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STATE OF MINNESOTA
IN COURT OF APPEALS
A07-0895

Richard P. Gamble, et al.,
Respondents,

vs.

Susan Schurke, et al.,
Appellants.

Filed May 27, 2008
Affirmed
Toussaint, Chief Judge

St. Louis County District Court
File No. 69-C1-04-102221

Frank A. Taylor, Julie H. Firestone, Briggs and Morgan, P.A., 2200 IDS Center, 80 South Eighth Street, Minneapolis, MN 55402; and

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David R. Marshall, Grant D. Fairbairn, Fredrikson & Byron, P.A., 200 South Sixth Street, Suite 4000, Minneapolis, MN 55402 (for appellants)

Considered and decided by Toussaint, Chief Judge; Halbrooks, Judge; and Crippen, Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

U N P U B L I S H E D O P I N I O N

TOUSSAINT, Chief Judge

Appellants Paul and Susan Schurke challenge the district court's order denying their motion to vacate or modify an arbitration award, arguing that the district court erred in concluding that respondents Richard P. Gamble and the Ely Surf Shop, Inc. had submitted to the arbitrator a promissory estoppel claim that was arbitrable under the governing arbitration clause. Because we determine that the district court did not err in confirming the arbitration award, we affirm.

FACTS

In 2003, appellants and Gamble discussed going into business together to own and operate the Ely Surf Shop out of a retail space in appellants' building. The parties agreed that appellants would own 50% of the business, and Gamble and his wife would own the other 50%. Appellants also agreed to contribute capital of $50,000 and two years of free rent for the Ely Surf Shop to operate in their building. After the drafted corporate documents had been finalized and reviewed by appellants and when renovation of the retail space was almost completed, appellants told Gamble that they had decided not to proceed with their promised investment in the Ely Surf Shop after all.

Because Gamble had invested over $280,000 in renovation of the retail space, he could not afford to miss the scheduled grand opening of the Ely Surf Shop and decided to continue with the business. Gamble signed a lease on behalf of the Ely Surf Shop with appellants to rent the space in their building. The lease contained an arbitration clause that stated:

> Any claim or controversy *arising out of or relating to* this Agreement and Lease or to the breach of this contract shall be settled by arbitration in accordance with the rules of the American Arbitration Association, and judgment on the award granted by the arbitrator may be entered in any court having jurisdiction thereof.

(Emphasis added.) The lease also contained an integration clause stating: "The foregoing constitutes the entire agreement between the parties."

Respondents brought this action against appellants, seeking a declaratory judgment that appellants breached the oral joint venture and written lease agreement and were liable for tortious interference and libel. Almost a year later, appellants moved to dismiss and compel arbitration on respondents' breach-of-the-lease-agreement claim under the arbitration clause in the lease agreement. Respondents moved to stay the litigation and compel arbitration of all claims. The district court compelled arbitration of the entire matter, allowing the arbitrator to determine the arbitrability of the claims.

The arbitrator determined that all claims were arbitrable and, after a hearing, awarded Gamble $312,772 on his promissory estoppel claim and the Ely Surf Shop $5,000 on its promissory estoppel and breach-of-contract claims. Respondents' remaining claims for breach of contract (as to the alleged joint venture), breach of fiduciary duty, defamation/libel, and unjust enrichment were dismissed with prejudice. Appellants were awarded $6,000 on their counterclaim for breach of the lease agreement.

The arbitrator determined that respondents' joint-venture claim should be dismissed because the parties "contemplated operating the Ely Surf Shop as a Subchapter S Corporation, not a joint venture." But the arbitrator treated respondents' promissory estoppel claim as an independent claim, not merely an element of joint venture, and

found that appellants had promised Gamble to invest in the Ely Surf Shop as "50/50 owners," intended to induce Gamble to rely on that promise, and broke that promise. The arbitrator concluded that justice required the promise to be enforced.

Respondents moved the district court to confirm the arbitration award, and appellants moved to have the award vacated or modified. The district court granted respondents' motion to confirm the arbitration award, reinstating the judgment, and concluding that all the disputed issues were properly before the arbitrator because they were within the broad scope of the arbitration clause in the lease agreement. The district court also determined that the arbitrator had acted within his authority in considering promissory estoppel as a separate theory of recovery because it had "its genesis within the party submissions," and because appellants would have been "forced to argue the same facts to defend the promissory estoppel claim whether contained as an element, or as a separate basis for recovery."

