# STATE OF MICHIGAN

# COURT OF APPEALS

---

BEST FINANCIAL CORPORATION, doing business as BEST INSURANCE AGENCY, INC.,

Plaintiff-Appellant,

v

FRANKENMUTH MUTUAL INSURANCE COMPANY, a Michigan Corporation,

Defendant-Appellee.

---

UNPUBLISHED
March 9, 1999

No. 203757
Clare Circuit Court
LC No. 96-000579 CK

Before: White, P.J., and Markman and Young, Jr., JJ.

PER CURIAM.

Plaintiff, an insurance agency that writes insurance policies for a variety of different insurance companies, entered into an agency agreement with defendant insurance company by which it contracted to be one of defendant's authorized agents. After operating pursuant to this agency agreement for almost four years, defendant notified plaintiff that the contract was being terminated. Plaintiff filed a breach of contract action and requested specific performance of the contract through reinstatement of the agency relationship. Defendant moved for summary disposition arguing that the contract contained an arbitration clause and that the complaint should therefore be dismissed under MCR 2.116(C)(7). The trial court agreed and granted summary disposition. Plaintiff now appeals of right, arguing (1) that when defendant terminated the contract, it also terminated the arbitration provision that was a part of the contract; (2) that the contract gave insufficient notice that the arbitration provision would apply to resolve a dispute with respect to the termination of the contract; and (3) that the contract is one of adhesion. We affirm.

"Appellate review of a motion for summary disposition is de novo." *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). When reviewing a motion for summary disposition pursuant to MCR 2.116(C)(7), this Court must accept the plaintiff's well-pleaded allegations as true and construe them in favor of the plaintiff. *Witherspoon v Guilford*, 203 Mich App 240, 243; 511 NW2d 720 (1994). If there are no facts in dispute, then the question whether the claim is statutorily barred is one of law for the court. *Id*. MCR 2.116(C)(7) provides that a motion for

summary disposition may be based on the assertion that "[t]he claim is barred because of . . .an agreement to arbitrate."

Defendant first contends that the arbitration provision did not survive the termination of the contract. We disagree. In *Burns v Olde Discount Corp*, 212 Mich App 576, 580; 538 NW2d 686 (1995), this Court stated:

> To ascertain the arbitrability of an issue, the court must consider whether there is an arbitration provision in the parties' contract, whether the disputed issue is arguably within the arbitration clause, and whether the dispute is expressly exempt from arbitration by the terms of the contract . . . Any doubts about the arbitrability of an issue should be resolved in favor of arbitration . . . [Citations omitted.]

There is an arbitration provision in the contract in § 13(k) which expressly indicates that the parties agreed to submit "any dispute arising out of or under this Contract … to arbitration." The disputed issues, according to the complaint, concern alleged breaches of the contract, all of which arise out of or under the contract. Thus, under the arbitration clause, the disputed issues raised in plaintiff's lawsuit were to be submitted to arbitration. Neither the contract itself, nor the arbitration provision, expressly exempt any disputes arising under the contract from arbitration. Accordingly, under *Burns, supra* at 580, the contractual issues raised by plaintiff were required to be submitted to arbitration.

Contrary to plaintiff's assertion, the arbitration provision survives the termination of the contract. The *Burns* decision involved the use of an arbitration provision after the contract itself had been terminated; other cases also hold that arbitration agreements survive the termination of a contract. For example, in *E E Tripp Excavating Contractor, Inc v Jackson Co*, 60 Mich App 221, 242-50; 230 NW2d 556 (1975), this Court held that the termination of a contract did not automatically result in the termination of an arbitration provision absent an express revocation of that provision. As stated in 4 Am Jur 2d, Alternative Dispute Resolution, § 79, at 138:

> The termination of the contract prior to a demand for arbitration will generally have no effect on such demand, provided that the dispute in question either arose out of the terms of the contract or arose when a broad contractual arbitration clause was still in effect.

Similarly, in *American Locomotive Co v Chemical Research Corp*, 171 F2d 115, 119-20 (CA 6, 1948), the Sixth Circuit rejected a claim that an arbitration clause terminated when the underlying contract itself was terminated. The Court held that a party who has begun performance of a contract does not lose its right to rely on the arbitration provisions of the contract when it cancels the contract following a breach by the other party to the agreement.

In this case, both parties had performed under the contract for almost four years. Defendant claimed the right to terminate the contract due to alleged violations of contract requirements that arose during the life of the contract. The breaches of the contract alleged by plaintiff likewise all arose during

the life of the contract. Therefore, under *E E Tripp, supra*, the arbitration provision in this case continues even after the termination of the underlying agreement.

