2015 IL App (2d) 140753-U
No. 2-14-0753
Order filed March 9, 2015

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

KAREN ANGEL, GAINSEY ANGEL, and K&G ANGEL, INC.,	)	Appeal from the Circuit Court of Du Page County.
Plaintiffs-Appellees,	)	
v.	)	No. 10-L-726
MR. ROOTER CORPORATION and THE DWYER GROUP,	)	
Defendants-Appellants	)	
(Phil Knippen, individually and d/b/a Mr. Rooter of Will County, Mr. Rooter of Will County, Terry Schuler, individually and d/b/a Mr. Rooter of Du Page County, Inc., Mr. Rooter of Du Page County Inc., Vinay Rajput, individually and d/b/a Mr. Rooter of Cook County and d/b/a Mr. Rooter Plumbing and d/b/a VKR Enterprises, Inc., Mr. Rooter of Cook County, VKR Enterprises, Inc., and Mr. Rooter Plumbing, Defendants).	)	Honorable William I. Ferguson, Judge, Presiding.

JUSTICE SPENCE delivered the judgment of the court.
Justices Burke and Hudson concurred in the judgment.

ORDER

¶ 1 *Held*: We lacked jurisdiction to address defendants' argument that the trial court erred in denying its motion to dismiss. We agreed with defendants that the trial court

> erred in ordering that arbitration take place at a specific location and in requiring the parties to use three arbitrators, and we reversed these rulings. We affirmed the remaining portions of the order compelling arbitration, as the parties did not dispute them.

¶ 2 Plaintiffs, Karen Angel, Gainsey Angel, and K&G Angel, Inc., brought suit against defendants, Mr. Rooter Corporation and its parent company, the Dwyer Group, alleging that defendants had breached the parties' franchise agreement. In this interlocutory appeal, defendants contest the trial court's order denying their motion to dismiss plaintiffs' suit as time-barred, as well as the trial court's order compelling arbitration. Regarding the latter order, defendants argue that the trial court erred in ordering the parties to conduct the arbitration at a particular location and have a three-arbitrator panel. We do not address defendants' first argument, as we conclude that we lack jurisdiction over the denial of a motion to dismiss. As for defendants' second argument, we agree with defendants that the trial court erred in specifying where the arbitration should be held and by which method the arbitrators should be chosen. We therefore reverse these rulings while affirming the remainder of the arbitration order.

¶ 3 I. BACKGROUND

¶ 4 Plaintiffs filed their complaint on June 7, 2010, against defendants and other parties, alleging as follows in relevant part. Defendants contacted plaintiffs to solicit their purchase of a "Mr. Rooter" franchise, and defendants made various representations regarding the business. On February 26, 2007, plaintiffs signed a promissory note providing a loan of $129,292.27 to purchase the franchise, and they entered into a franchise agreement in March 2007. Under the agreement, plaintiffs had an exclusive license to establish and operate a "Mr. Rooter" franchise in Du Page County, as well as the exclusive right to solicit customers, perform services, and sell products within Du Page County. However, shortly after commencing business operations, plaintiffs learned that several other individuals and/or entities were using the "Mr. Rooter" name

in Du Page County. These other businesses interfered with plaintiffs' business by diverting work from them, thereby depriving them of business income. Plaintiffs notified defendants of the infringing activities, and defendants promised to take any and all steps needed to remedy the situation, as required by the franchise agreement. However, defendants failed to take the necessary legal action to stop the infringing activities. As a result, plaintiffs' business failed and ceased operation around May 2009. Upon the business's failure, plaintiffs were unable to pay the fees due under the franchise agreement and promissory note, as well as other debts. Defendants terminated the franchise agreement on June 2, 2009.

¶ 5 In their complaint, plaintiffs alleged breach of contract, common law fraud, two counts of civil conspiracy, three counts of tortious interference with a contract, four counts of intentional infliction of emotional distress, and a violation of the Consumer Fraud and Deceptive Business Practices Act (815 ILCS 505/1 *et seq.* (West 2010)). Six of the twelve counts were directed against defendants.

