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COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

TA ROBINSON EQUIPMENT CO., an Arizona corporation, Plaintiff/Appellant, v. JCB, INC., a Maryland corporation, Defendant/Appellee.	2 CA-CV 2011-0193 DEPARTMENT A MEMORANDUM DECISION Not for Publication Rule 28, Rules of Civil Appellate Procedure

APPEAL FROM THE SUPERIOR COURT OF PINAL COUNTY

Cause No. CV201005144

Honorable Gilberto V. Figueroa, Judge

AFFIRMED

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B R A M M E R, Judge.

¶1 TA Robinson Equipment Co. (Robinson) appeals from the trial court's order granting appellee JCB, Inc.'s (JCB) motion to compel arbitration of the claims of wrongful dealer termination, breach of contract, promissory estoppel, tortious interference with contract, and open account included in the complaint Robinson had filed in Superior Court. Robinson argues the arbitration provision in the dealership agreement executed between it and JCB does not compel it to arbitrate those claims because another of the agreement's provisions preserved Robinson's rights under A.R.S. § 44-6708 to maintain its legal action. Robinson also argues that, even if it must arbitrate some of its claims, two of them are not subject to arbitration.

Factual and Procedural Background

¶2 Robinson and JCB entered a dealership agreement in 2009, which appointed Robinson as a dealer for the sale, rent, or lease of JCB products in several Arizona counties. Robinson filed its complaint against JCB in December 2010. JCB then filed its motion to compel arbitration, relying on section eighteen of the dealership agreement, which provides in relevant part:

> In the event of any dispute, except for matters relating to collection of accounts due under this Agreement, the parties will attempt in good faith to negotiate a mutually agreeable resolution of such dispute. If such dispute is not amicably resolved, then all such disputes shall be settled by binding arbitration . . . .

¶3 Robinson objected to the motion, arguing that application of § 44-6708 and section twenty-one of the agreement both modified the arbitration section and protected its right to bring its legal action. After a hearing and supplemental briefing on the issue,

the trial court determined the arbitration provision of the dealership agreement was enforceable and not inconsistent with section twenty-one or Arizona law. It granted JCB's motion to compel arbitration and entered judgment pursuant to Rule 54(b), Ariz. R. Civ. P.

Discussion

¶4 The trial court's review of a motion to compel arbitration is limited to deciding whether an arbitration agreement exists. A.R.S. § 12-1502(A); *City of Cottonwood v. James L. Fann Contracting, Inc.*, 179 Ariz. 185, 190, 877 P.2d 284, 289 (App. 1994). We review questions of law, including contract interpretation, de novo. *Bennett v. Baxter Grp., Inc.*, 223 Ariz. 414, ¶ 12, 224 P.3d 230, 234 (App. 2010); *Green v. Lisa Frank, Inc.*, 221 Ariz. 138, ¶ 48, 211 P.3d 16, 33 (App. 2009).

Agreement to Arbitrate

¶5 Agreements to arbitrate controversies generally are enforceable. A.R.S. § 12-1501. To decide whether an arbitration agreement exists between the parties, we must determine the parties' intent based on the terms of the agreement. *See Grosvenor Holdings, L.C. v. Figueroa*, 222 Ariz. 588, ¶ 9, 218 P.3d 1045, 1050 (App. 2009). Arizona favors arbitration as a matter of public policy, *Foy v. Thorp*, 186 Ariz. 151, 153, 920 P.2d 31, 33 (App. 1996), and "[a]n agreement containing provisions for arbitration should be liberally construed with any doubt resolved in favor of the arbitration," *Payne v. Pennzoil Corp.*, 138 Ariz. 52, 55-56, 672 P.2d 1322, 1325-26 (App. 1983).

