

**UNITED STATES DISTRICT COURT  
DISTRICT OF MAINE**

<b>FRIJHTOF SPECHT,</b>	)	
	)	
<b>Plaintiff</b>	)	
	)	
<b>v.</b>	)	<b>Civil No. 96-79-B</b>
	)	
<b>FIEDLER CORP., ET AL,</b>	)	
	)	
<b>Defendants</b>	)	

***RECOMMENDED DECISION***

The Court now has before it the defendants' motions to dismiss the plaintiff's complaint, stay discovery, and strike an exhibit attached to the plaintiff's response, as well as the plaintiff's motion to stay the arbitration that is referenced in the employment agreement underlying this dispute. The Court recommends that the motions to dismiss be denied, that the motion to stay discovery be granted pending the entry of a final order on the motions to dismiss, that the motion to strike the exhibit from the plaintiff's response be denied, and that the plaintiff's motion to stay arbitration be scheduled either for further briefing or for an oral argument in the event that this Court's recommendation concerning the defendants' motions to dismiss be affirmed.

**I. Motion to Dismiss**

A motion to dismiss tests the legal sufficiency of the complaint, and thus does not require the Court to examine the evidence at issue. *Goldman v. Belden*, 754 F.2d 1059, 1067 (2d Cir. 1985). The Court accepts all well-pleaded facts as true, "indulging every reasonable inference helpful to the plaintiff's cause." *Garita Hotel Ltd. Partnership v. Ponce Federal Bank, F.S.B.*, 958 F.2d 15, 17 (1st Cir. 1992). The plaintiff must, however, "set forth factual allegations, either direct or inferential, respecting each material element necessary to sustain recovery under some actionable legal theory."

*Gooley v. Mobil Oil Corp.*, 851 F.2d 513, 515 (1st Cir. 1988). The Court need not accept "bald assertions" or "unsubstantiated conclusions." *Correa-Martinez v. Arrillaga-Belendez*, 903 F.2d 49, 52 (1st Cir. 1990). "[I]f the facts narrated by the plaintiff 'do not at least outline or adumbrate' a viable claim, [the] complaint cannot pass Rule 12(b)(6) muster." *Gooley*, 851 F.2d at 515 (quoting *Sutliff, Inc. v. Donovan Companies, Inc.*, 727 F.2d 648, 654 (7th Cir. 1984)).

## **II. Background**

This matter arises out of Frijhtof Specht's contention that he wrongfully was terminated from his employment with the Fiedler Corporation (Fiedler Corp.) in violation of the Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. §§ 1961-1968 (1984 & Pamph. 1996), and that he is entitled to various sums of money arising from his employment contract and affiliation with Fiedler Corp. There are three named defendants in this matter. Defendant Fiedler Corp., an American corporation based in Georgia, is a subsidiary of its parent, the German-based Heinrich Fiedler GmGH & Co. KG, also a named defendant in this action. The third named defendant is Kurt Beisenherz, an individual residing in Germany who is the president of both Fiedler Corp. and Heinrich Fiedler GmGH & Co.

Specht, a German national with legal alien status, resides in Maine. He formerly was employed as both an engineer and executive with Fiedler Corp., a company engaged in providing technical support to the commercial papermaking industry. Specht and Fiedler Corp. entered into an employment contract on August 10, 1994. In a letter dated June 30, 1995, Specht received thirty days' notice that he was to be terminated from his employment with Fiedler Corp. for what Specht contends was "no reason." Following his termination from employment, Specht demanded from Fiedler Corp. certain monies he claimed were owed him pursuant to his contract and employment

with the company. Fiedler Corp. denied that such payments were due, and instead requested that Specht return to it certain funds that had been advanced to him as part of his job. Unable to informally resolve the dispute, Fiedler Corp. made a demand for binding arbitration as provided for in Specht's employment contract. Specht refused to engage in arbitration and instead initiated this action.