¶ 6 Plaintiffs attached to their complaint a copy of the franchise agreement. Section 13 of the agreement set forth terms for dispute resolution. Section 13J specifically discussed arbitration and stated, in relevant part:

> "In order to resolve Disputes, including any dispute as to whether arbitration is allowed or required, which may arise between them more effectively and thereby further their mutually beneficial business relationship, the parties to this Agreement agree that if they are not able to resolve the Dispute through the mediation process described above, the controversy shall be submitted to binding arbitration. *The arbitration shall be conducted through an organization experienced in the arbitration of Disputes between franchisors and franchisees and shall be designated by Franchisor*, however, such

> organization will be independent of Franchisor. *If Franchisor fails to designate an organization within a reasonable time after the termination of the mediation at which the parties have been unable to reach an agreement (not to exceed fifteen (15) days), the arbitration shall be conducted by a panel of three (3) arbitrators selected in the following manner. Each party shall appoint one (1) arbitrator and the two (2) arbitrators appointed by the parties shall select a third arbitrator. The arbitration shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association, except that the arbitrators shall apply the Federal Rules of Evidence during the conduct of the sessions* [*sic*] *with respect to the admissibility of evidence. The arbitration shall be governed by the United States Arbitration Act, 9 U.S.C. § 1-16.* Judgment upon the award rendered by the arbitrators may be entered by any court having jurisdiction thereof and will be final, binding and non-appealable, except as set forth below. *The place of arbitration shall be as mutually agreed between the parties*; provided, however, if the parties cannot agree, this provision is subject to the jurisdiction provided in Section 14.K. hereof. " (Emphases added.).

¶ 7 The agreement also contained a choice-of-law provision in paragraph 14K stating that the rights of and the relationship between the franchisor and franchisee would be governed by Texas law, with two exceptions, the one relevant here being "except to the extent governed by the" Federal Arbitration Act (FAA) (9 U.S.C. 1 *et seq.* (2006)). An addendum to the contract for Illinois residents added a provision to paragraph 14K which stated, in relevant part:

> "If any provisions of the Agreement are inconsistent with applicable Illinois state law, then Illinois state law shall apply. Any provision which designates jurisdiction or venue in a forum outside Illinois is void with respect to any cause of action which is

otherwise enforceable in Illinois, provided that a Franchise Agreement may provide for arbitration in a forum outside of Illinois."

¶ 8 On August 16, 2010,[1] defendants filed a "Motion to Compel Contractually Mandated Dispute Resolution Procedure." Defendants noted that section 13 of the franchise agreement provided the terms for dispute resolution for the counts against them. Defendants argued that the parties were required to first try to negotiate in good faith; if that failed, enter into mediation of the dispute; and if the mediation process did not succeed, enter into arbitration. Defendants requested that the trial court compel dispute resolution, including arbitration if both negotiations and mediation failed. Defendants cited both the Illinois Uniform Arbitration Act (Illinois Arbitration Act or Act) (710 ILCS 5/1 *et seq.* (West 2012)) and the FAA in their motion.

¶ 9 The trial court entered and continued the motion to compel arbitration on October 4, 2010. Plaintiffs filed a response to the motion on January 26, 2011.

¶ 10 On April 25, 2011, the trial court ordered the parties to participate in mediation.

¶ 11 On September 13, 2011, defendants filed a motion to dismiss the suit as time-barred under the Illinois Franchise Disclosure Act of 1987 (815 ILCS 705/27 (West 2010)) and alternatively, to compel arbitration pursuant to the terms of the franchise agreement. They alleged that the mediation was held on August 23, 2011, with former judge Edward Duncan as the mediator, but the parties were unable to come to a resolution of the issues.[2] Also on

[1] The motion has a file-stamped date of January 25, 2011, but the notice of motion states that it was served August 16, 2010. In their briefs, both parties also refer to the motion as being filed in August 2010, and the trial court references such a motion in its October 4, 2010, ruling. Accordingly, we state that the motion was filed on August 16, 2010.

[2] The parties each blame the other for the termination of the mediation process.

September 13, 2011, defendants filed a separate motion to strike and dismiss the complaint, similarly alleging that the suit was time-barred.[3]

¶ 12 On April 18, 2012, the trial court stated that due to plaintiffs' bankruptcy, the case would remain on inactive status. On January 14, 2014, plaintiffs were ordered to respond to defendants' pending motion to dismiss. The trial court denied the motion to dismiss on April 22, 2014.

