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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

CURRENCY CORP., Plaintiff and Respondent, v. WERTHEIM, LLC, Defendant and Appellant.	B262441 (Los Angeles County Super. Ct. No. BC417798)

APPEAL from an order of the Superior Court of Los Angeles County, Deirdre Hill, Judge. Affirmed.

The Newell Law Firm, Felton T. Newell, Jr.; Klapach & Klapach and Joseph S. Klapach for Defendant and Appellant.

Diem Law and Robin L. Diem for Plaintiff and Respondent.

In a dispute between a borrower and lender, the borrower's assignee instituted arbitration proceedings against the lender pursuant to the terms of a June 2006 promissory note. The arbitrators awarded the assignee $672,122 on that and scores of similar notes, and the superior court confirmed the award. In a prior appeal we reversed, concluding the arbitrators exceeded their authority because the arbitration provision in the June 2006 note pertained only to that one note, and none of the other notes contained an arbitration provision. On remand the assignee sought from the trial court an order directing the arbitrators to enter an award in the assignee's favor on the June 2006 note only. The trial court denied the motion on the ground that it no longer had jurisdiction over the dispute.

We affirm. A motion or petition to compel arbitration commences proceedings akin to an action in equity, which vests the trial court with jurisdiction to order the matter to arbitration. But the trial court here had no authority to order the arbitrators to make specific findings or enter a particular award.

BACKGROUND

Loans

Parviz Omidvar and his relatives and companies, including Currency Corporation (collectively Currency), loaned money at high interest rates to elderly artists who owned rights to receive royalties from music rights management companies. The artists assigned their royalties to Currency in exchange for the loans. Currency made dozens of such loans to Maibell Page, the widow of Eugene Page, a successful songwriter, who in exchange assigned her royalties to Currency.

On June 2, 2006, Currency made the loan that is the subject of this action. As evidenced by a promissory note (the

June 2006 note), Currency loaned Maibell $6,500 for six months at an interest rate of 2 percent compounded every 10 days, with an administrative fee of 10 percent.

The June 2006 note contained an arbitration provision.

In 2006, David Pullman, the owner of Wertheim, LLC, persuaded Page to assign to him the royalty rights she had already assigned to Currency, as well as any causes of action she might have against Currency. Pullman and Currency then began a legal feud over Page's royalty stream, each contending the other makes a widespread practice of swindling the gullible elderly. (E.g., *Currency Corp. v. Wertheim* (May 20, 2011, B222851 [nonpub. opn.]) (*Currency I*).)

Currency has always maintained that Pullman forged the June 2006 note. In support of its contention, Currency produced evidence that: (1) Although all notes produced in this years-long litigation were signed or at least initialed by Maibell or Eugene Page, no signed copy of the June 2006 note has ever been produced; (2) none of the other scores of notes in this and other litigation contained an arbitration provision; and (3) an almost verbatim arbitration provision had been drafted by *Pullman* two weeks earlier, in May 2006, as part of his assignment agreement with Maibell, which suggested he had also drafted the June 2006 note. However, Pullman presented testimonial and circumstantial evidence that Maibell did in fact enter into the agreement memorialized by the June 2006 note, and at least two trial judges and the arbitration panel have found it to be valid.

In a second prior appeal we noted the identity between the May 2006 arbitration provision by Pullman and the June 2006 provision allegedly drafted by Currency, but concluded that because "various trial judges and the arbitration panel have

found it to be valid[, t]he validity of the June 2006 note is . . . not before us." (*Currency Corp. v. Wertheim* (Sept. 30, 2013, B240444 [nonpub. opn.] 2013 Cal.App.Unpub. LEXIS 7045 at p. *11 (*Currency II*); see also *id*. at fn. 5 [comparing passages from the May 2006 assignment and June 2006 promissory note, in which 138 of 143 words in their respective arbitration provisions were identical].)

Action by Wertheim against Omidvar and Currency

On June 8, 2009, Wertheim filed a form demand for arbitration with the American Arbitration Association (the AAA), alleging causes of action against Currency for fraud, breach of contract, and elder abuse. Wertheim alleged each of the dozens of transactions between Maibell and Currency was subject to the arbitration clause found only in the June 2006 note, and demanded $5 million.

