

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

SCOTT REISING JEWELERS, INC.,	:	APPEAL NO. C-070039
d/b /a/ HYDE PARK JEWELERS,	:	TRIAL NO. A-0404301
	:	
Plaintiff-Appellant,	:	<i>JUDGMENT ENTRY.</i>
	:	
vs.	:	
	:	
CARTIER INCORPORATED, a/k/a	:	
CARTIER, INC.,	:	
	:	
Defendant-Appellee.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.¹

In this case, we determine whether a claim brought under New York’s version of the Uniform Commercial Code (“U.C.C.”) for a check that had been dishonored is subject to arbitration under the contract governing the relationship between a jewelry store in Cincinnati, Ohio, and its out-of-state supplier of certain jewelry products. The trial court said that the claim was subject to arbitration; under the set of facts before us, we say it is not. Accordingly, we reverse the judgment of the trial court.

Plaintiff-appellant, Scott Reising Jewelers, Inc. (“Reising”), began to sell the products of defendant-appellee, Cartier, Incorporated (“Cartier”), in its Cincinnati,

¹ See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

Ohio, jewelry store in 1995. Three years later, Cartier required Reising to sign an “Authorized Dealer Agreement” as a condition for continuing to sell Cartier’s products in Reising’s store. The agreement contained an unnegotiated arbitration provision, which provided in part that “[o]ther than claims by Cartier for payment for Cartier products sold and delivered to Dealer, all disputes arising out of or relating to the agreement or the parties’ relationship (including the termination thereof), including any permissive or compulsory counterclaim to any claim for payment, shall be resolved by arbitration in the City of New York, Borough of Manhattan, State of New York, under the Rules of the American Arbitration Association.”

In March 2002, Cartier informed Reising that it was not going to renew its agreement with Reising to sell Cartier products. Upon receiving this information, Reising placed a stop-payment order on a check in the amount of \$35,254.82 that it had recently sent to Cartier. It appears that Reising had a revolving account with Cartier. As of October 2002, Reising had a balance of \$78,614.39 owing on this account. Accordingly, Reising returned merchandise to Cartier in the approximate amount of \$41,000 and “charged back” to Cartier certain costs totaling \$37,536.78, including advertising expenses that Reising asserted it had incurred on behalf of Cartier. Essentially, Reising contends that the “charge backs” were a setoff against the amount it owed Cartier. Cartier maintains that Reising should not have “charged back” to Cartier those specified costs.

Eventually, Cartier filed a demand for arbitration with the American Arbitration Association (“AAA”) against Reising, seeking payment of Reising’s dishonored check under New York’s version of Uniform Commercial Code 3-413. In

response, Reising instituted a declaratory-judgment action in the Hamilton County Court of Common Pleas, seeking a declaration that Cartier's U.C.C. claim was not subject to arbitration and that it did not owe any money to Cartier. Reising also sought a permanent injunction against Cartier to prevent it from pursuing its claim in arbitration. Cartier moved to compel arbitration and to stay or dismiss the proceedings in the common pleas court. The court granted Cartier's motion and dismissed Reising's action, stating in its entry that all the claims were subject to arbitration.

Reising now contends, in a single assignment of error, that the trial court erred by dismissing its action and granting Cartier's motion to compel arbitration. We agree.

"Whether a controversy is arbitrable under a contract is a question of law. Thus, we review the issue of arbitrability de novo."² We recognize that the established policy of federal and Ohio law favors arbitration; however, we are also mindful that that a party cannot be required to submit to arbitration those disputes it has not agreed to arbitrate.³

Under the arbitration provision in this case, the parties agreed that claims for payment by Cartier for goods sold and delivered would not be subject to arbitration. Cartier argues that its claim submitted to the AAA was not a claim for payment for products sold and delivered, but rather a claim based upon Reising's obligation to pay the amount of the dishonored check under the U.C.C., and thus that it was subject to arbitration. We disagree. Regardless of how Cartier labels its claim, its

² *Carey v. Seeley*, 1st Dist. No. C-050073, 2005-Ohio-5721, at ¶12.

³ *Council of Smaller Enterprises v. Gates McDonald & Co.*, 80 Ohio St.3d 661, 665, 1998-Ohio-172, 787 N.E.2d 1352; *Fazio v. Lehman Bros., Inc.*(C.A.6 Cir., 2003), 340 F.3d 386.

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essence was clearly one for payment for goods sold and delivered to Reising. Thus, Cartier's claim for payment is not subject to arbitration.

Next, Cartier maintains that because Reising was also seeking a declaration from the trial court that it did not owe any more money to Cartier due to the "charge backs," this issue was subject to arbitration. It is not. The declaration sought by Reising simply represented its answer to Cartier's claim for payment due on Reising's account, and as such, it is not subject to arbitration. The matter of "charge backs" will be considered and determined as part of Cartier's claim for payment against Reising.

Because we have held that Cartier's claim for payment under the U.C.C. and Reising's answer to that claim are not subject to arbitration under the Authorized Dealer Agreement, the trial court should have denied Cartier's motion to compel arbitration. Accordingly, Reising's assignment of error is sustained.

We reverse the judgment of the trial court and remand this case for further proceedings consistent with the law and this judgment entry.

Further, a certified copy of this judgment entry shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

PAINTER, P.J., HILDEBRANDT and HENDON, JJ.

To the Clerk:

Enter upon the Journal of the Court on December 12, 2007
per order of the Court _____
Presiding Judge