Plaintiff next contends that while the parties may have agreed to submit many contractual disputes to arbitration, the arbitration provision did not give adequate notice that there was an agreement between the parties to arbitrate the issue of the termination of the contract. However, "[a]ny doubts about the arbitrability of an issue should be resolved in favor of arbitration." *Burns, supra* at 580. Here, plaintiff filed suit claiming that defendant had breached the agency contract in several particulars and thus had wrongfully terminated the agreement. Plaintiff specifically alleged in § 4 of its complaint that "this cause of action is based upon a Michigan Agency Contract . . . entered between the parties." Plaintiff asked for damages *and* for specific performance. All of plaintiff's claims relate to occurrences that took place before the contract was terminated, occurrences which plaintiff maintained precluded defendant from terminating the contract. Plaintiff's claims clearly arise out of the contract and thus, under the terms of the arbitration clause, are subject to arbitration. There is no "notice" issue because the arbitration provision clearly states that "any dispute arising out of or under this Contract" will be submitted to arbitration. Plaintiff was thus on notice that any disputed breach of the contract would be submitted to arbitration.

Finally, plaintiff contends that the contract should not be enforced because it is a "contract of adhesion." However, here the parties were both corporations bargaining at arm's length. In such circumstances, this Court has held that the relative bargaining power of the parties is insufficient to find a contract unenforceable. Instead, if the contract itself is reasonable, it will be enforced. *St Paul Fire & Marine Ins Co v Guardian Alarm Co of Michigan*, 115 Mich App 278, 283-84; 320 NW2d 244 (1982). Plaintiff further contends that the language of the arbitration provision is unreasonable for several reasons and that, therefore, the contract should not be enforced. It argues that the arbitration clause is "buried deep" within the listing of numerous "Miscellaneous Provisions" and therefore did not afford sufficient notice that the clause was "considered a major issue in the contract." In fact, however, the language setting forth the arbitration provision was found at the top of the signature page of the contract; it comprised almost half of the printed space on that page. It is reasonable to assume that plaintiff's representative would have noticed the arbitration clause when he reviewed the contract and affixed his signature to the document directly below the clause. Moreover, by its plain terms, the arbitration provision was to control the resolution of "any dispute arising out of or under" the contract. We find no basis for plaintiff's claim that the language was inconspicuously "buried" in the contract and could not have put plaintiff on notice that arbitration was considered a major issue in the contract. As this Court stated in *Christy v Kelly*, 198 Mich App 215, 217; 497 NW2d 194 (1993): "Where, as here, an arbitration agreement indisputably complies with the requirements of the arbitration act, failure to read it . . . is not grounds for refusing to enforce it."

Plaintiff also claims that arbitration is designed to "effectuate immediate resolution" of disputes and thereby "avoid disruption [of] business relationships." It then points out that since the contract was terminated, arbitration offered it nothing of value because its business relationship with defendant had *already* ended. In *City of Dearborn v Freeman-Darling, Inc*, 119 Mich App 439, 444; 326 NW2d 831 (1982), this Court stated that "[t]he purpose of an arbitration clause is to provide early disposition

of disputes arising from contracts of this nature without the long delays and impositions from and upon the courts." Enforcement of the arbitration provision in this case would be consistent with this purpose.

Plaintiff finally alleges that the language of an arbitration agreement must be such that "it reasonably allows one to assert that the signing party knew what he was agreeing to and was a willing participant." As far as can be gleaned from this record, plaintiff has never been an "unwilling participant" in this business arrangement. It desired to sell insurance for defendant, and based upon its request for specific performance of the agency contract, it still desires to do so. Furthermore, it does not appear that plaintiff can make a credible claim that it did not understand the provision. It has failed to point to any specific language of the arbitration clause that renders it indecipherable or that rendered plaintiff incapable of knowing to what it was agreeing. Under these circumstances, plaintiff has failed to demonstrate that this contract was one of "adhesion" or that its terms were otherwise so unreasonable that this Court, as a matter of public policy, should refuse to enforce it. Accordingly, the trial court did not err in granting summary disposition based on the existence of an arbitration agreement.[1]

Affirmed.

/s/ Helene N. White
/s/ Stephen J. Markman
/s/ Robert P. Young, Jr.

[1] At oral argument on appeal, plaintiff raised an issue regarding the arbitration statute, MCL 600.5001; MSA 27A.500. However, this issue was not preserved for appeal because it was neither raised before the trial court nor addressed in plaintiff's brief on appeal. Thus, we will not address this issue further.