**STATE OF MICHIGAN**
**IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND**
**BUSINESS COURT**

**PAPA ROMANO'S ENTERPRISES, LLC,**
**Plaintiff,**

**v.** **Case No. 14-138903-CK**
**Hon. James M. Alexander**

**HILDA, INC, ET AL,**
**Defendants.**
**_____/**

**ORDER RE: MOTION TO STAY AND COMPEL ARBITRATION**

This matter is before the Court on Defendants' Motion to Stay and to Compel Arbitration. Defendants are former owners or operators of a Papa Romano's franchise. The last franchise agreement was executed on July 26, 2004 and expired five years later (on July 26, 2009).

In its Complaint, Plaintiff alleges that Defendants operated a Papa Romano's restaurant for over a year after the expiration of the franchise agreement, and thereafter, opened a new pizza business in the same Milford location. Plaintiff claims these actions violate the franchise agreement, which provides that Defendants may not operate a competing pizza business within five miles of the former location for five years.

Defendants now wish to invoke the arbitration provision of the franchise agreement to force the parties to arbitrate their dispute. Said provision is found in paragraph 21.3 and provides:

> 21.3 **Arbitration-** The resolution of all disputes, controversies and claims arising out of or relating directly or indirectly to this Franchise Agreement will be submitted to final and binding arbitration in accordance with the rules and procedures of the American Arbitration Association governing commercial arbitration in the State of Michigan, Oakland County, City of Southfield,

> Michigan unless local law requires a different venue. Each claim or controversy will be arbitrated by you on an individual basis and shall not be consolidated in any arbitration with the claim of any other past or current franchisee as a class action or otherwise.
>
> > 21.3.1 You and the Franchisor will be bound by decision of the arbitrator and consent to the immediate entry of judgment upon such award in a court of competent jurisdiction.
> >
> > 21.3.2 Pending completion of the arbitration proceedings and the decision of the arbitrator, the party then operating the Franchised Business will be deemed to be a trustee for the benefit of the prevailing party.

Defendants' defense to this suit is based on the premise that the five-year non-compete provision is "unreasonably long and not carefully tailored to protect the franchisor's legitimate business interests." In other words, the provision is unenforceable or inapplicable.

In Michigan, "a 'question of arbitrability' is an issue for judicial determination unless the parties unequivocally indicate otherwise." *Gregory J Schwartz & Co v Fagan*, 255 Mich App 229, 232 (2003), citing *Howsam v Dean Witter Reynolds, Inc*, 537 US 79; 123 S Ct 588; 154 L Ed 2d 491 (2002). Further, MCL 691.1686(1) provides that "[a]n agreement contained in a record to submit to arbitration any existing or subsequent controversy arising between the parties to the agreement is valid, enforceable, and irrevocable except on a ground that exists at law or in equity for the revocation of a contract."

Further, "[t]he court shall decide whether an agreement to arbitrate exists or a controversy is subject to an agreement to arbitrate." MCL 691.1686(2). Michigan courts have consistently reasoned that "our Legislature and our courts have strongly endorsed arbitration as an inexpensive and expeditious alternative to litigation." *Rembert v Ryan's Family Steak Houses, Inc*, 235 Mich App 118,133; 596 NW2d 208 (1999). As a result, "any doubts about the arbitrability of an issue should be resolved in favor of arbitration." *DeCaminada v Coopers & Lybrand*, 232 Mich App 492, 499; 591 NW2d 364 (1998).

In this case, Plaintiff's case is premised on Defendants' alleged breach of paragraph 16.2 of the Franchise Agreement, which provides that Defendants may not operate a competing pizza business within five miles of the former Papa Romano's location for five years. This provision is a substantive provision of the Franchise Agreement that, by its terms, reaches five years beyond the expiration of the same. As a result, it still governs the duties of the parties under the Franchise Agreement through July 26, 2014.

As stated, Defendants argue that this provision should be unenforceable as "unreasonably long and not carefully tailored." In other words, the parties dispute the enforceability and application of a substantive provision of the Franchise Agreement during the timeframe contemplated by the same.

Because the parties agreed to resolve "all disputes, controversies and claims arising out of or relating directly or indirectly to this Franchise Agreement" via arbitration, this issue must be submitted to arbitration.

In its response to Defendants' motion, Plaintiff argues that another provision of the Franchise Agreement permits court resolution of injunctive relief at any time and without arbitration. Paragraph 21.8 provides:

> Notwithstanding that the parties have agreed to binding arbitration in accordance with Section 21.3 we can seek injunctive relief at any time in any court having jurisdiction against actual or threatened conduct that will cause loss or damage under the usual equity rules, including the applicable rules for obtaining specific performance, restraining order and preliminary injunctions. You agree to pay all court costs and reasonable attorneys' fees incurred by the Franchisor in successfully obtaining such relief.

Plaintiff argues that it is entitled to seek injunctive relief under this provision because Defendant has violated the non-compete provision. As a result, Plaintiff is entitled to toll and extend the restrictive covenant term.

Initially, the Court finds that Plaintiff's request for the extension of the restrictive covenant must be submitted to arbitration because it concerns a dispute over the duration of a substantive provision of the parties' agreement.

And while the Court generally agrees that the parties contracted to allow court resolution of injunctive requests, the present dispute is founded on whether Defendants violated the non-compete provision of the Franchise Agreement. And, as stated, this issue is properly submitted to arbitration.

It makes little sense for this Court to determine whether Plaintiff is entitled to an injunction based on Defendants' violation of the Franchise Agreement before the arbitrator(s) concludes whether Defendants so violated. This would be terribly inefficient and burdensome for the parties and Court – particularly if the arbitrator(s) and Court reach different conclusions as to Defendants' violation.

For all of the foregoing reasons, Defendants' motion to stay and compel arbitration is GRANTED. The parties are compelled to arbitration and these proceedings are stayed until the conclusion of the same.

The parties are responsible for notifying the Court within 21 days of service of the arbitrator(s) final decision.

**IT IS SO ORDERED.**

April 30, 2014_____ __/s/ James M. Alexander_____
Date Hon. James M. Alexander, Circuit Court Judge