UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

JUDGE PETER J. WALSH

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September 28, 2001

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Re: Beloit Corporation v. Asia Pulp & Paper Company, Ltd.; P.T. Indah Kiat Pulp & Paper Corporation TBK; A.V. Dawson, Ltd.; Kusters Beloit Corporation LLC; Morris Export Crating Company; and Transpak Corporation
Adv. Proc. No. 01-927

Dear Counsel:

This is the Court's ruling on the motion of defendants Asia Pulp & Paper Company, Ltd. and P.T. Indah Kiat Pulp & Paper Corporation TBK to dismiss the complaint or stay this adversary proceeding (Doc. # 10). For the reasons briefly discussed below,

I will grant the motion to stay this adversary proceeding pending the outcome of arbitration of the dispute.

The essential facts are not in dispute. Asia Pulp & Paper Company, Ltd. and P.T. Indah Kiat Pulp & Paper Corporation TBK (collectively, "APP") entered into an agreement with Beloit Corporation ("Beloit") in 1996 whereby APP agreed to purchase two paper making machines from Beloit. In connection with the manufacturing of those machines, Beloit entered into purchase orders with third party vendors for materials, machine parts and equipment necessary to make the machines. The other four named defendants (A.V. Dawson, Ltd., Kusters Beloit Corporation LLC, Morris Export Crating Company and Transpak Corporation) are such third party vendors.

The relationship between APP and Beloit deteriorated and in December 1998 the parties commenced arbitration in Singapore concerning various disputes. On June 7, 1999 Beloit filed its Chapter 11 petition in this Court. While the arbitration was pending, the parties agreed to settle their dispute pursuant to a Deed of Settlement (the "Deed") dated March 3, 2000. Pursuant to Rule 9019, the Court approved the settlement as set forth in the Deed on March 22, 2000.

The Deed provides that arbitration is the sole and exclusive means of resolving any disputes arising out of the settlement. Specifically, Section 17 of the Deed provides, in

relevant part:

> The parties agree that all disputes arising out of or in connection with this Deed (including any queries regarding its existence, validity or termination)... shall exclusively be referred to and finally resolved by arbitration in Singapore in accordance with the Arbitration Rules of Singapore International Arbitration Centre for the time being in force, which rules shall be deemed to be incorporated by reference into this Clause.... The decision of the arbitrators shall be final and binding and may be used (without limitation) as a basis for judgement in any country which has ratified in 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

(Deed § 17.)(Emphasis added.)

On April 6, 2001 Beloit commenced this adversary proceeding by filing a six count complaint against APP and the four other defendants. According to the complaint: (a) under the terms of the Deed APP and Beloit agreed that APP could, but was not obligated to, take title and possession of certain paper machine parts in the possession of Beloit, Beloit's affiliates, Beloit's vendors, and others, provided that APP complied with certain provisions of the Deed, (b) there was a six month period during which APP had to satisfy its Deed obligations and (c) the Deed obligated APP to satisfy certain conditions for obtaining any desired machine parts, including the payment of necessary cure amounts and storage costs. The complaint alleges that "APP has failed to meet the conditions that were required by the Deed for APP to obtain any desired machine parts. APP's failure under the Deed include, without limitation, nonpayment of cure amounts

and storage fees." (Complaint ¶ 21).

The complaint contains six counts. Four of the counts relate to the above named four defendant vendors who apparently hold machinery or equipment which was purchased for the performance of the contract. Essentially, as to those four counts Beloit claims that APP's failure of performance includes its failure to pay the vendors the cure amounts and storage costs, resulting in the title and right of possession of those goods to be in dispute. The fifth count relates to materials which Beloit placed in storage in Canada and as to which, according to the complaint, APP has made representations that it owns those materials. According to the complaint, Beloit's dispute with APP results in a cloud on the title of the materials identified in the five counts. The sixth count is a request for authority to assume the purchase orders related to the disputed materials.

The motion papers devote considerable effort to the question of whether the complaint states causes of action which constitute core or non-core matters, with Beloit asserting the former and APP asserting the latter. I do not believe that it is necessary to resolve that question because I believe that Beloit should be required to do what it contracted to do and what it sought this Court's approval to do, namely, arbitrate any dispute arising out of the Deed's terms of settlement. The Deed was

presented to the Court for approval pursuant to the dispute settlement provisions of Rule 9019. The parties obviously negotiated the terms of the Deed at arms length and the mandatory arbitration clause is unequivocally clear that all disputes arising out of or in connection with the settlement are to be resolved exclusively by arbitration.

