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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

BRENT HELD,

Plaintiff and Respondent,

v.

TIMOTHY L. NORTON et al.,

Defendants and Appellants.

B268595

(Los Angeles County
Super. Ct. No. YC070498)

APPEAL from an order of the Superior Court of Los Angeles County, Ramona G. See, Judge. Reversed with directions.

Timothy L. Norton, in pro. per.; Norton and Associates and Timothy L. Norton for Defendants and Appellants.

Brent Held, in pro. per., for Plaintiff and Respondent.

Brent Held filed a complaint for declaratory relief against his former attorneys, Timothy L. Norton and Norton & Associates (collectively Norton), to resolve a dispute concerning Norton's right to assert a lien on settlement funds in another action. Norton filed a petition to compel arbitration of the complaint based on an arbitration provision in a written attorney fee agreement. The trial court denied the petition, and Norton filed this appeal. We reverse with directions to grant the petition.

FACTUAL AND PROCEDURAL BACKGROUND¹

On or about November 4, 2010, Held retained Norton to file a civil suit concerning a real estate transaction in Orange County. In or about February 2012, Held retained attorney Jay Spillane to replace Norton as Held's counsel in that litigation. In agreeing to the substitution, Norton also agreed "that he will not be filing or claiming any lien for services" in that litigation.

On or about November 1, 2012, Held retained a new attorney, Stephen Goldberg, to replace Spillane. Goldberg tried the case and obtained a judgment for \$1,249,616.74 in favor of Held and an affiliated entity. The defendants appealed.

On July 29, 2013, Norton filed a notice of lien for attorney fees of \$170,000 in the Orange County litigation. In February 2014, Norton filed an amended notice of lien for \$250,000.

In October 2014, with the appeal pending, Held and the defendants in the Orange County litigation settled the matter.

¹ Our summary of the facts leading up to the filing of the instant complaint is drawn from the allegations of the complaint itself.

On December 22, 2014, at a hearing to approve the settlement and “determine the allocation of the attorneys’ fees” in the Orange County litigation, the Orange County trial court “ordered that \$170,000 be reserved and held by the disbursing agent pending the determination of the Norton lien.”

On April 1, 2015, Held filed the instant declaratory relief action in the Superior Court of Los Angeles County. He alleges that “[a]n actual controversy has arisen between Held and Norton regarding whether Norton has the right to assert a lien on the settlement proceeds” in the Orange County litigation.

On April 17, 2015, Norton filed a petition to compel arbitration of Held’s declaratory relief action. The petition was based on the arbitration provision contained in the fee agreement between Norton and Held for Norton’s representation of Held in the Orange County litigation, which Held executed on April 12, 2011. Section 5 of the fee agreement provides that the parties “agree that any and all disputes . . . that arise out of, or relate to this agreement, or any services provided, including but not limited to claims of negligence or malpractice arising out of or relating to the legal services provided, shall be decided only by binding arbitration in accordance with the California Arbitration Act” A separate provision of the agreement states that the agreement as a whole shall be governed by California law.

In opposition to the petition, Held argued that “[f]or all intents and purposes, all matters pertaining to the initial retainer agreement were terminated” when Norton substituted out of the Orange County litigation upon Held’s retention of Spillane. Held further argued that his “alleged reengagement” of Norton when Spillane withdrew was not governed by any written agreement, let alone a written agreement containing an

arbitration clause. He also argued that the fees for which Norton sought compensation were “outside the scope of” the 2011 fee agreement.

The trial court denied Norton’s petition “without prejudice on the grounds that although the parties’ original written retainer agreement contained an arbitration clause, no evidence was presented that all of the same terms and conditions as set forth in the original written retainer agreement applied to the subsequent verbal agreement.” The court reasoned that “it is unclear whether the initial Attorney-Client Fee Agreement and its arbitration provision . . . was still in effect when [Held] reengaged the services of [Norton].”

Norton timely appealed from the order denying his petition to compel arbitration.²

DISCUSSION

Norton argues that the trial court erred in denying the petition to compel arbitration, because (1) Norton and Held entered into a valid arbitration agreement, and (2) Held’s declaratory relief action falls within the scope of that agreement. We agree.

