Filed 4/24/18 Premier Health Partners v. Intermedix Corp. CA2/4

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

PREMIER HEALTH PARTNERS, INC., Plaintiff and Respondent, v. INTERMEDIX CORPORATION, Defendant and Appellant.	B282590 (Los Angeles County Super. Ct. No. BC641072)

APPEAL from an order of the Superior Court of Los Angeles County, Randolph M. Hammock, Judge. Affirmed.

Matheny Sears Linkert & Jaime and Jeffrey E. Levine for Plaintiff and Respondent.

Venable, Alex M. Weingarten and Matthew M. Gurvitz for Defendant and Appellant.

Intermedix Corporation (Intermedix), a medical billing services provider, appeals from an order denying its petition to compel arbitration with its customer, Premier Health Partners, Inc. (Premier). A written agreement between the parties, which named specific hospital locations, contained an arbitration provision. The instant dispute involves a hospital location not named in that written agreement. Appellant argues the trial court erred in determining that no applicable arbitration provision exists in the instant dispute. We disagree and affirm.

FACTUAL AND PROCEDURAL SUMMARY

Respondent Premier is a provider of emergency medical services for hospitals. In December 2010, Premier engaged Marina Medical Billing Services (MMBS) to provide billing services in relation to its business. A written agreement between Premier and MMBS states that Premier provides emergency medical services at two hospital locations, Anaheim General Hospital and Bellflower Medical Center. This written agreement contained the following arbitration provision: "All disputes, disagreements or claims arising between the Parties concerning this Agreement, its breach, its interpretation, or its specific performance, including related claims in tort will be resolved through binding arbitration conducted pursuant to Judges Arbitration and Mediation Services (JAMS) in Los Angeles County, CA." The agreement also provided that any amendment must be "in writing and valid only if executed by all of the Parties."

In 2013, MMBS was acquired by T-System, Inc. and merged into its subsidiary called RevCycle+, Inc. (RevCycle+). Premier and RevCycle+ agreed to an addendum to the written

agreement which replaced MMBS with RevCycle+ as the billing services provider. This addendum also added a new hospital location at which Premier was providing emergency medical services, LA Metropolitan Hospital.

In April and May 2013, Anaheim General Hospital, Bellflower Medical Center, and LA Metropolitan Hospital ceased their operations and closed. In June 2013, Premier was retained by the emergency department at Palo Verde Hospital. Premier entered into an oral agreement with RevCycle+ in which RevCycle+ would provide billing services in relation to Premier's work at Palo Verde Hospital. The written agreement was not amended to add Palo Verde Hospital as a new location.

In June 2014, RevCycle+ was acquired by appellant Intermedix and the written agreement was assigned to Intermedix. A dispute arose between Premier and Intermedix regarding the possession of certain insurance reimbursements. Premier filed a complaint in November 2016 asserting claims of breach of oral contract, conversion, and intentional or negligent interference with prospective economic advantage, among other claims. The complaint alleged misconduct by Intermedix in relation to Premier's work at Palo Verde Hospital.

In November 2016, Intermedix submitted a claim to JAMS for the purpose of commencing arbitration against Premier and alleging that Premier failed to pay for billing services it had performed. In December 2016, Premier filed an application for writ of possession in the trial court seeking to recover checks it alleged Intermedix was unlawfully withholding. This application was heard by Judge James C. Chalfant, who issued a tentative decision denying the application. In this tentative decision, Judge Chalfant discussed the arbitrability of the case, stating:

> "As Intermedix correctly points out, the arbitrator must make the determination of whether the [written] Agreement's arbitration provision applies. The rules of the arbitration services provider (JAMS) selected by the parties in effect at the time the Agreement was entered govern the arbitration and the question of arbitrability. Greenspan v. LADT, LLC, ("Greenspan") (2010) 185 Cal.App.4th 1413, 1442-43 (under JAMS' rules the arbitrator, not the courts, determines issues subject to arbitration). [¶] The arbitrator will determine whether the Agreement's arbitration provision governs the relationship between the parties."

In January 2017, Intermedix filed a petition to compel arbitration. In April 2017, the petition was heard by Judge Randolph M. Hammock. The petition was denied based on the court's conclusion that no arbitration agreement existed with respect to Palo Verde Hospital. The court reasoned that Code of Civil Procedure section 1281[1] and the terms of the written agreement required any modifications to be in writing. The court also pointed to the course of dealing between Premier and Intermedix's predecessor, RevCycle+, which had explicitly amended the agreement to add a new hospital location. Judge Hammock stated he was not bound by statements made by Judge Chalfant, reasoning that Judge Chalfant's comments did not result in collateral estoppel on the issue of arbitrability.

This appeal followed.

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[1] Subsequent undesignated statutory references are to the Code of Civil Procedure.

DISCUSSION

Appellant argues Judge Hammock erred in making an order which contradicted the earlier statements of Judge Chalfant. We disagree.

