

NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-6277-11T2

WOODBIDGE CENTER
PROPERTY LLC,

Plaintiff,

v.

AMP FOOD HOLDINGS, LLC,
PRABODH MENON, MAYA MENON,
ERIK PAPADOPOLO, CATHLIN
PAPADOPOLO, and BAHRAM
ASGARIAN,

Defendants.

AMP FOOD HOLDINGS, LLC,
PRABODH MENON, MAYA MENON,
ERIC PAPADOPOLO, CATHLIN
PAPADOPOLO, and BAHRAM
ASGARIAN,

Third-Party Plaintiffs/
Respondents,

v.

PANCHERO'S FRANCHISE
CORPORATION and
RODNEY L. ANDERSON,

Third-Party Defendants/
Appellants.

Argued January 14, 2013 - Decided June 20, 2013

Before Judges Graves and Espinosa.

On appeal from Superior Court of New Jersey,
Law Division Middlesex County, Docket No.
L-1112-12.

Justin W. Oravetz argued the cause for
appellants Pancharo's Franchise Corporation
and Rodney L. Anderson (Archer & Greiner,
attorneys; Mr. Oravetz and Benjamin D. Morgan,
on the brief).

Mitchell J. Kassoff argued the cause for
respondents AMP Food Holdings, LLC, Prabodh
Menon, Maya Menon, Erik Papadopollo, Cathlin
Papadopollo and Bahram Asgarian.

Dinah E. Hendon argued the cause for plaintiff
Woodbridge Center Property, LLC
(Lasser Hochman, L.L.C., attorneys; Ms. Hendon,
of counsel and on the brief).

PER CURIAM

Third-party defendants Pancharo's Franchise Corporation and
Rodney L. Anderson, president of the corporation, (collectively
Pancharo's) appeal from a June 29, 2012 order denying their
motion to compel arbitration and an August 10, 2012 order
denying their motion for reconsideration. Because we conclude
that the franchise agreement between Pancharo's and third-party
plaintiff AMP Food Holdings, LLC (AMP) contained an enforceable,
unambiguous arbitration provision, we reverse.

On October 10, 2010, AMP entered into a franchise agreement
with Pancharo's to establish a Pancharo's Mexican Grill
restaurant. The individual owners of AMP, Prabodh Menon, Erik

Papadopollo, and Bahram Asgarian, signed a guaranty and assumption of obligations, stipulating AMP would "punctually pay and perform each and every undertaking, agreement and covenant set forth in the Agreement" and that each owner "shall be personally bound by, and personally liable for the breach of each and every provision in the Agreement."

The cover page of the franchise agreement stated: "THIS CONTRACT IS SUBJECT TO ARBITRATION," and the arbitration clause contained within the franchise agreement specified:

Franchisor and Franchisee agree that all controversies, disputes, or claims between Franchisor and its affiliates, and their respective owners, officers, directors, agents, and/or employees, and Franchisee (and Franchisee's owners, guarantors, affiliates, and/or employees) arising out of or related to:

(1) this Agreement or any other agreement between Franchisee and Franchisor;

(2) Franchisor's relationship with Franchisee;

(3) the scope or validity of this Agreement or any other agreement between Franchisee and Franchisor (including the validity and scope of the arbitration obligation under this Paragraph, which Franchisor and Franchisee acknowledge is to be determined by an arbitrator and not by a court); or

(4) any operating standard relating to developing and servicing PANCHERO'S Restaurants;

must be submitted for binding arbitration, on demand of either party, to the American Arbitration Association. . . . All proceedings will be conducted at a suitable location chosen by the arbitrator that is within Cook County, Illinois. All matters relating to arbitration will be governed by the Federal Arbitration Act (9 U.S.C. §§ 1 et seq.).

The franchise agreement also included an applicable law provision, stating the agreement "shall be interpreted and construed under the laws of the State of Illinois" and "any action sought to be brought by either party, except those claims required to be submitted to arbitration, shall be brought in the appropriate state or federal court with jurisdiction over Cook County, Illinois."

On July 29, 2011, AMP entered into a lease agreement with plaintiff Woodbridge Center Property, LLC (Woodbridge) for space in the Woodbridge Center Mall. The lease was guaranteed by the owners of AMP and two of their spouses, Maya Menon and Cathlin Papadopollo, who guaranteed "the monthly installment of rent" and all additional obligations to Woodbridge. Pursuant to the lease, AMP "was required to diligently pursue obtaining the permits and governmental approvals" needed to "open for business" within 150 days.

However, AMP failed to take possession of the leased premises. On February 14, 2012, Woodbridge filed a complaint

against AMP, its owners, and the additional lease guarantors, for damages, alleging they were "in default under the terms and conditions of the lease by reasons of [their] failure to take possession of the premises and [their] failure to pay rent." The complaint further stated they "failed to diligently pursue obtaining required permits and governmental approvals," "failed to begin work on the premises, and failed to open for business."

