[Cite as *Eaton Corp. v. Allstate Ins. Co.*, 2015-Ohio-2034.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 101654

EATON CORPORATION

PLAINTIFF-APPELLEE

vs.

ALLSTATE INSURANCE COMPANY, ET AL.

DEFENDANTS-APPELLEES

[Appeal by First State Insurance Company
Defendants-Appellants]

JUDGMENT:
AFFIRMED

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CV-13-802476
BEFORE: Blackmon, J., Keough, P.J., and Laster Mays, J.
RELEASED AND JOURNALIZED: May 28, 2015

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PATRICIA ANN BLACKMON, J.:

{¶1} Appellant First State Insurance Company ("First State") appeals the trial court's denial of its motion for stay and assigns the following error for our review:

> I. The trial court erred in denying First State's motion under R.C. § 2711.02 to stay the case pending arbitration.

{¶2} Having reviewed the record and pertinent law, we affirm the trial court's decision. The apposite facts follow.

{¶3} In 1979, appellee Eaton Corporation ("Eaton") acquired Cutler-Hammer, Inc., a manufacturer of electrical products. Thereafter, as a result of the acquisition, Eaton was named in claims alleging exposure to asbestos in products manufactured, distributed or sold by Cutler-Hammer or by Eaton in continuation of Cutler-Hammer's business. These claims were covered under insurance policies issued to Cutler-Hammer from 1940 through 1979, and under insurance policies issued to Eaton from 1979 through 1985. The insurance policies issued to Eaton from 1979 through 1985 cover claims for Cutler-Hammer as well as claims flowing from Eaton's separate axle-brake and airflex business.

{¶4} In 1990, following years of coverage litigation for asbestos-related bodily injury claims arising out of the operation of its predecessor, Eaton, First State, and a number of other Continental insurers ("Continental"), reached what became known as the Cutler-Hammer Agreement ("the Agreement"). The Agreement was struck to settle all

issues relating to the handling, defense, and indemnity of claims alleging asbestos-related bodily injuries arising out of the operation of Cutler-Hammer. To be discussed later, at the heart of the instant appeal is the clause in the Agreement that provided that any dispute as to coverage for Cutler-Hammer claims would be subject to binding arbitration.

{¶5} On March 4, 2013, Eaton filed a declaratory judgment action against 22 domestic insurers, including First State and Continental, as well as against dozens of foreign insurers, seeking a declaration that the insurers were obligated to defend and indemnify the underlying claims. In the complaint, Eaton alleged that the underlying action did not encompass coverage issues relating to Cutler-Hammer claims or any matter that would implicate the Agreement.

{¶6} On May 10, 2013, First State filed its answer to Eaton's complaint. In the answer, First State, who issued secondary insurance policies, contended it had no duty to defend or indemnify unless the underlying Continental policies had exhausted their coverage limits.

{¶7} On February 26, 2014, Eaton filed a motion for partial summary judgment against Arrowood Indemnity Company ("Arrowood") and Continental with respect to their duty to defend or indemnify in pending claims alleging bodily injury as a result of exposure to asbestos or asbestos containing products sold by Eaton. In the motion, Eaton stated that Arrowood issued two primary comprehensive general liability policies that were in effect from December 31, 1964 through September 1969. Eaton also stated that

10 Continental primary general liability insurance policies were in effect from September 1, 1969 through January 1, 1986.

{¶8} On April 28, 2014, following Eaton's filing of its motion for partial summary judgment against Arrowood and Continental, First State filed a motion to stay pending arbitration. In its motion, First State alleged that Eaton's declaratory action involves Cutler-Hammer claims, and thus triggers the arbitration provision in the Agreement.

{¶9} On June 25, 2014, the trial court denied First State's motion for stay pending arbitration.

Motion for Stay Pending Arbitration

{¶10} In the sole assigned error, First State argues the trial court erred when it denied its motion to stay pending arbitration.

