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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 EIGHT

ESTHER LIU, Plaintiff and Appellant, v. PREMIER FINANCIAL ALLIANCE, INC., Defendant and Respondent.	B284545 (Los Angeles County Super. Ct. No. BC639922)

APPEAL from orders of the Superior Court of Los Angeles County, William F. Fahey, Judge. Affirmed.

Law Office of Roland Ho and Roland Ho for Plaintiff and Appellant.

Lieber & Galperin, Stanley P. Lieber and Jason Lieber for Defendant and Respondent.

Plaintiff Esther Liu appeals from the trial court's orders compelling arbitration of her dispute with Premier Financial Alliance, Inc. (PFA), and denying her motion for an order requiring PFA to pay the arbitration costs. She argues that the arbitration clause in the parties' contract did not apply to her complaint because PFA had already terminated the agreement. She also contends the trial court considered the wrong factors in denying her motion for arbitration costs. We find no error and affirm.

FACTUAL AND PROCEDURAL BACKGROUND

In 2011, Liu, an insurance agent, signed an Associates Marketing Agreement with PFA, an insurance brokerage. The agreement gave Liu a license to sell PFA's insurance products. She signed the agreement again in 2012.

In September 2016, PFA terminated the agreement with Liu after concluding that she had committed misconduct relating to other agents. Two months later, she filed the present action against PFA for intentional and negligent interference with prospective economic advantage, defamation and negligence.[1]

PFA moved to compel arbitration. It cited the parties' agreement which provided that Liu "agrees not to institute any legal proceedings against PFA; but, instead, shall submit any and all disputes with PFA, its officers, directors, employees and associates to binding arbitration pursuant to the rules of the American Arbitration Association."

In opposition, Liu argued solely that (1) the arbitration provision did not apply because PFA had terminated the agreement, and (2) the arbitration clause did not clearly and unambiguously provide that all disputes between the parties

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[1] She also sued several of PFA's agents. Those individuals are not parties to this appeal.

would be submitted to binding arbitration. The court granted the motion.

Liu then filed a motion to compel PFA to advance the costs of arbitration. She argued that if she were required to pay a pro rata share of the arbitration expenses, she would effectively be deprived of a forum for her dispute. In support of her motion, she filed a declaration stating that her expenses over the preceding four months were greater than her income. The court denied the motion, and dismissed the case without prejudice. Liu timely appealed.

DISCUSSION

1. *Liu's Agreement to Arbitrate Survived Termination of the Contract*

Liu argues that her contractual obligation to arbitrate disputes with PFA expired with the termination of the Associates Marketing Agreement. We disagree. We review the interpretation of the parties' arbitration agreement de novo. (*Coast Plaza Doctors Hosp. v. Blue Cross of Cal.* (2000) 83 Cal.App.4th 677, 684 (*Coast Plaza*).)

" 'The scope of arbitration is a matter of agreement between the parties.' [Citation.] 'A party can be compelled to arbitrate only those issues it has agreed to arbitrate.' [Citation.] Thus, 'the terms of the specific arbitration clause under consideration must reasonably cover the dispute as to which arbitration is requested.' [Citation.] For that reason, 'the contractual terms themselves must be carefully examined before the parties to the contract can be ordered to arbitration' by the court. [Citation.]" (*Molecular Analytical Systems v. Ciphergen Biosystems, Inc.* (2010) 186 Cal.App.4th 696, 705 (*Molecular*).)

"In determining the scope of an arbitration clause, '[t]he court should attempt to give effect to the parties' intentions, in light of the usual and ordinary meaning of the contractual

language and the circumstances under which the agreement was made [citation].' [Citation.]" (*Victoria v. Superior Court* (1975) 40 Cal.3d 734, 744.) Any " 'doubts as to the scope of an agreement to arbitrate are to be resolved in favor of arbitration.' [Citations.]" (*Molecular*, *supra*, 186 Cal.App.4th at p. 705.) "The party opposing arbitration has the burden of showing that the agreement, as properly interpreted, does not apply to the dispute. [Citations.]" (*Ibid.*)

Here, Liu agreed "to submit any and all disputes with PFA" to arbitration. This was a broadly worded agreement that clearly showed an intention to arbitrate "any" dispute between the parties. "In interpreting an unambiguous contractual provision we are bound to give effect to the plain and ordinary meaning of the language used by the parties. [Citations.]" (*Coast Plaza*, *supra*, 83 Cal.App.4th at p. 684.) We interpret this language to mean that it applies to Liu's claim that PFA improperly terminated the Associates Marketing Agreement.

