[Cite as *Columbus Steel Castings, Inc. v. Real Time Staffing Servs., Inc.*, 2011-Ohio-3708.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Columbus Steel Castings, Inc.,	:	
Plaintiff-Appellee,	:	
		No. 10AP-1127
v.	:	(C.P.C. No. 10CVH-10-14440)
Real Time Staffing Services, Inc. et al.,	:	(ACCELERATED CALENDAR)
Defendants-Appellants.	:	

D E C I S I O N

Rendered on July 28, 2011

Porter, Wright, Morris & Arthur LLP, Scott E. North, and *Eric B. Gallon,* for appellee.

Dinsmore & Shohl, LLP, Charles E. Ticknor, III, and *Gregory P. Mathews,* for appellants.

APPEAL from the Franklin County Court of Common Pleas.

BRYANT, P.J.

{¶1} Defendants-appellants, Real Time Staffing Services, Inc. d.b.a. Select Staffing Services, Koosharem Corp. d.b.a. Select Staffing, New Koosharem Corp., and Select PEO, Inc. d.b.a. Select Focus (collectively "defendants"), appeal from a judgment of the Franklin County Court of Common Pleas denying defendants' motion to dismiss or, in the alternative, to stay proceedings pending arbitration and for an order compelling arbitration ("motion to stay"). Defendants assign a single error:

> The trial court erred when it failed to stay the proceedings and compel arbitration pursuant to R.C. 2711.02.

Because the trial court erred in determining the issues involved in the litigation are not subject to arbitration under the parties' agreements, we reverse.

I. Facts and Procedural History

{¶2} On October 1, 2010, plaintiff-appellee, Columbus Steel Castings, Inc., filed a complaint in the trial court against defendants seeking damages, injunctive relief, and a declaratory judgment "stemming from [defendants'] breaches of their contracts with [plaintiff]." (Complaint, ¶1.) According to the complaint, plaintiff and defendants had two nearly identical agreements effective from June 2008 to June 2010 under which defendants, in exchange for an administrative fee, were to provide plaintiff with employees to work at plaintiff's foundry. Under the express terms of their agreements, defendants were responsible for paying the workers' wages and for maintaining workers' compensation coverage for those employees. Significant to this litigation, defendants also agreed to indemnify plaintiff "from and against any losses, liabilities, claims, obligations and/or expenses * * * arising from or related to * * * the acts, errors or omissions of [defendants,] including but not limited to any payments owed or due any governmental agencies." (Complaint, Exhibit A, ¶9.B; Exhibit B, ¶9.B.)

{¶3} Plaintiff's complaint alleged defendants failed to pay $811,253.62 to the Ohio Bureau of Workers' Compensation ("BWC") for the first half of 2010 even though plaintiff complied with its contractual obligation to provide defendants with the funds needed to pay workers' compensation insurance premiums. As a result, the complaint asserts, plaintiff not only paid funds to defendants intended to cover the workers'

compensation insurance but, as a result of defendants' failure to pay over the funds to the BWC, also was compelled to directly pay BWC. Plaintiff further asserted it paid additional monies to BWC when BWC notified plaintiff its workers' compensation premiums were underpaid for the time period predating the first half of 2010. Plaintiff's complaint alleged defendants had not indemnified plaintiff for any of BWC's claims.

{¶4} After it filed its complaint, plaintiff filed a motion for preliminary injunction on October 19, 2010, asking the court to enjoin defendants from using, transferring or disposing of the $779,230.44 plaintiff forwarded to defendants to pay the workers' compensation premiums for the first half of 2010. Before responding to plaintiff's motion for preliminary injunction, defendants on October 25, 2010 filed their motion to stay, arguing the trial court should dismiss the case pursuant to Civ.R. 12(B)(6) for failure to state a claim upon which relief can be granted or, alternatively, compel arbitration and stay the proceedings pending arbitration.