Proceedings to Enjoin Arbitration

On July 14, 2009, the Omidvar parties, including Currency Corporation, filed the instant lawsuit against Page and Wertheim for declaratory and injunctive relief, seeking to enjoin arbitration or limit its scope to the June 2006 note. (LASC No. BC417798.)

Page and Wertheim cross-complained against the Omidvar parties only (not Currency Corporation), alleging fraud, breach of fiduciary duty, and racketeering. On June 7, 2012, the trial court granted cross-defendants' motion for judgment on the pleadings as to Wertheim on the ground that Wertheim lacked standing to bring its claims. Wertheim was subsequently dismissed from the cross-complaint, but not from the complaint itself.

Currency II

The arbitration panel awarded Wertheim $672,122, which the superior court confirmed. In 2013, we reversed the judgment

confirming the award. We identified the issue as to whether "the scope of arbitration should have been restricted to the $6,500 allegedly put in issue by the June 2, 2006 promissory note." (*Currency II*, *supra*, B240444, at p. *29.) The answer was yes: The arbitration provision in the June 2006 note pertained "at most" to only that note, and the arbitrators exceeded their authority in rendering an award as to all of the notes. (*Ibid*.) Our remand directed the trial court to vacate the arbitration award, but gave no other instruction.

Proceedings Upon Remand

On March 6, 2014, Wertheim and Christopher Page, as Maibell's representative, moved for re-arbitration by the original panel and requested that the panel be "instructed to issue a new award based on the arbitration already held pursuant to the June 2, 2006 Note and the arbitration clause contained therein, and the Court of Appeal decision on such." It is not clear whether the trial court ever ruled on this motion.

On August 14, 2014, Page dismissed her cross-complaint with prejudice, leaving no cross-complaint extant.

On October 6, 2014, Wertheim, as "Defendant and Cross-Complainant," filed a second motion to compel arbitration "for the limited purpose of determining the amount of a new arbitration award to be reinstated in favor of Wertheim, LLC as to the June 2, 2006 Promissory Note." The motion was made "pursuant to . . . multiple court rulings upholding the validity of the June 2, 2006 arbitration agreement . . . , including but not limited to orders by . . . the California Court of Appeal's decision of September 30, 2013." In its memorandum of points and authorities supporting the motion, Wertheim argued, "[i]t is irrefutable that the June 2, 2006 promissory note between Maibell Page and Currency Corp.

is a valid and fully enforceable . . . arbitration agreement," as multiple courts, including "the California Court of Appeal have all upheld the enforceability of that agreement." Wertheim prayed that "in compliance with the September 30, 2013 Court of Appeal decision," the trial court should order the matter back to arbitration before the original panel "for the limited purpose of determining the amount of the arbitration award in favor of Cross-Complaints [*sic*: "complainants" is misspelled, misused, and improperly pluralized—Wertheim, the only moving party, was no longer a cross-complainant], based on evidence already presented to and accepted [by] the tribunal, which amount corresponds to all of the claims arising from the June 2, 2006 Note . . . plus all preexisting interest, fees, and costs collected by the Currency Parties, including but not limited to attorney fees and costs and AAA arbitration fees."

On December 18, 2014, the trial court pursuant to our remittitur vacated the judgment confirming Wertheim's arbitration award. On the same date, the court ordered Wertheim's motion to compel arbitration off calendar on the ground that it was not "within the jurisdiction of the pleadings."

On January 8, 2015, the trial court elaborated on its ruling, finding that "[t]he issue of whether the June 2, 2006 note is to be sent back to arbitration is not within the scope of the surviving pleadings." The court found it had no "authority to order said claims back to arbitration" because "the Complaint has been resolved and the Cross-Complaint was dismissed, [and] there is nothing left to try in Case No. BC417789." The court found that because "there are no further claims by or against Currency Corp. . . . and nothing left to try in BC417798," Currency Corporation and the Omidvar parties were entitled to judgment. Accordingly,

the court declared Currency Corporation and the Omidvar parties to be prevailing parties and ordered that judgment be entered in their favor and that the case be dismissed.

