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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 THREE

STEPHEN A. KOLODNY et al., Plaintiffs and Respondents, v. JILL C. WONDRIES, Defendant and Appellant.	B293985 Los Angeles County Super. Ct. No. BC561022
JILL C. WONDRIES, Plaintiff and Appellant, v. STEPHEN A. KOLODNY et al., Defendants and Respondents.	Los Angeles County Super. Ct. No. BC561095

APPEAL from judgments of the Superior Court of Los Angeles County, Elizabeth R. Feffer, Judge. Affirmed.

Hill Farrer & Burrill, Michael K. Collins and Stephen J. Tomasulo for Defendant, Plaintiff and Appellant.

Robie & Matthai, Edith R. Matthai and Leigh P. Robie for Plaintiffs, Defendants and Respondents.

INTRODUCTION

Jill C. Wondries appeals from judgments confirming an arbitration award entered against her in a dispute over the amount of attorneys' fees and costs two law firms, Kolodny & Anteau (K&A) and Kolodny Law Group (KLG), charged her in a marital dissolution action. Wondries contends the trial court erred when it ordered the parties' claims involving KLG to be resolved through arbitration because Wondries never signed an arbitration agreement governing disputes between herself and KLG. As we explain, the court properly ordered Wondries to arbitrate the claims involving KLG because they arise out of the underlying retainer and arbitration agreements Wondries signed. Accordingly, we affirm the judgments confirming the arbitration award.

FACTS AND PROCEDURAL BACKGROUND

1. Wondries Hires K&A

In June 2012, Wondries was involved in a marital dissolution action that had been ongoing for about 10 years. At the time, Stephen Kolodny was practicing law at K&A.

On June 15, 2012, Wondries retained K&A to represent her in the dissolution action. Wondries signed two agreements that Kolodny drafted: (1) a retainer agreement outlining the terms of K&A's representation, including the hourly rates to be charged

by Kolodny and other members of the firm (Retainer Agreement); and (2) an arbitration agreement requiring all disputes between Wondries and K&A to be decided by binding arbitration (Arbitration Agreement).

In relevant part, the Arbitration Agreement provided: "If any disputes arise between you and K&A regarding the nature and quality of K&A's work and/or the work for which you have been billed and/or the amount of the billing for that work, all such disputes will be decided in arbitration and the result will be binding on both you and K&A. Accordingly, except as provided below, all disputes between you and K&A, including malpractice claims, will be decided in binding arbitration." (Capitalization and bold removed.) The Arbitration Agreement also informed Wondries of her right to elect arbitration under Business and Professions Code section 6200 for any dispute over attorneys' fees and costs, and it explained the circumstances under which she could waive her right to elect arbitration under the terms of that statute.

2. K&A Represents Wondries

K&A represented Wondries until late September 2013, including through 23 days of trial between July and September 2013. By September 2013, K&A had billed Wondries more than $4.5 million in attorneys' fees and costs.

On September 27, 2013, the trial court in Wondries's dissolution action denied K&A's request for an award of $1 million in interim attorneys' fees to continue representing Wondries. That same day, Kolodny sent Wondries a letter informing her that K&A had dissolved, and that he was forming a new law firm—KLG. Kolodny told Wondries that the same lawyers, paralegals, and other professionals who worked on her

case at K&A would be available to continue working on her case at KLG. Kolodny asked Wondries to sign a substitution of attorney form, as well as an acknowledgement that KLG would continue to represent Wondries under "the same terms" as the Retainer Agreement and the Arbitration Agreement (Acknowledgement). Wondries refused to sign the Acknowledgement, but she asked Kolodny and KLG to continue representing her in the dissolution action. Wondries and KLG did not sign a separate retainer agreement.

On October 8, 2013, Kolodny filed a motion to withdraw from the dissolution action because Wondries told him "she did not intend to make any additional [fees and costs payments] until the completion of the trial," which was expected to last 45 more days.[1] Wondries opposed the motion to withdraw, asserting she wanted "Kolodny to continue with the case, [since] she ha[d] no irreconcilable differences with him" and only disputed "Kolodny's demand for additional money." The court granted the withdrawal motion on October 18, 2013.

