

**COURT OF CHANCERY
OF THE
STATE OF DELAWARE**

WILLIAM B. CHANDLER III
CHANCELLOR

COURT OF CHANCERY COURTHOUSE
34 THE CIRCLE
GEORGETOWN, DELAWARE 19947

Submitted: October 20, 2005

Decided: October 20, 2005

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Re: *Terex Corporation and American Crane Corporation v.
STV USA, Inc. and American Truck Company LLC*
Civil Action No. 1614-N

Dear Counsel:

Pending before the Court is defendant STV's motion to dismiss or stay this case. In the interest of time and efficiency, I am constrained to provide this abbreviated decision. For the reasons set forth briefly below, I hereby grant defendant's motion to dismiss the complaint.

Section 12.2 of the American Truck Company LLC Limited Liability Company Agreement (the "LLC Agreement") states unequivocally that all disputes arising out of or relating to the LLC Agreement must be resolved through arbitration. Construing similar language, the Delaware Supreme Court has held that the parties had "signaled an intent to arbitrate all possible claims that touch on the rights set forth in their contract" where they had agreed to arbitrate any dispute "arising out of or in connection with" the contract. *Parfi Holding AB v. Mirror Image Internet, Inc.*, 817 A.2d 149, 155 (Del. 2002). Nothing in the plain text of

Section 12.1 indicates a limitation on the broad arbitration mandate of Section 12.2. The carve-out language in Section 12.1 is a simple device to preserve a party's rights during the negotiation period, and to protect such rights from imminent and irreparable harm—a constituent factor of injunctive relief. The carve-out language is meant to afford only temporary protection of a party's rights until the initiation of an arbitration proceeding, at which point the arbitration proceeding will provide a means of further preserving the party's rights as well as eventually adjudicating the dispute giving rise to the arbitration.

I do not agree with plaintiff's argument that Section 14.2's language places dissolution solely into the hands of a court. Read plainly, Section 14.2 does not in any way carve out judicial dissolution from the broad language mandating arbitration in Section 12.2. Rather, Section 14.2 requires the LLC members to take appropriate steps required by law following the entry of a judicial dissolution under the Delaware Limited Liability Company Act; such dissolution could be entered in accordance with, and following, dissolution proceedings before an arbitrator, and nothing in Section 14.2 suggests otherwise.

Therefore, I am granting the motion to dismiss the complaint, and remitting the parties to avail themselves of the arbitration procedure that they chose under such broad terms of the LLC Agreement.

IT IS SO ORDERED.

Very truly yours,

A handwritten signature in cursive script that reads "William B. Chandler III". The signature is written in black ink and includes a horizontal line under the name.

William B. Chandler III

WBCIII:bsr