

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

DOUGLAS C. WISCH, :
 :
 Plaintiff, :
 :
 vs. : No. 3:04cv347(WWE)
 :
 FREEDOM YACHTS, INC., and :
 MARK EDWARDS, :
 :
 Defendants. :
 -----X

Ruling on Defendants' Motion to Stay [Doc. # 23]

Following this Court's denial of defendants' motion to dismiss on grounds of lack of personal jurisdiction and improper venue, defendants have now sought a stay of proceedings pursuant to the Federal Arbitration Act, 9 U.S.C. § 3,¹ ("FAA") based on a mandatory arbitration clause in the yacht purchase and sale agreement between the parties.

13. ARBITRATION OF DISPUTES: Any dispute, controversy or claim relating to this Agreement, including but not limited to the interpretation thereof, or its breach or

¹ Section 3 of the Federal Arbitration Act provides:

If any suit or proceeding be brought in any of the courts of the United States upon any issue referable to arbitration under an agreement in writing for such arbitration, the court in which such suit is pending, upon being satisfied that the issue involved in such proceeding is referable to arbitration under such an agreement, shall upon application of one of the parties stay the trial of the action until such arbitration has been had in accordance with the terms of the agreement, providing the applicant for the stay is not in default in proceeding with such arbitration.

existence which cannot be resolved amicably by the BUYER and SELLER shall be referred to arbitration, which shall be the sole and exclusive forum for resolution and settlement of any dispute, controversy, or claim between the parties. . . . The BUYER and SELLER further understand and agree that arbitration shall be the sole and exclusive forum for resolving any dispute, controversy or claim relating to this Agreement and that neither party shall resort to any court except to compel arbitration, refer questions of law or to confirm, vacate or modify any such award.

(Emphasis added). Defendants assert that each of plaintiff's claims arises directly from the purchase of a yacht under this agreement and, therefore, "relates to" the agreement and is covered by the mandatory arbitration clause.

As discussed in this Court's ruling on the motion to dismiss, this case involves a dispute over plaintiff's purchase of a 40-foot sailing yacht from defendants. Plaintiff alleges that defendants misrepresented the condition, construction, design, and quality of the yacht, and failed to repair and/or remedy various defects, for which he seeks to rescind the sale and recover damages. He has asserted various state common-law claims and claims under the Magnuson-Moss Warranty Act. There can be no question that each of his claims "relates to" the underlying purchase and sales agreement, and plaintiff does not argue otherwise. Rather, plaintiff seeks to avoid his contractual obligation to arbitrate based upon defendants' alleged bad faith delaying tactics in the parties' attempts to resolve this dispute and defendants' waiver of their right to

arbitrate based on their participation in this litigation.

Although the right to arbitration, like any other contract right, can be waived, see Steinberg & Lyman v. Takacs, 774 F. Supp. 885 (S.D.N.Y. 1991), here, defendants' limited participation through the filing of a motion to dismiss did not constitute a waiver. There has been no discovery nor other significant participation by defendants in the litigation. Moreover, defendants specifically stated in their memorandum in support of the motion to dismiss that they were reserving their right to invoke the arbitration clause.

With respect to defendants' alleged bad faith delaying tactics, the parties paint drastically different pictures of what transpired between them prior to plaintiff's instituting this lawsuit. Defendants claim they were simply engaging in good faith, amicable settlement discussions in an effort to resolve matters, as required by the arbitration clause. Plaintiff contends that defendants pursued a one-year "path of delay" that prejudiced plaintiff who was left with a yacht that he could not sell or trade.

Even if the Court credits plaintiff's version of the facts, the Court finds that this delay by defendants in seeking arbitration did not constitute a waiver by defendants of their right to arbitrate nor has plaintiff been materially prejudiced. The language in the contract is unequivocal and unambiguous. The

Supreme Court has held that, under the FAA, "any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration, whether the problem at hand is the construction of the contract language itself or an allegation of waiver, delay, or a like defense to arbitrability." Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp., 460 U.S. 1, 24-25 (1983). The FAA is an expression of "a strong federal policy favoring arbitration as an alternative means of dispute resolution." Hartford Accident & Indem. Co. v. Swiss Reinsurance Am. Corp., 246 F.3d 219, 226 (2d Cir. 2001).

Accordingly, the Court grants defendants' motion to stay this litigation until the conclusion of the arbitration proceedings. The parties are directed to submit this dispute to arbitration in accordance with the arbitration clause of the purchase and sale agreement. This case will remain open and the parties are directed to file a joint status report with the Court every six months, advising the Court as to the progress of the arbitration and an estimated date of completion.

SO ORDERED, this 31st day of December, 2004, at Bridgeport, Connecticut.

_____/s/_____
Warrren W. Eginton,
Senior United States District Judge