The fact that this agreement was effected during the pendency of the case does not, in my view, support an argument that this Court should take jurisdiction over this matter pursuant to 28 U.S.C. § 157(b)(2)(A) concerning administration of the estate. Indeed, I believe it would be quite inappropriate for this Court to ignore the mandatory arbitration provision after having had the parties present it to me as an agreed term of the settlement. Beloit, as a debtor in possession at the time of the Deed approval, being consciously and fully informed on the matter agreed that this Court should not be the forum for resolving any disputes arising out of the parties performance of the settlement terms. I know of no reason why I should now nullify that consensual arrangement.

In Hays and Co. v. Merrill Lynch, 885 F.2d 1149 (3rd Cir. 1989) the bankruptcy courts were directed to give deference to arbitration obligations in the following language:

> The message we get from these recent cases is that we must carefully determine whether any underlying purpose of the Bankruptcy Code would be adversely affected by enforcing an arbitration clause and that we should

> enforce such a clause unless that effect would seriously jeopardize the objectives of the Code.

Hays, 885 F.2d at 1161.

In directing that this matter be arbitrated, I believe that not only is the purpose of the Bankruptcy Code not being adversely affected, but indeed the integrity of the process is being preserved.

Beloit complains that the matter could be expeditiously resolved in this Court versus an arbitration in Singapore. Given this Court's heavy caseload and given the absence of any facts of record regarding the arbitration process in Singapore, Beloit has not sustained any burden of proof on this position.

I am equally not persuaded by Beloit's argument that the inclusion of the four vendors as defendants to the complaint and the fact that they, and an additional nondefendant party, hold goods to which Beloit claims title and right of possession warrants disregard of the arbitration clause in favor of this Court presiding over the matter. It is quite obvious that the only real dispute here is between Beloit and APP. Once that dispute is resolved and appropriate amounts are paid to the third party vendors and the storage company, this matter can be concluded. While I have not examined the answers filed by the four vendor defendants, I presume that they simply wish to have Beloit and APP resolve their differences and be paid their cure and storage obligations--with the result of releasing the

materials to the appropriate owner, either APP or Beloit.[1]

With respect to the sixth count of the complaint, namely, a request for authority to assume purchase orders pursuant to Bankruptcy Code § 365, I suspect that this count was thrown into the complaint to create an argument for labeling this matter as a core proceeding, not subject to the arbitration provision of the Deed. When the dispute between APP and Beloit is finally resolved and the obligations for the appropriate cure amounts and storage payments are determined, Beloit can easily file a § 365 motion to assume the purchase orders. Beloit's counsel knows (or should know) that one does not need an adversary proceeding to achieve that result.

For the above stated reasons, defendants Asia Pulp and Paper Company, Ltd. and P.T. Indah Kiat Pulp & Paper Corporation TBK's motion (Doc. # 10) for a stay of this adversary proceeding pending the conclusion of the arbitration pursuant to Section 17 of the Deed of Settlement is granted.

Very truly yours,

Peter J. Walsh

PJW:ipm

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[1] None of the four vendor defendants have filed papers taking a position on the motion sub judice. This suggests to me that those defendants have no interest in the issue of what forum the dispute between Beloit and APP is resolved.

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE:	)	Chapter 11
	)	
HARNISCHFEGER INDUSTRIES, INC., et al.,	)	Case No. 99-2171 (PJW) Jointly Administered
	)	
Debtors.	)	
	)	
BELOIT CORPORATION,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Adv. Proc. No. 01-927
	)	
ASIA PULP & PAPER COMPANY, LTD.; P.T. INDAH KIAT PULP & PAPER CORPORATION TBK; A.V. DAWSON, LTD.; KUSTERS BELOIT CORPORATION, LLC; MORRIS EXPORT CRATING COMPANY; and TRANSPAK CORPORATION,	)	
	)	
Defendants.	)	

ORDER

For the reasons set forth in the Court's letter ruling of this date, the motion (Doc. # 10) by Asia Pulp and Paper Company, Ltd. and P.T. Indah Kiat Pulp & Paper Corporation TBK for a stay of this adversary proceeding pending the conclusion of the arbitration pursuant to Section 17 of the Deed of Settlement is GRANTED.

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Peter J. Walsh
United States Bankruptcy Judge

Date: September 28, 2001