Wertheim timely appealed from the resulting judgment.

DISCUSSION

Wertheim contends that pursuant to our ruling in *Currency II*, the matter should be ordered back to arbitration for a new award. Wertheim misconstrues *Currency II*.

Whether Wertheim had a right to arbitrate its dispute involving the June 2006 note was not at issue in *Currency II*. The only issue was whether "the scope of arbitration should have been *restricted to* the . . . June 2, 2006 promissory note." (*Currency II*, *supra*, B240444, at p. *29, italics added.) In other words, the issue was whether Wertheim could arbitrate its disputes on *other* notes.

In fact, contrary to upholding the arbitration provision in the June 2006 note we implicitly questioned its validity by observing it was virtually identical to an arbitration provision drafted two weeks earlier by Pullman as part of a different agreement. But because we were constrained by the trial courts' and arbitrators' having found the note to be valid, we stated "[t]he validity of the June 2006 note is . . . not before us." (*Currency II*, *supra*, B240444, at p. *11.) Working within these parameters, as we were obligated to do, we held only that the arbitration provision of the June 2006 was limited "at most" to that note. We held that the other notes were not subject to arbitration because none contained an arbitration provision.

Because the global arbitration award could not be parsed into separate awards for individual notes, our remand directed only that the trial court vacate the award. We gave no

instruction regarding correction of the award or remand to the arbitrators. The remand disposed of all issues raised by Currency's complaint, as Currency had sought only to enjoin arbitration or, in the alternative, to limit its scope to the June 2006 note. The trial court therefore properly dismissed the complaint.

Relying upon well established authority, Wertheim argues that a petition to compel arbitration initiates a special proceeding and vests the superior court with jurisdiction to order the parties to refer their dispute to arbitration. The point is irrelevant because notwithstanding the title of its motion, Wertheim did not move to compel arbitration, it moved for an order directing the original arbitrators to affirm their original findings and fashion a new award. Wertheim argued remand to the arbitrators was necessary "for the limited purpose of determining the amount of a new arbitration award to be reinstated in favor of Wertheim." Perhaps the arbitrators should have fashioned such an award, but no authority of which we are aware, certainly not *Currency II*, authorizes a court to order them to do it years after the original award was issued. (See Code Civ. Proc., § 1288 ["A petition to . . . correct an award shall be served and filed not later than 100 days after the date of the service of a signed copy of the award on the petitioner"].) Wertheim has never petitioned either the court or arbitrators to correct the original award directly.[1]

[1] Wertheim also argues it was compelled under Code of Civil Procedure section 1292.4 to file its arbitration petition in this action. It is incorrect. That section provides that "[i]f a *controversy referable to arbitration* under an alleged agreement is involved in an action or proceeding pending in a superior court, a petition for an order to arbitrate shall be filed in such action or proceeding." (Code Civ. Proc., § 1292.4, italics added.) Here, the

Wertheim argues the trial court erred in declaring Currency to be the prevailing party. A trial court's prevailing party determination rests within its broad discretion. (*J.B.B. Investment Partners, Ltd. v. Fair* (2014) 232 Cal.App.4th 974, 993.) Here, Currency sought only to enjoin arbitration or, in the alternative, to limit its scope to the June 2006 note. *Currency II* granted the relief Currency sought by limiting arbitration to the June 2006 note. Therefore, the trial court was well within its discretion to designate Currency the prevailing party.

DISPOSITION

The judgment is affirmed. Respondent is to receive its costs on appeal.

NOT TO BE PUBLISHED.

CHANEY, Acting P. J.

We concur:

JOHNSON, J.

BENDIX, J.

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only controversy involved in the instant action is whether Wertheim's claims should be arbitrated. (Currency makes no allegations pertaining to its substantive obligations under any promissory note.) The arbitrability controversy is not itself subject to arbitration as contemplated by section 1292.4.