¶6 The dealership agreement clearly states that binding arbitration shall apply to "any dispute, except for matters relating to collection of accounts." Robinson does not dispute that section eighteen of the dealership agreement constitutes an agreement to arbitrate, but argues it has been modified—and effectively nullified—by section twenty-one because application of section eighteen "denies access to the procedures, forums or remedies" provided to equipment dealers under Arizona law. Section twenty-one provides:

> If any provision herein contravenes the laws or regulations of any state or other jurisdiction wherein this Agreement is to be performed, or denies access to the procedures, forums or remedies provided for by such laws or regulations, such provisions shall be deemed to be modified to conform to such laws or regulations, and all other terms and provisions shall remain in full force and effect.

¶7 Robinson argues, and JCB does not dispute, that it is an "equipment dealer" protected by title 44, chapter 20. Section 44-6708(A) provides "[a]n equipment dealer may bring an action against a supplier in any court of competent jurisdiction for damages sustained by the dealer as a consequence of the supplier's violation of the provisions of this chapter." Robinson contends the agreement's arbitration section purported to "eliminate the court 'forum' provided by [title 44, chapter 20], and also the 'procedures' available only in such forum."[1]

[1]Robinson conceded at oral argument that section eighteen does not "contravene" Arizona law and that the effect of the first clause of section twenty-one is not in dispute.

¶8 "'It is the duty of the court to adopt a construction of a contract which will harmonize all of its parts, and apparently conflicting parts must be reconciled, if possible, by any reasonable interpretation.'" *Aztar Corp. v. U.S. Fire Ins. Co.*, 223 Ariz. 463, ¶ 48, 224 P.3d 960, 974 (App. 2010), *quoting U.S. Insulation, Inc. v. Hilro Constr. Co.*, 146 Ariz. 250, 259, 705 P.2d 490, 499 (App. 1985). Sections eighteen and twenty-one of the dealership agreement may be harmonized by interpreting section twenty-one to invalidate only those provisions of the agreement that deny access to "the procedures," while preserving the parties' ability to choose by contract which of the lawful procedures otherwise available to them they wish to utilize. Under this interpretation, section twenty-one would not restrict enforcement of section eighteen's arbitration provision. Arizona law provides that parties generally may agree to arbitrate disputes, § 12-1501, and nothing prohibits equipment dealers from doing so, § 44-6708 (remedies provided by section "are in addition to any other remedies permitted by law").

¶9 Robinson argues section twenty-one need not be harmonized with the remainder of the contract because it is a "modification clause" and is "not intended to be harmonized with other provisions," but instead is "intended to change" any that "denies access to the procedures, forums or remedies" otherwise provided by Arizona law. First, the arbitration provision denies neither party access to Arizona's procedures, forums, or remedies; rather, it allows them to take advantage of arbitration procedures Arizona specifically permits. *See* § 12-1501. Second, the canon of harmonization must retain some vitality where section twenty-one otherwise would nullify section eighteen's

arbitration provisions under all circumstances. "[W]e must interpret a contract in a way that gives meaning to all its material terms and renders none superfluous."[2] *Miller v. Hehlen*, 209 Ariz. 462, ¶ 11, 104 P.3d 193, 197 (App. 2005). Robinson concedes that, if section twenty-one is interpreted to invalidate section eighteen's arbitration provisions any time a state provides litigants any dispute resolution procedures, forums, and remedies other than arbitration, it would "render [section eighteen] a nullity" and make it "superfluous." However, he nonetheless argues section twenty-one may be interpreted more narrowly to nullify the arbitration provisions of section eighteen only in states such as Arizona, which specifically provide statutory procedures for dealership agreements. We fail to find such a distinction in the language of section twenty-one, and conclude Robinson's interpretation would render section eighteen meaningless in any state because we presume every state provides procedures, forums, and remedies other than arbitration for dispute resolution. For these reasons, the parties' agreement to arbitrate contained in section eighteen of the agreement is valid and enforceable and the trial court did not err in granting JCB's motion to compel arbitration.

