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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 FIVE

MICHAEL M. GUIRGUIS et al., Plaintiffs and Respondents, v. CHRISTOPHER BROWN, Defendant and Appellant.	B280566 (Los Angeles County Super. Ct. No. BC624842)

APPEAL from order of the Superior Court of Los Angeles County, Elizabeth A. White, Judge. Affirmed.

Jonathan D. Davis; Proskauer Rose, Sandra A. Crawshaw-Sparks, for Defendant and Appellant.

Glaser Weil Fink Howard Avchen & Shapiro, Patricia L. Glaser, Kerry Garvis Wright, Louise D. Nutt, Elizabeth G. Chilton, for Plaintiffs and Respondents.

A "personal management agreement" between an entertainer and a management company provides that "[a]ny dispute hereunder shall be submitted to binding arbitration." The issue presented in this appeal is whether the arbitration agreement applies to those portions of a civil complaint alleging that the entertainer committed various torts, including assault and battery, defamation, false imprisonment, and intentional infliction of emotional distress. These tort claims plainly are not covered by the arbitration agreement, as the trial court correctly ruled.

BACKGROUND

The Operative First Amended Complaint (FAC)

Michael M. Guirguis and MMG Industries, Inc., dba NiteVision Management (collectively plaintiffs) filed the FAC on June 24, 2016, alleging seven causes of action: assault; battery; false imprisonment; intentional infliction of emotional distress; breach of contract; breach of implied covenant of good faith and fair dealing; and defamation per se. The FAC was based on the following pertinent allegations.

NiteVision provides personal management services to musicians. Guirguis joined Christopher Brown's management team in 2012, and by 2014, he became Brown's exclusive personal manager. Brown and NiteVision executed a personal management agreement in April 2014.

Guirguis was identified in the agreement as the person primarily responsible for providing services to Brown.

On May 10, 2016, Brown summoned Guirguis to a rehearsal studio. Brown approached Guirguis and said, "Let's talk." Guirguis suggested they go into a quiet room to talk without distraction. After they entered the room, Brown closed the door and said, "We're going to go for thirty seconds." Guirguis thought Brown was kidding "until Brown sucker punched him in the face as he tried to exit the room." Brown prevented Guirguis from leaving the room. As Guirguis began to fall backwards, "Brown punched him three more times in the face and neck." Guirguis received medical treatment.

Within hours of the attack, Brown posted a video on Instagram. In the video clip, Brown is smirking and laughing, with an emoji of two eyes followed by, "them days when u are looking for some fucks to give."

The original complaint in this case was filed on June 23, 2016. It did not include a defamation cause of action. The filing of the original complaint was reported in the news media. That same day, Brown posted a video on Instagram stating: "Okay, you knew it was coming. You knew it was fucking coming. I'm under this goddamn light to make me seem more serious. Okay. Niggers is getting mad and filing lawsuits cause I fire them because they're stealing money. You're stealing money, pal. So you're mad because you're no longer existent. It's alright. I'm gonna keep pushing. God bless ya, wish you the best of luck."

Brown made another post on Instagram two minutes later. The second post stated: "Mr. Pettipants himself, I'll declare it. I'm not fitting to entertain this petty shit. Because don't nobody come out clean in this shit throwing contest. And I could throw a big piece of shit. I'm talking about massive. It's like, elephant shit, mixed with donkey shit, might even be a little bit of rabbit pebbles. But I would throw the biggest piece of shit so we're not gonna, we're not gonna play these games. We're gonna let these people do what they do. And I'm going to keep getting this money. Thank you all for, man, supporting me on this tour. Killing it. We're gonna keep doing out thing, man. Fuck everybody else. Fuck all that other shit."

The FAC was filed after Brown's June 23, 2016 Instagram posts, adding the defamation per se cause of action to the cause of action. The defamation cause of action alleged that the June 23 Instagram posts were widely viewed.

