

STATE OF MAINE  
CUMBERLAND, ss

BUSINESS AND CONSUMER COURT

Location: Portland

Docket No.: BCD-CV-11-25

JCN - cum - 3/2/12



HL 1, LLC and SHIPYARD BREWING  
COMPANY, LLC,

Plaintiffs,

v.

RIVERWALK, LLC; RIVERWALK  
VENTURE, LLC; OCEAN GATEWAY  
GARAGE, LLC; OG GARAGE  
VENTURE, LLC; PENNBROOK  
PROPERTIES, II, LLC;  
INTERCONTINENTAL FUND IV  
OCEAN GATEWAY, LLC;  
INTERCONTINENTAL REAL ESTATE  
INVESTMENT FUND IV, LLC; and  
INTERCONTINENTAL REAL ESTATE  
CORP.,

Defendants

PENNBROOK PROPERTIES, II, LLC;  
INTERCONTINENTAL FUND IV  
OCEAN GATEWAY, LLC;  
INTERCONTINENTAL REAL ESTATE  
INVESTMENT FUND IV, LLC; and  
INTERCONTINENTAL REAL ESTATE  
CORP.,

Third-party Plaintiffs,

v.

FRED M. FORSLEY and OGG, LLC,

Third-party  
Defendants

**ORDER**  
(Motion for Clarification/  
Motion to Amend Complaint)

Entered on the Docket: 3-6-12  
Copies sent via Mail \_\_\_ Electronically



*Macomber v. MacQuinn-Tweedie*, 2003 ME 121, ¶ 14, 834 A.2d 131. Substantive arbitrability is simply “whether the parties intended to submit the dispute to arbitration.” *Roosa v. Tillotson*, 1997 ME 121, ¶ 2, 695 A.2d 1196. Because the First Amended Complaint includes claims that are “in connection with” the Riverwalk and OGG Operating Agreements, the Court concluded that, pursuant to the parties’ agreements, HL 1 and Pennbrook must arbitrate their dispute.

In essence, HL 1 and Shipyard’s request for clarification of the Order is a request for the Court to define the scope of the arbitration clause. The Law Court has explicitly stated that

[i]t is the arbitrator who should first decide the scope of arbitration pursuant to the contract. Although we have held that the final decision on the question of substantive arbitrability is the function of the court, not the arbitrator, the arbitrator must initially determine whether the claims fall within the scope of the arbitration clause. The court cannot make such a determination without the benefit of a factual record.

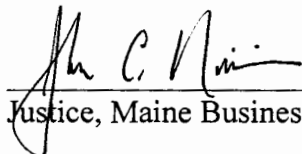
*Orthopedic Physical Therapy Ctr., P.A., v. Sports Therapy Ctrs, Ltd.*, 621 A.2d 402, 403 (Me. 1993) (quotation marks and citation omitted). An in depth analysis of the precise scope of an arbitration clause is thus more properly addressed in arbitration with the development of a full factual record.

Based on the foregoing, the Court orders as follows:

1. Plaintiffs’ motion to clarify is GRANTED, consistent with the analysis in this Decision and Order.
2. Because the Court has stayed the action pending the arbitration decision, the Court will not address Plaintiffs’ Motion to Amend. Plaintiffs can renew the motion if they wish to prosecute it upon the Court’s removal of the stay.

Pursuant to M.R. Civ. P. 79(a), the Clerk shall incorporate this Decision and Order into the docket by reference.

Date: 3/2/12

  
\_\_\_\_\_  
Justice, Maine Business & Consumer Court

CV-11-25 HL1 et al v. Riverwalk et al.

For Plaintiffs – HL1 & Shipyard Brewing  
David Johnson, Esq.  
Lee Bals, Esq.  
Marcus Clegg & Mistretta PA  
One Canal Plaza, Ste 600  
Portland ME 04101-4600

For Riverwalk LLC, Riverwalk Venture, LLC & OGG LLC:  
Timothy Norton, Esq.  
U. Charles Remmel II, Esq.  
Kelly Remmel & Zimmerman  
53 Exchange St  
PO Box 596  
Portland ME 04112-0597

Pennbrook Properties  
Seth Brewster, Esq.  
Benjamin Ford, Esq.  
Verril Dana  
One Portland Square  
PO Box 586  
Portland ME 04112

Intercontinental Defendants  
Paul Driscoll, Esq.  
David Goldman, Esq.  
Norman Hanson & DeTroy  
415 Congress St  
PO Box 4600  
Portland ME 04112