3. The Parties' Lawsuits

On October 17, 2014, Kolodny, K&A, and KLG (collectively, the Kolodny Parties) filed a lawsuit against Wondries in Los Angeles Superior Court Case Number BC561022. Kolodny and K&A sued Wondries for breach of contract, alleging Wondries breached the Retainer Agreement when she "announced that she

[1] A copy of the motion to withdraw is not included in the record on appeal. Kolodny testified that he filed the motion on K&A's behalf, even though the firm was dissolved at the time the motion was filed, because Wondries never signed a substitution of attorney form allowing KLG to substitute in as her counsel of record.

was no longer going to timely pay Mr. Kolodny and [K&A] for their services as provided for in the [agreement.]" Kolodny and KLG brought the claim for unjust enrichment, alleging KLG performed more than $180,000 in reasonable legal services, which Wondries refused to pay. Finally, the Kolodny Parties sued Wondries for account stated, alleging Wondries owed K&A an outstanding balance of more than $790,000 in attorneys' fees and costs, and that she owed KLG an outstanding balance of more than $180,000 in fees and costs.

On October 17, 2014, Wondries sued Kolodny, K&A, KLG, and Carole Azran-Dickstein, an attorney who worked at K&A,[2] for breach of fiduciary duty, legal malpractice, and breach of contract in Los Angeles Superior Court Case Number BC561095. Wondries named all four defendants in her breach of fiduciary duty and legal malpractice claims, asserting defendants "over-bill[ed] her, fail[ed] to follow through on representations made to her[,] and withdr[ew] from representing her in the middle of trial." As for the breach of contract claim, Wondries alleged Kolodny, Azran-Dickstein, and K&A breached the Retainer Agreement by overbilling Wondries, withdrawing from the dissolution action, and "failing to follow through on representations made to [Wondries]."

Wondries's claims were based on a theory that, before she retained K&A, Kolodny estimated the amount of fees and costs the firm would likely incur representing her in the marital dissolution action would fall between $800,000 and $1.2 million, and he ensured Wondries that if the fees crossed a certain threshold, the firm would not require her to make any additional

[2] Azran-Dickstein is not a party to this appeal.

payments "through the remainder of the litigation." Wondries alleged that "[d]efendants provided no reasonable explanation" as to why their fees were "unreasonable, unjustifiable[,] and out of line with industry standards," and that defendants withdrew from representing Wondries when she told them she could not afford to continue to pay their fees. Notably, Wondries's complaint did not draw a distinction between the acts of KLG and any of the other defendants that form the basis for her breach of fiduciary duty and legal malpractice claims, aside from an allegation that "[s]ome of the misconduct … by Kolodny and [Azran-Dickstein] took place after [Kolodny formed KLG] and is accordingly imputable to KLG."

On January 20, 2015, the court related both lawsuits.

4. The Motion to Compel Arbitration and the Arbitration Hearing

On January 21, 2015, the Kolodny Parties filed a motion to compel arbitration of all claims raised in both lawsuits. They argued that when Wondries signed the Arbitration Agreement, she agreed to arbitrate any dispute arising out of the Kolodny Parties' representation of Wondries in the marital dissolution action.

Wondries opposed the motion. She argued she could not be compelled to arbitrate any claims concerning KLG because that firm was not a party to the Arbitration Agreement, she never signed any other agreement requiring her to arbitrate disputes involving KLG, and none of the principles allowing a nonsignatory to enforce an arbitration agreement applied to KLG. Wondries did not, however, dispute she had agreed to arbitrate claims arising out of K&A's representation throughout the marital dissolution action.

In April 2015, the court granted the Kolodny Parties' motion to compel arbitration. The court stayed both lawsuits and ordered the parties to submit their claims to binding arbitration.

Between June and November 2017, the parties participated in a multi-day arbitration hearing before JAMS. In June 2018, the arbitrator issued a written "Final Award" in favor of the Kolodny Parties (Award). The arbitrator awarded K&A $1,037,719.16 in unpaid fees and costs, plus interest, under a breach of contract theory. Under a theory of quantum meruit, the arbitrator awarded KLG $236,046.75 for the reasonable value of the services it provided Wondries, using the same billing rates outlined in the Retainer Agreement. The arbitrator found the Kolodny Parties were the "prevailing party" and awarded them $508,678.82 "for fees and costs incurred in th[e] arbitration."

5. The Petition to Confirm the Award

On June 19, 2018, the Kolodny Parties filed a petition to confirm the Award and a separate motion to recover attorneys' fees and costs associated with the arbitration hearing and the filing of the petition to confirm the Award. Wondries opposed the petition to confirm the Award, but she did not oppose the attorneys' fees motion. On August 15, 2018, the court granted the petition and the attorneys' fees motion, awarding the Kolodny Parties "$16,755.00 in fees and $1,585.31 in costs." On September 4, 2018, the court entered judgments in the Kolodny Parties' favor in Case Numbers BC561022 and BC561095.