On April 26, 2012, AMP filed a third-party complaint against Pancharo's, alleging Pancharo's was liable "for all damages, interest, costs, attorney's fees and expenses that might be obtained" by Woodbridge against AMP. AMP claimed that Pancharo's promised "they would assist in the lease, plans and permitting to build [AMP's] franchised restaurant" and then refused to allow AMP "to revise the plans to make them economically feasible."

On June 1, 2012, Pancharo's filed a motion to compel arbitration in lieu of an answer to the third-party complaint. Pancharo's argued that "[b]ased on the language in the arbitration [clause], all claims and disputes have to be moved to arbitration." AMP opposed the motion, and argued that if the motion was granted, AMP would be forced to litigate in three

forums: "in Illinois with arbitration against Panchero's"; "in this court with plaintiff"; and "in the federal court."¹

Following oral argument on June 29, 2012, the trial court denied Panchero's motion, reasoning as follows: "We're at the very beginning of the case. I can see how a multiplicity of litigation would be generated by granting arbitration. I'm satisfied that the points that [AMP] made are sufficiently valid to override what seems to be relatively clear language in the [franchise] agreement."

Panchero's motion for reconsideration of the June 29, 2012 order was denied on August 10, 2012. The court denied the reconsideration motion "not because the [arbitration clause] was unclear," but because Panchero's did not raise any new issues or arguments.

On appeal, Panchero's argues that the court erred in denying its motion to compel arbitration, because AMP's claims "are within the scope of the arbitration provision." In addition, Panchero's contends "the law does not permit a court any discretion to abrogate the parties' intent to arbitrate simply because multiple proceedings will be generated."

¹ On November 18, 2011, AMP filed a complaint against Panchero's, which was removed to United States District Court for the District of New Jersey under Docket No. 3:11-cv-07490-PGS-LHG.

When the issue on appeal involves a contract interpretation, our standard of review is de novo. Hutnick v. ARI Mut. Ins. Co., 391 N.J. Super. 524, 528 (App. Div.), certif. denied, 192 N.J. 70 (2007). "[U]nder both federal and state law, 'arbitration is a matter of contract and a party cannot be required to submit to arbitration any dispute which he has not agreed so to submit.'" Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Cantone Research, Inc., 427 N.J. Super. 45, 58 (App. Div. 2012) (quoting AT&T Techs., Inc. v. Commc'n Workers of Am., 475 U.S. 643, 648, 106 S. Ct. 1415, 1418, 89 L. Ed. 2d 648, 655 (1986)). The "trial court's interpretation of the law and the legal consequences that flow from established facts are not entitled to any special deference." Manalapan Realty, L.P. v. Twp. Comm., 140 N.J. 366, 378 (1995).

Both federal and New Jersey public policy strongly support arbitration. See Buckeye Check Cashing, Inc. v. Cardegna, 546 U.S. 440, 443, 126 S. Ct. 1204, 1207, 163 L. Ed. 2d 1038, 1042 (2006) (stating the Federal Arbitration Act was enacted to embody "national policy favoring arbitration and places arbitration agreements on equal footing with all other contracts"); Martindale v. Sandvik, Inc., 173 N.J. 76, 92 (2002) ("[T]he affirmative policy of this State, both legislative and judicial, favors arbitration as a mechanism

of resolving disputes."). "New Jersey law comports with its federal counterpart in striving to enforce arbitration agreements." Jansen v. Salomon Smith Barney, Inc., 342 N.J. Super. 254, 257 (App. Div. 2001). Moreover, "courts operate under a 'presumption of arbitrability in the sense that an 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.'" EPIX Holdings Corp. v. Marsh & McLennan Companies, Inc., 410 N.J. Super. 453, 471 (App. Div. 2009) (quoting Caldwell v. KFC Corp., 958 F. Supp. 962, 973 (D.N.J. 1997)).

In this case, the trial court denied Panchero's motion to compel arbitration "not because the language was unclear," but because it would possibly create a multiplicity of litigation. However, as noted by the United States Supreme Court, the Federal Arbitration Act "requires piecemeal resolution when necessary to give effect to an arbitration agreement," and "an arbitration agreement must be enforced notwithstanding the presence of other persons who are parties to the underlying dispute but not to the arbitration agreement." Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp., 460 U.S. 1, 20, 103 S. Ct. 927, 939, 74 L. Ed. 2d 765, 782 (1983). Furthermore, a

"possible inconvenience" to a party "is not a sufficiently compelling ground to overcome New Jersey's strong public policy favoring arbitration where the parties have expressly agreed to this method of dispute resolution." EPIX Holdings, supra, 410 N.J. Super. at 480.

In this case, the terms of the franchise agreement are not ambiguous, and we find that the claims in AMP's third-party complaint are encompassed under "all controversies, disputes, or claims between [f]ranchisor and . . . [f]ranchisee" and is therefore within the arbitration clause of the franchise agreement. The right of Woodbridge to pursue its claims against AMP, its owners, and the additional lease guarantors is not affected.

Reversed and remanded for further proceedings in conformity with this opinion. Jurisdiction is not retained.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.



CLERK OF THE APPELLATE DIVISION