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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 TWO

STEPHANIE WAGNER, Plaintiff and Respondent, v. HOMEOWNER RIGHTS LAW GROUP, APC et al., Defendants and Appellants.	B282398 (Los Angeles County Super. Ct. No. BC605944)

APPEAL from an order of the Superior Court of Los Angeles County. Maureen Duffy-Lewis, Judge. Affirmed.

Kahn Roven, Robert A. Kahn and Jonathan D. Roven, for Plaintiff and Respondent.

Baker, Keener & Nahra, Mitchell F. Mulbarger and Benjamin I. Beezy, for Defendants and Appellants.

Defendants and appellants Homeowner Rights Law Group, APC (HRLG), Consumer Litigation Law Center, APC (CLLC), September J. Katje (Katje), Diana Torres-Brito (Torres-Brito), and Sanam Alicia Nikkhoo (Nikkhoo) (collectively defendants) challenge the trial court's order denying their petition to compel arbitration of a complaint filed against them by plaintiff and respondent Stephanie Wagner. We affirm.

BACKGROUND

On January 4, 2016, plaintiff filed a complaint against HRLG, CLLC, attorneys Katje, Torres-Brito, and Nikkhoo, legal strategist Gregg Bridwell (Bridwell), and the company Premiere Legal Works, LLC (Premiere) in the Los Angeles Superior Court. After amendment on May 12, 2016, the complaint alleged claims for professional negligence (legal malpractice), breach of fiduciary duty, intentional misrepresentation, negligent misrepresentation, and intentional infliction of emotional distress.[1]

According to the complaint, plaintiff was the owner of real property located in Los Angeles, California (property). In order to prevent the foreclosure sale of her property, plaintiff hired two law firms, HRLG and CLLC, and signed retainer agreements with them (five in total),[2] based on representations by the attorneys and others that they could easily stop the sale and file a lawsuit against her lender for violating the Homeowner's Bill of

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[1] Plaintiff's claims for professional negligence and breach of fiduciary were not alleged against Bridwell.

[2] Three of the retainer agreements were between plaintiff and HRLG only; two of the retainer agreements were between plaintiff and CLLC only. All five agreements contained arbitration provisions.

Rights. Despite the representations, plaintiff's property was still foreclosed upon.

On June 10, 2016, HRLG, CLLC, and attorneys Katje, Torres-Brito, and Nikkhoo filed a petition to compel arbitration.[3] They argued plaintiff must be compelled to arbitrate her lawsuit because the retainer agreements she had signed with them contained arbitration provisions.

Plaintiff opposed the petition, arguing, as relevant to this appeal, that she could not be ordered to arbitrate because neither Premiere, Bridwell, nor the individually named attorney defendants had signed an arbitration agreement with her.[4] As noted above, the retainer agreements were entered into between plaintiff, HRLG, and CLLC.

After entertaining oral argument, the trial court denied defendants' petition to compel arbitration "based on the current situation" and scheduled the case for trial. At the hearing, the court explained to the parties that it was "perplexed" about the relationship between the defendants, and did not see the evidence why the arbitration provisions in the retainer agreements would apply to either Bridwell or Premiere.[5]

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[3] Bridwell and Premiere joined defendants' petition to compel arbitration.

[4] We grant plaintiff's motion to augment the record on appeal to include a copy of her declaration filed in support of her opposition to defendants' petition to compel arbitration. (Cal. Rules of Court, rule 8.155(a).)

[5] Although the transcript is not a model of clarity, we presume the trial court exercised its discretion to deny arbitration under Code of Civil Procedure section 1281.2,

Defendants filed a timely notice of appeal.[6]

DISCUSSION

Defendants contend plaintiff must be compelled to arbitrate against *all* defendants because: (1) plaintiff entered into enforceable agreements containing arbitration provisions with HRLG and CLLC,[7] and (2) the individually named attorney defendants, Bridwell and Premiere fall within the scope of those arbitration provisions under either the equitable estoppel doctrine, or as "agents" of HRLG and CLLC. We are not persuaded. Because we conclude Bridwell and Premiere were third parties to the arbitration provisions, the trial court was well

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subdivision (c) based on its conclusion that Bridwell and Premiere were third parties to the retainer agreements.

All further statutory references are to the Code of Civil Procedure unless otherwise indicated.

[6] Bridwell and Premiere also filed a notice of appeal; however, we subsequently dismissed their appeal pursuant to California Rules of Court, rule 8.140(b).

[7] Plaintiff's contention that the arbitration provisions are unenforceable because she was fraudulently induced to sign the retainer agreements is without merit. In order to defeat a petition to compel arbitration based on fraud, the party "must show that the asserted fraud claim goes specifically "'to the 'making' of the agreement to arbitrate,'" rather than to the making of the contract in general." (*Engalla v. Permanente Medical Group, Inc.* (1997) 15 Cal.4th 951, 973.) Here, as defendants point out, plaintiff has failed to cite to any facts indicating she did not know she had agreed to arbitrate any potential claims. Accordingly, plaintiff's fraud defense has no effect on the validity of the arbitration provisions.

within its discretion to deny arbitration in order to avoid the possibility of conflicting rulings on common issues of law or fact.