On September 28, 2018, Wondries filed a motion for new trial, again arguing the court erred in granting the petition to confirm the Award. On October 22, 2018, the court denied Wondries's new trial motion. In a written ruling, the court explained KLG was entitled to enforce the Arbitration Agreement

against Wondries under an equitable estoppel theory because Wondries's claims against KLG were "based upon the [Retainer Agreement] between Wondries and K&A."

Wondries appeals.

DISCUSSION

Wondries contends the court erred when it ordered her to arbitrate the claims involving KLG because she never signed an agreement requiring her to arbitrate disputes arising out of that firm's representation, and none of the principles allowing a nonsignatory to enforce an arbitration agreement apply to KLG. Wondries does not dispute that she entered a binding agreement to arbitrate claims involving K&A.

A party to an arbitration agreement may petition the trial court to compel another party to arbitrate a dispute that falls within the scope of the parties' agreement. (Code Civ. Proc., § 1281.2; *Jones v. Jacobson* (2011) 195 Cal.App.4th 1, 15.) While public policy favors contractual arbitration as a means of resolving disputes, " ' " 'there is no policy compelling persons to accept arbitration of controversies which they have not agreed to arbitrate … .' " ' " (*DMS Services, LLC v. Superior Court* (2012) 205 Cal.App.4th 1346, 1352.)

To determine whether the parties' dispute falls within the scope of an arbitration agreement, we apply general principles of contract law. (*Mendez v. Mid-Wilshire Health Care Center* (2013) 220 Cal.App.4th 534, 541.) We try to give effect to the parties' intentions by looking to the usual and ordinary meaning of the contractual language and the circumstances under which the contract was formed. (*Bono v. David* (2007) 147 Cal.App.4th 1055, 1063.) " 'The party seeking to compel arbitration bears the burden of proving the existence of a valid arbitration agreement.'

[Citations.]" (*Cohen v. TNP 2008 Participating Notes Program, LLC* (2019) 31 Cal.App.5th 840, 859.)

It is undisputed that KLG did not sign the Arbitration Agreement and that Wondries never signed any other arbitration agreement to which KLG was a party. We therefore must determine whether KLG, as a nonsignatory, has standing to enforce the Arbitration Agreement. "Where, as here, there are no disputed issues of fact, we determine whether a nonsignatory may enforce an arbitration agreement under the de novo standard of review. [Citation.]" (*Marenco v. DirecTV LLC* (2015) 233 Cal.App.4th 1409, 1416–1417 (*Marenco*).)

A party who has not signed an arbitration agreement may enforce the agreement if "there is sufficient identity of parties." (*Valley Casework, Inc. v. Comfort Construction, Inc.* (1999) 76 Cal.App.4th 1013, 1021.) Generally, sufficient identity of parties exists where: (1) the nonsignatory is the agent for a party to the agreement containing the arbitration provision; (2) the nonsignatory is a third party beneficiary of the agreement containing the arbitration provision; or (3) the party opposing arbitration is estopped from denying the nonsignatory's right to compel arbitration because the opposing party bases its claims on the agreement containing an arbitration provision. (*Marenco*, *supra*, 233 Cal.App.4th at p. 1417.)

Our analysis begins, and ends, with equitable estoppel. "In *any* case applying equitable estoppel to compel arbitration despite the lack of an agreement to arbitrate, a nonsignatory may compel arbitration only when the claims against the nonsignatory are founded in and inextricably bound up with *the obligations imposed by the agreement containing the arbitration clause*." (*Goldman v. KPMG, LLP* (2009) 173 Cal.App.4th 209,

219 (*Goldman*).) In other words, "Equitable estoppel applies 'when the signatory to a written agreement containing an arbitration clause "[relies] on the terms of the written agreement in asserting [its] claims" against the nonsignatory.' [Citation.]" (*Ibid.*; see also *Marenco*, *supra*, 233 Cal.App.4th at p. 1417 ["the [opposing party] may be equitably estopped to deny the nonsignatory['s] right to enforce an arbitration clause that is contained within the contract that the [opposing party] has placed at issue"].)

Equitable estoppel serves to " 'prevent a party from using the terms or obligations of an agreement as the basis for [her] claims against a nonsignatory, while at the same time refusing to arbitrate with the nonsignatory under another clause of that same agreement.' [Citation.]" (*JSM Tuscany, LLC v. Superior Court* (2011) 193 Cal.App.4th 1222, 1238 (*JSM Tuscany*).) Because the application of equitable estoppel in arbitration cases depends on the nature of the claims asserted by the party seeking to avoid arbitration (see *Goldman*, *supra*, 173 Cal.App.4th at pp. 220–221), we begin by reviewing the allegations in Wondries's complaint.