As appellant argues, an order made by one judge is binding and effective in a latter department as if the latter judge had made it himself or herself. (*Lee v. Offenberg* (1969) 275 Cal.App.2d 575, 583.) But, Judge Hammock's order did not contradict the order made by Judge Chalfant. Judge Chalfant's discussion of the arbitrability of this case was dicta, as the sole issue before him was Premier's application for a writ of possession. Further, as respondent argues, interim orders of a trial court may be reconsidered at any time prior to entry of judgment. (*Darling, Hall & Rae v. Kritt* (1999) 75 Cal.App.4th 1148, 1156.)

Appellant claims the trial court erred when it determined the scope of the arbitration provision in the written agreement, arguing the agreement required this decision to be made by an arbitrator. We disagree with this characterization of the trial court's action.

Section 1281.2 provides that "the court shall order [the parties] to arbitrate the controversy if it determines that an agreement to arbitrate the controversy exists." (See also *Toal v. Tardif* (2009) 178 Cal.App.4th 1208, 1219 [trial court must initially determine existence of arbitration agreement]; see also *Vianna v. Doctors' Management Co.* (1994) 27 Cal.App.4th 1186, 1189 [arbitration should be ordered unless agreement clearly does not apply to dispute].) Here, the trial court performed this duty, deciding that no arbitration agreement existed with respect to this controversy. Appellant characterizes this action as

deciding the scope of the arbitration provision in the written agreement. Although the court's decision has the implication that claims involving Palo Verde Hospital fall outside the scope of the arbitration provision, this implication is merely incidental to the court's proper inquiry regarding the existence of an applicable arbitration agreement. Appellant's reliance upon *Greenspan v. LADT, LLC* (2010) 185 Cal.App.4th 1413 is therefore inapposite. In that case, the court found that it is the arbitrator, not the court, who decides which issues are arbitrable under an arbitration agreement. (*Id.* at p. 1435.) The trial court's order is compatible with that proposition, since it only decided that no arbitration agreement exists with respect to the instant controversy.

Appellant also argues the trial court erred in finding that no arbitration agreement exists with respect to this controversy. We do not agree.

"'Whether an arbitration agreement applies to a controversy is a question of law to which the appellate court applies its independent judgment *where no conflicting extrinsic evidence in aid of interpretation was introduced in the trial court.* [Citation.]'" (*Jones v. Jacobson* (2011) 195 Cal.App.4th 1, 12, italics added.) Respondent contends the parties submitted conflicting extrinsic evidence. But the evidence it points to, a declaration in which Premier's chief executive officer makes legal conclusions which differ from those urged by appellant, does not bear this contention out. As appellant argues, the parties agreed on the relevant facts but gave them different legal interpretations. For this reason, we review the court's decision de novo. (*Ibid.*)

The party seeking to compel arbitration bears the burden of demonstrating the existence of a valid arbitration agreement by a preponderance of the evidence. (*Giuliano v. Inland Empire Personnel, Inc.* (2007) 149 Cal.App.4th 1276, 1284 (*Giuliano*).) Section 1281 provides that a "written" agreement to submit to arbitration is enforceable. (See also *Marsch v. Williams* (1994) 23 Cal.App.4th 250, 255 [party can be compelled to submit dispute to arbitration only where he has agreed "in writing" to do so]; but see *Craig v. Brown & Root, Inc.* (2000) 84 Cal.App.4th 416, 420 [agreements to arbitrate may be implied-in-fact].) Section 1280, subdivision (f) provides that a "[w]ritten agreement" shall be deemed to include an agreement which has been "extended or renewed" by an oral or implied agreement.

Appellant argues the arbitration provision in this written agreement is applicable to this controversy, either by its express terms or because the agreement was "extended or renewed" by the parties' subsequent oral agreement. Appellant argues the written agreement does not clearly restrict the applicability of its provisions to the listed hospital locations. Although this is true, it is appellant's burden to demonstrate that the agreement is not so restricted. (*Giuliano*, *supra*, 149 Cal.App.4th at p. 1284.) The conduct of the parties, who found it necessary to amend the contract to add a new hospital location, LA Metropolitan Hospital, implies that the contract only applies to the expressly listed hospital locations. Appellant does not provide further evidence to rebut this implication or independently demonstrate that the agreement was intended to apply to unnamed hospital locations.

Appellant's argument that the agreement was extended or renewed also is unsupported. Whether appellant's argument is

that the agreement terminated when the named hospital locations closed and was renewed by the oral agreement, or that the oral agreement simply extended the written agreement, appellant must show that the parties continued to operate under the terms of the written agreement. Although appellant and respondent agree that Intermedix continued to provide billing services related to the Palo Verde Hospital as it had done with respect to the named hospitals under the written agreement, no evidence is presented that this relationship operated under the same terms included in the written agreement. This is fatal to appellant's argument. (See *Giuliano*, *supra*, 149 Cal.App.4th at p. 1284 [party seeking to compel arbitration must affirmatively establish existence of applicable arbitration agreement].)

Because appellant has not demonstrated the existence of a valid arbitration agreement applicable to this controversy, the trial court's order denying Intermedix's petition to compel arbitration is affirmed.

DISPOSITION

The order is affirmed.

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EPSTEIN, P. J.

We concur:

WILLHITE, J.

COLLINS, J.