

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

G.S. STRATEGIES LLC,)
)
 Plaintiff,)
)
 v.) Civil Action No. 00-770-SLR
)
 JOCKEY CLUB ELDORADO - RS,)
)
 Defendant.)

MEMORANDUM ORDER

At Wilmington this 12th day of July, 2002, having reviewed defendant's motion to dismiss, or in the alternative, to stay pending arbitration (D.I. 21);

IT IS ORDERED that defendant's motion is denied for the reasons that follow:

1. On August 22, 2000, plaintiff GS Strategies LLC filed this action against defendant Jockey Club Eldorado - RS for breach of contract arising out of a Loan Agreement between plaintiff and defendant.

2. Prior to execution of the Loan Agreement, defendant and Las Vegas Entertainment Network, Inc. ("LVEN") signed a Letter of Intent dated February 9, 2000 which provided, inter alia, that LVEN would provide \$2 million to defendant for the expansion of its business. (D.I. 22, Ex. B) In conjunction with the Letter of Intent, LVEN and plaintiff planned to form a joint venture to purchase substantially all of defendant's stock. (D.I. 28, Ex. C

at ¶ 7) The Letter of Intent contained an arbitration clause, providing that "any dispute shall be resolved by arbitration in London in accordance with the rules of commercial arbitration and the law of arbitration shall be the International Arbitration Act of 1994." (D.I. 22, Ex. B)

3. On or about April 14, 2000, plaintiff and defendant entered into the Loan Agreement, which provides for the first \$200,000 installment in the larger \$2 million transaction. (D.I. 22, Ex. A) The Loan Agreement does not contain an arbitration clause, and provides that the parties "irrevocably consent" to the jurisdiction of the Delaware state and federal courts. (Id.) The Loan Agreement contains only two references to the Letter of Intent:

Background. . . . Lender desires to borrow the principal sum of U.S. \$200,000 to begin its expansion plan, as an advance payment on account of the sum of U.S. \$2,000,000 anticipated to be provided to Borrower as described in Paragraph II of the letter of intent dated February 8, 2000, among LVEN, Borrower and MG Marketing Promotions and Events LTDA (the "Letter of Intent"), and Lender is willing to lend such sum to Borrower, on and subject to the terms and conditions of this Agreement.

. . .

Section 3. Repayment of Loan.

(a) At the time of the consummation of the sale of Owner's member titles in Borrower to a Brazilian entity to be formed by LVEN and persons affiliated with Lender, the unpaid principal of the Loan and Note will be credited towards and will become part of the

U.S. \$2,000,000 amount to be provided to Borrower as contemplated by Paragraph II of the Letter of Intent.

(D.I. 22, Ex. A)

4. The court finds that the Loan Agreement does not, explicitly or implicitly, incorporate the arbitration clause contained in the Letter of Intent. Thus, the court cannot compel the parties to submit to arbitration. See, e.g., Watkins Engineers & Constructors, Inc. v. Deutz, AG, No. 3:01CV1147-M, 2001 WL 1545738, at *2 (N.D. Tex. Dec. 3, 2001) ("Because the Guarantee does not expressly contain a written agreement to arbitrate or specifically incorporate by reference an agreement in any other contract, it, alone, cannot serve as a basis for the Court to compel the parties to arbitration.").

IT IS FURTHER ORDERED that defendant's motion to stay discovery pending arbitration (D.I. 23) is denied as moot.

Sue L. Robinson
United States District Judge