Here, Wondries sued all defendants, including KLG, for breach of fiduciary duty and legal malpractice. As we noted in the factual summary, Wondries asserted generally that "defendants" breached their duties by overbilling her, failing to follow through on certain promises, and withdrawing during the middle of trial. Wondries did not allege any specific acts that KLG, separate and apart from K&A or any of the other defendants, engaged in that would support a claim for breach of fiduciary duty or legal malpractice. Nor did Wondries allege any source of KLG's duties giving rise to the breach of fiduciary duty and legal malpractice

claims that was different from the source of K&A's duties giving rise to the same claims. Based on the generalized nature of the allegations in her complaint, we are unable to parse the basis for Wondries's claims against KLG from the basis for her claims against K&A. Put another way, Wondries's claims against KLG are intertwined with her claims against K&A.

Wondries contends that none of the claims concerning KLG arise out of the obligations created by the Retainer and Arbitration agreements because she refused to sign the Acknowledgment, which asked her to agree that KLG would represent her under the same terms included in those agreements after K&A dissolved. We disagree. Wondries ignores that when she refused to sign the Acknowledgment, she also demanded that Kolodny continue representing her through KLG. In doing so, Wondries never proposed any different terms that would apply to KLG's representation nor did she ask to negotiate a different retainer agreement.

It follows, then, that the terms of KLG's representation would be based on the terms of the Retainer Agreement Wondries signed with K&A, which was the source of the attorney-client relationship between KLG and Wondries. (See *Strasbourger Pearson Tulcin Wolff Inc. v. Wiz Technology, Inc.* (1999) 69 Cal.App.4th 1399, 1404 [an attorney-client relationship can be created by an express or implied agreement; the terms of an implied agreement "are manifested by conduct"].) To allow Wondries to pursue claims against KLG that are based on obligations originating out of the Retainer Agreement, while allowing her to avoid application of the Arbitration Agreement that she signed at the same time as the Retainer Agreement, would run counter to the purpose of applying equitable estoppel

in arbitration cases. (*JSM Tuscany*, *supra*, 193 Cal.App.4th at p. 1240.)

This case is distinguishable from *Fuentes v. TMCSF, Inc.* (2018) 26 Cal.App.5th 541 (*Fuentes*), on which Wondries relies. In *Fuentes*, the plaintiff signed a written purchase agreement to buy a motorcycle from a dealership. (*Id.* at p. 545.) The purchase agreement did not contain an arbitration provision. (*Ibid.*) At the same time, the plaintiff signed a separate security agreement with a bank to finance the purchase. (*Ibid.*) The security agreement did contain an arbitration clause. (*Id.* at pp. 545–546.) The plaintiff later sued the dealership for false advertising and other claims. (*Id.* at p. 546.) Although it was not a party to the security agreement, the dealership sought to compel arbitration of the plaintiff's claims under that agreement. (*Id.* at pp. 546–547.)

The court of appeal affirmed the trial court's denial of the motion to compel arbitration. (*Fuentes*, *supra*, 26 Cal.App.5th at pp. 547–553.) In relevant part, the court rejected the dealership's argument that the plaintiff was equitably estopped from opposing arbitration. (*Id.* at pp. 552–553.) The court reasoned that because none of the plaintiff's claims relied on the security agreement—i.e., the claims against the dealership would have been identical whether the plaintiff financed the purchase or paid only cash—the dealership could not enforce the security agreement's arbitration clause under an equitable estoppel theory. (*Id.* at p. 553.)

Here, on the other hand, the claims involving KLG are premised on the agreements containing an arbitration provision. As we explained above, the Retainer Agreement formed the basis for the terms of KLG's representation of Wondries in the marital

dissolution action. And all the claims concerning KLG in this case arise out of the firm's obligations under the Retainer Agreement. Because Wondries agreed to arbitrate any dispute arising out of the Retainer Agreement, she is estopped from repudiating the Arbitration Agreement as it applies to KLG. The court, therefore, did not err when it ordered Wondries to arbitrate the parties' claims involving KLG.[3]

DISPOSITION

The judgments are affirmed. Respondents are awarded their costs on appeal.

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LAVIN, Acting P. J.

WE CONCUR:

EGERTON, J.

DHANIDINA, J.

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[3] Because we conclude the court properly compelled arbitration of the claims involving KLG under an equitable estoppel theory, we need not address Wondries's arguments that she could not be compelled to arbitrate under an agency or a third-party beneficiary theory.