¶ 13 On June 12, 2014, the trial court granted defendants' motion to compel arbitration. At the hearing, it verbally stated as follows. The Illinois Arbitration Act provides that the Act must be deemed a part of the contract. The parties were to hold the arbitration in Du Page County, with three arbitrators selected under the provisions of section 13J of the franchise agreement. The Illinois rules of evidence were to apply. The parties could investigate whether to use the Du Page County Arbitration Center (Center) as a venue.

¶ 14 The trial court's written order stated that the parties would have 28 days to each pick an attorney-arbitrator, and those two arbitrators would then have 14 days to pick a third arbitrator. The court stated that it would retain jurisdiction to assist in "matters of Arbitration," such as discovery and subpoenas.

¶ 15 On July 10, 2014, plaintiffs filed a motion for clarification or reconsideration. They stated that at the time of the previous ruling, it was plaintiffs' understanding that the three arbitrators would perform the arbitration at the Center and that the costs would be split according to paragraph 13J of the franchise agreement. Plaintiffs alleged that defendants had sent them an e-mail demanding that plaintiffs go through the American Arbitration Association (AAA) and pay the AAA application fee.

[3] We refer to the two motions collectively as defendants' motion to dismiss.

¶ 16 Plaintiffs attached a copy of the e-mail to their motion. In it, defendants stated that the "Du Page Court Annexed Arbitration Program" had said that it administered only cases under $50,000 pursuant to Illinois Supreme Court rules, and it did not handle franchisor/franchisee disputes. Defendants stated that under paragraph 13J of the franchise agreement, they were designating the AAA as the organization to administer the arbitration, and that AAA rules were to apply. Defendants further stated that plaintiffs would have to pay the administrative filing fee.

¶ 17 On July 16, 2014, the trial court held a hearing on plaintiffs' motion, stating as follows. It was striking its order of June 12, 2014, and entering a new order. The parties were to have their arbitration at the Center. Paragraph 13 of the franchise agreement discussed how the three-person arbitration panel was to be chosen.

¶ 18 Defendants stated that the Center had told them that, under Illinois Supreme Court Rules, it could only handle cases under $50,000. The trial court responded that local rules specifically stated that the trial court could order arbitration, and the Center would honor the court order. Defendants stated that under section 13J, the organization needed to have experience with franchisee/franchisor disputes, and they were told that none of the arbitrators at the Center were qualified to do that. The trial court stated that defendants knew when they talked to the Center that they were ordered to choose their own arbitrators and should have said that. Defendants stated that under AAA rules, the arbitration could take place wherever the parties agreed. The trial court said to "[f]orget Triple A." It stated that if the parties agreed to hold the arbitration anywhere in the world they could do that, but if the parties did not agree and had pending litigation, the Illinois Arbitration Act applied, and the Act required that the arbitration take place in the county where the litigation was occurring. The trial court stated that it was giving the parties a free room. It continued:

> "And then we're complying with that paragraph that you talked about because we're going to use the arbitrators that you select. You are going to pick a person who you have confidence in who has background, training, and understanding with regard to franchises. He is going to pick who he wants. You may not like who he wants and he may not like who you want. But the two of them are going to then go pick and you can give your arbitrator marching orders that says [*sic*] that you want the second arbitrator to be an expert in franchises as indicated in the contract. What he considers to be an expert in franchises may be different than what you consider to be an expert in franchises. But, you know, this is outside my purview at this point because I'm telling you where to go and when to do it. I'm not telling you when. I'm telling you where to go. I'm telling you how to pick your arbitrators, and I'm telling you you have to come back and tell me what happened at some point in time."

¶ 19 The trial court's written ruling from July 16, 2014, stated that arbitration should take place at the Center and not the AAA. Each party was to pick an arbitrator, and those two arbitrators would pick a third arbitrator. Each party would have the right to supply its own court reporter at its cost. The court was retaining jurisdiction to assist in arbitration matters, such as discovery and subpoenas.