Counts Four and Five

¶10 Robinson argues further that, if the arbitration provision applies, counts four and five of its complaint are not covered by it, and thus "the motion to compel

[2]It also is notable that the arbitration section describes the rules and procedures for requesting and conducting arbitration. It is difficult to conclude the parties did not intend this more specific provision to retain significance in the face of section twenty-one. *See ELM Ret. Ctr., LP v. Callaway*, 226 Ariz. 287, ¶ 18, 246 P.3d 938, 942 (App. 2010) (specific provisions express intent more precisely than general provisions).

arbitration should have been denied as to [those counts]." It contends count four pleads a tort claim it did not agree to arbitrate and count five raises a dispute expressly excluded from arbitration.

¶11 Courts may determine whether parties have agreed to arbitrate a particular dispute. *Foy*, 186 Ariz. at 153-54, 920 P.2d at 33-34. Parties are bound to arbitrate only those issues which they clearly have agreed to arbitrate. *Saguaro Highlands Cmty. Ass'n v. Biltis*, 224 Ariz. 294, ¶ 5, 229 P.3d 1036, 1037-38 (App. 2010). "'[A]rbitration clauses should be construed liberally and any doubts as to whether or not the matter in question is subject to arbitration should be resolved in favor of arbitration.'" *Id.*, *quoting New Pueblo Constructors, Inc. v. Lake Patagonia Recreation Ass'n*, 12 Ariz. App. 13, 16, 467 P.2d 88, 91 (1970) (alteration in *Saguaro Highlands*).

¶12 Robinson and JCB agreed to arbitrate "any dispute," except those related to the collection of accounts, and further specified an arbitrator could "hear and determine all disputes between the parties . . . concerning the subject matter of [the dealership agreement]." Count four of the complaint alleges tortious interference with contract and business expectancies. Tort claims can be characterized as "arising out of or related to the subject matter of the contract, and thus subject to arbitration" if the claims at least "raise some issue the resolution of which requires a reference to or construction of some portion of the contract itself." *Dusold v. Porta-John Corp.*, 167 Ariz. 358, 362, 807 P.2d 526, 530 (App. 1990). Robinson contended JCB "interfere[d] with [Robinson]'s contracts and ongoing business relationships . . . by wrongfully terminating [its]

dealership agreement; soliciting and hiring [its] key personnel . . . ; and by soliciting and obtaining business from customers that had previously conducted business with [it]." Robinson further asserted it had been injured because JCB's actions precluded Robinson from obtaining profits to which it was entitled under the dealership agreement and because JCB had interfered with Robinson's ability to sell its remaining inventory.

¶13 The resolution of count four explicitly requires reference to the dealership agreement. *See id.* The dispute did not arise merely because that agreement created a relationship between Robinson and JCB, but rather the allegations arise out of and are related directly to the agreement and its termination by JCB. *See id.* ("relationship between the dispute and the contract is not satisfied simply because the dispute would not have arisen absent the existence of a contract between the parties"). Moreover, we resolve any doubt as to whether count four is subject to the agreement's arbitration provision in favor of arbitration. *See Saguaro Highlands*, 224 Ariz. 294, ¶ 5, 229 P.3d at 1037. Therefore, count four properly is subject to arbitration.

¶14 Count five alleges JCB owed Robinson a balance due on an open account maintained by JCB and Robinson. The arbitration provision explicitly does not apply to "matters relating to collection of accounts due." JCB concedes count five is not subject to arbitration and Robinson can pursue that claim in court. Therefore, to the extent it may suggest otherwise, the trial court's grant of JCB's motion to compel arbitration does not apply to count five of the complaint.

Disposition

¶15 For the foregoing reasons, we affirm the trial court's ruling compelling arbitration of counts one through four of Robinson's complaint.

/s/ J. William Brammer, Jr.
J. WILLIAM BRAMMER, JR., Judge

CONCURRING:

/s/ Peter J. Eckerstrom
PETER J. ECKERSTROM, Presiding Judge

/s/ Virginia C. Kelly
VIRGINIA C. KELLY, Judge