Filed 10/2/19 Redha v. Aron CA2/1

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

SUAD M-ALI REDHA, Plaintiff and Respondent, v. MARC ARON, Defendant and Appellant.	B286915 (Los Angeles County Super. Ct. No. SC127255)

APPEAL from an order of the Los Angeles County Superior Court, Gerald Rosenberg, Judge. Affirmed.

Law Offices of Ronald Richards & Associates, Ronald Richards and Morani Stelmach, for Defendant and Appellant.

Law Offices of Rick Aljabi, Rick Aljabi; Williams Iagmin and Jon R. Williams, for Plaintiff and Respondent.

In this appeal, we are asked to determine whether a provision in a purchase and sale agreement for arbitration of claims "arising in connection with or questions related to or occurring under" that purchase and sale agreement applies to disputes years later among the purchasers regarding alleged fraud and breach of fiduciary duty in the operation of an asset acquired pursuant to the purchase agreement. We hold it does not.

BACKGROUND

The parties here, Suad M-Ali Redha (Redha) and Marc Aron (Aron), each bought ownership shares in an overseas entity called Wadebridge Limited (Wadebridge). Redha, Aron, and a third individual named Joseph Abdul-Nour El Khouri (El Khouri) each purchased a one-third ownership interest in Wadebridge from a London, England company named O&H Limited, which previously owned Wadebridge. These sales were pursuant to three separate purchase and sale agreements between O&H and each individual purchaser. The three agreements each contained an identical arbitration clause at paragraph 6.5, stating that "all disputes differences controversies or claims arising in connection with or questions related to or occurring under the present Agreement shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce ('ICC') by a single arbitrator appointed in accordance with said Rules. The arbitrator shall be a lawyer fluent in English. The place of arbitration shall be London."

Wadebridge's sole asset was a luxury yacht used by Redha, Aron, and El Khouri as well as being rented out for charter trips in the Mediterranean Sea. Redha's son Alaa Ghani managed the

yacht's operations. Redha alleges that at some point in 2011, the yacht suffered major damage which insurance refused to cover. Redha and Aron disagreed over the wisdom of repairing the yacht. At some point after the yacht was damaged, Aron acquired El Khouri's interest in Wadebridge and thus a majority stake in the company. According to Redha, after acquiring this majority stake Aron sold the yacht for a substantial loss and sought to recoup Aron's losses as well as additional unsubstantiated and undocumented expenses from Redha and her son Alaa Ghani.

Redha responded by suing Aron for breach of fiduciary duty and fraud and requesting an accounting. Aron filed a motion to dismiss for forum non conveniens, arguing the purchase and sale agreements with O&H required Redha's claims proceed before an arbitration panel in London, and further that the witnesses and documents were all in Europe. The trial court denied the motion, and in October 2017 we summarily denied Aron's writ petition seeking review of that order.

Aron subsequently petitioned to compel arbitration, arguing the O&H purchase and sale agreements required Redha's claims be arbitrated before the ICC. The trial court denied the petition, finding among other things the arbitration clause in the purchase and sale agreement did not apply because "Paragraph 6.5 of the agreement is restricted to claims brought under the agreement" and "the dispute has nothing to do with the purchase and sale of the Plaintiff's membership interest nor does it involve representations made in the [a]greement."

Aron timely appealed. We have jurisdiction pursuant to Code of Civil Procedure section 1294, subdivision (a), which

permits an aggrieved party to appeal from an order denying a petition to compel arbitration.

DISCUSSION

A. Standard of Review

" 'There is no uniform standard of review for evaluating an order denying a motion to compel arbitration. [Citation.] If the court's order is based on a decision of fact, then we adopt a substantial evidence standard. [Citations.] Alternatively, if the court's denial rests solely on a decision of law, then a de novo standard of review is employed. [Citations.]' [Citation.] Interpreting a written document to determine whether it is an enforceable arbitration agreement is a question of law subject to de novo review when the parties do not offer conflicting extrinsic evidence regarding the document's meaning." (*Avery v. Integrated Healthcare Holdings, Inc*. (2013) 218 Cal.App.4th 50, 60.)

Here, we are called upon to interpret the arbitration language in the purchase and sale agreement, which is a question of law. "Because the parties offered no extrinsic evidence, we review the court's order under the de novo standard." (*Oxford Preparatory Academy v. Edlighten Learning Solutions* (2019) 34 Cal.App.5th 605, 610.)

B. The Arbitration Provision in the Purchase and Sale Agreement With O&H Does Not Encompass Wadebridge Shareholder Disputes

Aron argues the purchase and sale agreement language mandating arbitration of disputes "arising in connection with or questions related to or occurring under" the purchase and sale

agreement must be broadly construed to encompass the instant dispute. We disagree. Redha's claims do not arise in connection with the purchase and sale agreement. They do not present questions related to the purchase and sale agreement. They do not occur under the purchase and sale agreement. They in no way involve O&H, the counterparty to the purchase and sale agreement. Instead, Redha's claims relate to the operation of Wadebridge years after the shares at issue were purchased from O&H—a subject matter not encompassed by the plain language of the arbitration clause at issue.

