

Exhibit 3

COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

MAHENDIAN JAWAHARLAL,	:	Case No. A0203251
Plaintiff	:	(Judge Niehaus)
vs.	:	
CARS INFORMATION SYSTEMS CO.,	:	<u>OPINION GRANTING</u>
et al.	:	<u>SUMMARY JUDGMENT TO</u>
Defendants	:	<u>DEFENDANTS</u>

This cause came before the Court on the motion of the defendants for summary judgment. The plaintiff filed in opposition thereto.

After considering the affidavits and depositions in evidence and the memoranda of counsel the Court issues this opinion.

The case arises out of an employee buy-out contract which contained a non-compete agreement wherein the plaintiff Mahendran Jawaharlal agreed to leave CARS Information Systems Corporation in return for \$107,000. He also agreed pursuant to the terms of the written contract between the parties dated August 31, 2001 not to be employed by certain companies whom "CARS" and "Jenzabar" believed were its competitors.

Plaintiff Jawaharlal filed suit against CARS Information Systems Corporation for breach of the above contract. According to plaintiff Jawaharlal "CARS" failed to make timely reimbursement of a COBRA payment as required under the contract resulting in a breach.

The breach issue arose when Jawaharlal submitted his request for payment for reimbursement of his COBRA payment and, according to Jawaharlal, the defendants were

three days late in reimbursing him. Jawaharlal refers to the terms of the contract specifically §3.2 Benefits, wherein CARS/Jenzabar agreed to reimburse Mr. Jawaharlal for his COBRA payment "within ten (10) business days of Mr. Jawaharlal's written submission of evidence of payment for the premium payments.

Mr. Jawaharlal submitted a copy of a non-negotiated check by e-mail as evidence of payment on October 27, 2001, a Saturday, requesting he be reimbursed for the \$1,766 COBRA payment. The reimbursement was not paid until November 12, 2001.

Subsequent discovery disclosed the postmark on the envelope in which the original check was mailed was dated November 1, 2001. Thus the COBRA check could not have been received and negotiated prior to November 2nd or November 3rd at the earliest. This is extremely important because Jawaharlal was required by §3.2 of the contract to provide evidence of payment for the premium payments in order to receive reimbursement. This was the second COBRA reimbursement check payment under the contract. The first one was for August-October 2001 and this payment was for November, 2001-January 2002. Originally Jawaharlal brought his COBRA payment to Jenzabar/CARS for mailing to COBRA as evidence of payment. Jawaharlal asserts the e-mailing of a copy of the non-negotiated check as evidence of payment was agreed to by Jenzabar/CARS through their agent by e-mail.

A number of problems arise when seeking to apply conclusions of law to Jawaharlal's version of the facts and their legal significance. Section 20 of the Contract states "No waiver (of a provision of the contract) shall be valid unless prepared in writing and signed by either Mr. Jawaharlal or any officer or director of Jenzabar on behalf of the party granting the waiver." Is an e-mail message "a writing signed by" a proper party? Obviously it may be a writing but it is not signed by a party and in violation of the terms of the contract.

Furthermore, is Jawsharlal's non-negotiated check "evidence of payment" under the contract such that it starts the 10-13 business days clock running? (Under the scenario of the November 1st mailing of the check the reimbursement was timely since the check could not have been received by the payee until November 2nd or 3rd 2001.)

Since "evidence of payment" is not specifically defined under the contract, the Court must look to the legal definition of "evidence of payment" under Massachusetts law. (The law of the contract is designated as the laws of the Commonwealth of Massachusetts.

Under United States v. Forcelli 610 F.2d 25 delivery of a check is at best of limited functional significance. In the absence of a special agreement a check is but conditional payment even when delivered to the payee. (Also see GMAC v. Abington Casualty Ins. Co., 413 Mass. 583. In Noble v. John Hancock Mut. Life Ins. Co. the Court noted. "Absent an agreement to the contrary, a waiver or estoppel, the receipt of a check constitutes only a conditional acceptance conditioned on its being honored. Therefore in this case the e-mailing of the non-negotiated check was not proof of payment under Massachusetts law.

Finally, if there was a failure to timely pay the reimbursement of the \$1,766 COBRA payment was it "material breach"?

In Petrangelo v. Pollard 356 Mass. 696 the Court cites Restatement (Second) of contracts §237 (1981); 6 Williston, Contracts §829 (3rd ed., 1962) "Only a material breach of contract ... justifies a party thereto in rescinding it." Although a material breach may be a jury question, a small breach may be ruled not to be material as a matter of law. See Nat'l Mach. and Tool Co. v. Standard Shoe Mach. Co. 181 Mass. 275, Gold v. Concentra Preferred Sys., Inc. 2001 WL 755829, 6 (Mass. Supra 2001). Thus referencing "Gold" the amount of the breach in this case was a little over 1% and was late for only 3 days (if you accept

plaintiff's assertions that the reimbursement was not timely which is not supported by the law or the evidence presented) where in Gold a breach of 1% for four days was not found to be a material breach.


An Ohio case, Equitable Life Insurance Co. of Iowa v. Oerwick 50 Ohio App. 277 cites "Williston on Contracts" 3d 1968 440 Section 32.9 which states under the "main purpose doctrine" a contract must be considered as a whole and the intent of the parties must be determined from the entire instrument and not the detached parts.

In this case the main purpose of the contract was to allow Jawaharlal to have his employment association with "CARS" Jenzabar terminated in return for approximately \$117,000 in severance pay and benefits by "CARS"/Jenzabar. Jawaharlal agreed to enter into a non-compete covenant as part of the separation agreement between the parties. These were the main purposes of the contract. The issue of when and how the reimbursement of the COBRA payments was to be accomplished constituted only a part of the overall contract. Therefore the alleged changes and the non-material default alleged are insufficient reasons to void the "main purpose" of the contract which was to allow Jawaharlal to terminate his employment relationship with "CARS"/Jenzabar, and enter into a non-compete agreement.

Wherefore defendants' motion for summary judgment is hereby granted.

Counsel to submit an entry in conformity with this opinion on or before the 16th of September 2003 at 11:00 a.m.

SO ORDERED.



Richard A. Niehaus, Judge