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

BLUE TECHNOLOGIES SMART SOLUTIONS, LLC
Plaintiff

OHIO COLLABORATIVE LEARNING SOLUTIONS,
INC., ET AL
Defendant

Case No: CV-18-902719

Judge: CASSANDRA COLLIER-WILLIAMS

JOURNAL ENTRY

DEFENDANTS' OHIO COLLABORATIVE LEARNING SOLUTIONS, INC., ANAND JULKA, NEERAJ JULKA AND ANAND JULKA MOTION TO STAY AND TO COMPEL ARBITRATION, FILED 03/29/2019, IS DENIED. OPINION AND ORDER IS SIGNED AND ORDERED RECORDED. ORDER ATTACHED. OSJ.

OSJ

Judge Signature

Date

CLERK OF COURTS
CUYAHOGA COUNTY

2019 APR 11 P 4: 29

FILED

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

BLUE TECHNOLOGIES SMART SOLUTIONS, LLC.)

Plaintiff,)

vs.)

OHIO COLLABORATIVE LEARNING SOLUTIONS, INC., et al.)

Defendants.)

Case No. CV-18-902719

JUDGE CASSANDRA COLLIER-WILLIAMS

OPINION AND ORDER

JUDGE C. COLLIER-WILLIAMS:

This cause came for consideration upon Defendants’ Ohio Collaborative Learning Solutions, Inc., Anand Julka, Julka Irrevocable Trust, Julka Revocable Trust and Neeraj Julka (hereinafter “Defendants”) Motion to Stay and to Compel Arbitration, filed on March 29, 2019. Said motion requests the court to stay this litigation and to compel arbitration pursuant to Section 5.6 of the parties’ Asset Purchase Agreement and O.R.C. §2711.02 and 2711.03. Plaintiff filed its opposition to the motion on March 29, 2019. For reasons set forth more fully below, this Court hereby DENIES Defendants’ Motion to Stay and to Compel Arbitration.

I. FACTUAL AND PROCEDURAL BACKGROUND

Pursuant to the attendant briefs and record, on August 24, 2018, Plaintiff Blue Technologies Smart Solutions, LLC (hereinafter “Plaintiff”) filed the Complaint in this matter against Defendants. The matter was originally re-assigned from the Honorable Judge Pamela A. Barker to the Honorable Judge Maureen Clancy as commercial docket litigation. Plaintiff

simultaneously filed a Motion for Temporary Restraining Order and/or Preliminary Injunction. On September 13, 2018, Defendants filed their answer and counterclaim in this matter.

Notably, Defendants set forth six affirmative defenses without raising any right to arbitration pursuant to the contract and set forth affirmative claims in its Counterclaim pursuant to the contract.

Plaintiff filed an Amended Complaint on August 18, 2018, and Defendants' Motion for Leave to File Answer to Amended Complaint and Counterclaim was deemed filed on October 23, 2018. Defendants' answer and counterclaim again asserted the same six affirmative defenses and three causes of action with no mention of mandatory arbitration pursuant to the contract. The parties attended a case management conference and agreed to a case schedule, all while engaging in motion practice.

On January 15, 2019, a telephone conference was held and on January 17, 2019, Judge Clancy recused herself, and the case was transferred and re-assigned to Judge Cassandra Collier-Williams. The parties participated in a pretrial on February 7, 2019, and a new case schedule was ordered.

Defendants' current counsel filed a Notice of Substitution of Counsel on March 20, 2019. New counsel filed the current Motion to Stay and to Compel Arbitration at issue on March 29, 2019.

II. APPLICABLE LAW AND ANALYSIS

O.R.C. § 2711(B) provides, "If any action is brought upon any issue referable to arbitration under an agreement in writing for arbitration, the court in which the action is pending, upon being satisfied that the issue involved in the action is referable to arbitration under an

agreement in writing for arbitration, shall on application of one of the parties stay the trial of the action until the arbitration of the issue has been had in accordance with the agreement, provided the applicant for the stay is not in default in proceeding with arbitration.”

O.R.C. § 2711(C) provides in pertinent part, “An order under division (B) of this section that grants or denies a stay of a trial of any action pending arbitration, including, but not limited to, an order that is based upon a determination of the court that a party has waived arbitration under the arbitration agreement, is a final order and may be reviewed, affirmed, modified, or reversed on appeal.”

This Court is well aware that Ohio law and federal courts encourage arbitration to settle disputes. This Court also acknowledges that the parties in this case are bringing claims that were governed under a contract which included a valid arbitration clause. In this case, however, based on the totality of the circumstances, this Court finds that both parties waived any right to compel arbitration.

Pursuant to *Cantie v. Hillside Plaza*, 2014-Ohio-822, whether a party has waived their right to arbitrate is dependent on the facts of a particular case. To determine whether a defendant acted inconsistently with arbitration, the court should consider:

- (1) Any delay in the requesting party’s demand to arbitrate via a motion to stay judicial proceedings and an order compelling arbitration;
- (2) the extent of the requesting party’s participation in the litigation prior to its filing a motion to stay the judicial proceeding, including a determination of the status of discovery, dispositive motions, and the trial date;
- (3) whether the requesting party invoked the jurisdiction of the court by filing a counterclaim or third-party complaint without asking for a stay of proceedings;
- and (4) whether the non-requesting party has been prejudiced by the requesting party’s inconsistent acts.

The circumstances of the instant litigation lead this Court to a finding against Defendants with respect to all four factors to be weighed. Defendants filed their Motion to Stay

approximately seven months after Plaintiff filed its Complaint and Motion for Temporary Restraining Order and Preliminary Injunction, a significant delay. Defendants have extensively participated in the litigation from the onset, as described above. Defendants filed two answers and counterclaims without moving to stay or including the right to arbitrate as an affirmative defense. Lastly, Plaintiff raised its prejudice in its opposition to the current motion.

Simple judicial notice of the docket in this matter would indicate arbitration at this juncture would go against Ohio and federal policy favoring arbitration by adding costs and time to a case which has been heavily litigated.

CONCLUSION

Plaintiff's Motion to Stay and to Compel Arbitration is hereby DENIED. The Court hereby extends the discovery cutoff in this matter to May 24, 2019. A pretrial in this matter will be scheduled by further entry.

Pursuant to Civ. R. 54(B), there is no just reason for delay.

IT IS SO ORDERED.



JUDGE CASSANDRA COLLIER-WILLIAMS