

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

NO. 02-2127

DAVID WEBER CO., INC., d/b/a WEBER DISPLAY AND PACKAGING
Appellant

v.

BOBST GROUP, INC.

On Appeal From the United States District Court
For the District of New Jersey
(D.C. Civil Action No. 01-cv-02276)
District Judge: Honorable Katharine S. Hayden

Submitted Pursuant to Third Circuit LAR 34.1(a)
February 4, 2003

BEFORE: SLOVITER, RENDELL and STAPLETON, Circuit Judges

(Opinion Filed: February 4, 2003)

OPINION OF THE COURT

STAPLETON, Circuit Judge:

David Weber Co., Inc. ("Weber"), purchased corrugated paperboard manufacturing equipment from the German subsidiary of Bobst Group, Inc. ("Bobst"). Weber instituted this diversity action against Bobst, stating claims for fraud and negligent

misrepresentation. Bobst responded by moving to compel arbitration of Weber's claims and to stay this action pending arbitration. The District Court concluded that the parties had committed in their contract to arbitrate Weber's claims and granted Bobst's motion. This appeal followed. Bobst promptly moved to dismiss for want of jurisdiction.

We will dismiss for lack of appellate jurisdiction. The District Court did not dismiss the action before it; it entered a "stay . . . until arbitration has concluded." Section 16(b) of Title 9 of the United States Code provides that "an appeal may not be taken from an interlocutory order . . . granting a stay." This statute is applicable here and means what it says. Green Tree Financial Corp.-Alabama v. Randolph, 531 U.S. 79, 87 n.2 (2000); ATAC Corp. v. Arthur Treacher's, Inc., 280 F.3d 1091 (6th Cir. 2002). This was the rule in the Third Circuit even before the passage of § 16 in 1988. Zosky v. Boyer, 856 F.2d 554 (3d Cir. 1988) (rejecting claim that stay for arbitration was a final order under the collateral order doctrine). Because there is no appealable order, we have no jurisdiction to address any of the issues raised, including whether the District Court erred in finding this controversy arbitrable.

/s/ Walter K. Stapleton
Circuit Judge

