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**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, CHANCERY DIVISION  
MORTGAGE FORECLOSURE/MECHANICS LIEN SECTION**

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ANCHOR STONE FUND 2, LLC,

*Plaintiff,*

*v.*

AREA WIDE REALTY CORPORATION;  
CITY OF CHICAGO DEPARTMENT  
OF WATER MANAGEMENT;  
UNKNOWN OWNERS; NON-RECORD  
CLAIMANTS,

*Defendants.*

Case Number: 2024 CH 00631

Calendar 60

Honorable Debra A. Seaton,  
Judge Presiding

Property Address:  
10601 South Champlain Avenue  
Chicago, Illinois 60628

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**MEMORANDUM OPINION AND ORDER**

**DEBRA A. SEATON, Circuit Judge:**

Before the Court is Defendant AREA WIDE REALTY CORPORATION's ("Area Wide") Motion to Withdraw its Answer and Jury Demand and to Compel Arbitration and Dismiss, or Alternatively, to Stay Proceedings Pending Arbitration ("Motion to Compel") pursuant to 735 ILCS 5/2-1001(b). For the following reasons, Area Wide's Motion to Compel is hereby DENIED.

**I. BACKGROUND**

On April 26, 2022, Area Wide and Plaintiff ANCHOR STONE FUND 2, LLC ("Anchor") entered into a joint venture agreement memorialized in writing by a term sheet ("Joint Venture Agreement"). The Joint Venture Agreement provided for the acquisition, restoration, and sale of properties. Area Wide was to acquire and

own real properties. Anchor was to provide funding for the properties to be rehabilitated and eventually resold. The agreement contained the following arbitration clause:

This agreement is governed by Illinois law. Any disputes between the parties shall be subject to binding arbitration under the AAA Commercial Arbitration Rules. Any arbitration shall be held in a location mutually convenient to the parties and in the event there is no agreement, then the Arbitration shall be conducted in Bucks County, Pennsylvania.

(Area Wide's Motion to Compel, Ex. 1).

On August 16, 2021, *prior to* entry into the Joint Venture Agreement between Area Wide and Anchor, Area Wide purchased the property at issue in this case: 10601 South Champlain Avenue in Chicago, Illinois (the "Property"). On May 3, 2022, roughly a week after Anchor and Area Wide executed the Joint Venture Agreement, Anchor loaned Area Wide \$108,250.00 to rehabilitate the Property. On the same day, Area Wide signed a note ("Note") to memorialize the loan and a mortgage ("Mortgage") as security for the loan.

Area Wide allegedly defaulted on its loan on July 1, 2023. Anchor filed its Complaint to Foreclose the Mortgage ("Complaint") on January 31, 2024, seeking to foreclose on the Mortgage, or, in the alternative, for the Court to partition the property. On May 28, 2024, Area Wide filed its Answer to Plaintiff's Complaint ("Answer").

On October 25, 2024, Area Wide filed its instant Motion to Compel. On January 6, 2025, Anchor timely filed its Response in opposition to the Motion to Compel. On January 14, 2025, Area Wide timely filed its Reply in Support of its Motion to Compel. The Court held a hearing on the Motion to Compel on February

19, 2025. During the hearing, Area Wide and Anchor both declined to offer oral argument and rested on their respective briefs. The Court having reviewed the pleadings and having read the Motion, Response, and Reply, entered an Order on February 20, 2025, taking the Motion under advisement for the issuance of a written opinion. The Court's ruling follows.

## II. LEGAL STANDARD

Area Wide now moves this Court to compel arbitration. A motion to compel arbitration is akin to a motion brought under section 2-619(a)(9) of the Code of Civil Procedure. 735 ILCS 5/2-619; *Clanton v. Oakbrook Healthcare Center Limited*, 2022 IL App (1st) 210984, ¶40. A motion to compel arbitration effectuates a stay on an action based on an affirmative matter in which arbitration becomes an exclusive remedy to the dispute. *Griffith v. Wilmette Harbor Association, Inc.*, 378 Ill. App. 3d 173, 180 (1st Dist. 2007).

When evaluating a motion to compel arbitration, a trial court is tasked with two duties: (1) determining whether the parties have a valid written agreement to arbitrate and (2) whether the issues in the dispute fall within the scope of the arbitration agreement. *Green Tree Financial Corp. v. Bazzle*, 539 U.S. 444, 452 (2003); *Jensen v. Quik International*, 213 Ill. 2d 119, 123 (2004).

## III. ANALYSIS

The question before the Court is whether the parties assented to a valid written agreement to arbitrate disputes arising out of the Joint Venture Agreement, the Mortgage, and the Note. This includes the issue of whether this foreclosure case

should be arbitrated. Neither Party has challenged the validity of any of the contracts at issue herein. Area Wide argues that the Joint Venture Agreement provides for arbitration in accordance with the Federal Arbitration Act (“FAA”). *See* 9 U.S.C. §§ 1; *et seq.*

Area Wide also contends that any dispute that arises between itself and Anchor (as well as the question of arbitrability itself) must be submitted to arbitration because the FAA, as a federal statute, preempts any exclusive remedial procedure afforded to parties under Illinois law.

