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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

SHEILA STOCK,

Petitioner,

v.

THE SUPERIOR COURT OF
LOS ANGELES COUNTY,

Respondent;

SERENITY MALIBU et al.,

Real Parties in Interest.

No. B276312

(Super. Ct. No. BC578405)

ORIGINAL PROCEEDING. Petition for writ of mandate,
Gerald Rosenberg, Judge. Writ denied.

Benedon & Serlin LLP, Gerald M. Serlin and Judith E.
Posner; Mancini & Associates, Marcus A. Mancini, Christopher
M. Barnes, Tara J. Licata and Meghan E. George for Petitioner.

No appearance for Respondent.

Beach, Cowdrey, Owen LLP, Thomas E. Beach, Spencer H. Jenkins, Darryl Hottinger, and Molly M. Loy for Real Parties in Interest.

Petitioner Sheila Stock seeks relief from an order compelling arbitration of her claims against Real Parties in Interest Serenity Malibu, LLC, Seasons Recovery Center, LLC, and Seaside Recovery Center, LLC. Because Stock failed to raise the grounds on which she seeks relief in the trial court, we will decline to grant extraordinary relief.

FACTUAL AND PROCEDURAL BACKGROUND

The operative First Amended Complaint in this matter, filed on March 8, 2016, alleges that Sheila Stock contracted to receive rehabilitation treatment at defendants' facility by executing a written agreement in Chicago, Illinois. Stock then traveled to Los Angeles on April 10, 2014, and arrived at the facility after consuming alcohol during her trip. The facility would not admit her because she was not sober, and directed Paul Williams,¹ a member of the staff, to transport Stock to a hotel at 1:30 a.m. Thereafter, according to the complaint, Williams sexually assaulted Stock, remaining in her hotel room until 6:30 a.m.

Defendants admitted Stock to the facility later that morning, but discouraged her from filing a police report. She

¹ Williams is a defendant in the lawsuit, but was not a participant in the motion to compel arbitration and is not a party to this proceeding.

later filed a police report on April 24, 2014, for which she was reprimanded by defendants' employees. In May, she was discharged from the facility for failure to comply with program rules. Stock sought a refund of her \$20,000 pre-payment for the program; defendants refused.

Stock's contract with the facility, entered on April 6, 2014, provided for addiction rehabilitation and counseling services. The first numbered paragraph of the agreement detailed the services that the parties agreed to. The contract also contained a provision mandating arbitration of disputes, which provided in relevant part: "Any dispute arising in connection with this Agreement that cannot be resolved by the Parties hereto shall be settled exclusively by arbitration under the auspices of the American Arbitration Association." On her admission, she signed a Consent to Treat, which contained no arbitration clause.

Stock's complaint sought relief in 14 causes of action.² On August 28, 2015, defendants moved to compel arbitration. Stock sought sanctions for defendants' filing of the motion to compel, and the court heard both matters on May 24, 2016. The court granted the motion to compel arbitration, and denied the motion for sanctions. Stock filed this writ seeking mandamus relief on

² Violation of Civil Code, sections 51 and 51.9 (First and Second); declaratory relief (Third); violation of Civil Code, section 1708.5 (Fourth); Assault (Fifth); Battery (Sixth); False imprisonment (Seventh); Intentional infliction of emotional distress (Eighth); Negligence (Ninth); Breach of Contract (Tenth); Breach of the Covenant of Good Faith and Fair Dealing (Eleventh); Fraud (Twelfth); Negligent Misrepresentation (Thirteenth); and Negligent Disclosure of Medical Records (Fourteenth).

July 22, 2016. This Court received opposition, and issued its Order to Show Cause on August 17, 2016.

DISCUSSION

I. Standard of Review

“A party who claims that there is an applicable written arbitration agreement may petition the superior court for an order compelling the parties to arbitrate. (Code Civ. Proc., § 1281.2.) Such a petition essentially seeks specific performance of the arbitration agreement. (*Banner Entertainment, Inc. v. Superior Court* (1998) 62 Cal.App.4th 348, 356 [72 Cal.Rptr.2d 598].) ‘In determining whether an arbitration agreement applies to a specific dispute, the court may examine only the agreement itself and the complaint filed by the party refusing arbitration.’ (*Weeks v. Crow* (1980) 113 Cal.App.3d 350, 353 [169 Cal.Rptr. 830] (*Weeks*).) Because the trial court sits as a trier of fact in ruling on such a petition, its decision on the existence of a valid arbitration agreement will be affirmed on appeal if substantial evidence supports the ruling. (*Banner*, at pp. 356–357.) Where, as here, ‘there is no “*factual* dispute as to the language of [the] agreement” [citation] or “conflicting extrinsic evidence” regarding the terms of the contract [citation], our standard of review of a trial court order granting or denying a motion to compel arbitration under [Code of Civil Procedure] section 1281.2 is de novo.’ (*Bono v. David* (2007) 147 Cal.App.4th 1055, 1061–1062 [54 Cal.Rptr.3d 837] (*Bono*).) ‘We are not bound by the trial court’s construction or interpretation.’ (*Coast Plaza Doctors Hospital v. Blue Cross of California* (2000) 83 Cal.App.4th 677, 684 [99 Cal.Rptr.2d 809] (*Coast Plaza*).)”