The Petition to Compel Arbitration, Opposition, and Reply

Brown sought to compel arbitration pursuant to Code of Civil Procedure section 1281.2 as to all causes of on the basis that the FAC "purportedly alleges causes of action that arise from services that Plaintiffs provided to Petitioner under a Personal Management Agreement." Brown described the agreement to arbitrate as "broad, simple, and unambiguous," and that "there are no exclusions." The

petition alleged that plaintiffs were both bound by the arbitration agreement.

Plaintiffs filed an opposition to the petition to compel arbitration, arguing that agreement does not compel arbitration of all of the claims in the FAC. The agreement to arbitrate did not apply to the tort claims, which did not arise from a dispute under the personal management agreement, and in addition, Guirguis was not a party to the arbitration agreement and is not bound by its terms. Plaintiffs argued the court should sever those portions of the complaint covered by the arbitration agreement from the other portions that did not arise under it.

Brown filed a reply, arguing that plaintiffs had ignored the plain language of the "broad" arbitration agreement that encompasses all of their claims. Brown contended that a confidentiality/non-disclosure provision affects the scope of the agreement's application to "'any dispute hereunder.'" Brown repeated its assertion that Guirguis was bound by the arbitration agreement.

Ruling of the Trial Court

After considering oral argument, the trial court granted the motion to compel arbitration as to the causes of action for breach of contract and breach of the implied covenant of good faith and fair dealing, but denied the

motion as to the remaining tort claims.[1] The court considered the issue to be "really clear-cut" because there is no way the "any dispute hereunder" language in the personal management agreement "could be construed to cover a physical attack, false imprisonment, intentional infliction [of emotional distress]." The court's ruling was reduced to a signed order, from which Brown has filed a timely notice of appeal.

DISCUSSION

Brown raises two issues on appeal. First, he argues the trial court erred by refusing to compel arbitration of Guirguis' tort claims because they involved the same dispute, incident, and conduct giving rise to the breach of contract claims under the management agreement. Second, Brown contends the defamation per se cause of action—based on an alleged accusation that defendants took unauthorized commission payments—should have been ordered to arbitration, because it will require proof that defendants violated the management agreement.

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[1] The breach of contract and breach of the implied covenant of good faith and fair dealing causes of action, which were referred to arbitration, are not in dispute on appeal.

Standard of Review

"In reviewing the superior court's order denying the petition to compel arbitration, we apply basic rules for interpreting contracts, to analyze both the agreement and the arbitration clause within it. (*Fittante v. Palm Springs Motors, Inc.* (2003) 105 Cal.App.4th 708, 713–714 (*Fittante*).) An 'arbitration agreement is subject to the same rules of construction as any other contract, including the applicability of any contract defenses.' (*Id.* at p. 713.)" (*Duffens v. Valenti* (2008) 161 Cal.App.4th 434, 443.)

"Whether there is an agreement to arbitrate the present controversy turns on the language of the arbitration clause. [Citations.] There is no dispute as to the language of the arbitration clause. As will be noted, there is no relevant conflicting extrinsic evidence as to its terms. We thus conduct a de novo review of the arbitration clause." (*EFund Capital Partners v. Pless* (2007) 150 Cal.App.4th 1311, 1320.)

"'The fundamental rules of contract interpretation are based on the premise that the interpretation of a contract must give effect to the "mutual intention" of the parties. "Under statutory rules of contract interpretation, the mutual intention of the parties at the time the contract is formed governs interpretation. (Civ. Code, § 1636.) Such intent is to be inferred, if possible, solely from the written provisions of the contract. (*Id.,* § 1639.) The 'clear and explicit' meaning of these provisions, interpreted in their 'ordinary and popular sense,' unless 'used by the parties in a technical

sense or a special meaning is given to them by usage' (*id.,* § 1644), controls judicial interpretation. (*Id.,* § 1638.)'" (*Waller [v. Truck Ins. Exchange, Inc.* (1995)] 11 Cal.4th [1,] 18.)" (*Ameron Intern. Corp. v. Insurance Co. of State of Pennsylvania* (2010) 50 Cal.4th 1370, 1378.*)*