#### A. Dueling Obligations

The Joint Venture Agreement was executed on April 26, 2022. The Mortgage and Note were executed on May 3, 2022. The Joint Venture Agreement concerns activities related to acquisition, rehabilitation, and redevelopment of some not specified or identified property(ies) to be acquired, rehabilitated, and redeveloped. Here, the Property in question is identified in the Mortgage and Note.

The Joint Venture Agreement outlines various elements of the business relationship between the Parties. For example, it dictates that the profits from any sale of property be split equally and paid to Area Wide and Anchor. The Joint Venture Agreement also outlines the role that each party will play in the business relationship (*e.g.*, Area Wide will budget for the projects and will oversee rehabilitation efforts). Pertinent to the issues raised in this case, the Joint Venture Agreement includes an arbitration clause.

The Mortgage and Note outline additional rights and obligations not found in the Joint Venture Agreement. Paragraph 22 of the Mortgage states that, “Lender, at its option may require immediate payment in full sums secured by this security instrument without further demand and may foreclose this Security Instrument by judicial proceeding.” The judicial proceeding in question is not defined. The plain reading of the contract would tend to indicate that Anchor may file an action to foreclose upon the mortgage in a court, as it did by filing the present suit before this Court.

There appears to be dueling contractual obligations. The Joint Venture Agreement requires that disputes be adjudicated through arbitration. While the Mortgage permits that the Lender (in this case Anchor) to foreclose on the mortgage through a judicial proceeding.

Section 15-1106(a)(1) of the Illinois Mortgage Foreclosure Law (“IMFL”) provides the exclusive procedure for the foreclosure of mortgages. As Anchor argues in its Response, the IMFL does not provide for mandatory arbitration. It provides very specific exclusive methods to terminate a mortgagor’s interest in real property, including a judicial foreclosure under Sections 15-1404 and 15-1501; *et seq.* The foreclosure process under the IMFL is the default method of foreclosure in Illinois. It does not need to be contractually specified.

#### B. Controlling Contract

Agreements to arbitrate are contract issues and such clauses are to be enforced according to their terms. *Henry Schein, Inc. v. Archer & White Sales, Inc.*,

586 U.S. 63, 67 (2019).<sup>1</sup> In order for the Court to determine whether the issues at hand are subject to arbitration, the Court must ascertain which contract is controlling to decide if there is even a question of arbitrability. Neither party has challenged the validity of any of the writings. Both parties agree that the Joint Venture Agreement is still in force. The only point of contention is the application of the arbitration clause in the Joint Venture Agreement. The Joint Venture Agreement was attached to Anchor's Complaint and Area Wide's Motion to Compel demonstrating that both Area Wide and Anchor view the Joint Venture Agreement as enforceable against the other.

The question before the Court is whether or not the written contractual provision in the Mortgage to foreclose via a judicial proceeding, signed after the Joint Venture Agreement, modified or superseded the arbitration clause in the Joint Venture Agreement. The Court finds that it does.

A "modification" of a contract is a change in one or more respects which introduces new elements into the details of the contract, or cancels some of them, but leaves the general purpose and effect undisturbed. *Urban Sites of Chicago, LLC v. Crown Castle USA*, 2012 IL App (1st) 111880, ¶36. This Court's analysis is confined to the four corners of the contracts. The parol evidence rule typically precludes evidence of prior or contemporaneous agreements that would alter or contradict the written terms of a contract, except in a circumstance such as this one

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<sup>1</sup> In *Henry Schein, Inc. v. Archer & White Sales, Inc.*, the Court found that the question of whether an agreement is arbitrable is an arbitrable question itself. 586 U.S. 63, 71-72 (2019). In other words, the question of whether a question is arbitrable must be determined through the arbitration process. Importantly, the analysis in *Henry Schein, Inc.* has no application here because this Court finds that a valid agreement does exist, but the issues raised by the cause of action are not arbitrable issues.

where there is evidence of subsequent modifications. *E.A. Cox Co. v. Road Savers International Corp.*, 271 Ill. App. 3d 144, 152 (1st Dist. 1995).

Here, the general purpose of the Joint Venture Agreement remains. The Parties clearly must arbitrate disputes that arise from activities related to acquisition, rehabilitation, and redevelopment of properties according to Area Wide's own admission. (Motion to Compel, Page 1). The Joint Venture Agreement necessitates modification to be an accurate reflection of the business relationship between the Parties. For example, the Joint Venture Agreement is silent on which property(ties) it covers. The information concerning the property in question here must be supplemented by information from the Mortgage and Note.

Here, the Mortgage modified certain clauses of the Joint Venture Agreement. A modified contract containing a term inconsistent with a term of an earlier contract between the same parties is interpreted as including an agreement to rescind the inconsistent term in the earlier contract. *Schwinder v. Austin Bank of Chicago*, 348 Ill. App. 3d 461, 469 (1st Dist. 2004).

The existence of Mortgage terms inconsistent with the Joint Venture Agreement prevent Area Wide from forcing itself and Anchor to arbitrate. Paragraph 22 of the Mortgage is the operative term of the contract. Paragraph 22 was assented to *after* the Joint Venture Agreement and must be understood as canceling the arbitration clause in circumstances where the Lender seeks foreclosure under the Mortgage via a judicial proceeding.