(Rice v. Downs (2016) 248 Cal.App.4th 175, 184-185 (Rice).)

II. Stock's Failure to Raise Her Grounds for Relief In the Trial Court Precludes Writ Relief

The First Amended Complaint sets forth several categories of claims. The first concerns the sexual assault, which Stock alleged occurred on April 6, 2014, and which she asserts was committed by Williams, an employee of defendants, acting in the course and scope of his employment. Stock alleged that the assault, defendants' response attempting to prevent her from reporting it, her ultimate termination from treatment when she did so and defendants' subsequent refusal to refund her program payment violated California Civil Code sections 51 and 51.9, and Government Code section 12948. She further alleged that the attack itself constituted sexual battery, assault, battery, and false imprisonment.

Stock alleged that the actions of defendants amounted to intentional infliction of emotional distress. She further asserted that defendants owed her a duty of care, which they breached by their negligent employment of Williams, as well as by the care and treatment provided to her.

Stock also alleged claims directly based on the contract signed on April 6, 2014. She claims the defendants breached that contract, as well as the covenant of good faith and fair dealing arising from it. She further asserts that the defendants made fraudulent and negligent misrepresentations in connection with that agreement.

Finally, Stock alleges that at some unknown time, defendants negligently disclosed protected medical information to members of her family.

Stock asserts, in seeking relief from this court, that none of these claims fall within the scope of the arbitration clause. In doing so, she argues that the agreement containing the arbitration clause is narrow, and was not intended to encompass the course and scope of her treatment at the facility which forms the basis for her claims. She asserts that the limited subject matter of the agreement requires us to read it narrowly, precluding its application as an agreement to arbitrate most of the claims she has alleged.³ She further alleges in her petition that the text of the Consent to Treat, signed by all parties on April 10, 2014, demonstrates the intended limits of that April 6 contract. Her argument, however, ignores several critical points.

First, in her opposition to the motion to compel arbitration, Stock did not argue that the initial agreement was limited to financial matters and therefore could not form the basis for compelling arbitration. Stock did not allege the existence of the Consent to Treat, on which she now relies, in her complaint, or cite its provisions to challenge any of the actions by defendants. In her opposition to the motion to compel arbitration, she also failed to argue that the Consent was relevant to the determination before the court.

³ The Tenth, Eleventh, Twelfth and Thirteenth Causes of Action expressly allege claims relating specifically to the April 6 contract, which her complaint specifically alleged to be the operative agreement. The complaint also makes clear that the assault occurred at a time when that agreement was the only agreement in effect between herself and the defendants. Stock's petition to this Court concedes that the breach of contract and breach of the covenant of good faith claims might be subject to the arbitration provision.

What Stock did argue to the trial court was that arbitration should not be required because: the rape occurred before any services under the contract began; the rape occurred before full consideration was paid; and the rape was outside the scope of services to be rendered under the agreement. Only the last of these arguments approaches the arguments presented in her petition to this court, but her assertion was made without supporting analysis, discussion, or citation to authority.⁴ As such, defendants were not put on notice that Stock was claiming relief on those grounds, and were deprived of the opportunity to place relevant extrinsic evidence, or legal argument, in the record.⁵

As a result, Stock has not made the showing necessary to obtain extraordinary relief. Her failure to raise the issues below not only prevented an adequate record concerning the intended scope of the arbitration clause, but also precluded the trial court from ruling on these grounds. A party should, however, request

⁴ Stock's other arguments to the trial court raised issues concerning the legal authority for compelling arbitration based on the nature of the claims made; her capacity to contract, and waiver by defendants. She has not asserted these claims in this petition.

⁵ In her later filed motion for sanctions, which the trial court denied, Stock again asserted that the nature of her claims precluded arbitration, and that the conduct occurred before she was admitted to the facility, and thus was not covered by the arbitration agreement. Her brief reference to a limited scope of the arbitration clause was, again, made without citation or legal authority.

relief in the trial court before seeking writ review. (See *Phelan v. Superior Court* (1950) 35 Cal.2d 363, 372 “[b]efore seeking mandate in an appellate court to compel action by a trial court, a party should first request the lower court to act”); accord, *Edwards Wildman Palmer LLP v. Superior Court* (2014) 231 Cal.App.4th 1214, 1236-1237; *Safai v. Safai* (2008) 164 Cal.App.4th 233, 243.)

DISPOSITION

The petition for writ of mandate is denied. Real Parties are to recover their costs.

ZELON, Acting P. J.

We concur:

SEGAL, J.

SMALL, J.*

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