Application of the Personal Management Agreement to the FAC

We focus on whether the tort claims may be considered "[a]ny dispute hereunder" the personal management agreement in order to resolve Brown's contention that the arbitration clause applies to all causes of action in the FAC. "[A]s other courts of appeal have regularly observed, the terms of the specific arbitration clause under consideration must reasonably cover the dispute as to which arbitration is requested. This is so because '[t]here is no public policy favoring arbitration of disputes which the parties have not agreed to arbitrate.'" (*Bono v. David* (2007) 147 Cal.App.4th 1055, 1063 (*Bono*).) "Indeed, this principle is effectively prescribed by Civil Code section 1648, which provides: 'However broad may be the terms of a contract, it extends only to those things concerning which it appears that the parties intended to contract.' (Civ. Code, § 1648.)" (*Ibid*.)

Case law looks to whether an arbitration clause is "broad" or "narrow" in determining whether a dispute is subject to arbitration. (*Rice v. Downs* (2016) 248 Cal.App.4th 175, 186 (*Rice*); see *Bono*, *supra*, 147 Cal.App.4th at p. 1067.) A "broad clause" typically uses

language such "as any claim arising from" or "arising in connection" with the agreement, and arbitration under this type of clause may extend to tort claims. (*Rice*, *supra*, at p. 186.) On the other hand, agreements requiring arbitration of claims "arising from" or "arising out of an agreement," but without language such as "related to this agreement" or "in connection with this agreement," are considered "narrow" and limit arbitration to the interpretation and performance of the agreement. (*Id*. at pp. 186–187.)

Here, the parties agreed to arbitrate "any dispute hereunder," which is narrowly drawn to apply only to disputes under the agreement. Brown cannot point to anything suggesting that the parties intended to broaden the scope of arbitration to acts of gratuitous violence that are nowhere mentioned in the personal management agreement. Given the plain language of the personal management agreement, Brown's contention is completely devoid of merit.

Brown argues that the tort claims (other than defamation) occurred during a business meeting between Brown and Guirguis. Brown reasons that events at this meeting serve as the basis for the contract-related claims, which are subject to arbitration. From the premise, Brown asserts that if the contract-based claims are subject to arbitration, it follows that his tort claims for acts committed at that same meeting necessarily fall under the arbitration agreement. The argument is misdirected. The incidental fact that the alleged assault occurred after Guirguis was

summoned purportedly to discuss a business-related matter does not transform a gratuitous act of violence into a dispute arising under the personal management agreement. The correct analysis requires examination of the intent of the parties as reflected in the written agreement, and as already stated, there is nothing in that agreement indicating that liability for unprovoked violence was intended to be subject to arbitration.

As noted in *RN Solution, Inc. v. Catholic Healthcare West* (2008) 165 Cal.App.4th 1511 (*RN Solution*), arguments that a business arbitration clause applies to violent tort causes of action have gained no traction. "The few courts that have discussed hypothetical claims of that nature have treated them dismissively, using them to illustrate the principle that even the broadest arbitration clauses obviously cannot cover every type of dispute that might arise. (See *Medical Staff of Doctors Medical Center in Modesto v. Kamil* (2005) 132 Cal.App.4th 679, 684 [defamation claim would no more come within the terms of an arbitration clause covering any dispute concerning the terms of contract between medical insurer and physician group than would 'a punch in the nose' during a dispute over medical billing]; *Coors Brewing Co. v. Molson Breweries* (10th Cir.1995) 51 F.3d 1511, 1516 ['if two small business owners execute a sales contract including a general arbitration clause, and one assaults the other, we would think it elementary that the sales contract did not require the victim to arbitrate the tort claim because the tort claim

is not related to the sales contract']; *Stone v. Doerge* (N.D.Ill.2002) 245 F.Supp.2d 878, 883, affd. (7th Cir.2003) 328 F.3d 343 [agreeing with *Coors Brewing*].)" (*Id.* at p. 1524.)

