

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2018-000277-001 DT

09/12/2018

COMMISSIONER SIGMUND POPKO

CLERK OF THE COURT

C. Avena

Deputy

J H PORTFOLIO DEBT EQUITIES L L C

SHANNON NICOLE CRANE

v.

LESTER A MIRANDA (001)

JULIA MIRANDA (001)

LESTER A MIRANDA

3211 S 94TH AVE

TOLLESON AZ 85353

JULIA MIRANDA

3211 S 94TH AVE

TOLLESON AZ 85353

AGUA FRIA JUSTICE COURT

COMM. POPKO

REMAND DESK-LCA-CCC

RECORD APPEAL – REVERSAL & LIMITED REMAND

Lower Court Case No. CC2017-188823RC.

Defendants/Appellants, LESTER and JULIA MIRANDA,¹ appeal from a civil judgment entered in the Agua Fria Justice Court. That trial court found in favor of Plaintiff/Appellee, J H PORTFOLIO DEBT EQUITIES, LLC. This Court has jurisdiction pursuant to Ariz. Const. art. VI, § 16 and A.R.S. §§ 12-124, 22-261. For the reasons explained below, this Court reverses the trial court and remands for purposes of allowing sufficient time for private arbitration proceedings in accordance with the rules, procedures, and processes of the American Arbitration Association.

FACTUAL BACKGROUND & PROCEDURAL HISTORY

Because of the nature of the resolution of this appeal, this procedural and factual history is brief. Plaintiff sued Defendant on an alleged credit card debt. Defendant answered and also

¹ Collectively, “Defendant” or “Appellant.”

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moved to compel arbitration as authorized by the parties' purported credit card agreement. Defendant's Motion to Compel, filed 1/12/2018. Plaintiff did not object or otherwise challenge Defendant's demand for arbitration, instead it informed the trial court that it did not "acquiesce" to Defendant's factual allegations contained in the motion to compel. Consequently, "Plaintiff, therefore, [did] not object to the Court staying this action for thirty (30) days pending Defendants' commencement of private arbitration." Plaintiff's Response to Defendants' Motion to Compel, filed 1/31/2018. The trial court granted the stay.

Defendant commenced the private arbitration proceeding with the American Arbitration Association ("AAA") on February 22, 2018, and the claim was assigned a case number of 01-18-0000-8846. The AAA apparently had the matter under review for a period of time, but by letter to the parties² dated April 3, 2018, it informed them that the matter would proceed in accordance with AAA's "Consumer Rules" of arbitration. The AAA required Plaintiff, as the business party, to advance all the necessary arbitration fees due from both parties.

The parties appeared in the trial court on April 5, 2018.³ Defendant objected to the trial going forward because of the pending arbitration proceedings. Plaintiff's counsel argued that the AAA took too long in sending its letter to Plaintiff – just two days before trial – and so the trial should go forward. Counsel also argued that Defendant did not give Plaintiff notice of the actual filing of the arbitration claim. The trial court agreed that because the arbitration preparations had not been "taken or completed," the trial would go forward. FTR, 4/05/2018, near 1:39:55. After that trial, the court awarded judgment for Plaintiff. Defendant timely appealed.

ISSUE ON APPEAL & STANDARD OF REVIEW

Defendant's appellate memorandum⁴ raises a single argument on appeal – that the trial court erred by ordering the trial to proceed notwithstanding the pending arbitration proceedings. The validity and enforceability of a contract and arbitration clause are mixed questions of fact and law, subject to *de novo* review. *See Estate of DeCamacho v. La Solana Care & Rehab, Inc.*,

² The AAA letter to Plaintiff was addressed to Plaintiff's trial counsel. That is evidence that Defendant gave the AAA information about how to contact Plaintiff's counsel.

³ Plaintiff was represented by counsel. Defendant, as in this Court, was self-represented.

⁴ Appellee chose to exercise its option not to file an appellate memorandum. *See* Rule 8(a)(1), Superior Court Rules of Appellate Procedure—Civil ("Non-filing of an appellee or cross-appellee memorandum shall not constitute confession of error.").

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234 Ariz. 18, 20, ¶ 9 (App. 2014). Denial of a motion to compel arbitration is also reviewed *de novo*. See *Sun Valley Ranch 308 Ltd. v. Robson*, 231 Ariz. 287, 291, ¶ 9 (App. 2012); *National Bank of Ariz. v. Schwartz*, 230 Ariz. 310, 311, ¶ 4 (App. 2012). Further, whether conduct amounts to waiver of the right to arbitrate is also a question of law reviewed *de novo*. See *In re Estate of Cortez*, 226 Ariz. 207, 210, ¶ 3 (App. 2010). “When the facts are undisputed, this [C]ourt is not bound by the trial court’s conclusions and may make its own analysis of the facts or legal instruments on which the case turns.” *Broemmer v. Abortion Services of Phoenix, Ltd.*, 173 Ariz. 148, 150 (1992).

DISCUSSION

The public policy of Arizona strongly favors arbitration. Our court of appeals has explained it this way:

The Arizona Legislature has adopted the Uniform Arbitration Act, Arizona Revised Statutes Annotated (“A.R.S.”) sections 12–1501 to 12–1518, which greatly limits judicial review of an agreement to arbitrate. Moreover, the public policy of Arizona favors arbitration. Because of the public policy favoring arbitration, arbitration clauses are construed liberally and any doubts about whether a matter is subject to arbitration are resolved in favor of arbitration.

