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**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**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 SIX

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| SUMMERLAND FALLS, LLC et al.,<br><br>Plaintiffs and Respondents,<br><br>v.<br><br>QUINN EMANUEL URQUHART & SULLIVAN, LLP et al.,<br><br>Defendants and Appellants. | 2d Civil No. B276751<br>(Super. Ct. No. 56-2016-00481282-CU-BC-VTA)<br>(Ventura County) |

Quinn Emanuel Urquhart & Sullivan, LLP and Fred Bennett appeal from an order denying their motion to compel arbitration of a legal malpractice action filed by respondents, Summerland Falls, LLC (Summerland), Jack Riley, and Paul Winkler. (Code Civ. Proc., § 1281.2.)[1] Appellants provided legal

[1] All statutory references are to the Code of Civil Procedure unless otherwise stated.

services to respondents pursuant to an Engagement Letter that had an arbitration provision which was initialed by Summerland and Riley but not Winkler. The trial court found that Winkler was not a signator to the arbitration agreement and that arbitration of the action with respect to Summerland and Riley would create the possibility of conflicting rulings on common issues of law and fact. (Code Civ. Proc., § 1281.2, subd. (c).) We affirm.

*Facts and Procedural History*

In 2014, respondents retained appellants to represent them in a Bakersfield real estate dispute. (*Kent R. Smith etc. v. Summerland Falls, LLC et al.*, JAMS Case No. 1220049125.) Respondents signed a 14-page Engagement Letter that contained an "Agreement to Arbitrate" provision with block lines to be initialed by respondents.[2]

On May 4, 2016, respondents sued appellants for $5+ million in damages for over billing, failing to conduct discovery and introduce evidence in the Bakersfield matter, and legal malpractice. On June 17, 2016, appellants filed a motion to compel arbitration of the action. (§ 1281.2.) Opposing the motion, Winkler declared that he signed the last page of the Engagement Letter but did not initial the arbitration provision

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[2] The Agreement to Arbitrate states in pertinent part that appellants "and you agree that any dispute between us, whether a claim by you against us or by us against you, including, without limitation, claims for unpaid legal fees and charges, negligence, breach of contract or fiduciary duty, fraud or any other claims relating to any aspect of the Engagement and our representation of you, shall be resolved by confidential, binding arbitration . . . ." (A true and correct copy of the Agreement to Arbitration, page 11 of the Engagement Letter, is attached as Appendix A, *post*, p. 7.)

because he did not agree to submit disputes under the legal services contract to binding arbitration. It was uncontroverted that appellants drafted the Engagement Letter and did not discuss the arbitration provision with Winkler.

The trial court found that Winkler was not a signator to the arbitration agreement and did not agree to submit the matter to binding arbitration when he signed the Engagement Letter. The court reasoned that the block line directly below the Agreement to Arbitrate was not "surplusage" and that the "specific controls over the general." Denying the motion to compel arbitration, the trial court rejected the argument that Winkler or that the third party litigant exception (§ 1281.2, subd. (c)) did not apply.

*Contract to Arbitrate*

In California, only parties to an arbitration agreement may be compelled to arbitrate. (*County of Contra Costa v. Kaiser Foundation Health Plan, Inc.* (1996) 47 Cal.App.4th 237, 244-245.) "There is no public policy favoring arbitration of disputes which the parties have not agreed to arbitrate. [Citation.]" (*Engineers & Architects Assn. v. Community Development Dept.* (1994) 30 Cal.App.4th 644, 653.) Because there is no conflicting material evidence, the trial court's determination on whether there is an agreement to arbitrate is reviewed de novo. (*Parsons v. Bristol Development Co.* (1965) 62 Cal.2d 861, 865-866; *Fitz v. NCR Corp.* (2004) 118 Cal.App.4th 702, 711.)

Winkler read the Engagement Letter and understood that he was not agreeing to binding arbitration unless he initialed the block line directly below the Agreement to Arbitrate. Appellants claim that the block line is surplusage and that

Winkler agreed to binding arbitration by signing the last page of the Engagement Letter. But that is contrary to the intention of the parties and the Agreement to Arbitrate which includes a block line for Winkler's initials. (Civ. Code, §§ 1636, 1638, 1644.) A court should interpret a contract to give effect to the mutual intention of the parties and, any interpretation which renders parts of the instrument to be surplusage should be avoided. (*Ticor Title Ins. Co. v. Rancho Santa Fe Assn.* (1986) 177 Cal.App.3d 726, 730.)