{¶5} Defendants supported their motion with the language in paragraph 12.J of the mediation and arbitration clause contained in both contracts with plaintiff. Paragraph 12.J provides that "[i]f a dispute arises between the parties relating to the terms of this Agreement," either party may notify the other "it desires to have the dispute mediated in accordance with the rules and procedures of the Federal Mediation and Conciliation Service, or as otherwise agreed by the parties." (Oct. 25, 2010 Motion to Stay, Exhibit A, ¶12.J; Exhibit B, ¶12.J.) According to the agreement, "[i]f the dispute is not resolved through mediation, either party to the dispute may elect to arbitrate the dispute by serving written notice upon the other." (Oct. 25, 2010 Motion to Stay, Exhibit A, ¶12.J; Exhibit B, ¶12.J.) The parties further "agree[d] that the arbitration procedure provided herein shall

be the sole and exclusive remedy to resolve any controversy or dispute arising under this Agreement." (Oct. 25, 2010 Motion to Stay, Exhibit A, ¶12.J; Exhibit B, ¶12.J.) Defendants attached to their motion a letter dated October 25, 2010 sent from defendants' counsel to plaintiff's counsel "to formally demand mediation and, if necessary, arbitration of this dispute pursuant to Section 12.J of the Agreements." (Oct. 25, 2010 Motion to Stay, Exhibit C.)

{¶6} On November 15, 2010, defendants responded to plaintiff's motion for preliminary injunction with a memorandum opposing it, and the trial court conducted a hearing on the preliminary injunction request the next day. The trial court on November 17, 2010 granted plaintiff's motion for preliminary injunction and ordered defendants to deposit $779,230.44 into a court escrow account. On November 30, 2010, the trial court issued a decision denying defendants' motion to stay in its entirety.

{¶7} Defendants appeal from the trial court's judgment denying their motion to stay.

II. Analysis

{¶8} R.C. 2711.01(A) provides that an agreement to settle controversies or disputes by arbitration shall be valid, irrevocable, and enforceable, except upon grounds that exist at law or in equity for the revocation of any contract. If an "action is brought upon any issue referable to arbitration under an agreement in writing for arbitration," the trial court, "upon being satisfied that the issue involved in the action is referable to arbitration * * * shall on application of one of the parties stay the trial of the action until the arbitration of the issue has been had." R.C. 2711.02(B). An order granting or denying a stay of the proceedings pending arbitration is a final order and may be reviewed, affirmed,

modified, or reversed on appeal. R.C. 2711.02(C); *White v. Equity, Inc.,* 191 Ohio App.3d 141, 2010-Ohio-4743.

{¶9} Arbitration is strongly encouraged as a method to settle disputes. *Williams v. Aetna Fin. Co.*, 83 Ohio St.3d 464, 1998-Ohio-294. "A presumption favoring arbitration arises when the claim in dispute falls within the scope of the arbitration provision." Id. at 471. "An arbitration clause in a contract is generally viewed as an expression that the parties agree to arbitrate disagreements within the scope of the arbitration clause, and, with limited exceptions, an arbitration clause is to be upheld just as any other provision in a contract should be respected." Id.

{¶10} Defendants' only assignment of error asserts the trial court erroneously denied defendants' request for arbitration when it concluded "[t]he issues involved in this litigation do not involve a dispute related to the terms of the two agreements" because (1) the arbitration clause did not apply since no one disputed the meaning of the terms of their agreements and (2) no dispute exists because defendants undisputedly are required to forward to the BWC the monies plaintiff paid defendants. The critical issue resolves to the scope of the arbitration agreement and whether the allegations of plaintiff's complaint fall within it.

{¶11} The Supreme Court of Ohio adopted general principles for evaluating a dispute's arbitrability. Initially, a court must determine whether the parties agreed to submit the matter to arbitration, a question typically raising an issue of law for the court to decide. *Council of Smaller Ents. v. Gates, McDonald & Co.*, 80 Ohio St.3d 661, 1998-Ohio-172; see also *Peters v. Columbus Steel Castings Co.*, 10th Dist. No. 05AP-308, 2006-Ohio-382, ¶11, quoting *Council of Smaller Ents.* at 665 (noting that because

arbitration is a matter of contract "a party cannot be required to submit to arbitration any dispute which [it] has not agreed so to submit"); *Morris v. Morris*, 189 Ohio App.3d 608, 2010-Ohio-4750, ¶15, quoting *Hudson v. John Hancock Fin. Servs.*, 10th Dist. No. 06AP-1284, 2007-Ohio-6997, ¶8, citing *Peters* at ¶10 (stating a " 'trial court's decision granting or denying a stay of proceedings pending arbitration is * * * subject to de novo review on appeal with respect to issues of law, which commonly will predominate because such cases generally turn on issues of contractual interpretation or statutory application' ").

