

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

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| IA TECHNOLOGIES, INC., | : | APPEAL NO. C-100203    |
|                        | : | TRIAL NO. A-1000808    |
| Plaintiff-Appellee,    | : |                        |
| vs.                    | : | <i>JUDGMENT ENTRY.</i> |
| BAY TECHNOLOGIES, LLC, | : |                        |
| Defendant-Appellant.   | : |                        |

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

Defendant-appellant Bay Technologies, LLC, (“Bay”) appeals the order of the Hamilton County Court of Common Pleas denying Bay’s motion to stay proceedings for arbitration.

This dispute arises out of a joint-venture agreement between Bay and plaintiff-appellee IA Technologies, Inc., (“IA”) to develop and market an oil-recovery product. IA sued Bay for breach of the joint-venture agreement and sought an accounting and declaratory relief. Bay moved pursuant to R.C. 2711.02(B) to stay the action for arbitration. The trial court denied the motion for a stay after determining that the joint-venture agreement did not contain an enforceable arbitration agreement.

In its sole assignment of error, Bay argues that the trial court erred by denying its motion to stay the proceedings for arbitration. The dispositive issue is whether paragraph

19 of the joint-venture agreement provides for a dispute-resolution procedure that amounts to “arbitration” as contemplated by R.C. Chapter 2711.

The interpretation of a written contract such as a joint-venture agreement is a matter of law that this court reviews de novo, without deference to the trial court’s determinations.<sup>2</sup> The fundamental principle in arbitration law is that a party cannot be compelled to arbitrate absent an actual agreement to do so.<sup>3</sup> The presumption in favor of arbitration does not apply when the parties dispute the existence of a valid arbitration agreement.<sup>4</sup>

The arbitration contemplated by R.C. Chapter 2711 is a dispute-resolution procedure that is final, binding, and without any qualification or condition as to the finality of the award.<sup>5</sup> The dispute-resolution procedure referred to in paragraph 19 of the joint-venture agreement does not meet this standard.

The heading of paragraph 19 refers to “arbitration and mediation,” and the first sentence of the paragraph involves only an agreement to submit disputes to the “American Arbitration Association.” That organization provides a variety of dispute-resolution services. Further, the second sentence of paragraph 19 retains the parties’ rights to resolve any dispute in court.

Bay implicitly concedes that paragraph 19 does not provide for a dispute-resolution procedure that is final, binding, and without any qualification or condition as to

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

<sup>2</sup> *Nationwide Mut. Fire Ins. Co. v. Guman Bros. Farm*, 73 Ohio St.3d 107, 108, 1995-Ohio-214, 652 N.E.2d 684; *Ignazio v. Clear Channel Broadcasting, Inc.*, 113 Ohio St.3d 276, 2007-Ohio-1947, 865 N.E.2d 18, ¶19.

<sup>3</sup> See *Council of Smaller Enterprises v. Gates, McDonald & Co.*, 80 Ohio St.3d 661, 665, 1998-Ohio-172, 687 N.E.2d 1352; *Henderson v. Lawyers Title Ins. Corp.*, 108 Ohio St.3d 265, 2006-Ohio-906, 843 N.E.2d 152, at ¶28.

<sup>4</sup> See *Council of Smaller Enterprises* at 666-667.

the finality of the award, when it argues that submission to the American Arbitration Association is only a preliminary condition to the right of the parties to fully litigate the dispute in court.

In sum, no part of paragraph 19 evinces the intent of the parties to submit a dispute arising under the joint-venture agreement to a dispute-resolution procedure that is final, binding, and without any qualification or condition as to the finality of the award.

Thus, we hold that paragraph 19 of the joint-venture agreement is not an enforceable arbitration clause as contemplated by R.C. Chapter 2711. Accordingly, the trial court did not err by denying Bay's motion, brought under R.C. 2711.02, to stay the proceedings pending arbitration.

We overrule the assignment of error and affirm the order of the trial court.

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.

**CUNNINGHAM, P.J., SUNDERMANN and MALLORY, JJ.**

*To the Clerk:*

Enter upon the Journal of the Court on December 8, 2010

per order of the Court \_\_\_\_\_.  
Presiding Judge

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<sup>5</sup> See *Medallion Northeast Ohio, Inc. v. SCO Medallion Healthy Homes, Ltd.*, 9th Dist. No. 23214, 2006-Ohio-6965, at ¶16, citing *Miller v. Gunckle*, 96 Ohio St.3d 359, 2002-Ohio-4932, 775 N.E.2d 475, at ¶10.