UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF NEW YORK

IN RE:

AGWAY, INC.

Debtor

CASE NO. 02-65872 through 02-65877
Chapter 11
Jointly Administered

IN RE:

AGWAY GENERAL AGENCY, INC.

Debtor

IN RE:

BRUBAKER AGRONOMIC CONSULTING SERVICE LLC

Debtor

IN RE:

COUNTRY BEST ADAMS, LLC

Debtor

IN RE:

COUNTRY BEST-DEBERRY LLC

Debtor

IN RE:

FEED COMMODITIES INTERNATIONAL LLC

Debtor

APPEARANCES:

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Hon. Stephen D. Gerling, Chief U.S. Bankruptcy Judge

MEMORANDUM-DECISION, FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Before the Court is a motion filed by D. Clark Ogle, Trustee of the Agway Liquidating Trust (the "LT") on January 9, 2006, seeking an Order approving an arbitration award granted to Vaughn and Mary Sleeper d/b/a Sleeper Farms (the "Sleepers"), against the Agway Liquidating Trust ("Agway" or the "Debtors"). The Sleepers responded on January 19, 2006, by filing an untimely cross-motion for relief from the automatic stay, pursuant to § 362(d)(1) of the Bankruptcy Code, 11 U.S.C. § § 101-1330 ("Code"), in which they requested that the Court hold or adjourn the LT's motion until the United States Court of Appeals for the First Circuit ruled on the Sleepers' appeal of a decision by the United States District Court for the District of Maine ("Maine District Court").[1] On February 7, 2006, the Sleepers filed a motion for relief from the

[1]The Court does not condone the use of "cross-motions." Neither the Court's Local Rules. nor the Federal Rules of Bankruptcy Procedure, permit a cross motion for relief from the automatic stay. A cross-motion is not a proper pleading, and it fails to provide interested parties with the requisite fifteen days notice of the motion. Additionally, it would allow parties to avoid paying the $150 filing fee required for such a motion. *See In re III Enters., Inc. V,* 163 B.R. 453, 458 (Bankr. E.D. Pa. 1994); *In re Summit Airlines, Inc.,* 94 B.R. 367, 369 (Bankr. E.D. Pa. 1988).

automatic stay, pursuant to Code § 362(d)(1), which would allow them to appeal the Maine District Court decision, as well as file a motion with the Maine District Court to vacate the arbitrator's decision.

The Court initially heard the LT's motion on January 31, 2006, at its regular motion term in Binghamton, New York, and then heard both the LT's motion and the Sleepers' February 7th motion on February 23, 2006. The Court adjourned both the motions to the March 30, 2006, motion term to permit the parties to file supplemental affidavits. Upon conclusion of the March 30th oral argument, the Court reserved decision on the motions.

JURISDICTION

The Court has core jurisdiction over the parties and subject matter of these contested matters pursuant to 28 U.S.C. §§ 1334 and 157(a), (b)(1), and (b)(2)(B).

FACTS

The Sleepers own and operate a potato farm in Maine. From 1998 to 2000, the Sleepers received, signed, and returned eight orders from Agway to purchase the Sleepers' potatoes. On February 22, 2002, the Sleepers filed a complaint in the Maine District Court seeking damages against Agway and several of its employees for, inter alia, negligent misrepresentation, fraud, breach of contract, unilateral price adjustments, mislabeling, tying, interference with quality and advantageous economic relationships, rejection without notice, right to inspection and cure, market control, and waste. Agway denied these allegations. On July 1, 2002, the Maine District

Court found that the parties had entered into an agreement to arbitrate. *Sleeper Farms v. Agway, Inc.*, 211 F.Supp.2d 197, 203 (D. Maine 2002). The Maine District Court stayed the Sleepers' complaint pending the arbitration. *Id.* The court referred the dispute to an arbitrator to determine: (1) what issues contained in the Sleepers' complaint, or raised by the Sleepers as defenses to the purchase orders, are covered by the arbitration clause; (2) what issues, if any, are not covered by the arbitration clause and should remain for the court to decide; and (3) the merits of the issues that are covered by the arbitration clause. *Id.*