¶ 20 On August 4, 2014, defendants filed the instant interlocutory appeal under Illinois Supreme Court Rule 307(a)(1) (eff. Feb. 26, 2010). See *Fosler v. Midwest Care Center II, Inc.*, 398 Ill. App. 3d 563, 566 (2009) (ruling on motion to compel arbitration is injunctive and appealable under Rule 307(a)(1)). On appeal, defendants argue that: (1) the trial court erred in not granting their motion to dismiss, because the lawsuit is barred by the statute of limitations; and (2) the trial court erred by not following the terms of the arbitration clause when it

compelled arbitration of the suit.

¶ 21 II. ANALYSIS

¶ 22 We begin by addressing two motions we ordered taken with the case. First, plaintiffs filed a motion to strike portions of defendants' briefs wherein defendants argue that the trial court erred in denying their motion to dismiss; plaintiffs maintain that we lack jurisdiction to determine this issue because the order did not contain language under Illinois Supreme Court Rule 304(a) (eff. Feb. 26, 2010) allowing the denial of the motion to dismiss to be appealed. Second, after defendants filed a response to plaintiffs' motion to strike, plaintiffs filed a motion for leave to file a reply *instanter*. We now grant the latter motion and allow plaintiffs' reply to be filed *instanter*.

¶ 23 On the subject of the denial of defendants' motion to dismiss, we agree with plaintiffs that we lack jurisdiction to consider the issue's merits. With a few statutory and supreme court rule exceptions, our jurisdiction is limited to reviewing appeals from final judgments. *Walker v. Carnival Cruise Lines, Inc.*, 383 Ill. App. 3d 129, 132 (2008). An order is final and appealable only if it terminates the litigation on the merits or disposes of the parties' rights on either the entire controversy or a separate part thereof. *In re A.A.*, 2014 IL App (5th) 140252, ¶ 32. A trial court's denial of a motion to dismiss constitutes an interlocutory order that is not final and appealable. *Walker*, 383 Ill. App. 3d 129; see also *Saddle Signs, Inc. v. Adrian*, 272 Ill. App. 3d 132, 135 (1995) (the denial of a motion to dismiss was not final and did not fall within the purview of any Illinois Supreme Court Rules regarding interlocutory appeals); *Illinois Concrete-I.C.I., Inc. v. Storefitters, Inc.*, 397 Ill. App. 3d 798, 800 (2010) (an appeal under Rule 307 does not allow for a general review of all orders the trial court entered up to that date).

¶ 24 While plaintiffs focus on the lack of a Rule 304(a) finding, such a finding is appropriate only in cases involving multiple parties or claims where there is a *final* judgment as to one or more parties or claims. Ill. S. Ct. R. 304(a) (eff. Feb. 26, 2010); *Harreld v. Butler*, 2014 IL App (2d) 131065, ¶ 11. Rule 304(a) language cannot change a nonfinal order into a final and appealable order. *Hadley v. Doe*, 2014 IL App (2d) 130489, ¶ 79. Thus, even if the trial court had included Rule 304(a) language, we still would lack jurisdiction over the denial of the motion to dismiss, as the ruling did not terminate the litigation on the merits or dispose of either party's rights on any portion of the controversy, nor does it fall within any rule allowing the appeal of an interlocutory order.

¶ 25 Accordingly, we lack jurisdiction to address defendants' argument that the trial court erred in denying their motion to dismiss. We therefore grant plaintiffs' motion to strike the portions of defendants' brief setting forth this argument. See *LaSalle National Bank v. City Suites, Inc.*, 325 Ill. App. 3d 780, 786 (2001) (granting party's motion to strike portions of opponent's brief directed at a judgment that appellate court lacked jurisdiction to review).

¶ 26 We now turn to defendants' argument that the trial court erred by not following the arbitration clause's terms when compelling arbitration. Defendants argue as follows. The trial court ordered arbitration before the local Illinois mandatory arbitration forum, the Center, even though defendants were supposed to designate the arbitration organization. Also, it is undisputed that the Center is limited to the arbitration of cases under $50,000, whereas plaintiffs allege $650,000 in damages, and the Center and its arbitrators have no franchise dispute experience. Further, the arbitration clause provides for a choice of law and AAA's commercial arbitration rules, but the trial court said to forget about the AAA, and it did not designate any rules of evidence or rules in general. The arbitration clause required that three arbitrators be appointed

only if defendants failed to designate an arbitration organization, but defendants designated AAA, and AAA rules would have required only one arbitrator. Moreover, the trial court allowed the parties to choose anyone as an arbitrator, whereas AAA rules required qualified arbitrators in large cases and franchise law experience.