In *Romo v. Y-3 Holdings*, *Inc.* (2001) 87 Cal.App.4th 1153, plaintiff signed an employee handbook that had an arbitration provision. Plaintiff did not sign the arbitration section, but did sign an acknowledgment at the end of the other sections of the employee handbook. (*Id.* at p. 1157.) The Court of Appeal concluded that the arbitration provision was not enforceable and denied the employer's motion to compel arbitration. (*Id.* at pp. 1159-1160.) "'[R]ead as a whole, the [arbitration agreement within the employment handbook] in this case contemplated that the arbitration of disputes provision would be effective only if both [parties] assented to that [particular] provision. Since the [parties] did not assent to this [particular] provision the parties did not agree to binding arbitration.'" (*Id.* at p. 1160, quoting *Marcus & Millichap Real Estate Inv. Brokerage Co. v. Hock Inv. Co.* (1998) 68 Cal.App.4th 83, 91 .)

Winkler signed the Engagement Letter but declined to initial the arbitration provision based on the understanding that he was not agreeing to binding arbitration. The trial court reasonably concluded that the Agreement to Arbitrate was a stand-alone agreement and not enforceable unless Winkler

signed or initialed the block line. Assuming that the Engagement Letter is ambiguous with respect to the meaning and effect of the block line, any ambiguity must be construed against the drafter, i.e., appellants. (*Rebolledo v. Tilly's, Inc.* (2014) 228 Cal.App.4th 900, 913.) It is elemental that a party can be compelled to arbitrate only those issues he or she agreed to arbitrate. (*Molecular Analytical Systems v. Ciphergen Biosystems, Inc.* (2010) 186 Cal.App.4th 696, 705; accord, *Matthau v. Superior* Court (2007) 151 Cal.App.4th 593, 598 ["right to arbitration depends on a contract, and a party can be compelled to submit a dispute to arbitration only if the party has agreed in writing to do so"].) The policy favoring arbitration does not displace the necessity for a voluntary agreement to arbitrate. (*Victoria v. Superior Court* (1985) 40 Cal.3d 734, 738.)

*Third-Party Litigant Exception*

The trial court denied the motion to compel arbitration on the alternative ground that arbitration of the action as to some but not all of the parties could result in conflicting rulings on common issues of law or fact. (§ 1281.2, subd. (c).) We review for abuse of discretion. (*Birl v. Heritage Care, LLC* (2009) 172 Cal.App.4th 1313, 1318-1319; *Henry v. Alcove Investment, Inc.* (1991) 233 Cal.App.3d 94, 101.) Section 1281.2, subdivision (c) provides that the trial court may deny a petition to compel arbitration where a third-party nonsignator is a party to the proceeding and arbitration by some but not all of the parties could result in conflicting rulings on common issues of fact and law. (*Cronus Investments, Inc. v. Concierge Services* (2005) 35 Cal.4th 376, 393.)

Appellants argue that Winkler is a third-party beneficiary to the legal services agreement and that Summerland

and Riley acted as Winker's agent in initialing the Agreement to Arbitrate. The Engagement Letter states that appellants will provide legal services to Winkler, Summerland and Riley "individually" and that appellants "will not be representing any officer, director, employee, owner, founder, member, shareholder or partner of, or any other person affiliated with, or any subsidiary, parent or other affiliate of Summerland, Winkler or Riley." Appellants make no showing that Summerland and Riley acted as Winkler's principal or agent in initialing the Agreement to Arbitrate.