Appellants now argue that: (1) the district court erred in deciding that a promissory estoppel claim was "related to" the lease containing the arbitration clause, allowing it to be properly before the arbitrator; and (2) the district court erred in deciding that respondents had submitted for arbitration a promissory estoppel claim based on the theory that appellants had breached a contract to invest in the Ely Surf Shop as "50/50 owners" and a claim that appellants had breached the lease agreement.

D E C I S I O N

"Arbitration is a proceeding favored in law." *Ind. Sch. Dist. No. 279 v. Winkelman Bldg. Corp.*, 530 N.W.2d 583, 586 (Minn. App. 1997), *review denied* (Minn. Jul. 20,

1995). This court's review of an arbitration decision is limited, and we must exercise every reasonable presumption "in favor of the finality and validity of the arbitration award." *State, Office of State Auditor v. Minn. Ass'n of Prof'l Employees*, 504 N.W.2d 751, 754 (Minn. 1993). Whether the record supports the arbitrator's findings is not an issue for this court's review, and we "may not examine the underlying evidence and record, or otherwise delve into the merits of the award." *Liberty Mut. Ins. Co. v. Sankey*, 605 N.W.2d 411, 414 (Minn. App. 2000), *review denied* (Minn. Apr. 18, 2000).

An arbitration award may be vacated or modified only upon proof of one of the grounds set forth in Minn. Stat. §§ 572.19, .20 (2006). An award may be vacated if the arbitrator exceeded his powers. Minn. Stat. § 572.19, subd. 1(3). An award may be modified if the arbitrator "awarded upon a matter not submitted . . . and the award may be corrected without affecting the merits of the decision upon the issues submitted." Minn. Stat. § 572.20, subd. 1(2).

I.

We review a determination of arbitrability de novo. *Ind. Sch. Dist. No. 88 v. Sch. Serv. Employees Union Local 284*, 503 N.W.2d 104, 106 (Minn. 1993). Any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration. *Johnson v. Piper Jaffray, Inc.*, 530 N.W.2d 790,795 (Minn. 1995). The party opposing the arbitrability of a dispute bears the burden of proving that the dispute is outside the scope of the arbitration agreement, and that burden is especially high if that party drafted the arbitration agreement. *Onvoy, Inc. v. Shal, LLC.*, 669 N.W.2d 344, 349 (Minn. 2003).

Here, the lease agreement between the parties contained an arbitration clause that made "any claim or controversy arising out of or relating to this Agreement and Lease" subject to arbitration. The arbitration clause did not expressly exclude arbitration of any claim.[1] Minnesota caselaw has not formulated a specific test to determine when an issue "arises out of or relates to" the contents of a contract containing an arbitration clause. The language "arising under" in an arbitration clause has been held broad enough to encompass some claims regarding contract formation, but not all claims. *Id.* at 352 (limiting determination to facts of that particular case). If parties want the district court to retain jurisdiction over particular issues and not have those issues submitted to arbitration, they "must expressly state such an intent when drafting the arbitration clause in the contract." *Id.* Arbitration clauses requiring parties to arbitrate claims "arising out of or relating to" the agreement are considered to be very broad and contain "the broadest language the parties could reasonably use to subject their disputes to that form of settlement, including collateral disputes that relate to the agreement containing the clause." *Fleet Tire Serv. of N. Little Rock. v. Oliver Rubber Co.*, 118 F.3d 619, 621 (8th Cir. 1997).

When appellants drafted the arbitration clause in the lease agreement, they did not exclude any particular issues from arbitration. *See David Co. v. Jim W. Miller Constr., Inc.*, 444 N.W.2d 836, 842 (Minn. 1989) (declining to judicially restrict arbitrator's

[1] The arbitration clause at issue is valid. *See* Minn. Stat. § 572.08 (2006) ("A written agreement to submit any existing controversy to arbitration or a provision in a written contract to submit to arbitration any controversy thereafter arising between the parties is valid, enforceable, and irrevocable, save upon such grounds as exist at law or in equity for the revocation of any contract.").

authority when parties failed to limit arbitrator's authority). Appellants could have excluded arbitration of the joint-venture claim, particularly in light of the recent collapse of their anticipated business deal.