¶ 27 Plaintiffs argue that the issues on appeal are whether the Illinois Arbitration Act or the FAA applies, and whether the trial court's manner of ordering arbitration was proper. Regarding the first question, plaintiffs cite several cases in support of their position that the Illinois Arbitration Act applies. See *Jupiter Mechanical Industries, Inc. v. Sprinkle Filters & Apprentices Local Union No. 281*, 281 Ill. App. 3d 217 (1996); *Johnson v. Baumgardt*, 216 Ill. App. 3d 550 (1991); *Premier Electrical Construction Co. v. Ragnar Benson, Inc.*, 111 Ill. App. 3d 855, 858 (1982); *Yates v. Doctor's Associates, Inc.*, 193 Ill. App. 3d 431, 437 (1990); *Cecala v. Moore*, 982 F. Supp 609 (N.D. Ill. 1997). They further argue that the FAA cannot apply because the dispute does not involve interstate commerce. See 9 U.S.C. § 2 (2012) (the FAA applies to contracts "evidencing a transaction involving commerce").

¶ 28 As for the second question, plaintiffs argue that the trial court's manner of ordering arbitration was proper. Plaintiffs maintain that the arbitration clause's terms control the arbitration procedures. Plaintiffs argue that under the contract: (1) the parties were to first go through mediation; (2) if mediation failed, the parties were to arbitrate; (3) the franchisor was to name an organization to conduct the arbitration within a reasonable time; (4) if the franchisor failed to designate an organization within 15 days after the termination of mediation, the arbitration was to be conducted by three arbitrators; (5) the three arbitrators were to use the AAA's commercial arbitration rules; and (6) judgment on the arbitrators' award was to be entered by the court having jurisdiction of the matter.

¶ 29 Plaintiffs note that the mediation occurred on August 23, 2011, and they contend that under paragraph 13J, defendants had until "September 2, 2011,"[4] to designate an organization to handle the arbitration. Plaintiffs argue that, however, defendants never named an association within the proper time frame. Plaintiffs argue that defendants filed only a motion in the alternative to compel arbitration and did not file an actual, written demand until after the trial court ruled. Plaintiffs argue that both motions were filed long after the 15-day grace period in paragraph 13J expired. Plaintiffs argue that defendants therefore forfeited their right to select any organization to conduct the arbitration, if such right even existed.

¶ 30 Defendants respond that they are not conceding that the three-arbitrator option was invoked. They maintain that the August 23, 2011, mediation never had a written conclusion, so it was never clear if it would continue. Defendants argue that the trial court also did not find that there was a delay in choosing an arbitration forum.

¶ 31 Defendants additionally argue that there is no real issue regarding whether the Illinois Arbitration Act or the FAA applies because the statutes are virtually identical and both require courts to follow the arbitration clause's terms for appointing arbitrators. Defendants argue that because the arbitration clause specifically states that the FAA applies, both the FAA and the Illinois Arbitration Act apply, and there are no conflicts between the two acts relevant to this case.

¶ 32 Arbitration is favored over litigation by state, federal, and common law because arbitration is a fast, informal, and relatively inexpensive way to resolve controversies arising out of commercial transactions. *GPS USA, Inc. v. Performance Powdercoating*, 2015 IL App (2d)

[4] September 2, 2011, would have been 10 days later. Plaintiffs presumably meant September 7, 2011, which was 15 days later.

131190, ¶ 17. The Illinois Arbitration Act shows a legislative policy favoring the enforcement of agreements to arbitrate, and Illinois courts also favor arbitration. *Id.* In general, we review *de novo* a trial court's ruling on a motion to compel arbitration. *LRN Holding, Inc. v. Windlake Capital Advisors, LLC*, 409 Ill. App. 3d 1025, 1027 (2011); see also *Smola v. Greenleaf Orthopedic Associates, S.C.*, 2012 IL App (2d) 111277, ¶ 16 ("The interpretation of an arbitration agreement involves a question of law and is subject to *de novo* review."). However, where the nature of the issue on appeal deals with factual findings requiring deference, we apply an abuse of discretion standard. *Brown v. Delfre*, 2012 IL App (2d) 111086, ¶ 10. Here, the trial court did not make any factual findings, so we review its ruling *de novo*.