The cases cited by appellants are distinguishable and involve a medical services arbitration agreement that was binding on the patient's spouse (*Mormile v. Sinclair* (1994) 21 Cal.App.4th 1508, 1511-1516), a corporate president and CEO who signed the arbitration agreement as an agent-employee of the corporation (*RN Solution, Inc. v. Catholic Healthcare West* (2008) 165 Cal.App.4th 1511, 1520), and a third party who benefited under an insurance policy but disavowed the applicability of the arbitration provision in the policy (*NORCAL Mutual Ins. Co. v. Newton* (2000) 84 Cal.App.4th 64, 82). "The common thread of all the above cases is the existence of an agency or similar relationship between the nonsignatory and one of the parties to the arbitration agreement. In the absence of such a relationship, courts have refused to hold nonsignatories to arbitration agreements." (*Id.* at p. 76.) There are, however, two categories of cases in which a nonsignator was required to arbitrate his or her claim: those where a benefit was conferred on the nonsignatory as a result of the contract, making the nonsignatory a third party beneficiary of the arbitration agreement, and those where the nonsignatory was bound to

arbitrate "because a preexisting relationship existed between the nonsignatory and one of the parties to the arbitration agreement, making it equitable to compel the nonsignatory to also be bound to arbitrate his or her claim." (*County of Contra Costa v. Kaiser Foundation Health Plan, Inc.*, *supra*, 47 Cal.App.4th at p. 242.)

Winkler is not a nonsignator third-party beneficiary, but rather is an explicit signator to the legal services agreement. Appellants' agency and nonsignator third-party beneficiary theories have no legal or factual basis. Simply stated, Riley and Summerland lacked the authority to bind Winkler to the Agreement to Arbitrate. The trial court reasonably concluded that the piecemeal arbitration of Summerland's and Riley's claims would result in conflicting rulings on common issues of law and fact. (§ 1281.2, subd. (c).) In the words of the trial court, "the only way to avoid a possibility of conflicting rulings would . . . be to have the claims litigated in the same forum (i.e., this court action)." Appellants make no showing that the trial court abused its discretion in denying the motion to compel arbitration or that the ruling exceeds the bounds of reason. (*Henry v. Alcove Investment, Inc.*, *supra*, 233 Cal.App.3d at p. 101.)

*Disposition*

The judgment (order denying motion to compel arbitration) is affirmed. Respondents are awarded costs on appeal.

NOT TO BE PUBLISHED.

YEGAN, J.

We concur:

GILBERT, P. J.

TANGEMAN, J.

amicably through informal discussions, we believe that most, if not all, disputes can be resolved more expeditiously and with less expense by binding arbitration than in court. This provision will explain under what circumstances such disputes shall be subject to binding arbitration.

AGREEMENT TO ARBITRATE:

(a) QEU&S and you agree that any dispute between us, whether a claim by you against us or by us against you, including, without limitation, claims for unpaid fees and charges, negligence, breach of contract or fiduciary duty, fraud or any other claims relating to any aspect of the Engagement and our representation of you, shall be resolved by confidential, binding arbitration as described in ¶ (b) below.

You acknowledge that this agreement to arbitrate results in a waiver by you of LLP's right to a court or jury trial for any fee dispute and/or malpractice claim. This also means that you may be giving up your right to discovery and appeal, to compel witnesses and documents, to seek all available relief (except punitive damages which are provided for under state law), and to have the matter heard in a public forum. If you later refuse to submit to arbitration, you understand that you may be ordered to do so. You also acknowledge that, before signing this Engagement Letter and agreeing to binding arbitration, you are entitled to, and have been given, a reasonable opportunity to seek the advice of independent counsel.

*(Summerland Falls, LLC's initials)*

*(Jack Riley's initials)*

*(Paul Winkler's initials)*

(b) ARBITRATION PROCEDURES:

In the event of any dispute that is subject to arbitration pursuant to ¶ (a) above, the initiating party will provide a written demand for arbitration to the other party setting forth the basis of the initiating party's claim and the dollar amount of damages sought.

The parties further agree that, if arbitration is necessary, each arbitration will:

John Nguyen, Judge*

Superior Court County of Ventura

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Quinn Emanuel Urquhart & Sullivan, Eric J. Emanuel, Jeffrey D. McFarland, Shahin Rezvani, and Grant J. Maxwell for Defendants and Appellants.

Mahaffey Law Group and Steven E. Paganetti for Plaintiffs and Respondents.

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* Retired Judge of the Ventura Sup. Ct. assigned by the Chief Justice pursuant to art. VI, § 6 of the Cal. Const.