On October 1, 2002, the Debtors filed for chapter 11 bankruptcy relief. In connection with the Maine District Court complaint, the Sleepers filed a proof of claim (claim number 869) in the chapter 11 case on January 17, 2003, against the Debtors for $28,737,845.99 plus interest "to be determined at the federal rate." On August 27, 2004, the LT filed a motion seeking to expunge the proof of claim. The Court then issued a Consent Order on October 21, 2004, finding that the claim is a disputed claim and modifying the automatic stay to allow the Sleepers and the Debtors "to fully adjudicate and determine the amount of the claim in an American Arbitration Association proceeding in Syracuse New York pursuant to the United State District Court, District of Maine Order dated July 1, 2002 . . . ." The Sleepers and the Debtors then entered into a Stipulation, dated May 18 and May 27, 2005, respectively, in which the parties stipulated "that all issues of liability and damages contained within Sleeper Farm's Complaint filed in United States District Court for the Northern (sic) District of Maine, Docket No. CN-02-35-B-S, shall be determined through arbitration in this forum."

The arbitration took place from August 23-25, 2005, and the arbitrator issued his decision on December 16, 2005, in which he awarded the Sleepers $82,459.19 in damages and $20,040.51

in arbitration fees and expenses, for a total of $102,488.70 ("Arbitration Decision"). The arbitrator held that the award is in full settlement of all claims and counterclaims submitted to the arbitration. He also declared that "[a]lthough the scope of the arbitration was left open by the [Maine District] Court, the parties stipulated that the Arbitrator shall have jurisdiction over all parties with respect to all issues raised by the claim of Agway and by the counterclaims of the Sleepers."

On January 9, 2006, the LT filed the instant motion in this Court to approve the Arbitration Decision. On January 11, 2006, the Sleepers filed a motion to vacate the Arbitration Decision in the Maine District Court. The next day (January 12, 2006), Agway filed a motion in the Maine District Court to dismiss the Sleepers' original complaint. On January 17, 2006, the Sleepers filed an appeal of the Maine District Court decision with the U.S. Court of Appeals for the First Circuit. On February 7, 2006, approximately three weeks later, the Sleepers filed their motion in this Court for relief from the automatic stay to allow them to appeal the Maine District Court decision and to file a motion with the Maine District Court to vacate the Arbitration Decision. However, the Sleepers advised the Court during oral argument on March 30, 2006, that they withdrew their appeal to the First Circuit Court of Appeals.

ARGUMENTS

The Sleepers contend that the Arbitration Decision was the result of a manifest disregard of law and was based in material part upon fraudulent evidence offered by the Debtors. In addition, they argue that the arbitrator did not follow the Maine District Court's findings of fact

in that court's *Sleeper Farms* decision. They also assert that in the first instance, the Maine District Court erred in finding that Agway had not waived its right to arbitration. The Sleepers initially argued that it would be appropriate that the First Circuit decide the issue of whether Agway had waived its right to arbitration. They further contend that for reasons of efficient resolution, the Maine District Court should be the forum to hear the motion to vacate because it would be a burden to the potential witnesses if they had to travel to Syracuse, New York, for a hearing before this Court. The Sleepers also assert that the Maine District Court should be allowed to complete the trial-level adjudication of their complaint, which is pending on the Maine District Court's docket.

The LT asserts that the Court must fix the Sleepers' claim as an unsecured claim that does not exceed $102,488.70. The LT contends that the Court's approval of the Arbitration Decision is in the best interest of the Debtors' estate because it will incorporate the Decision into the claims resolution process as outlined by the Debtors' liquidation plan and the Code. Additionally, the LT asserts that the Arbitration Decision benefits the Debtors because it reduces the $28,737,845.99 claim filed by the Sleepers. The LT argues that by agreeing to the Consent Order and signing the Stipulation, the Sleepers relinquished their opportunity both to challenge the Maine District Court Order and to return to the Maine District Court to determine issues that the arbitrator considered as being outside the scope of the arbitration agreement. The LT asserts that the Sleepers consented to their claim being administered by the Court following the arbitration's conclusion, and that this consent rendered the action in the Maine District Court moot. Additionally, the LT contends that the Sleepers' attempt to appeal the Maine District Court Order was both an impermissible interlocutory appeal and a violation of the automatic stay. The

LT asserts that the Arbitration Decision was not a manifest disregard for the law. Finally, the LT argues that there is a limited basis on which a court may decide to vacate an arbitration award and that the Sleepers failed to meet those requirements.