¶ 33 We first address the subject of whether the Illinois Arbitration Act or the FAA, or both, apply. "[W]here parties to a contract agree to *arbitrate* in accordance with state law, the FAA does not apply even where interstate commerce is involved." (Emphasis added.) *LRN Holding, Inc. v. Windlake Capital Advisors, LLC*, 409 Ill. App. 3d 1025, 1033 (2011). Conversely, the FAA governs the construction of an agreement to arbitrate unless the agreement expressly provides that state law should govern. *Id.* at 1034; see also *Brown*, 2012 IL App (2d) 111086, ¶ 15 (the FAA applies to both state and federal courts). Here, the parties did not agree to arbitrate according to Illinois law, but rather explicitly stated that the FAA would apply, and that the arbitration was to be conducted under the AAA's commercial arbitration rules. Therefore, the Illinois Arbitration Act does not apply. *Cf. LRN Holding, Inc.*, 409 Ill. App. 3d at 1035 (where the contract contained a generic state choice of law clause but also incorporated AAA arbitration rules, the parties did not intend that disputes encompassed by the arbitration agreement be settled pursuant to the Illinois Arbitration Act).

¶ 34 Plaintiffs' case citations do not provide a contrary result. In *Jupiter Mechanical Industries, Inc*, 281 Ill. App. 3d at 220, the court stated that the Illinois Arbitration Act applies to all written agreements to arbitrate, but it prefaced this proposition with the statement that neither party contended that the arbitration issue was preempted by federal law. In *Johnson*, 216 Ill. App. 3d at 560, the court stated that the Illinois Arbitration Act "must be deemed part of a contract containing an arbitration clause." However, the *Johnson* court was not faced with the question of whether the federal or state arbitration act applied. Courts looking at this issue have held that where a contact involving interstate commerce has an arbitration clause, the FAA supercedes the Illinois Arbitration Act. *Aste v. Metropolitan Life Insurance Co.*, 312 Ill. App. 3d 972, 975 (2000); *Konewko v. Kidder, Peabody & Co.*, 173 Ill. App. 3d 939, 942 (1988). Plaintiffs' citation to *Premier Electrical Construction Co.*, 111 Ill. App. 3d at 860, is not persuasive for the same reason.

¶ 35 The appellate court's analysis in *Yates*, 193 Ill. App. 3d 431, warrants more discussion. That case, like this one, involved a franchisee-franchisor dispute. The defendants brought a motion to compel arbitration under the Illinois Arbitration Act, and following the denial of the motion, they appealed. *Id.* at 435-36. On appeal, the defendants argued that the FAA preempted the Illinois Arbitration Act. The appellate court reasoned that the defendants had forfeited their claim regarding the application of the FAA by not raising it below. *Id.* at 437. The court stated that, even otherwise, the FAA did not control because the agreement contained a choice-of-law provision electing the laws of Connecticut. *Id.* Relying on *Volt Information Sciences, Inc. v. Board of Trustees of the Leland Stanford Junior University*, 489 U.S. 468 (1989), the *Yates* court stated, "Where, as here, the parties have agreed to arbitrate in accordance with State law, the

[FAA] does not apply, even though the transaction involves interstate commerce." *Yates*, 193 Ill. App. 3d at 437.

¶ 36 In contrast to *Yates*, here defendants did not rely exclusively on the Illinois Arbitration Act but instead argued that the FAA also applied. Further, the *Yates* court's statement regarding the FAA is no longer "good law," as the Supreme Court subsequently limited its statement in *Volt* in *Mastrobuono v. Shearson Lehman Hutton, Inc.*, 514 U.S. 52 (1995). In *Mastrobuono*, the Supreme Court stated that the choice of law provision covers the parties' rights and duties and the arbitration clause covers arbitration. *Id.* at 64. "*Mastrobuono* has been read to mean that a general choice of law provision in a contract will not extend to the arbitration clause, absent specific evidence that the parties intended it to do so." *State Farm Mutual Automobile Insurance Co. v. George Hyman Construction Co.*, 306 Ill. App. 3d 874, 881 (1999); see also *LRN Holding, Inc.*, 409 Ill. App. 3d at 1033-34 (under *Mastrobuono*, the FAA governs the construction of an agreement to arbitrate unless the agreement expressly provides that state law should govern). Therefore, in this situation, notwithstanding the agreement's reference to Illinois law, the FAA governs the arbitration because the parties explicating stated so in their arbitration provision.

