

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
ERIE COUNTY

Victoria Irby

Court of Appeals No. E-09-032

Appellee

Trial Court No. 2008-CV-0477

v.

Steven Strang, et al.

Appellants

and

City of Sandusky

DECISION AND JUDGMENT

Appellee

Decided: January 22, 2010

* * * * *

John C. Cubar, for appellants.

William P. Lang, for appellee City of Sandusky.

* * * * *

SINGER, J.

{¶ 1} Appellants, Steven Strang and New Horizon Development Company,
appeal the judgment of the Erie County Court of Common Pleas, denying their motion to

stay or dismiss court proceedings pending arbitration. For the reasons that follow, we affirm.

{¶ 2} In 2006, appellee, Victoria Irby ("Irby"), applied for and received a grant through the Owner Occupied Rehabilitation Program, a state and federally funded program that was locally administered by appellee, the city of Sandusky ("Sandusky"). The program provides funds for home repairs to low income and senior citizen home owners.

{¶ 3} Appellants, through the program, entered into a contract with Irby to perform the requisite repairs on her home. Unsatisfied with the end result, Irby, on May 21, 2008, filed a complaint against appellants and Sandusky alleging breach of contract, violation of the Ohio Consumer Sales Practices Act, unjust enrichment, breach of fiduciary duty, tortious interference with contract, and violation of the Ohio Civil RICO statute.

{¶ 4} On July 10, 2008, appellants filed a "motion to stay or dismiss court proceedings pending arbitration." The court denied their motion finding that the contract Irby signed did not include an arbitration clause. Appellants now appeal setting forth the following assignment of error:

{¶ 5} "The trial court improperly failed to enforce the arbitration clause in the agreement."

{¶ 6} Generally, a trial court's disposition of a motion to stay trial pending arbitration is reviewed under an abuse of discretion standard. *Porpora v. Gatliff Bldg.*

Co., 160 Ohio App.3d 843, 2005-Ohio-2410, ¶ 5. However, the question here is whether the arbitration clause was part of the contract between the parties. This is a matter of contract interpretation—a question of law, not fact. See *Dunkelman v. Cincinnati Bengals, Inc.*, 158 Ohio App.3d 604, 2004-Ohio-6425. Therefore, our standard of review is de novo. *Buyer v. Long*, 6th Dist. No. F-05-012, 2006-Ohio-472.

{¶ 7} To form a contract, there must be an offer, an acceptance, and a meeting of the minds which are supported by consideration. *Lucas v. Costantini* (1983), 13 Ohio App.3d 367, 368. In a written contract, the intent to contract is evident in the contract language. *Kelly v. Med. Life Ins. Co.* (1987), 31 Ohio St.3d 130, syllabus.

{¶ 8} Arbitration is a matter of contract. See *Williams v. Aetna Fin. Co.* (1998), 83 Ohio St.3d 464, 471. A party cannot be compelled to arbitrate any dispute that he has not agreed to submit to arbitration. *Piqua v. Ohio Farmers Ins. Co.* (1992), 84 Ohio App.3d 619, 621, citing *Teramar Corp. v. Rodier Corp.* (1987), 40 Ohio App.3d 39.

{¶ 9} An evidentiary hearing on appellants' motion was held on October 15, 2008. Irby identified plaintiff's exhibit one as the contract she signed for repairs to her house. Exhibit one consists of three pages. First, a cover page identifying Irby and appellants as parties to the contract. The second page contains an "agreement" stating that Irby wished to have certain repairs performed on her home by appellants and a section listing the consideration for the contract as \$33,000. Page three contained the November 11, 2006 signatures of Irby, appellants and Mark Warren, a representative for the city of Sandusky. Irby testified that this was the only contract she signed for work to

be performed by appellants. Irby testified that she never saw anything that was labeled arbitration in the documents she signed and that no one ever discussed arbitration with her. Irby testified that until she filed suit against appellants, she did not even know what arbitration was. Irby did acknowledge receiving a six page document labeled "supplemental conditions." The first page of the document is numbered "page 4". The last page of this document, numbered "page 14", contains an arbitration clause. Irby testified that she did not receive this document until much later, after she had signed plaintiff's exhibit one and when the actual work on the house had begun. The "supplemental conditions" document was not signed nor initialed by Irby.

{¶ 10} Based on the record before us, we conclude that there was no meeting of the minds between the parties regarding the arbitration provision as it was not a term of the contract that Irby signed. Even if we were to assume that the original three pages together with the "supplemental conditions" document constituted one contract, we agree with the trial court's observation that it would be "peculiar that the parties would be signing the third page of an alleged 14-page contract." Since the arbitration provision was not a term of the contract, no valid agreement to arbitrate existed. Since there must be a valid written agreement to arbitrate before a court may stay proceedings under R.C. 2711.02, we, accordingly, affirm the trial court's order denying a stay of proceedings pending arbitration. Appellants' sole assignment of error is found not well-taken.

{¶ 11} On consideration whereof, this court finds that substantial justice has been done the party complaining and the judgment of the Erie County Court of Common Pleas is affirmed. Pursuant to App.R. 24, appellants are ordered to pay the costs of this appeal.

JUDGMENT AFFIRMED.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4.

Mark L. Pietrykowski, J.

JUDGE

Arlene Singer, J.

JUDGE

Thomas J. Osowik, P.J.
CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
<http://www.sconet.state.oh.us/rod/newpdf/?source=6>.