I. Standard of Review

"A trial court is required to order a dispute to arbitration when the party seeking to compel arbitration proves the existence of a valid arbitration agreement covering the dispute." (*Laswell v. AG Seal Beach, LLC* (2010) 189 Cal.App.4th 1399, 1404 (*Laswell*).) An exception to the rule applies under section 1281.2, subdivision (c), where "[a] party to the arbitration agreement is also a party to a pending court action or special proceeding with a third party, arising out of the same transaction or series of related transactions and there is a possibility of conflicting rulings on a common issue of law or fact." (§ 1281.2, subd. (c); *Laswell*, *supra*, at p. 1405 [section 1281.2, subdivision (c) ""addresses the peculiar situation that arises when a controversy also affects claims by or against other parties not bound by the arbitration agreement""].) If the trial court finds a defendant is a third party and not bound by the arbitration agreement, section 1281.2, subdivision (c) "allows the trial court to stay arbitration proceedings while the concurrent lawsuit proceeds *or* stay the lawsuit while arbitration proceeds to avoid conflicting rulings on common issues of fact and law amongst interrelated parties." (*Cronus Investments, Inc. v. Concierge Services* (2005) 35 Cal.4th 376, 393.) "[W]hether a defendant is in fact a third party for purposes of [section 1281.2, subdivision (c)], is a matter of law subject to de novo review. [Citations.] If the third party exception applies, the trial court's discretionary decision as to whether to stay or deny arbitration is subject to review for abuse. [Citations.]" (*Laswell*, *supra*, at p. 1406.)

II. Bridwell and Premiere Were Third Parties

A. Plaintiff Cannot Be Compelled to Arbitrate Her Claims Against Bridwell and Premiere under the Equitable Estoppel Doctrine

Under the equitable estoppel doctrine, "a signatory to a agreement containing an arbitration clause may be compelled to arbitrate its claims against a nonsignatory when the relevant causes of action rely on and presume the existence of the contract." (*Boucher v. Alliance Title Co., Inc.* (2005) 127 Cal.App.4th 262, 269; *Goldman v. KPMG, LLP* (2009) 173 Cal.App.4th 209, 220 (*Goldman*).) Where the equitable estoppel doctrine applies, "the nonsignatory is not a 'third party' within the meaning of . . . section 1281.2, subdivision (c), and that provision simply does not apply." (*JSM Tuscany, LLC v. Superior Court* (2011) 193 Cal.App.4th 1222, 1237, fn. 18.) "Because equitable estoppel applies only if the plaintiffs' claims against the nonsignatory are dependent upon, or inextricably bound up with, the obligations imposed by the contract plaintiff has signed with the signatory defendant, we examine the facts alleged in the complaints [to determine whether the doctrine applies]." (*Goldman*, *supra*, at pp. 229–230.)

Here, defendants contend plaintiff must be compelled to arbitrate because all of her claims were based on "her rights under the retainer agreements she entered into." We disagree. Although plaintiff's claims against the individually named attorney defendants certainly rely on, and presume the existence of the retainer agreements, the problem lies with her claims against Bridwell and Premiere. The thrust of plaintiff's claims against them are based on Bridwell's misrepresentations pertaining to the foreclosure process involving her property,

which do not rely on any violation of any duty, term, or condition imposed by the retainer agreements. Thus, plaintiff cannot be compelled to arbitrate her claims against Bridwell and Premiere under the theory of equitable estoppel. (*Goldman*, *supra*, at p. 230 [equitable estoppel did not apply when "allegations depend solely on the actions of [nonsignatory defendants], not on the terms of the operating agreements, for their success"]; *DMS Services, LLC v. Superior Court* (2012) 205 Cal.App.4th 1346, 1354–1355 [equitable estoppel did not apply when plaintiff's claim against nonsignatory defendants did not rely on any provision in the agreement containing an arbitration provision].)

