

COMMONWEALTH OF MASSACHUSETTS

FRANKLIN, ss.

DISTRICT COURT DEPARTMENT  
OF THE TRIAL COURT  
ORANGE DIVISION  
DOCKET Nos. 0442 CV 0163  
and  
0442 CV 0164

MBNA AMERICA BANK NA,  
Plaintiff

v.

BARBARA F. TORCHIA,  
Defendant

**MEMORANDUM OF DECISION AND ORDER ON  
PLAINTIFF'S MOTIONS TO TRANSFER TO SUPERIOR COURT**

Background

MBNA AMERICA BANK NA is the plaintiff in two actions against BARBARA F. TORCHIA, the defendant and is seeking court judgements in each of the cases as above captioned by way of confirming arbitration awards made in its favor. In case 00042 CV 0163 which was entered in this court on July 13, 2004 the arbitration award subject to confirmation was \$9,004.07 and in case 0442 CV 0164 which was entered in this court on July 14, 2004 the arbitration award subject to confirmation award was \$5,839.07.

~~Since both parties and attorneys are the same in each case and the issues are also the same in each case for ease this one decision will pertain to both cases.~~

It should be noted that the defendant filed a Motion to Dismiss in case 0442 CV 0164 but it does not appear from the docket or filings that such a motion was filed in case 0442 CV 0163. However, the plaintiff did file an opposition requesting denial of the motion to dismiss for both

cases.

The plaintiff filed in each case a Motion to Transfer to Superior Court with an affidavit on the grounds that counsel has been informed that the District Court does not have jurisdiction to confirm an arbitration award.

I therefore held a hearing for arguments on whether the District Court has jurisdiction to confirm an arbitration and if it does not, can a District Court judge transfer the case to the Superior Court.

Those Motions to Transfer to Superior Court are the subject matter of this decision.

#### Discussion of Law

##### 1. Does the District Court have jurisdiction to confirm an arbitration award.

This question must first be reached because if the District Court has jurisdiction then there is no need to transfer the case. If it does not have jurisdiction, then a second question arises as to whether it has the authority to transfer the case to the Superior Court.

The arbitration of commercial disputes is governed by G.L. c. 251, secs. 1-19. Sec. 11 establishes with regard to confirmation of an arbitration award that "Upon application of a party, the court (my emphasis) shall confirm an award, unless . . ." Sec. 16 defines "court" as "any court of competent jurisdiction of this state." There is nothing in G.L. c. 251 that further defines the meaning of the word "court." However, sec. 17 specifically refers to the Superior Court when an initial application (to confirm an award) shall be made. As stated in *Karbowski v. Bradgate Associates, Inc.*, 25 Mass.App.Ct. 526, 528, 520 N.E.2d 504 (1988) that "Although that statute is nominally concerned with venue, it has strong jurisdictional overtones" and the court concluded that the District Court lacked jurisdiction to rule on a motion to vacate the arbitrator's award. Although *Bradgate* involves a motion to vacate an arbitrator's award and our case

involves a motion to confirm an award I find the cases to be analogous and I therefore conclude that the District Court lacks jurisdiction to confirm an arbitrator's award and that the proper court is the Superior Court.

Counsel for the plaintiff has brought to the court's attention the case of *Smith v. Baley*, 1996 Mass.App.Div. 153 where it was held by the Appellate Division of the District Court that the District Court did not have the authority to compel arbitration. That case is different from this case because sec. 2 of G.L. c. 251 with regard to compelling arbitration says that an aggrieved party may apply to the **superior** (my emphasis) court specifying the "superior court." However, I am still of the opinion that the whole statute has strong superior court jurisdictional overtones.

The issue that must further be raised is whether the one trial system as expanded to Franklin County by St. 2002, c. 70 (effective April 1, 2002) and any amendments thereto confers jurisdiction in the District Court to confirm arbitration awards. I am of the opinion that where the sole action is to confirm an arbitration award the District Court does not have jurisdiction.

There are cases that hold that a District Court subject to the one trial system may decide a claim which would normally fall within the exclusive jurisdiction of the Superior Court as long as at least one other claim in the same action is within the traditional jurisdiction of the District Court. See *Ravnikar v. Bogojavlensky* 438 Mass. 627, 634, 782 N.E. 2d 508, 513 (2003) and *Public Works Supply Company, Inc. v. Kevton Corporation, and others*, 2004 Mass.App.Div. 167. However, there are no cases that hold that a District Court has jurisdiction if the sole claim is within exclusive jurisdiction of the Superior Court. By innuendo the court in making strong mention of the fact that if there is a claim within the exclusive jurisdiction of the Superior Court and a claim within the traditional jurisdiction of the District Court, the District Court would have

jurisdiction of the whole matter, leads to the conclusion that if there is not a claim within the traditional jurisdiction of the District Court then the District Court has no jurisdiction. That is the case here. The sole claim here (to confirm an arbitration award) is within the exclusive jurisdiction of the Superior Court and therefore there is no District Court jurisdiction.

2. If the District Court does not have jurisdiction to confirm an arbitration award does it have the authority to transfer a proceeding initiated before it for such purpose to the Superior Court.

I have found no authority for such transfer within the General Laws or the Massachusetts Rules of Civil Procedure.

#### Conclusion

However, following the instructions of the Supreme Judicial Court in *Konstantopoulos v. Whately*, 384 Mass. 123, 129, 424 N.E. 2d 210, 215 ((1981), since there is a serious jurisdictional issue in this case I will not dismiss the complaint at this time for lack of jurisdiction but will ask the Chief Justice for Administration and Management to transfer this case to the Superior Court under G.L. c. 211B, section 9. See also footnote 3 in *Foster v. Evans*, 384 Mass. 687, 429 N.E. 2d 995 (1981) and *Nixon v. Levinson*, 20 Mass. App. Ct. 904, 906, 477 N.E. 2d 1046, 1048 (1985).

Dated: January 14, 2005.



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Herbert H. Hodos, Justice