¶ 37 In the last case cited by plaintiffs, *Cecala*, 982 F. Supp. at 612, the federal district court did not apply the FAA only because the real estate contract did not involve interstate commerce. Plaintiffs maintain that the agreement here similarly does not involve interstate commerce, but they provide no support for their statement. We note that: the agreement involves a Texas franchisor and an Illinois franchisee; plaintiffs were to pay fees to defendants; plaintiffs were to contribute to a national advertising fund to benefit all franchisees; required training was to take place in locations such as Texas; and defendants contemplated selling products to plaintiffs. Therefore, it clearly involves interstate commerce. See *Citizen Bank v. Alafabco, Inc.*, 539 U.S.

52, 56 (2003) (the FAA encompasses a wider range of transactions than those actually within the flow of interstate commerce); c*f. Ommani v. Doctor's Associates*, 789 F.2d 298, 299 (5th Cir. 1986) ("The nature of the franchise agreement, involving a contemplated continuous flow of money, advice, obligations, and benefits between Texas and Connecticut, was clearly in commerce."); see also *Carr v. Gateway, Inc.*, 241 Ill. 2d 15, 21 (2011) (in construing federal laws, federal court decisions are binding upon this court).

¶ 38 That all being said, we agree with defendants that the application of either the FAA or Illinois Arbitration Act would likely yield the same result. See *Federal Signal Corp. v. SLC Technologies, Inc.*, 318 Ill. App. 1101, 1111 (2001) (principles of FAA are consistent with those of the Illinois Arbitration Act); *J&K Cement Construction, Inc. v. Montalbano Builders, Inc.*, 119 Ill. App. 3d 663, 668 (1983) (the Uniform Arbitration Act and the FAA share a common origin).[5] However, we elected to resolve this issue because plaintiffs dispute the application of the FAA here and, more importantly, in order to have a framework in which to analyze the trial court's ruling compelling arbitration.

¶ 39 Under the FAA, the trial court shall stay further proceedings and order arbitration if a valid agreement to arbitrate exists and the dispute at issue falls within the agreement. *Bovay v. Sears, Roebuck & Co.*, 2013 IL App (1st) 120789, ¶ 28. The trial court has the role of determining whether there is a valid agreement to arbitrate and whether the dispute is within the arbitration agreement's scope. *Ford Motor Credit Co. v. Cornfield*, 395 Ill. App. 3d 896, 905-06 (2009). In this case, the parties do not contest that arbitration was warranted, but rather defendants argue that the trial court's manner of ordering arbitration was improper.

[5] The Illinois Arbitration Act is patterned after the Uniform Arbitration Act. *Village of Posen v. Illinois Fraternal Order of Police Labor Council*, 2014 IL App (1st) 133329, ¶ 52.

¶ 40 The FAA provides that "[i]f in the agreement provision be made for a method of naming or appointing an arbitrator or arbitrators or an umpire, such method shall be followed." 9 U.S.C. § 5 (2012). The arbitration provision here stated that the "arbitration shall be conducted though an organization experienced in the arbitration of Disputes between franchisors and franchisees and shall be designated by Franchisor, however such organization will be independent of Franchisor." Plaintiffs emphasize the next sentence of the paragraph, which states: "If Franchisor fails to designate an organization within a reasonable time after the termination of the mediation at which the parties have been unable to reach an agreement (not to exceed fifteen (15) days), the arbitration shall be conducted by a panel of three (3) arbitrators ***." The provision further provides that the arbitration is to be conducted pursuant to the AAA's commercial arbitration rules, except that the arbitrators are to apply federal rules of evidence.