{¶12} In addition, the Supreme Court noted a trial court may not rule on the potential merits of the underlying claim in deciding whether the claim is arbitrable. *Council of Smaller Ents.* at 665-66; see also *White* at ¶18. Finally, if a "contract contains an arbitration clause, there is a presumption of arbitrability in the sense that '[a]n order to arbitrate the particular grievance should not be denied unless it may be said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute.' " Id., quoting *AT&T Technologies, Inc. v. Communications Workers of Am.* (1986), 475 U.S. 643, 648-50, 106 S.Ct. 1415, 1419.

{¶13} Consistent with the Supreme Court's guidelines, "a court must 'look first to whether the parties agreed to arbitrate a dispute, not to general policy goals, to determine the scope of the agreement.' " *White* at ¶19, quoting *E.E.O.C. v. Waffle House, Inc.* (2002), 534 U.S. 279, 294, 122 S.Ct. 754, 764. Section 12.J of both contracts between plaintiff and defendants addresses mediation and arbitration and provides, in the first sentence, that "[i]f a dispute arises between the parties *relating to the terms of this Agreement*, either Party may serve notice on the other that it desires to have the dispute mediated." (Motion to Stay, Exhibit A, ¶12.J; Exhibit B, ¶12.J.) (Emphasis sic.) The trial

court determined that because the parties did not dispute the meaning of any of the terms contained in the contracts, the dispute was outside the scope of the arbitration agreement.

{¶14} Even under a narrow interpretation of the arbitration agreement focusing solely on the first sentence of the paragraph, a claim for breach of contract is a dispute "relating to the terms" of the contract in that it challenges one party's performance of the obligations, or terms, of the contract. See *Hanna v. Groom*, 10th Dist. No. 07AP-502, 2008-Ohio-765, ¶14 (stating that in order to prove a claim of breach of contract, "a plaintiff must establish the existence and terms of a contract, the plaintiff's performance of the contract, the defendant's breach of the contract, and damage or loss to the plaintiff"), quoting *Samadder v. DMF of Ohio, Inc.*, 154 Ohio App.3d 770, 2003-Ohio-5340, ¶27. When the trial court interpreted the arbitration agreement as limited to disputes involving the meaning of the terms of the contract, it impermissibly limited the scope of the arbitration clauses. The agreements do not state the meaning of the agreements' terms is arbitrable. Rather, they render arbitrable a dispute that relates to the terms of the agreement.

{¶15} Were the meaning of that sentence of the agreement in doubt, a subsequent sentence in paragraph 12.J clarifies the meaning, stating "[t]he Parties agree that the arbitration procedure provided herein shall be the sole and exclusive remedy to resolve *any controversy or dispute arising under this Agreement*." (Motion to Stay, Exhibit A, ¶12.J; Exhibit B, ¶12.J.) (Emphasis sic.) See *Masterclean, Inc. v. Ohio Dept. of Admin. Servs.* (May 13, 1999), 10th Dist. No. 98AP-727, quoting *State Auto. Ins. v. Childress* (Jan. 15, 1997), 1st Dist. No. C-960376 (stating a court should " 'attempt to harmonize all

of the provisions rather than create conflicts in them,' and a court 'must determine whether the contract can be interpreted giving reasonable, lawful, effective meaning to all terms' ").