The 2011 fee agreement provides that it shall be governed by California law. The arbitration provision within the agreement likewise provides for application of the California Arbitration Act.

² An order denying a motion to compel arbitration is appealable. (Code Civ. Proc., § 1294.)

Under California law, “[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. [Citation.] ‘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) 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. [Citation.] 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)” (Rice v. Downs (2016) 248 Cal.App.4th 175, 184-185.)

Under California law, an arbitration clause is severable from the larger contract in which it is embedded. Thus, in determining the validity and applicability of an arbitration clause, a court ordinarily cannot consider any claim that the contract as a whole is invalid. (Bruni v. Didion (2008) 160 Cal.App.4th 1272, 1283-1285.) “As a result, an arbitration clause may be enforceable regardless of whether the contract surrounding it is enforceable.” (*Id.* at p. 1283.)

As for determining the scope of an arbitration agreement, “[b]ecause California has a “strong public policy in favor of

arbitration” [citation], ‘ . . . arbitration agreements should be liberally interpreted, and arbitration should be ordered unless the agreement clearly does not apply to the dispute in question’ [citation]. ‘Doubts as to whether an arbitration clause applies to a particular dispute are to be resolved in favor of sending the parties to arbitration.’ [Citation.]” (*Vianna v. Doctors’ Management Co.* (1994) 27 Cal.App.4th 1186, 1189.) The presumption in favor of arbitration is particularly strong if the arbitration clause is worded broadly to apply to disputes not only *arising from* but also *relating to* the parties’ agreement. (*Khalatian v. Prime Time Shuttle, Inc.* (2015) 237 Cal.App.4th 651, 659-660.)

The foregoing principles apply straightforwardly here. Held’s complaint seeks resolution of a controversy concerning Norton’s right to a lien for attorney fees in the Orange County litigation. The fee agreement between Held and Norton concerning the Orange County litigation contains a broadly worded arbitration provision covering “all disputes . . . that arise out of, or relate to this agreement, or any services provided.” The controversy concerning the lien arises from or relates to the fee agreement or services provided, so it is within the scope of the arbitration agreement. The trial court accordingly should have granted Norton’s request to compel arbitration of Held’s complaint.

Held’s arguments to the contrary lack merit. First, Held argues that when Spillane substituted for Norton, the fee agreement between Held and Norton terminated, so the arbitration agreement contained in the fee agreement terminated as well. The argument fails because the arbitration clause is severable and hence is enforceable independently of the rest of

the fee agreement. (*Bruni v. Didion*, *supra*, 160 Cal.App.4th at pp. 1283-1285.) Fee disputes arising from or relating to the fee agreement remain arbitrable under the fee agreement's arbitration clause even after the fee agreement is terminated.³

Second, Held argues that there is substantial evidence that the fee agreement was not "revived" when Held "allegedly reengaged Norton's services" upon Spillane's withdrawal. The argument lacks merit because the petition to compel arbitration should have been granted even if the fee agreement was not "revived." Held's complaint does not indicate whether Norton's lien concerns fees earned before Spillane substituted for Norton, or after the substitution, or both. "Doubts as to whether an arbitration clause applies to a particular dispute are to be resolved in favor of sending the parties to arbitration." [Citation.]⁴ (*Vianna v. Doctors' Management Co.*, *supra*, 27 Cal.App.4th at p. 1189.)

For all of these reasons, the trial court erred by denying the petition to compel arbitration. Our resolution of that issue makes it unnecessary for us to address the other arguments raised by the parties.

³ If, for example, Held fired Norton and thereby terminated the fee agreement, but then Norton sued Held for unpaid bills or Held sued Norton for a refund of an overpayment, those subsequent disputes would be subject to the (terminated) fee agreement's arbitration provision.

⁴ Because Held's complaint does not indicate that the lien relates only to fees earned after Spillane substituted for Norton, we have no occasion to decide whether the controversy over the lien would be arbitrable if the lien were so limited.

DISPOSITION

The order is reversed with directions to grant the petition to compel arbitration. Norton is entitled to costs on appeal.

MENETREZ, J.*

We concur:

PERLUSS, P. J.

ZELON, J.

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