DISCUSSION

The issue facing this Court is straightforward: whether this Court should confirm the arbitrator's award, deny the award so as to permit the Sleepers to continue with their motion in the Maine District Court to vacate the Arbitration Decision, or abstain altogether. The Maine District Court found that the Federal Arbitration Act, 9 U.S.C. § 1 - § 307 ("FAA"), governed the parties' arbitration agreement. *Sleeper Farms*, 211 F.Supp. at 200. The Maine District Court also determined that the Sleepers received, signed and returned eight purchase orders from Agway between 1998 and 2000. Each order arrived by mail, usually with an enclosure labeled "Agway Sales Contract." The enclosure described various terms and conditions of sale between parties designated "Buyer" and "Seller," and contained an arbitration provision that read:

> The parties to this Contract agree that the sole remedy for resolution of any and all disagreements or disputes arising under this Contract shall be through arbitration in accordance with the rules of the American Arbitration Association, Syracuse, New York. The decision and award determined through such arbitration shall be final and binding upon the buyer and seller. Judgment upon the arbitration award may be entered and enforced in any Court having jurisdiction thereof.

Id. at 199.

Section 9 of the FAA governs venue for the confirmation of arbitration awards. It states,

in part, the following:

> If the parties in their agreement have agreed that a judgment of the court shall be entered upon the award made pursuant to the arbitration, and shall specify the court, then at any time within one year after the award is made any party to the arbitration may apply to the court so specified for an order confirming the award, and thereupon the court must grant such an order unless the award is vacated, modified, or corrected as prescribed in sections 10 and 11 of this title. If no court is specified in the agreement of the parties, then such application may be made to the United States court in and for the district within which such award was made.

In *Cortez Byrd Chips, Inc. v. Bill Harbert Construction Co.*, 529 U.S. 193, 198 (2000), the Supreme Court considered whether the word "may," as used in the FAA's venue provisions of §§ 9, 10, and 11, is permissive or mandatory. The Supreme Court held that it is permissive and that a motion to confirm, vacate, or modify an arbitration award may be brought in any district court where venue is proper under the general venue statute. *Id.* at 195. In the instant case, the parties' arbitration agreement did not specify the court that would enter a judgment upon the arbitration award. Therefore, the LT *may* file his motion to confirm the arbitrator's award in the "United States court in and for the district within which such award was made." In *Crysen/Montenay Energy Co.* v. *Shell Oil Co. & Scallop Petroleum Co.* (*In re Crysen/Montenay Energy Co.*), 240 B.R. 166, 169 (S.D.N.Y. 1999), *aff'd*, 226 F.3d 160 (2d Cir. 2000), the district court noted that it is debatable as to whether the FAA's term "courts of the United States" should be interpreted to refer directly to bankruptcy courts. However, the district court found that bankruptcy courts are "courts of the United States" for purposes of FAA § 3. The Sixth Circuit also held that bankruptcy courts are "United States court[s]" for purposes of FAA § 10. *Robinson v. Champaign Landmark, Inc. v.* (*In re Robinson*), 326 F.3d 767, 771 (6th Cir. 2003). Both *In re Goldbronn*, 263 B.R. 347, 356 (Bankr. M.D. Fla. 2001) and *In re Elcom Techs. Corp.*, 339 B.R. 354, 356 (Bankr. E.D. Pa. 2006) heard motions to confirm arbitration awards without considering

the issue of whether a bankruptcy court is a "United States court." The Court thus finds that bankruptcy courts are "United States court[s]" for purposes of FAA § 9 and that it has the power to confirm the arbitrator's award. However, the Tenth Circuit noted that just because a court has the power to confirm an award does not always mean that it should do so. *P & P Indus., Inc. v. Sutter Corp.*, 179 F.3d 861, 870 n.6 (10th Cir. 1999). The Tenth Circuit explained that concerns such as the "first to file rule," forum non conveniens, and transfer pursuant to 28 U.S.C. § 1404 will play a role in deciding which court, of the many that have power to confirm the award, should in fact do so. *Id.*

The Sleepers filed a complaint with the Maine District Court alleging a variety of contractual, statutory, and common law tort claims against the Debtors. They then moved to stay or enjoin the Debtors' filed demand for arbitration, while the Debtors moved to dismiss or to stay the Maine District Court's proceedings pending arbitration. *Sleeper Farms*, 211 F.Supp.2d at 199. The Maine District Court denied the Sleepers' motion and granted the Debtors' motion by staying the proceedings. *Id.* at 204. Notably, the Maine District Court did not dismiss the Sleepers' complaint.

