation relating to DAI's alleged conduct, Repins has wrongfully failed, neglected and/or refused to arbitrate and has violated the Franchise Agreement. Repins is therefore responsible for paying all of DAI's expenses in connection with this Petition and the Wisconsin Lawsuit.

18. Accordingly, DAI requests that this Court enter an order pursuant to 9 U.S.C. § 4 directing Repins to arbitrate his claims in the manner provided by the Franchise Agreement and that he pay all of DAI's expenses, including costs and attorneys' fees, incurred in connection with compelling arbitration and incurred in connection with the Wisconsin Lawsuit.

19. DAI further puts Repins on notice that, if he continues to threaten or pursue any claims or defenses relating to DAI's conduct in the Wisconsin Litigation or otherwise except in arbitration, it reserves its right to ask the Court to enter an injunction restraining his wrongful conduct.

PLAINTIFF
DOCTOR'S ASSOCIATES INC.

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