

**UNITED STATES DISTRICT COURT
DISTRICT OF MAINE**

ROBERT GRAHAM, ET AL.,)	
)	
PLAINTIFFS)	
)	
v.)	CIVIL No. 03-195-P-H
)	
DR. KYL SMITH, ET AL.,)	
)	
DEFENDANTS)	

**ORDER ON DEFENDANTS’ MOTION FOR RECONSIDERATION
ON PRELIMINARY INJUNCTION ORDER**

On October 10, 2003, I granted Robert Graham’s and Michael Shane’s motion for a preliminary injunction. Dr. Smith and Creative Health have filed a motion for reconsideration. They correctly point out that the Order did not expressly address the question of irreparable harm (although it was implicit in my treatment of the balancing of harms, since harm to the plaintiff is one side of the balance).

Smith and Creative Health argue that Graham and Shane will not suffer irreparable injury if they are forced to arbitrate, because the ability to appeal an unfavorable arbitration award is an adequate legal remedy. They rely on Springfield Term. RR Co. v. United Transport Union, 711 F. Supp. 665 (D. Me. 1989). Unlike Graham and Shane, the plaintiffs in Springfield did not argue that they had not agreed to submit any disputes to arbitration; instead, the challenge

there was that the arbitration award was “tainted.” The court’s holding in Springfield, that review of such an arbitration award was an adequate legal remedy, does not fit the facts of this case.

The Third Circuit has held that preliminary injunctive relief is appropriate in a context like that presented here, stating that “we think it is obvious that the harm to a party could be *per se* irreparable if a court were to abdicate its responsibility to determine the scope of an arbitrator's jurisdiction and, instead, were to compel the party, who has not agreed to do so, to submit to an arbitrator’s own determination of his authority.” Painewebber Inc. v. Hartmann, 921 F.2d 507, 515 (3d Cir. 1990); accord McLaughlin Gormley King Co. v. Terminix Int’l. Co., 105 F.3d 1192, 1194 (8th Cir. 1997) (“If a court has concluded that a dispute is non-arbitrable, prior cases uniformly hold that the party urging arbitration may be enjoined from pursuing what would now be a futile arbitration, even if the threatened irreparable injury to the other party is only the cost of defending the arbitration and having the court set aside any unfavorable award.”); Raytheon Engineers & Constructors, Inc. v. SMS Schloemann-Sieman Akiengesellschaft, 2000 U.S. Dist. LEXIS 5718 at *13 (N.D. Ill. March 16, 2000) (“forcing a party to arbitrate a dispute that it has not agreed to arbitrate is irreparable harm.”).¹

¹ The First Circuit has said that “irreparable injury is nominally required but courts are often generous where the complainant's claim on the merits is very strong or unanswerable.” Tejidos de Coamo, Inc. v. Int’l. Ladies’ Garment Workers’ Union, 22 F.3d 8, 15 (1st Cir. 1994). In that case the court denied injunctive relief, but it was because of the overriding policy of section 7 of the (*continued on next page*)

Here, Graham and Shane have a very strong case that they never agreed to submit to arbitration. Therefore, I now make explicit what was implicit in my earlier Order: Graham and Shane would suffer irreparable injury if I did not issue the preliminary injunction. Accordingly, I **DENY** the motion for reconsideration.

So ORDERED.

DATED THIS 17TH DAY OF NOVEMBER, 2003.

/s/D. BROCK HORNBY
D. BROCK HORNBY
UNITED STATES DISTRICT JUDGE

Norris LaGuardia Act, 29 U.S.C. § 107, which requires that stringent conditions be met before a federal court may grant an injunction in a case involving a labor dispute. That provision is not applicable here.

**U.S. DISTRICT COURT
DISTRICT OF MAINE (PORTLAND)
CIVIL DOCKET FOR CASE #: 03-cv-195**

Plaintiff

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and

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v.

Defendants

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