City of Cottonwood v. James L. Fann Contracting, Inc., 179 Ariz. 185, 189 (App. 1994) (footnote and internal citations omitted). Because of this strong public policy in favor of arbitration, “the burden is heavy on the party seeking to prove waiver of an agreement to arbitrate.” *In re Estate of Cortez*, 226 Ariz. 207, 210, ¶ 3 (App. 2010).

Defendant moved to compel arbitration pursuant to the parties’ purported contractual agreement. An agreement to arbitrate is “valid, enforceable and irrevocable.” A.R.S. § 12-1501. When Defendant moved to compel arbitration, Plaintiff had the option to raise either legal or equitable defenses to the arbitration agreement or to show that Defendant had somehow repudiated it. *James L. Fann Contracting*, 179 Ariz. at 190. See also A.R.S. § 12-1502(A) (allowing party opposing arbitration to deny the existence of the agreement to arbitrate and requiring trial court to “summarily” determine the issue). Here, Plaintiff did not dispute the existence of the agreement to arbitrate nor did it raise any legal or equitable defenses to the agreement. In its response to Defendant’s motion, Plaintiff merely did not “acquiesce” to Defendant’s assertions. This mere non-“acquiescence” was insufficient to either challenge the claim of an arbitration agreement or raise legal or equitable defenses to it.

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Immediately before trial began, Defendant objected to any further court proceedings due to the pending arbitration. In response, Plaintiff argued that (1) it received no notice that Defendant actually filed an arbitration claim and (2) that the AAA's letter dated April 3, 2018 came too late to avoid a trial. Arguably, then, Plaintiff did raise a repudiation defense with these two contentions. Neither of these contentions, however, carries Plaintiff's "heavy burden" to prove Defendant's waiver or repudiation of the arbitration agreement.

An allegation of repudiation based on unreasonable delay must include clear evidence of 1) prejudice suffered by the other party and 2) a demand for arbitration so egregiously untimely and inconsistent with an intent to assert the right to arbitrate that an intentional relinquishment can be inferred.

James L. Fann Contracting, 179 Ariz. at 192.

In the trial court, Plaintiff did not, and could not, dispute that it was aware that Defendant was seeking arbitration. Plaintiff also did not dispute that Defendant filed his arbitration claim with AAA on February 22, 2018. Nor did Plaintiff dispute that the AAA took the position that Plaintiff was to advance all the arbitration fees and that Defendant was entitled to rely on the AAA's position. Plaintiff merely argued that Defendant did not provide it with sufficient notice of having actually filed the arbitration claim. However, Plaintiff pointed out no requirement obligating Defendant to do so and nothing putting Defendant on notice that any failure to give notice of the filing of the arbitration claim would result in a total waiver of the right to arbitrate.

Plaintiff's response to Defendant's motion to compel arbitration did not request such notice. The trial court's order staying the court proceedings so that Defendant could file the arbitration claim also did not require Defendant to do so. Ruling on Motion, dated 2/06/2018. That order only requires that Defendant "initiate private arbitration." *Id.* Finally, there is no provision in the Justice Court Rules of Civil Procedure which requires Defendant to provide Plaintiff with a copy of his arbitration filing with the AAA. Simply put, Defendant did all that was required by initiating the private arbitration on February 22, 2018. Defendant fully complied with the trial court's February 6, 2018 order.

The fact that the AAA did not send its letter to the parties until April 3, 2018 cannot be attributed to Defendant. There was no showing Defendant unreasonably delayed in filing the arbitration claim or in providing any information to AAA. There was no showing that Defendant had anything to do with how or when the AAA chose to issue its April 3, 2018 letter. "Unless repudiation is clear, however, the court should not infer it." *James L. Fann Contracting*, 179

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Ariz. at 192. There is nothing in the record to show that Defendant clearly repudiated his desire for arbitration.⁵

CONCLUSION

The trial court erred when it ordered the trial to go forward despite the fact that Defendant initiated private arbitration proceedings as permitted by the court's February 6, 2018 order. It was undisputed that Defendant initiated that arbitration on February 22, 2018. Plaintiff did not argue that the February 22, 2018 filing itself was unreasonably delayed. Plaintiff's complaint was that Defendant should have served it with a copy of the arbitration filing and that the AAA waited too long to send its letter to the parties. Neither argument provides the clear evidence of an intentional relinquishment of the agreement to arbitrate. Accordingly,

IT IS THEREFORE ORDERED reversing and vacating the judgment of the Agua Fria Justice Court.

IT IS FURTHER ORDERED remanding this matter to the Agua Fria Justice Court for the limited purpose of issuing any necessary stays so that the parties can engage in private arbitration on a time schedule established by the AAA.

IT IS FURTHER ORDERED signing this minute entry as a formal order of the Court.

/s/ Sigmund Popko
The Hon. Sigmund G. Popko
Judicial Officer of the Superior Court

NOTICE: LC cases are not under the e-file system. As a result, when a party files a document, the system does not generate a courtesy copy for the Judge. **Therefore, you will have to deliver to the Judge a conformed courtesy copy of any new filings.**

⁵ Plaintiff did not even attempt to make an argument in the trial court about prejudice. See *James L. Fann Contracting*, 179 Ariz. at 192 (requiring clear evidence of untimeliness and prejudice). This is an additional reason for reversing the trial court's judgment.