B. Plaintiff Cannot be Compelled to Arbitrate Her Claims Against Bridwell and Premiere based on the Agency Exception

Under the agency exception, a plaintiff may be compelled to arbitrate if the nonsignatory defendant acted as the agent of the signatory defendant. (*Jensen v. U-Haul Co. of California* (2017) 18 Cal.App.5th 295, 300.) A "plaintiff's allegations of an agency relationship among defendants" can constitute a binding judicial admission compelling the plaintiff to arbitrate against a nonsignatory defendant. (*Thomas v. Westlake* (2012) 204 Cal.App.4th 605, 614 (*Thomas*); *Dryer v. Los Angeles Rams* (1985) 40 Cal.3d 406, 418 ["If, as the complaint alleges, the individual defendants, though not signatories, were acting as agents for the Rams, then they are entitled to the benefit of the arbitration provisions"].) A plaintiff can also be compelled to arbitrate based on evidence of the existence of an agency relationship among the defendants. (*Flores v. Evergreen at San Diego, LLC* (2007) 148 Cal.App.4th 581, 587 [agency can be established by evidence of an agreement between the agent and the principal].) A nonsignatory is not a "third party" within the meaning of section

1281.2, subdivision (c), if he or she was acting as an agent for the signatory defendant. (*RN Solution, Inc. v. Catholic Healthcare West* (2008) 165 Cal.App.4th 1511, 1520.)

Here, defendants have failed to produce any evidence establishing the existence of an agency relationship; rather, they argue plaintiff must be compelled to arbitrate based on her allegations that all of the defendants were agents of each other. In support, defendants rely on *Thomas*, *supra*, 204 Cal.App.4th at page 614, which held the plaintiff's general allegations of agency that "'[a]t all times relevant herein, Defendants, and each of them, acted as an agent of each other Defendant in connection with the acts and omissions alleged herein'" were sufficient to require the plaintiff to arbitrate his claims against the nonsignatory defendants. Defendants contend plaintiff here made the "same allegations of agency" as in *Thomas*. In particular, plaintiff alleged: "Unless otherwise alleged in this complaint, the Plaintiff is informed, and on the basis of that information and belief alleges that at all times herein mentioned, each of the remaining co-Defendants, in doing the things hereinafter alleged, were acting within the course, scope and under the authority of their agency, employment, or representative capacity, with the consent of her/his co-defendants." Defendants also point to the specific allegations against Bridwell that he was "an agent for Defendant HRLG and Defendant Premiere."

Barsegian v. Kessler & Kessler (2013) 215 Cal.App.4th 446 at page 451, however, rejected the contention that boilerplate allegations of mutual agency constituted a binding judicial admission, noting if such argument was sound, then "*every* defendant would be able to compel arbitration, regardless of how

tenuous or nonexistent the connections among the defendants might actually be." *Barsegian* instead determined that allegations of mutual agency would only constitute a judicial admission when "the parties *agree*[*d*] as to its truth." (*Id.* at p. 452 ["a judicial admission is ordinarily *a factual allegation by one party that is admitted by the opposing party*"].) In other words, a defendant must stipulate or admit to the existence of an agency relationship. (*Ibid.*) Because the defendants in *Barsegian* did not concede the fact that all defendants were agents of one another—i.e., they wished to retain the right to prove to the arbitrator that the allegation was false, the Court of Appeal held the boilerplate allegations of mutual agency were not judicial admissions, and the plaintiff could not be compelled to arbitrate her claims against the nonsignatory defendants. (*Id.* at p. 453.)

We find the *Barsegian* decision persuasive, and agree that boilerplate allegations of mutual agency, without more, cannot compel a plaintiff to arbitrate her claims against the nonsignatory defendants. Although Bridwell and Premiere consented to arbitration, neither of them conceded they were agents of HRLG or CLLC. Thus, plaintiff cannot be compelled to arbitrate her claims against Bridwell and Premiere based on the agency exception.

III. *The Trial Court Did Not Abuse Its Discretion*

Even though plaintiff cannot be forced to arbitrate her claims against Bridwell and Premiere, the issue is whether the trial court abused its discretion in denying defendants' petition to compel arbitration

"The appropriate test for abuse of discretion is whether the trial court exceeded the bounds of reason." (*Shamblin v. Brattain* (1988) 44 Cal.3d 474, 478.) As noted above, section 1281.2,

subdivision (c) gives the trial court discretion to refuse to enforce an arbitration agreement if a party to the agreement was also a party to related litigation with a third party that creates the risk of conflicting rulings on a common issue of law or fact. (§ 1281.2, subd. (c).) On the record before us, the trial court could reasonably conclude that litigation involving all of the parties should proceed in order to avoid conflicting rulings because plaintiff's claims against Bridwell and Premiere would have required the trier of fact to consider some of the same issues as plaintiff's claims against defendants. (*Birl v. Heritage Care, LLC* (2009) 172 Cal.App.4th 1313, 1321 [no abuse of discretion if all defendants are joined in court action to avoid conflicting rulings concerning fault and apportionment of damages].) Defendants concede that all of plaintiff's claims are "inextricably intertwined." Accordingly, we conclude the trial court was well within its discretion to deny defendants' petition to compel arbitration.

DISPOSITION

The order is affirmed. Plaintiff shall recover her costs on appeal.

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_____, J.
ASHMANN-GERST

We concur:

_____, P. J.
LUI

_____, J.
CHAVEZ