

STATE OF MAINE

YORK, ss.

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SUPERIOR COURT
CIVIL ACTION
Docket No. CV-05-182

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OUTLOOK FARM GOLF CLUB, LLC,
d/b/a THE LINKS AT OUTLOOK
GOLF COURSE,

CLERK OF SUPERIOR COURT
YORK COUNTY, MAINE

Plaintiff,

v.

ORDER

C AND J LEASING CORP. and
ROYAL LINKS USA, INC.,

Defendants.

The plaintiff owns and operates a golf course in York County, Maine and entered into separate though related agreements for the lease of golf course beverage carts and the placing of advertisements on the carts. It appears that the defendant Royal Links USA, Inc. failed to make payments to the plaintiff who then failed to make payments to the defendant C and J Leasing Corp. C and J has sued Outlook in the state courts in Polk County, Iowa where the case is pending. Royal Links is reported to have filed for bankruptcy.

In this case Outlook has brought a suit which contains a count for fraud against C and J, a count for breach of contract against Royal Links, a petition for declaratory judgment seeking, in an indirect way, to force its dispute with C and J to be resolved in Maine rather than in Iowa and a claim based upon unfair trade practices. C and J has filed an amended motion to dismiss.

The lease provides that, "This lease shall be governed by the laws of Iowa. Any legal action concerning this lease shall be brought in state court located within or for Polk County, Iowa. You consent to the jurisdiction and venue of state courts in Iowa."

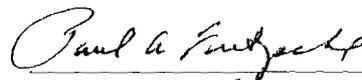
The plaintiff has argued that it is unfair and costly for it to defend the suit in Iowa. While those claims may be true, there is no indication that it is illegal to require Outlook to defend and bring its counterclaim in Iowa.

The plaintiff has cited Barrett v. McDonald Investments, Inc., 2005 ME 43. Barrett involved the question of whether an arbitration requirement was ambiguous and whether it should be enforced. The concerns of the majority and particularly the concurring opinion in Barrett are not applicable here. Unlike Barrett, there is no evidence that C and J was "a contracting party with a significantly superior bargaining position." ¶ 25, or that the Iowa courts would be anything other than completely fair in contrast to the abuses that sometimes occur in arbitration proceedings. See ¶ 33. As Outlook agreed to proceed in Iowa, as Outlook had equal bargaining power in a non-consumer agreement and since a court will be involved the choice of jurisdiction should be enforced.

The entry is:

Amended motion to dismiss is granted. Those portions of the complaint directed against C and J Leasing Corp. are dismissed.

DATED: November 8, 2005



Paul A. Fritzsche
Justice, Superior Court

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