{¶11} Generally, absent an abuse of discretion, a reviewing court should not disturb a trial court's decision regarding a motion to stay proceedings pending arbitration. *Maclin v. Greens Nursing*, 8th Dist. Cuyahoga No. 101085, 2014-Ohio-2538, citing *K.M.P., Inc. v. Ohio Historical Soc.*, 4th Dist. Jackson No. 03CA2, 2003-Ohio-4443, ¶ 14. The term abuse of discretion connotes more than an error of law or judgment; it implies that the court's attitude is unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 450 N.E.2d 1140 (1983).

{¶12} However, when addressing whether a trial court has properly granted a

motion to stay and compel arbitration, the appropriate standard of review depends on "the type of questions raised challenging the applicability of the arbitration provision." *Zilbert v. Proficio Mtge. Ventures, L.L.C.*, 8th Dist. Cuyahoga No. 100299, 2014-Ohio-1838, quoting *McCaskey v. Sanford-Brown College*, 8th Dist. Cuyahoga No. 97261, 2012-Ohio-1543, ¶ 7.

{¶13} Arbitration is a creature of contract, *see North Park Retirement Community Ctr., Inc. v. Sovran Cos.*, 8th Dist. Cuyahoga No. 96376, 2011-Ohio-5179, citing *United Steelworkers v. Warrior & Gulf Navigation Co.*, 363 U.S. 574, 582, 80 S.Ct. 1347, 4 L.Ed.2d 1409 (1960), so we are guided by "the principle that a party can be forced to arbitrate only those issues it specifically has agreed to submit to arbitration[.]" *Id.*, citing *First Options of Chicago, Inc. v. Kaplan*, 514 U.S. 938, 945, 115 S.Ct. 1920, 131 L.Ed.2d 985 (1995). This requires an examination of the agreement to arbitrate, which has always been considered a review as a "matter of law"; in other words, a de novo review.

{¶14} Ohio courts recognize a presumption favoring arbitration when the issue of the parties' dispute falls within the scope of the arbitration provision. *Taylor Bldg. Corp. of Am. v. Benfield*, 117 Ohio St.3d 352, 2008-Ohio-938, 884 N.E.2d 12, ¶ 27. In light of this strong presumption favoring arbitration, all doubts should be resolved in its favor. *Hayes v. Oakridge Home*, 122 Ohio St.3d 63, 2009-Ohio-2054, 908 N.E.2d 408, ¶ 15.

{¶15} Arbitration is favored because it provides the parties thereto with a relatively expeditious and economical means of resolving a dispute. *Schaefer v. Allstate Ins. Co.*, 63

Ohio St.3d 708, 712, 590 N.E.2d 1242 (1992). Thus, if a dispute even arguably falls within the parties' arbitration provision, the trial court must stay the proceedings until arbitration has been completed. *Fields v. Herrnstein Chrysler, Inc.*, 4th Dist. Pike No. 12CA827, 2013-Ohio-693, ¶ 15, citing *Tomovich v. USA Waterproofing & Found. Servs., Inc.*, 9th Dist. Lorain No. 07CA9150, 2007-Ohio-6214, ¶ 8.

{¶16} Ohio's strong public policy favoring arbitration is codified in Chapter 2711 of the Revised Code. *Westerfield v. Three Rivers Nursing & Rehab. Ctr., L.L.C.*, 2d Dist. Montgomery No. 25347, 2013-Ohio-512, ¶ 17. Under R.C. 2711.02(B), on application of one of the parties, a trial court may stay litigation in favor of arbitration pursuant to a written arbitration agreement. *Taylor Bldg. Corp. of Am.*, ¶ 28. R.C. 2711.02(B) provides:

> If any action is brought upon any issue referable to arbitration under an agreement in writing for arbitration, the court in which the action is pending, upon being satisfied that the issue involved in the action is referable to arbitration under an agreement in writing for arbitration, shall on application of one of the parties stay the trial of the action until the arbitration of the issue has been had in accordance with the agreement, provided the applicant for the stay is not in default in proceeding with arbitration.

{¶17} Thus, R.C. 2711.02 requires a court to stay the trial of an action "on application of one of the parties if (1) the action is brought upon any issue referable to arbitration under a written agreement for arbitration[;] (2) the court is satisfied the issue is referable to arbitration under the written agreement[;] and (3) the applicant is not in default in proceeding with arbitration." *Fields*, 4th Dist. Pike No. 12CA827,

2013-Ohio-693, ¶ 14.

