

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

DAVID THOMAS, et al.)	CASE NO. CV-18-894146
)	
Plaintiffs)	JUDGE NANCY R. MCDONNELL
)	
vs.)	
)	
PARKVIEW CUSTOM HOMES, LLC)	ORDER GRANTING DEFENDANT'S
)	MOTION TO STAY LITIGATION
Defendant)	AND COMPEL ARBITRATION

Defendant Parkview Custom Homes, LLC ("Parkview") filed a Motion to Stay Litigation and Compel Arbitration on April 25, 2018. Plaintiff David Thomas, et al. ("Thomas") filed a Brief in Opposition to that Motion on May 2, 2018. Defendant's Motion is granted and the stay is hereby granted. The matter will proceed to arbitration for the following reasons.

Plaintiffs' complaint alleges a breach of construction contract by defendant Parkview. Paragraph 9 of the contract provides that all claims, breaches, defaults, disputes and damages relating to the contract would be subject to arbitration under the auspices of the Ohio Arbitration and Mediation Center. The Center is no longer in operation. The Thomas' argue that their complaint for breach of the construction contract cannot be arbitrated as a result and the case should proceed in the Court of Common Pleas.

As an initial matter, unquestionably, courts have long favored arbitration to settle disputes. ABM Farms, Inc. v. Woods (1997); 88 Ohio State 3d, 498, Kelm v. Kelm (1993), 68 Ohio State 3d 26, Southland Corp. v. Keating (1984), 465 U.S. 1, 104 S.Ct 852. Additionally, this preference as a means to resolve disputes is codified in ORC §2711.01.

In the instant matter it is correct that the contract in question indicates that any arbitration should proceed before the Ohio Arbitration and Mediation Center, an entity which apparently is no longer in existence. This fact does not render the arbitration clause unenforceable. In Moore v. Houses on the Move, Inc., et al., 177 Ohio App. 3d 585, 2008 Ohio 3552 the Eighth District Court of Appeals, relying on Ervin v. Am. Funding Corp. (1993), 89 Ohio App. 3d 519 opined “an arbitration agreement will be enforced unless the court is firmly convinced that (1) the clause is inapplicable to the dispute or the issue in question, or (2) the parties did not agree to the clause.” Both the Thomas’ and Parkview agreed to submit disputes such as the instant one to arbitration. The court in Moore, supra, upheld the agreement to arbitrate.

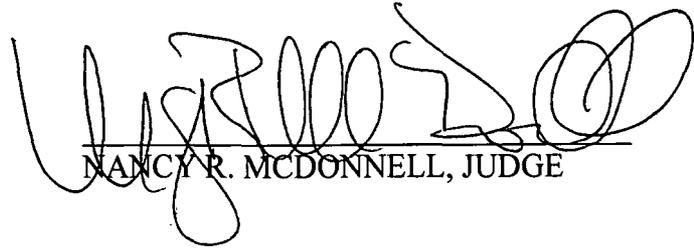
The Thomas’ argument that because the stated arbitration method is no longer available the clause is unenforceable is without merit. This argument was expressly overruled by the Eighth District Court of Appeals wherein the court, in considering a claim similar to the instant one, held “This provision plainly requires that the court appoint an arbitrator where the specified arbitration forum is no longer available.” Citraro v. Computer Training.com, Inc., 2013 Ohio 3249.

The Thomas’ cite a decision by a Common Pleas Judge wherein a stay of arbitration was denied on the same grounds in this case. Paulozzi, et al. v. Parkview Custom Homes, LLC, et al., Cuyahoga County Common Pleas Court Case No. CV-17-886650. A review of the docket shows this matter is currently pending before the Eighth District Court of Appeals. In another case in the Court of Common Pleas, Sack v. Parkview Custom Homes, et al., Case No. CV-17-877389, the trial judge granted the stay. The court indicated on the docket that if the parties could not agree on an arbitrator by a certain date the court would appoint one.

The decision in Sack, supra, is in line with both Moore and Citraro, supra.

For the foregoing reasons, the parties are ordered to mutually agree upon an arbitrator and notify the court in writing by **June 15, 2018**. Failure to do so will result in this court appointing an arbitrator. Arbitration to take place on or before **August 31, 2018**.

IT IS SO ORDERED.



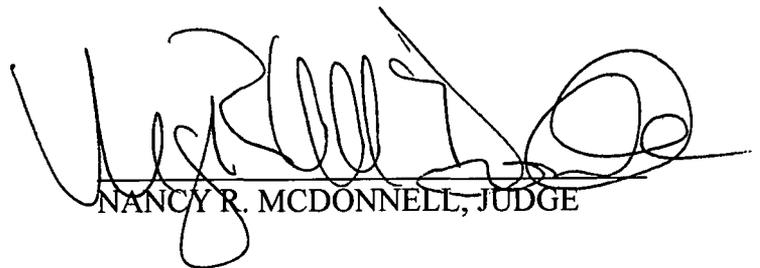
NANCY R. MCDONNELL, JUDGE

CERTIFICATE OF SERVICE

A copy of the foregoing Order Granting Defendant's Motion to Stay Litigation and Compel Arbitration was sent by ordinary U.S. Mail this 4th day of May, 2018 to:

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NANCY R. MCDONNELL, JUDGE