It is certainly true, as Aron points out, that " ' "California has a strong public policy in favor of arbitration and any doubts regarding the arbitrability of a dispute are resolved in favor of arbitration." ' " (*Laymon v. J. Rockcliff, Inc.* (2017) 12 Cal.App.5th 812, 820.) But it is equally true " ' 'this public policy does not override ordinary principles of contract interpretation. . . . 'Although "[t]he law favors contracts for arbitration of disputes between parties" [citation], " 'there is no policy compelling persons to accept arbitration of controversies which they have not agreed to arbitrate.' " ' " (*Ibid.*) Instead, " ' "the terms of the specific arbitration clause under consideration must reasonably cover the dispute as to which arbitration is requested." ' " (*Ibid.*) The specific arbitration clause here does not reasonably cover the dispute at issue.

Aron claims the purchase and sale agreement's "arising in connection with or questions related to" language is sufficiently broad to cover this dispute, because but for the share purchases, the present dispute never would have occurred. Aron primarily relies on three cases for this "but for" argument. Aron cites language in *EFund Capital Partners v. Pless* (2007) 150

Cal.App.4th 1311 (*EFund*) where the court enforced an arbitration clause because if the parties "had never entered into the . . . . agreement [with the arbitration clause], the present disputes would never have arisen." (*Id*. at p. 1326.) He similarly cites *Vianna v. Doctors' Management Co*. (1994) 27 Cal.App.4th 1186 (*Vianna*) and *Merrick v. Writers Guild of America, West, Inc*. (1982) 130 Cal.App.3d 212 (*Merrick*) for their statement that arbitration is required when the action has " 'its roots in the relationship between the parties which was created by . . . [their] agreement.' " (*Vianna*, *supra*, 27 Cal.App.4th at p. 1190 [quoting *Merrick*, *supra*, 130 Cal.App.3d at p. 219].) Aron argues that Redha's claims are rooted in the purchase and sale agreement because if the parties had not purchased shares from O&H, the present dispute never could have arisen.

EFund, *Vianna* and *Merrick* do not stand for the broad "but for" argument Aron asserts. Rather, they stand for the more commonsense proposition that where an agreement containing an arbitration clause governs disputes relating to the subject of the agreement containing that clause—here the purchase of a company—disputes about that subject matter are subject to arbitration. *EFund* involved a shareholder derivative suit brought by a private equity fund that claimed it was defrauded out of its investment. (150 Cal.App.4th at pp. 1314—1317.) The private equity fund had entered into a strategic relationship agreement with the nominal corporate defendant, which "established and governed" the investment and consulting relationship between the parties. (*Id*. at p. 1325.) The *EFund* court held the arbitration provision in the strategic relationship agreement covered the private equity fund's contract and tort

claims alleging it was defrauded because those claims all hinged on the strategic relationship agreement. (*Ibid.*)

In *Vianna*, a former employee sued for wrongful termination. Because his employment contract included an arbitration provision, and "all of his claims against [the defendant] are rooted in the employment relationship created by their contract," the court compelled arbitration. (*Vianna*, *supra*, 27 Cal.App.4th at p. 1190.) In *Merrick*, the Writers Guild brought a claim in arbitration against a producer behalf of its members, pursuant to a collective bargaining agreement to which the producer was a party, for breach of an agreement to pay for a screenplay. (130 Cal.App.3d at p. 215.) After the arbitration was resolved in favor of the producer, he brought a malicious prosecution claim against the Writers Guild in court. (*Ibid.*) The *Merrick* court compelled arbitration of the malicious prosecution claim because the producer's claim, including issues like the Writers Guild's probable cause to pursue the arbitration on behalf of its members, "has its roots in the relationship between the parties which was created by the collective bargaining provisions of their agreement." (*Id.* at p. 219.)

Here, in contrast, the purchase and sale agreement did not establish or govern the fiduciary or other duties as between Wadebridge's current shareholders—it was concerned only with the purchase and sale transaction with O&H. The arbitration clause in the purchase and sale agreement did not extend beyond the subject matter of that agreement—the purchase/sale transaction—to encompass the operational dispute at issue.

Aron further argues that failing to require arbitration here would require unnecessarily redundant arbitration provisions in

a shareholder or operating agreement if parties wanted to arbitrate shareholder disputes. This argument presumes that the purchase and sale agreement was meant to cover disputes regarding Wadebridge's operation. As the purchase and sale agreement arbitration clause does not encompass the dispute at issue, there would be nothing redundant in adding language that did cover Redha's claims.

In any event, a private company or its shareholders interested in arbitrating operational disputes would in fact seek to include an arbitration provision in the shareholder agreement, operating agreement, or other similar document instead of a purchase and sale agreement given the possibility of future changes in shareholders. Otherwise, the availability of arbitration would depend on whether a future shareholder selling his or her company interest in the secondary market decided to include an arbitration provision in the sale agreement binding the party buying the interest. A seller disposing of his or her interest is unlikely to be concerned with the company's future performance or governance, and indifferent to whether future operational disputes are arbitrated. Leaving the availability of arbitration over operational disputes to the whims of such a subsequent seller, and whether he or she includes an arbitration clause providing for it in a purchase and sale agreement to bind the person buying the interest (as opposed to ensuring arbitration by including it in a shareholder or operating agreement) would be an approach that makes no sense.

DISPOSITION

The order denying Aron's petition to compel arbitration is affirmed. Redha is to recover her costs on appeal.

NOT TO BE PUBLISHED

WEINGART, J.*

We concur:

CHANEY, Acting P. J.

BENDIX, J.

---

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