

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.

ATTORNEY FOR APPELLANTS:

JAMES E. AYRES
Wernle, Ristine & Ayres
Crawfordsville, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

ASHOK K. GUPTA and SUDHA R. GUPTA,)
)
Appellants-Plaintiffs,)
)
vs.)
)
HARBHUPINDER BAINS, RAJWINDER KAUR,)
and ASHOK BHARGAVA,)
)
Appellees-Defendants.)

No. 54A04-0703-CV-183

APPEAL FROM THE MONTGOMERY SUPERIOR COURT
The Honorable David A. Ault, Judge
Cause No. 54D01-0607-PL-305

July 24, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

KIRSCH, Judge

Ashok K. Gupta and Sudha R. Gupta (collectively, the Guptas) appeal the order of the trial court dismissing their complaint for replevin and conversion against Harbhupinder Bains, Rajwinder Kaur, and Ashok Bhargava (collectively, the defendants) and ordering their claims and the defendants' counterclaim for breach of contract submitted to arbitration. On appeal, the Guptas claim that their action for replevin and conversion is not subject to arbitration.

We affirm.

The Guptas and the defendants entered into an agreement for the financing of the Guptas' purchase of a motor inn in Crawfordsville, Indiana. The defendants declared the Guptas in default of their obligations under the contract and re-entered and took possession of the inn and its contents including some personal property of the Guptas. The defendants later returned several items of personal property to the Guptas, but the Guptas claimed that not all items of their personal property were returned. They then filed a complaint for replevin and conversion against the defendants. The defendants answered and filed a counterclaim for breach of contract against the Guptas.

Both the Guptas and the defendants filed motions to dismiss and to refer the dispute to arbitration pursuant to a provision in the parties' contract. The Guptas' motion was directed only at the defendants' counterclaim; the defendants' motion was directed at both the Guptas' complaint and their counterclaim. The trial court granted the defendants' motion, dismissed the Guptas' complaint and the defendants' counterclaim and referred the matter to arbitration. This appeal then ensued.

The Guptas claim that the arbitration provision in the contract applies only to matters arising from the contract and that their claim for replevin and conversion sound in tort and are not subject to the provision. The contract’s arbitration provision is not so limited, however. It provides as follows: “In the event, there is a dispute between the parties, the parties will resort to Mediation (or Arbitration) first. The prevailing party shall be entitled to attorney fees and costs from the losing party.”¹ By its plain language, the parties’ contract applies to any dispute between the parties. It is not limited to matters arising out of or related to the contract, and it makes no exception for tort claims.

Similarly, the Indiana Uniform Arbitration Act is not limited to matters of contract. Ind. Code § 34-57-1-1 provides that the Act “applies to any controversy existing between two (2) or more parties, which might be the subject of a suit at law” The only exceptions are not for tort, but for certain real estate claims. *See* Ind. Code § 34-57-1-2.

Finally, this court has recognized the applicability of a contractual arbitration provision to tort actions between the parties. *See Sanford v. Castleton Health Care Center*, 813 N.E.2d 411 (Ind. Ct. App. 2004). Accordingly, we affirm the trial court’s order of dismissal and reference to arbitration.

Affirmed.

DARDEN, J., and MATHIAS, J., concur.

¹ Although the arbitration provision is vague and phrased in the disjunctive, the Guptas do not argue that the arbitration provision is ambiguous or otherwise not enforceable, and we do not reach such issue. Indeed, the Guptas conceded the enforceability of the provision to the trial court and on appeal argue only the scope of the provision, not its enforceability.