

Gray and Associates, LLC, Trustee under the Litigation Trust established pursuant to the reorganization plan of Sunterra Corporation, et al v. *Ernst and Young, LLP*, Case No. 24-C-02-0293, 2003 MDBT 2 (Circuit Court for Baltimore City)(June 11, 2003)(per Albert J. Matricciani, Jr.)

The Court ruled on the parties' cross motions for a stay pending arbitration and a stay of arbitration. This ruling followed the court's granting a temporary stay of arbitration on January 30, 2003 until it determined whether a valid and enforceable arbitration agreement had been made. The plaintiff's argument rested on two theories: (1) the arbitration provisions in a May 1990 agreement were unenforceable because the defendant made material misrepresentations and/or concealed facts to induce the plaintiff to enter into the agreement; and (2) the arbitration provisions were obtained by constructive fraud.

Held: The Court held that the May 1998 arbitration/mediation agreement was valid and enforceable. Plaintiff's remaining contentions must be resolved by those arbitration/mediation provisions.

Synopsis: In order to show fraud or deceit, the plaintiff must demonstrate by clear and convincing evidence (1) that the defendant made a false representation to the plaintiff; (2) its falsity was either known by the defendant or made with reckless disregard for the truth; (3) the plaintiff rightfully relied on the representation; and (4) compensable injury resulted. To show constructive fraud, the plaintiff must show a fiduciary relationship.

Plaintiff failed to meet the clear and convincing standard of proof for fraud. The evidence does not show that material facts were misrepresented or concealed from plaintiff. Nor was there any evidence that the fraud related specifically to the arbitration/mediation clause in this contract; even assuming that material facts were misrepresented or concealed, the evidence did not support a particularized purpose to obtain an agreement to submit to arbitration.

As to the constructive fraud argument, the evidence failed to show by clear and convincing evidence that the arbitration provision was fraudulently obtained. The parties were sophisticated entities contracting on equal footing.

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