The joint-venture deal "related to" the lease agreement because it was the reason that the parties entered into the lease agreement. Appellants admitted at the arbitration hearing that the lease agreement was entered into only because they had backed out of their arrangement with Gamble. Appellants reasonably should have realized that if they were to arbitrate all problems arising from the lease agreement, they might also have to arbitrate issues connected with their previous business arrangement with Gamble because that arrangement might be dispositive in interpreting the lease provisions. The two separate agreements are completely related. The district court did not err in determining that respondents' joint-venture claim was arbitrable under the arbitration clause in the lease agreement.

II.

Because the joint-venture claim is arbitrable under the arbitration clause at issue, we must determine whether it was properly submitted to the arbitrator and whether he exceeded his powers in deciding that appellants are liable to respondents on the basis of promissory estoppel because they breached their promise to become 50% owners of the Ely Surf Shop.

We review de novo the district court's determination of whether the parties agreed to submit an issue to arbitration. *Johnson*, 530 N.W.2d at 795. "[A]rbitration is a matter of contract and a party cannot be required to submit to arbitration any dispute which he

has not agreed so to submit." *Id.* (quotation omitted). Arbitrators derive their authority to resolve disputes only because the parties have agreed in advance to submit such issues to arbitration. *Id.* at 95-96. An arbitration award "must have its genesis" either from the underlying contract, the arbitration clause itself, or the submissions of the parties. *David Co,*. 444 N.W.2d at 841.

First, appellants contend that respondents never claimed in their pleadings that the parties had agreed to become 50% owners of the Ely Surf Shop, and therefore such a claim was never properly submitted to the arbitrator. But in their statement of claim to the arbitrator, respondents did allege that appellants had agreed to become 50% owners of the Ely Surf Shop. Respondents were not merely referring to their allegation that appellants had agreed to contribute capital of $50,000 and two years of free rent as appellants suggest; respondents set forth the 50%-ownership allegation in a separate paragraph. The documents referencing the 50%-ownership agreement were also admitted into evidence at the arbitration hearing. The record indicates that respondents' 50%-ownership claim was properly submitted to the arbitrator, and nothing in the record indicates that appellants were not aware of such a claim.

Second, appellants argue that respondents never submitted promissory estoppel as a separate claim to the arbitrator and submitted it only as an element of their joint-venture claim. But respondents submitted many pleadings to the arbitrator that set out the elements of promissory estoppel. For example, in their prehearing brief to the arbitrator respondents explained the four elements that constitute a joint venture and then stated: "As to the fourth element, the existence of an express or implied contract may be proven

by promissory estoppel." Respondents also described the elements for a general claim of promissory estoppel. Appellants even began treating promissory estoppel as a separate claim when they answered that their defense to it was "unclean hands." Following the arbitration hearing, respondents submitted proposed conclusions of law to the arbitrator, wherein promissory estoppel was listed as a completely separate claim from joint venture. Nothing in the record indicates that appellants were not notified that respondents were pursuing a promissory estoppel claim or that appellants did not have the opportunity to defend against such a claim. *See EEC Prop. Co. v. Kaplan*, 578 N.W.2d 381, 384 (Minn. App. 1998) (holding submissions to arbitrator throughout proceedings provided adequate basis for arbitrator to consider issues that were not expressly specified in submission of claims), *review denied* (Minn. Aug. 31, 1998). The record indicates that respondents set forth promissory estoppel as both an element of joint venture and also as a claim on its own, so it was properly submitted to the arbitrator.[2]

Third, appellant argues that respondents never submitted a claim for breach of the lease agreement. But respondents put appellants on notice by alleging facts in their statement of claim showing that they were challenging the lease agreement. *See Barton v. Moore*, 558 N.W.2d 746, 749-50 (Minn. 1997) (holding that, even though party did not specifically name theory of liability, alleged facts were sufficient to provide adverse party

[2] Appellants also argue that respondents never asserted the factual basis for a separate claim of promissory estoppel. But since promissory estoppel is an equitable doctrine that does not require a separate set of facts, the same facts that would have proven a joint venture also formed the basis for the arbitrator's promissory estoppel award. *See Martens v. Minn. Min. & Mfg. Co.*, 616 N.W.2d 732, 746 (Minn. 2000) ("Promissory estoppel is an equitable doctrine that implies a contract in law where none exists in fact.") (quotation omitted).

with notice of such theory). In their request for relief, respondents requested "an Award declaring [appellants] to be in breach of both the Joint Venture and the Lease Agreement."

Respondents' claims of promissory estoppel (that appellants had promised to become 50% owners) and breach of the lease agreement were properly submitted to the arbitrator for consideration, and therefore the district court did not err in confirming the arbitrator's award.

Affirmed.