Nothing in arbitration clause excludes claims asserted after the contract ends. Rather, the provision states that Liu must submit "any and all" disputes between the parties to arbitration—regardless of when the claim arose. That the contract contains no temporal limitations is not surprising given that a large percentage of employer-employee disputes involve wrongful termination which, by definition, occurs after the agreement has been terminated. The contract could have been drafted to limit the arbitration clause to the time period when the contractual relationship was still ongoing. But there is no such language, and a court may not read terms into an agreement that are not there. (See Code Civ. Proc., § 1858 ["In the construction of a statute or instrument, the office of the Judge is simply to ascertain and declare what is in terms or in substance contained therein, not to insert what has been omitted, or to omit what has

been inserted"]; *Rebolledo v. Tilly's, Inc.* (2014) 228 Cal.App.4th 900, 918.)

2. *The Trial Court Did Not Err in Denying Costs*

Liu also contests the denial of her motion seeking an order compelling PFA to advance the costs of arbitration. She argues the trial court did not properly assess her ability to pay arbitration costs. We conclude the court did not err in denying the motion.

When an arbitration agreement requires the parties to share the costs of arbitration, and a party moves to compel the other side to advance arbitration costs, the trial court must determine the costs of arbitration and the moving party's ability to pay. (*Roldan v. Callahan Blaine* (2013) 219 Cal.App.4th 87, 94–96 (*Roldan*).) If the court finds the moving party "lack[s] the means to share the cost of the arbitration" such that to require them to share the arbitration costs "might effectively deprive them of access to any forum for resolution of their claims," the court must order the financially solvent party to either pay the moving party's share of the arbitration costs or waive its right to arbitrate that party's claim. (*Id.* at p. 96.)

We are not aware of any authority discussing the standard of review applicable to a trial court's decision whether to grant a motion to advance the costs of arbitration. We believe the court's decision was in its discretion, and therefore, apply the abuse of discretion standard.

Here, the parties' arbitration provision was silent as to allocation of arbitration expenses. Therefore, under Code of Civil Procedure section 1284.2, each party was required to "pay his pro rata share of the expenses and fees of the neutral arbitrator together with other expenses incurred or approved by the neutral arbitrator . . . ." Liu argued that the arbitration costs would be $12,000, and cited to a page of the American Arbitration

Association's "fee schedule" for arbitration which does not, in fact, state that costs would be $12,000. She also submitted a declaration stating that her expenses exceeded her income over the preceding four months: for example, that she earned $27,250 in rental property income and paid car loans of $5,700. Based on this evidence, she argued that she was "unable to pay" for a pro rata share of the costs of arbitration.

Liu failed to meet her burden as the moving party of showing that she was unable to pay her share of the arbitration costs. First, her claim that arbitration costs would be $12,000 was not supported by the evidence she cited. Second, the limited snapshot of her income and expense (which did not include evidence of her assets, such as her real estate holdings) did not demonstrate that she was unable to pay any arbitration costs. By contrast, in *Roldan*, where the court found a "very real possibility these plaintiffs might be deprived of a forum if they are accorded no relief from these costs," there was evidence the moving parties "relied on section 8 housing subsidies to pay for their apartments." (*Roldan*, *supra*, 219 Cal.App.4th at pp. 90, 96.)

3. *The Trial Court Did Not Rule on the Appropriate Location for the Arbitration*

Sprinkled throughout the parties' briefs and the trial court's oral comments at the hearing where the case was dismissed, were comments about the State of Georgia being the proper place for the arbitration. Liu argues the trial court "misinterpreted the choice of law/venue provision . . . to mandate that the arbitration was to take place in Georgia." She contends that it would be unconscionable to require her to arbitrate in Georgia.

By way of brief background the arbitration provision (¶ 2) says nothing about the location of arbitration. On its face, the arbitration provision, which is part of the "Covenants of the Associate [Employee]," deals only with employee claims. It says nothing about disputes initiated by PFA. That subject is covered in paragraph 13, "Breach of the Agreement" which states if Liu were to breach the agreement, PFA "in its sole discretion, may elect to file civil litigation in Gwinnett County, Georgia" or in Liu's home state. Paragraph 14 provides that Georgia law shall apply and that the parties consent to jurisdiction and venue in Georgia. Contractual interpretation aside, more relevant to Liu's argument, though, is that the trial court did not order that the arbitration should or should not take place in Georgia, so there is no error that Liu may assert on appeal. The court's rulings were limited to granting the motion to compel arbitration and denying Liu's request for cost allocation. Accordingly, we do not reach Liu's arguments on the place for the arbitration.[2]

DISPOSITION

The orders granting PFA's motion to compel arbitration and denying Liu's motion for arbitration costs are affirmed. PFA is awarded its costs on appeal.

RUBIN, J.

WE CONCUR:

BIGELOW, P. J. STRATTON, J.

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[2] Each party's motion for sanctions is denied. Liu's request for judicial notice of the trial court's October 6, 2017 minute order is granted.