STATE OF MINNESOTA
IN COURT OF APPEALS
A08-0739

Revestors Group 1, LLC,
Respondent,

vs.

Larry S. Severson, et al.,
Appellants.

Filed February 24, 2009
Reversed and remanded
Klaphake, Judge

Dakota County District Court
File No. 19-C7-07-011565

Jerome A. Miranowski, Nathaniel J. Zylstra, Edward Wahl, Faegre & Benson LLP, 2200 Wells Fargo Center, 90 South Seventh Street, Minneapolis, MN 55402-3901 (for respondent)

Richard T. Ostlund, Steven M. Pincus, Anthony Ostlund & Baer, PA, 90 South Seventh Street, Suite 3600 Minneapolis, MN 55402 (for appellants)

Considered and decided by Klaphake, Presiding Judge; Peterson, Judge; and Bjorkman, Judge.

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

KLAPHAKE, Judge

Appellants Larry S. Severson and Severson, Sheldon, Dougherty & Molenda, P.A., challenge the district court's order denying their motion to compel arbitration in the legal malpractice case filed against them by respondent Revestors Group 1, LLC.

Appellants argue that the district court erred by concluding that there was no agreement to arbitrate and that the issue was not arbitrable.

Because the dispute between the parties is reasonably within the scope of an arbitration agreement and the arbitrability of the dispute must be determined by an arbitrator, the district court erred by refusing to order arbitration. We therefore reverse and remand for further proceedings consistent with this opinion.

D E C I S I O N

Standard of Review

This court reviews the district court's decisions regarding arbitrability de novo. *Minn. Teamsters Pub. & Law Enforcement Employees' Union, Local No. 320 v. County of St. Louis*, 611 N.W.2d 355, 358 (Minn. App. 2000). Minnesota law favors arbitration; any doubts about the scope of arbitrable issues are resolved in favor of arbitration. *Id.* Thus, the district court is limited to inquiring whether a valid arbitration agreement exists and whether the dispute falls within the scope of the agreement. *Id.*

Generally, questions about the enforceability of arbitration provisions are resolved in one of three ways: (1) if there is a clear and enforceable agreement to arbitrate a dispute, the court must order arbitration; (2) if it is reasonably debatable whether or not a dispute is within the scope of an arbitration provision, it must be referred to an arbitrator to determine if it is covered by the provision; or (3) if there is no agreement to arbitrate or the dispute is outside of the scope of the arbitration provision, the court may protect a party from being compelled to arbitrate. *Atcas v. Credit Clearing Corp. of America*, 292 Minn. 334, 340-41, 197 N.W.2d 448, 452 (Minn. 1972), *overruled on other grounds by*

Onvoy, Inc. v. SHAL, LLC, 669 N.W.2d 344, 351 (Minn. 2003); *Community Partners Designs, Inc. v. City of Lonsdale*, 697 N.W.2d 629, 632 (Minn. App. 2005).

An agreement to arbitrate is contractual in nature; courts use general contract principles to determine whether there is a valid contract to arbitrate. *Onvoy*, 669 N.W.2d at 356. The district court must review the language of the parties' agreement in order to decide if the parties intended to arbitrate an issue. *Churchill Envtl. & Indus. Equity Partners, L.P. v. Ernst & Young, L.L.P.*, 643 N.W.2d 333, 337 (Minn. App. 2002). But the district court cannot refuse to compel arbitration because it feels that the claim lacks merit. *Id.*

Here, appellants assert that the parties' agreement is set forth in a letter of engagement for legal services dated March 31, 2004. This letter of engagement, which included the basic terms of the agreement as to subject matter, fees, and costs, also included a paragraph concerning disputes about representation:

> **ARBITRATION OF DISPUTES REGARDING FEES, DISBURSEMENTS OR QUALITY OF SERVICES.** You and the Law Firm agree that any disputes arising between you and the Law Firm involving our representation of you which we are not able to amicably resolve, including, without limitation, any dispute about the quality or nature of our services or our billing, will be submitted to binding arbitration[.]

Respondent contends that the parties' relationship is governed by a letter issued May 3, 2006, which contains similar terms concerning fees and costs, but omits any reference to arbitration. The district court concluded that the May 3, 2006 letter governed the parties' dispute about certain leases.

We have reviewed the record and conclude that the district court's determination that the May 3, 2006 letter is the governing document is clearly erroneous. Billing invoices issued under the March 31, 2004 letter include references to the leases central to the dispute; no invoices refer to the May 3, 2006 letter of engagement. Both letters refer in only general terms to the subject matter of the engagement; neither letter specifically references the disputed leases. Although the May 3, 2006 letter is closer in time to the origin of the dispute between the parties, the leases were negotiated and reviewed in 2004. Under these facts, it is reasonably debatable that this dispute falls within the arbitration provision. *Atcas*, 292 Minn. at 340-41, 197 N.W.2d at 452. The party opposing arbitration has the burden of showing that a dispute is not reasonably subject to arbitration. *Onvoy*, 669 N.W.2d at 349. On this record, we conclude that respondent has failed to sustain that burden of proof.

Furthermore, when language in an agreement is broadly inclusive, courts construe it to cover most controversies. *See, e.g.*, *Michael-Curry Co. v. Knutson Shareholders Liquidating Trust*, 449 N.W.2d 139, 141-42 (Minn. 1989) (construing language requiring arbitration of any controversy "arising out of, or relating to" the making of the contract to include question of fraudulent inducement, based on broad language of arbitration agreement); *Churchill Envtl. Partners*, 643 N.W.2d at 337-38 (concluding that clause requiring arbitration of "[a]ny issue concerning the extent to which any dispute is subject to arbitration" clearly required arbitration of all arbitrability questions).

Here, the paragraph requiring arbitration is broadly inclusive: it covers all disputes about billing and about the nature and quality of services rendered, which would include questions of legal malpractice.

We are also not convinced that the arbitration clause was the result of appellants overbearing respondent's will, as respondent contends. Although the principal of respondent, Douglas Anderson, claims that he never discussed the arbitration clause with appellants, this clause was included in the many engagement letters he received from appellants during the course of a 25-year relationship. Anderson is a sophisticated and experienced developer, which does not suggest an inequality in bargaining power. Further, neither Anderson nor respondent has alleged fraud or coercion in making the agreement.

Finally, although respondent argued and the district court apparently agreed that the arbitration agreement should be rejected because appellants had a financial relationship with the proposed arbitrator, Minn. Stat. § 572.10, subd. 2 (2008), provides that a party may petition the court to remove an arbitrator who has "any relationship, conflict of interest, or potential conflict of interest." Because there is a method to cure a conflict, this is not a basis for refusing arbitration.

Because respondent failed to sustain its burden of proving that the dispute is not within the scope of the arbitration provision, the dispute must be referred to an arbitrator to determine, at a minimum, whether it is within the scope of the arbitration provision. We therefore reverse and remand for further proceedings consistent with this opinion.

Reversed and remanded.