In *Green Tree Fin. Corp.-Alabama v. Randolph*, 531 U.S. 79, 89 (2000), the Supreme Court held that a district court's order dismissing an entire action with prejudice and ordering arbitration is an appealable final decision under FAA § 16(a)(3). While FAA §16(a)(3) provides that a party may appeal a final decision with respect to an arbitration subject to the FAA, the FAA does not define the phrase "a final decision with respect to an arbitration." The Supreme Court held that the term "final decision," as used in FAA § 16, must be given "its well-established meaning" as a "decision that ends the litigation on the merits and leaves nothing

more for the court to do but execute the judgment." (quotation marks omitted). However, the Supreme Court stated in a footnote that "[h]ad the District Court entered a stay instead of a dismissal in this case, that order would not be appealable." Id. at 87 n.2. Therefore, this Court concludes that the Maine District Court's Order was not a final decision. Because the Maine District Court stayed the proceeding, rather than dismiss it, the Court finds that the Maine District Court retained jurisdiction over the Sleepers' complaint. The Maine District Court did not find that all claims before it were arbitrable. *Sleeper Farms*, 211 F.Supp.2d at 203. It simply held that the parties had entered into a binding arbitration agreement, and then referred the dispute to an arbitrator to determine what issues were covered by the arbitration clause. *Id.* This Court concludes that the Maine District Court is the appropriate court to review the Arbitration Decision because it retained jurisdiction over the proceedings before it.

The Court also finds that its Consent Order did not render the action in the Maine District Court moot. The Consent Order permitted the Sleepers and the Debtors to fully adjudicate and determine the amount of the Sleepers' claim in an arbitration proceeding pursuant to the Maine District Court's Order in *Sleeper Farms*, 211 F.Supp.2d at 203-04. As the court issuing the Order, the Maine District Court should review the arbitration proceeding to determine whether the arbitrator complied with its Order.

Additionally, this Court finds that the Maine District Court should review the Stipulation in which the Sleepers and Agway agreed that all issues of liability and damages contained within the Sleepers' Maine District Court complaint shall be determined through arbitration. The Stipulation arguably prevents the Sleepers from successfully contesting their agreement to arbitrate the issues within their Maine District Court complaint. However, it does not prevent

the Sleepers from contending that the arbitrator ignored the Maine District Court's findings of fact in the *Sleeper Farms* decision. Because the Maine District Court has retained subject matter jurisdiction over the issues contained in the Sleepers' complaint, that court should determine the effect of the Stipulation and whether the arbitrator ignored the court's findings of fact.

It is true that when the Sleepers filed their proof of claim against the Debtors' estate, they submitted themselves to the jurisdiction of this Court to hear all matters related to the allowance of that claim. *Logan v. Credit Gen. Ins. Co.* (*In re PRS Ins. Group*), 331 B.R. 580, 586 (Bankr. D. Del. 2005). This is because the Sleepers voluntarily submitted to the process of the allowance and disallowance of claims adjudicable by this Court. *In re Com 21*, No. C-04-03396 RMW, 2005 WL 1606357, at *9 (N.D. Cal. 2005). The determination of the objection to and allowance of a claim is within the Court's core jurisdiction. *Gulf States Exploration Co. v. Manville Forest Prods. Corp.* (*In re Manville Forest Prods. Corp.*), 896 F.2d 1384, 1390 (2d Cir. 1990). But the Sleepers' act of filing the proof of claim did not cause the Maine District Court to lose subject matter jurisdiction over the Sleepers' complaint filed with that court. For this reason, the Court grants the Sleepers nunc pro tunc relief from the injunction imposed upon confirmation of the Debtors' confirmed plan, to the extent they seek to proceed with their motion to vacate the Arbitration Decision.[2] The Court, therefore, declines, without prejudice, to rule upon the LT's motion to approve the Arbitration Decision.

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[2] The automatic stay terminated upon confirmation of the Debtors' Plan; however, it was replaced with an injunction under the Court's Confirmation Order, which provided that "[p]ursuant to Section 11.06 of the Plan, on and after the Confirmation Date, all Persons are permanently enjoined from commencing or continuing in any manner any action or proceeding (whether directly, indirectly, derivatively or otherwise) on account of or respecting any such claim, debt, right or cause of action of Agway for which the Liquidating Trust retains sole and exclusive authority to pursue in accordance with the Plan."

IT IS SO ORDERED.

Dated at Utica, New York

this 12th day of May 2006

/s/ Hon. Stephen D. Gerling
STEPHEN D. GERLING
Chief U.S. Bankruptcy Judge