{¶18} In the instant case, First State argues that the claims for asbestos-related bodily injuries that are the subject of Eaton's declaratory judgment action are subject to the arbitration provision in the Agreement.

{¶19} It is undisputed that an arbitration provision was included in the post-acquisition Agreement struck between Eaton and the various insurers to deal with the pending and future asbestos-related bodily injury claims against Cutler-Hammer. It is also undisputed that in its complaint for declaratory judgment, Eaton specifically indicated that the action was limited to non-Cutler -Hammer claims. In that regard, the complaint stated at paragraph 13 that:

> Eaton also has been named in various lawsuits in which the claimants allege, among other things, continuous or progressive bodily injury arising from exposure to asbestos allegedly contained in products manufactured, distributed or sold by Cutler-Hammer, Inc. ("C-H") and/or by Eaton in its continuation of the business of C-H (the "C-H Claims"). Coverage issues relating to the C-H Claims are governed by a coverage-in-place agreement. This action does not encompass coverage issues relating to the C-H Claims or such coverage-in place agreement, and the term "Claims" as used in this Complaint does not include "C-H Claims."

{¶20} Thus, from the outset of the underlying action, Cutler-Hammer claims were excised from the relief being sought.

{¶21} Nonetheless, after Eaton filed its motion for partial summary judgment against Arrowood and Continental, First State claimed that its inspection revealed that more than 1,100 of the 1,600 underlying claims identified in Eaton's motion were

demonstrably Cutler-Hammer claims. First State further claimed that none of the claims were verifiable as non-Cutler-Hammer claims. This, First State contends, implicates the arbitration provision in the Agreement.

{¶22} However, in its motion for partial summary judgment, Eaton stated in pertinent part as follows:

> Continental also complains that, in certain of the Pending Claims, Eaton has been sued in two capacities — both "individually and as successor-in-interest to Cutler-Hammer." Continental Brief at 18-20. For such lawsuits, the claim against Eaton as successor-in-interest to Cutler-Hammer alleging exposure to Cutler-Hammer products is governed by the 1990 agreement, and Eaton's Complaint expressly carves such Cutler-Hammer claims out of this case. See Complaint for Declaratory Relief and Damages (filed March 4, 2013) ("Complaint"), ¶ 13. However, as Continental concedes, the 1990 agreement plainly does not govern the claim against Eaton alleging exposure to products other than Cutler-Hammer's. See Continental Brief at 5 ("the 1990 Agreement covers only claims arising from exposure to Cutler-Hammer products (i.e. electrical product claims) and does not purport to address any other Eaton asbestos liability (e.g., the Eaton axle brake claims)."

Eaton's motion for partial summary judgment.

{¶23} Here, it is clear from the above excerpt that Eaton's prayer for relief only concerns non-Cutler-Hammer asbestos claims. The excerpt reveals a meticulously crafted motion that eliminates any doubt that Eaton was only seeking a ruling on the insurer's duty to defend non-Cutler-Hammer claims.

{¶24} Further, despite the sheer volume of asbestos-related bodily injury claims that are pending and undoubtedly will be brought against Eaton, both in an individual capacity and as successor to Cutler-Hammer, we cannot imagine that each case would not

get the individual attention it deserves. Therefore, in the process of providing individual attention to each claim, the difference between non-Cutler-Hammer claims and Eaton claims would be easily discernable. As such, the trial court properly denied First State's motion for stay, because the claims for which Eaton sought the trial court's ruling were not within the ambit of the arbitration provision in the Agreement.

{¶25} Finally, although both parties devote considerable time discussing whether First State waived its right to arbitrate, that question need not be our focus because the underlying claims — the subject of Eaton's declaratory judgment action — did not implicate the arbitration provision in the Agreement.

Consequently, based on our review, we conclude that First State's motion for stay pending arbitration was properly denied. Accordingly, we overrule the sole assigned error.

{¶26} Judgment affirmed.

It is ordered that appellees recover from appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to said court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

PATRICIA ANN BLACKMON, JUDGE

KATHLEEN ANN KEOUGH, P.J., and
ANITA LASTER MAYS, J., CONCUR