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NEWS

'No Magical Words': Appellate Division Reverses Denial of Motion to Compel Arbitration in Business Dispute

"I think it is important for commercial law practitioners to understand, as the Supreme Court has said before, there are no magical words needed for an arbitration clause to have effect," the prevailing attorney said.

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4 minute read

By Colleen Murphy

The New Jersey Appellate Division reversed a Bergen County Superior Court judge's denial of a motion to dismiss and to compel arbitration in a complex business dispute, finding that the plaintiff company agreed to arbitrate in a partnership agreement.

The underlying dispute involved a number of companies and their principals. At issue was the defendant's appeal of orders denying Rule 4:6-2(e) motions to dismiss the complaint filed by the plaintiffs, the company GGLM and its sole member, Georgios Drosos. Drosos is a resident of Greece, the owner of GGLM, and the founder of defendant company Dreamfood, the operating company for the "Greek from Greece" (GFG) brand, developed to operate "a chain of stores that combined a Greek bakery with a café, serving light food throughout the day," according to the opinion.

Drosos brought in partners to Dreamfood who would ultimately become the defendants in this matter. After the COVID-19-related closures, Drosos returned from Greece to the United States in June 2020 to reopen the GFG stores. Postpandemic, Dreamfood and the GFG brand continued to grow, opening new stores in Pennsylvania, with more planned in Newark; Boston; Rye, New York; and Milwaukee, according to the opinion.

After a year of traveling and exhausted from building the brand, Drosos stepped down as CEO and was replaced by Christos Savva, according to the opinion.

The plaintiffs alleged that, by the end of 2021, Savva had cut Drosos out of the operations and activities of the company. And by January 2022, Savva virtually shut down the GFG brand "without any public announcement or any notice to Drosos or GGLM," the plaintiffs claim, according to the opinion.

In their five-count complaint, the

plaintiffs sought appointment of a receiver for Dreamfood, repayment of a $176,891 loan allegedly made to the company by GGLM, and repayment of an $89,502.65 loan allegedly made by Drosos, as well as damages for misappropriation, conversion and conspiracy, among other claims, according to the opinion.

The defendants filed motions under Rule 4:6-2 to compel arbitration, invoking the arbitration clause in Dreamfood's operating agreement, according to the opinion.

The trial court denied the defendants' motions, stating that the arbitration clause "falls short of the arbitrability criteria" set forth in *Atalese v. U.S. Legal Services Group*.

Appellate Division Judge Allison E. Accurso, writing for the court, stated that, considering the Dreamfood arbitration clause, and in light of *Atalese* and *Flanzman v. Jenny Craig*, the appeals court was convinced that the trial court erred in deeming the clause unenforceable, despite the fact that it doesn't state "the signatory is waiving the critical right to a trial by jury," and fails to explain the distinction between arbitration and civil litigation, according to the opinion.

"That the Dreamfood clause does not mention specifically that

the signatories were waiving a jury trial does not preclude its enforcement," Accurso wrote. "As defendants rightly note, neither *Atalese* nor *Flanzman* requires specific 'jury trial' language to accomplish a waiver of rights."

Since the court was satisfied that the arbitration provision meets the *Atalese* standard, Accurso said it didn't need to consider the question of whether that decision extends to commercial arbitration agreements between sophisticated parties. The court also agreed with the defendants that Dreamfood can invoke the arbitration provision in its own operating agreement, even though it is not a signatory to that agreement. Accurso stated that N.J.S.A. 42:2C-12 expressly provides that "a limited liability company is bound by and may enforce its operating agreement, whether or not the company has itself manifested assent to the operating agreement."

"This plain statutory language entitles Dreamfood to arbitrate plaintiffs' claims against it to the same extent as any Dreamfood member could," Accurso said.

Counsel to the defendants, William C. Matsikoudis of Matsikoudis & Fanciullo in Jersey City, said: "I think it is important for commercial law practitioners to understand, as the Supreme Court has said before, there are no magical words needed for an arbitration clause to have effect, as long as it makes clear that signatories are waiving their right to seek redress in judicial forum."

Counsel to Drosos and GGLM, Jeffrey A. Bronster of Fairview, said, "We were disappointed in the decision."

But, he said, "this is still obviously an emerging area of the law and there are going to be surprises from time to time."

The attorney added that he does not expect that his client will appeal the decision, although he didn't completely rule it out.

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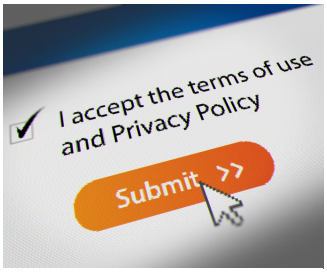

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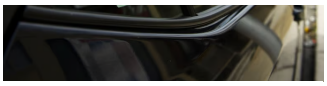

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