{¶16} "An arbitration clause that contains the phrase 'any claim or controversy arising out of or relating to the agreement' is considered 'the paradigm of a broad clause.' " *Academy of Medicine of Cincinnati v. Aetna Health, Inc.*, 108 Ohio St.3d 185, 2006-Ohio-657, ¶18, quoting *Collins & Aikman Prods. Co. v. Bldg. Sys., Inc.* (C.A.2, 1995), 58 F.3d 16, 20. Here, the subsequent sentence includes the phrase "any controversy or dispute arising under this Agreement" and is sufficiently similar to the quoted language in *Academy of Medicine of Cincinnati* to encompass litigation stemming from the parties' performance of obligations under the contracts. See id. at ¶19 (noting "[a]rbitration is not limited to claims alleging a breach of contract, and creative pleading of claims as something other than contractual cannot overcome a broad arbitration provision"). Because plaintiff's complaint alleged defendants breached their contracts with plaintiff, its allegations fall within the scope of disputes intended to be submitted to arbitration under the express terms of the arbitration agreement.

{¶17} Plaintiff nonetheless asserts that even if the trial court erred in too narrowly construing the arbitration agreement, the trial court ultimately did not err in refusing to refer the matter to arbitration because no actual dispute exists between the parties. According to plaintiff, no one disputes that defendants obtained the funds from plaintiff and failed to pay those funds to BWC, so this matter is not a "dispute" within the meaning of the arbitration agreement.

{¶18} Neither of the two contracts includes definitions of the terms "controversy" or "dispute" as they are used in Section 12.J. We interpret undefined terms in a contract according to their plain, ordinary meaning unless doing so would create an absurd result. *Daniel E. Terreri & Sons, Inc. v. Mahoning Cty. Bd. of Commrs.*, 152 Ohio App.3d 95, 2003-Ohio-1227, ¶40; *Alexander v. Buckeye Pipeline* (1978), 53 Ohio St.2d 241, 245-46. Black's Law Dictionary defines "dispute" as "[a] conflict or controversy, esp. one that has given rise to a particular lawsuit." Black's Law Dictionary (9th ed. 2009). It similarly defines "controversy" as "[a] disagreement or a dispute, esp. in public," or "[a] justiciable dispute." Black's Law Dictionary (9th ed. 2009). Under those definitions, a lawsuit is a quintessential dispute or controversy, and this lawsuit is ongoing: plaintiff has not obtained judgment in this case, and defendants have not confessed judgment.

{¶19} Although plaintiff argues defendants have never disputed the merits of plaintiff's underlying complaint, defendants have yet to file an answer. A party seeking to enforce its contractual right to arbitration is not required to demonstrate the merits of its underlying position. See, e.g., *Griffith v. Linton* (1998), 130 Ohio App.3d 746, 753 (stating a party "act[s] inconsistently with the right to arbitrate" an issue when it "submit[s] that issue to the trial court for resolution on the merits"). Further, a court should not consider the merits of the claim in deciding whether to refer the matter to arbitration. *Council of Smaller Ents.* at 665-66.

{¶20} Defendants claimed their right to arbitrate pursuant to the arbitration procedure outlined in the contract. Their failure to materially deny any of plaintiff's allegations is irrelevant to whether the matter is a proper one for arbitration. Indeed, had defendants answered or otherwise defended against plaintiff's allegations, they would

have placed themselves at risk for the trial court's deeming their actions to waive their right to arbitration. See *Dispatch Printing Co. v. Recovery Ltd. Partnership*, 10th Dist. No. 10AP-353, 2011-Ohio-80, ¶20 (noting "[f]ailure to move for a stay, coupled with responsive pleadings, will constitute a defendant's waiver" of the right to arbitrate), quoting *Mills v. Jaguar-Cleveland Motors, Inc.* (1980), 69 Ohio App.2d 111, 113.

{¶21} Because a dispute or controversy exists that falls under the express terms of the arbitration agreement, the trial court should have granted defendants' motion to stay and referred the matter to arbitration.

III. Disposition

{¶22} Accordingly, we sustain defendants' sole assignment of error, reverse the judgment of the Franklin County Court of Common Pleas and remand with instructions to stay the proceedings and refer the matter to arbitration.

Judgment reversed and cause remanded with instructions.

FRENCH and TYACK, JJ., concur.

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