Alleging that the defendants intentionally and/or negligently conspired with deliberate misrepresentation and/or fraud both to terminate his employment and/or to deceive him and others into believing there was a reason, which defendant Beisenherz knew was false, for his termination, Specht brought a two-count complaint against the defendants pursuant to the terms of his contract, federal and state labor laws, and RICO. In Count I Specht seeks payment of all the benefits and severance pay he claims is owed him under the contract. In Count II Specht seeks damages pursuant to his allegation that he was fired in a manner that was violative of RICO and injurious of his business and property. In sum, Specht seeks the compensation, benefits, and reimbursement he claims is due him pursuant to the employment contract, as well as treble damages, interest, costs, and attorney fees.

There are two separate motions to dismiss for the Court's consideration. Defendant Fiedler Corp. moves to dismiss the plaintiff's complaint pursuant to Fed. R. Civ. P. 12(b)(1) and (6), as well as Fed. R. Civ. P. 26(b)(2) and Rule 19 of the Local Rules of this District, on the basis that since the parties agreed to resolve all disputes arising out of the employment contract through binding arbitration, this Court is without jurisdiction to hear the matter. Fiedler Corp. also has filed a motion to stay discovery pending the resolution of its motion to dismiss. Defendants Heinrich Fiedler GmGH & Co. and Kurt Beisenherz move to dismiss the complaint pursuant to Fed. R. Civ. P.

12(b)(6). They contend that the plaintiff has failed to state a claim upon which relief can be granted because since these defendants were not parties to the contract entered into by Specht and Fiedler Corp., no claim arising out of that agreement may be brought against them. In addition, these two defendants move pursuant to Fed. R. Civ. P. 12(f) to strike an exhibit that the plaintiff submitted to the Court as part of his response to their motion.

### **III. Discussion**

#### ***A. Defendant Fiedler Corp.'s motion to dismiss and motion to stay discovery***

Finding that Specht has "set forth factual allegations, either direct or inferential, respecting each material element necessary to sustain recovery under some actionable legal theory," *Gooley* 851 F.2d at 515, the Court recommends that defendant Fiedler Corp.'s motion to dismiss be denied. The plaintiff has alleged sufficient material facts regarding the enforceability of the arbitration clause and the terms of Specht's employment contract to withstand the motion to dismiss. The Court further concludes that it indeed has jurisdiction over the matter and that, depending on the future legal and factual determinations that are made by the Court regarding the contract's terms and the nature of Specht's employment, this Court well may continue to have the subject matter jurisdiction requisite for trying the case. In view of the above, the Court recommends that Fiedler Corp.'s motion to stay discovery pending a final order on its motion to dismiss be granted.

#### ***B. Defendant Heinrich Fiedler GmGH & Co.'s and Defendant Kurt Beisenherz's motion to dismiss and motion to strike the exhibit to the plaintiff's response***

The Court recommends that Heinrich Fiedler GmGH & Co.'s and Kurt Beisenherz's motion to dismiss the complaint be denied. The Court determines upon examination of the plaintiff's pleadings that significant factual and legal issues surround the issue whether these defendants are free from liability because they were not "parties" to the contract entered into by Specht and the Fiedler Corp. In addition, the Court recommends that the motion to strike an exhibit that the plaintiff submitted to the Court as part of his response to the defendants' motion be denied, as well. The exhibit, a purported description of the plaintiff's former job, is relevant to the gravamen of the plaintiff's complaint and to the contested issue of arbitration.

***C. Plaintiff's motion to stay arbitration***

In light of the above conclusions, the Court recommends that, in the event its recommendations regarding the defendants' motions to dismiss are affirmed, further briefing or an oral argument on the issue of the requested stay of arbitration be scheduled by the Court.

**IV. Conclusion**

Accordingly, the Court recommends that the Court DENY defendant Fiedler Corp.'s motion to dismiss but that it GRANT its motion to stay discovery, and that the Court DENY defendants Heinrich Fiedler GmGH & Co.'s and Kurt Beisenherz's motion to dismiss and DENY their motion to strike.

NOTICE

A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) (1988) for which *de novo* review by the district court is sought, together with a supporting memorandum, within ten (10) days of being served with a copy thereof. A responsive memorandum shall be filed within ten (10) days after the filing of the objection.

Failure to file a timely objection shall constitute a waiver of the right to *de novo* review by the district court and to appeal the district court's order.

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Eugene W. Beaulieu  
United States Magistrate Judge

Dated in Bangor, Maine on March 4, 1997.