One of the plaintiffs in *RN Solution* filed a complaint "alleging a series of interrelated contract, business tort, and personal injury claims." (*RN Solution*, *supra*, 165 Cal.App.4th at p. 1514.) The contract and business tort claims related to a corporation's agreement to provide nurses from Korea to work for hospitals. The agreement "included mandatory 'Dispute Resolution' provisions, which required that 'any dispute . . . aris[ing] out of the services contracted for in this Agreement' be resolved by a two-step process consisting of a 'meet and confer' followed by arbitration." (*Ibid.*) The personal injury claims alleged that the president of the Korean entity providing the nurses became involved in a sexual relationship with an officer of an entity operating the hospitals, and the hospital's officer committed acts of domestic violence on her that resulted in the officer suffering conviction of two felonies. (*Id.* at p. 1515.) The issue in *RN Solution* was whether all the plaintiff's causes of action—contract and personal injury torts—were subject to the arbitration agreement.

The *RN Solution* court concluded, without difficulty, that the tort claims were not subject to the arbitration agreement. "While the language of the arbitration provision might be broadly construed to cover every type of business dispute that might arise between the two signators, it cannot

seriously be argued that the parties intended it to cover tort claims arising from an alleged violent physical assault by an employee of one company against an employee of the other in the context of an intimate domestic relationship between them. Such a possibility could not have been within the parties' contemplation when the language was agreed to, and nothing in the language remotely suggests that it was intended to apply to personal injury tort claims arising outside of the business relationship between [the signators]. (Cf. *Victoria [v. Superior Court* (1985)] 40 Cal.3d [734,] 745 [hospital and patient could not have contemplated or expected that patient would be sexually assaulted by hospital employee during her hospital stay and therefore could not have intended such an attack to come within the scope of an arbitration clause covering 'bodily injury arising from rendition or failure to render services' (italics omitted)].)" (*RN Solution*, *supra*, 165 Cal.App.4th at p. 1523.)

We agree with the analysis in *RN Solution*, and conclude it points the way to the correct result in this case. While there are factual distinctions between *RN Solutions* and the instant case, the underlying principle is equally applicable—unless the personal management agreement shows otherwise, and it does not—the tort causes of action for violent acts are not subject to arbitration.

Brown makes a separate argument as to the defamation cause of action, contending the alleged statement that respondents stole money has a close nexus with the

personal management agreement. According to Brown, the defamation cause of action cannot be resolved without a determination of whether plaintiffs breached the management agreement, and because the contract claims are arbitrable, so is the defamation claim. We are not convinced.

The defamation cause of action is based on Brown's alleged video posts stating the respondents stole from him and were fired. There is nothing to suggest the parties intended disputes relating to defamation in the form of widely viewed internet postings to arise under the personal management agreement. We agree with the trial court that the truth or falsity of the alleged defamatory statements is an issue that may be resolved without regard to the interpretation of the professional management agreement. Although "[t]here may be cases where the alleged defamation is so intimately bound with the terms of the agreement that arbitration is appropriate" (*Medical Staff of Doctors Medical Center in Modesto v. Kamil*, *supra*, 132 Cal.App.4th at p. 683), this is not such a case. The defamation cause of action is not subject to the arbitration agreement.

In view of our affirmance of the trial court's order denying the petition to arbitrate the tort causes of action, we need not discuss Guirguis's separate contention that he is not a party to the arbitration agreement.

DISPOSITION

The order granting in part and denying in part the petition to compel arbitration is affirmed. Costs on appeal are awarded to MMG Industries, Inc., dba NiteVision Management, and Michael M. Guirguis.

KRIEGLER, Acting P.J.

We concur:

BAKER, J.

DUNNING, J.*

* Judge of the Orange Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.