The Parties did not attach a rider to the Mortgage asserting that arbitration was the necessary avenue for dispute resolution even in cases of foreclosure. The Parties did not restate the arbitration clause within the Mortgage or reword Paragraph 22 as to include arbitration. The Parties did not entirely remove Paragraph 22 as to render the Mortgage silent on dispute resolution. Area Wide's federal preemption argument may have been stronger if any of these things were done. Here, this is not the case. The Court must enforce the contract as written. *J.M. Beals Enterprises, Inc. v. Industrial Hard Chrome, Limited.*, 194 Ill. App. 3d 744, 748 (1st Dist. 1990). The Court reads Paragraph 22 of the Mortgage as nullifying the arbitration clause of the Joint Venture Agreement as to a judicial foreclosure proceeding under the Mortgage.

### C. Motion to Compel

Paragraph 22 is the controlling term concerning foreclosure as the remedy and entails a judicial foreclosure proceeding under IMFL. Area Wide fails to prove that the parties had a valid agreement to arbitrate the foreclosure of the Mortgage. Area Wide fails to meet its burden of proof. Paragraph 22 clearly permitted Anchor to file the instant *judicial* foreclosure proceeding regardless of the prior arbitration clause contained in the Joint Venture Agreement. The parties do not have a valid agreement to arbitrate as to the foreclosure of the Mortgage. The Mortgage unequivocally modified the Joint Venture Agreement's arbitration clause. This Court cannot force the parties to arbitrate when the parties have contracted for



another dispute resolution mechanism—the present judicial proceeding. Nor may this Court modify this unambiguous written agreement.

This Court will not imply terms that are not contained within the agreements or added via implication as Defendants argue. *See J.M. Beals Enterprises, Inc.* 194 Ill. App. 3d 744, 748); *see also Schweih's v. Davis, Friedman, Zavett, Kane & MacRae*, 344 Ill. App. 3d 493, 499 (1st Dist. 2003) (In general, courts will enforce contracts as written, and they will not rewrite a contract to suit one of the parties); *and People ex rel. Illinois State Scholarship Commission v. Harrison*, 67 Ill. App. 3d 359, 360 (1st Dist. 1978) ([W]hen a contract is unambiguous, the duty of the court is to enforce the terms which the parties included in the contract. (\*\*\*) A court may not rewrite the contract the parties have made and in the absence of ambiguous language may not reform the agreement). The Court must and will interpret the contracts as written. The plain language of the Mortgage which modified the Joint Venture Agreement clearly permits this judicial action to proceed. Accordingly, the Court finds that Area Wide's arguments to the contrary fail.

Area Wide has demonstrated that the Parties do have a valid arbitration agreement. However, Area Wide has failed to demonstrate that the arbitration provision in the Joint Venture Agreement extends to this judicial foreclosure action. Paragraph 22 of the Mortgage undoubtedly permits the foreclosing party (Anchor) to initiate a foreclosure proceeding outside of the arbitration process. The IMFL provides the exclusive remedy for foreclosure. Accordingly, the Court finds that the Parties must adhere to the foreclosure process outlined in the IMFL and in the

Mortgage. Arbitration cannot serve as a substitute for the process in the IMFL. The plain authority for Anchor to proceed here is acquiesced to by Area Wide in the Mortgage.

To the extent the arbitration agreement exists, the Mortgage clearly places this action outside the scope of the agreement to arbitrate. Under Paragraph 22, a foreclosure arising from the Mortgage may be remedied through a judicial proceeding—this action.

#### IV. CONCLUSION

For all of the reasons mentioned herein, the Court finds that the Mortgage explicitly states that this judicial foreclosure action may proceed. Area Wide has failed to demonstrate that it has a valid agreement to arbitrate this issue of foreclosure of the Mortgage—the exact remedy Anchor seeks in this case. Accordingly, Area Wide’s Motion to Compel is DENIED and Area Wide’s Answer stands as pled.

***[Intentionally Left Blank]***

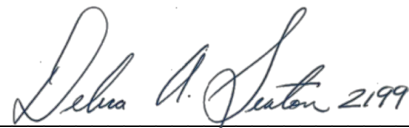
**THEREFORE, FOR THE AFOREMENTIONED REASONS, THE COURT  
HEREBY ORDERS AS FOLLOWS:**

- (1) Area Wide's Motion to Withdraw its Answer and Jury Demand and to Compel Arbitration and Dismiss, or Alternatively, to Stay Proceedings Pending Arbitration is DENIED.

**IT IS SO ORDERED.**

Date: March 21, 2025

ENTERED:

A handwritten signature in cursive script, reading "Debra A. Seaton 2199", written over a horizontal line.

Honorable Debra A. Seaton  
Cook County Circuit Judge

ORDER PREPARED BY THE COURT  
ccc.mfmlcalendar60@cookcountyil.gov  
(312) 603-3894

**Judge Debra Ann Seaton**

**MAR 21 2025**

**Circuit Court - 2199**