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**IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO**

CHRISTOPHER A. PRAIZNER
Plaintiff

Case No: CV-10-721574

Judge: BRENDAN J SHEEHAN



CLEATS RESTAURANTS
Defendant

JOURNAL ENTRY

88 BANKRPT/C.O.A. STAY - FINAL

OPINION AND JUDGMENT ENTRY. O.S.J.

Judge Signature

Date

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

CHRISTOPHER A. PRAIZNER,)	CASE NO. CV 10 721574
)	
Plaintiff,)	
)	
v.)	JUDGE BRENDAN J. SHEEHAN
)	
)	
CLEATS RESTAURANTS, LLC,)	
)	
Defendant.)	OPINION AND JUDGMENT ENTRY

This matter is before the Court on Defendant's Motion to Compel Arbitration and to Stay Litigation. The matter has been fully briefed and heard by the Court.

Plaintiff Christopher A. Praizner is a licensee of Defendant Cleats Restaurants, LLC. Plaintiff claims that Defendant has breached the license agreement. Plaintiff seeks monetary damages and injunctive relief. Defendant contends that Plaintiff first breached the terms of the license agreement and has moved the Court to stay the litigation pending arbitration of the dispute pursuant to the terms of the parties' License Agreement.

At issue is the arbitration clause contained in the License Agreement at issue, which provides in part:

In the event of a dispute between the parties with respect to the subject matter of this Agreement or any breach hereof, such dispute shall be determined and settled by binding arbitration in Cleveland, Ohio in accordance with the rules of the American Arbitration Association ("AAA"). The award rendered thereon by the arbitrator shall be final and binding upon the parties hereto and the judgment may be entered in any court of competent jurisdiction. Nothing in this Section 9.12 shall prevent: (A) either party from applying to a court of competent jurisdiction for equitable or injunctive relief, or (b) Licensor from seeking judgment under any cognovit promissory note delivered hereunder from a court of competent jurisdiction. Each disputing party shall

bear its own costs and expenses (including reasonable attorney fees) in connection with such arbitration.

License Agreement, Ex. A to Defendant's Motion, §9.12.

Pursuant to R.C. §2711.01 *et seq.*, an arbitration clause is enforceable to the extent it expresses the parties' intention to submit disputes to arbitration and the dispute is of the sort addressed in the arbitration agreement.

While the parties agree that the arbitration agreement applies to Plaintiff's breach of contract claim, they disagree as the remedy Plaintiff seeks and to the forum for arbitration. Plaintiff has requested permanent injunctive relief as one of the remedies for Defendant's alleged breach. While injunctive relief is excepted from the parties' arbitration clause, such relief is only appropriate if the arbitrator first determines that a breach has occurred. Accordingly, the underlying dispute must first be arbitrated and the Court can enter judgment and further relief as appropriate thereafter.

Defendant contends that the arbitration agreement requires the parties to arbitrate before the American Arbitration Association ("AAA"); Plaintiff disagrees. As with other contracts, parties may designate terms that are mutually agreeable. They are free to designate both, or either, procedural rules and the selected arbitration forum in their arbitration clauses. For example, AAA supplies the following arbitration clause template on its website that clearly requires arbitration by AAA under its rules:

Any controversy or claim arising out of or relating to this contract, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

American Arbitration Association website, www.adr.org.

Parties often designate only the procedural rules without specifying a particular forum to better control the timing and costs of arbitration. The Court finds that the agreement at issue clearly states that the arbitration shall proceed under AAA procedural but does not specify the forum in which the procedural rules will be applied.

Accordingly, the Court refers this case is stayed and referred to binding arbitration to be administered by court services. The arbitrator is to abide by AAA procedural rules and is to complete the arbitration by no later than November 19, 2010.

IT IS SO ORDERED.


JUDGE BRENDAN J. SHEEHAN

Dated: 9/7/10

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SEP 09 2010

By GERALD E. FUERST, CLERK Dep.