¶ 41 If the date that the mediation was held, August 23, 2011, is taken as the day the mediation terminated, then defendants would have had until September 7, 2011, to designate the organization. The first explicit mention of defendants naming an organization is in their July 2, 2014, e-mail to plaintiffs. However, as they pointed out in that e-mail, the AAA rules and case law provide that if the parties designate AAA rules, the parties authorize the AAA to administer the arbitration. See AAA, *Commercial Arbitration Rules & Mediation Procedures*, Oct. 1, 2003, R-1, *available at* https://www.adr.org/aaa/ShowProperty?nodeId=/UCM/ADRSTG_00410; *Dockser v. Schwartzberg*, 433 F.3d 421, 428 (4th Cir. 2006). The arbitration provision here designated AAA rules, meaning that the AAA was automatically authorized to administer the arbitration. Therefore, defendants did not forfeit their right to have the AAA administer the arbitration. Moreover, whether one or three arbitrators should hear a case is a procedural question, not a question of arbitrability, and is appropriate for arbitration. *Dockser*, 433 F.3d at

426; see also *Moses H. Cone Memorial Hospital v. Mercury Construction Corp.*, 460 U.S. 1, 24-25 (1983) (any doubts about the scope of arbitrable issues should be resolved in favor of arbitration); *Ford Motor Credit Co.*, 395 Ill. App. 3d at 906 (pursuant to the FAA, procedural questions arising from the dispute and affecting its final disposition, such as allegations of waiver, delay, or similar defenses to arbitrability, are presumptively for the arbitrator to decide). Even the trial court here did not explicitly find that defendants had failed to name an arbitration organization in a timely manner. Because defendants dispute that their designation of the AAA was untimely, the resolution of this issue should be determined through arbitration, at which point the AAA can decide whether the procedure for selecting three arbitrators should be followed, rather than having the default of one arbitrator under AAA rules. See AAA, *Commercial Arbitration Rules & Mediation Procedures*, Oct. 1, 2003, R-16, *available at* https://www.adr.org/aaa/ShowProperty?nodeId=/UCM/ADRSTG_00410 (discussing number of arbitrators). Accordingly, the trial court erred by ruling, at the outset, that the alternative method of choosing arbitrators be followed, in which the parties were to each pick an arbitrator and those two arbitrators would pick a third.

¶ 42 On the subject of the location of the arbitration, defendant's arguments regarding the inability of the "Du Page Court Annexed Arbitration Program" to handle cases over $50,000 and franchisor/franchisee disputes are irrelevant, as it is clear that the trial court was ordering arbitration to be physically held at the Center, without the Center actually administering the arbitration. That being said, under the parties' agreement, they can mutually agree where to hold the arbitration, and any disputes are subject to the jurisdiction provision. Similarly, under AAA rules, the parties are allowed to agree on the location where the arbitration is to be held. If they do not agree, disputes regarding the location are to be decided by the AAA. See

AAA, *Commercial Arbitration Rules & Mediation Procedures*, Oct. 1, 2003, R-11, *available at* https://www.adr.org/aaa/ShowProperty?nodeId=/UCM/ADRSTG_00410. As the parties did not have the opportunity to mutually decide on a location and defendants continue to object to the arbitration taking place at the Center, the trial court erred by ordering the parties to conduct their arbitration there. We note that if both parties subsequently agree to have the arbitration take place at the Center, this order should not be interpreted as a barrier to that agreement.

¶ 43 III. CONCLUSION

¶ 44 In sum, we lack jurisdiction over the trial court's April 22, 2014, denial of defendants' motion to dismiss, so we do not address defendants' arguments contesting that ruling. As for the trial court's July 16, 2014, ruling regarding arbitration, the parties do not dispute that the trial court properly: (1) compelled arbitration, (2) ordered that each party pay its own court reporter costs for arbitration proceedings; and (3) retained jurisdiction to assist in discovery-type matters. We therefore affirm those portions of its order. However, we agree with defendants that the trial court erred in ordering arbitration at the Center and in requiring that the arbitration be conducted by three arbitrators, and we therefore reverse these rulings. Rather, the parties are to submit the arbitration to the AAA, which will resolve any procedural matters regarding the arbitration.

¶ 45 Affirmed in part and reversed in part.