

STATE OF MICHIGAN
COURT OF APPEALS

REX M. CROTSER,

Plaintiff-Appellant,

v

SMITH BARNEY & COMPANY, INC., and
ROBERT FISHER,

Defendants-Appellees.

UNPUBLISHED

April 30, 2002

No. 228226

Oakland Circuit Court

LC No. 99-019330-CZ

Before: White, P.J., and Murphy and Fitzgerald, JJ.

PER CURIAM.

This is an action alleging negligence, breach of fiduciary duty, failure to supervise, and fraud. Plaintiff appeals as of right from the trial court's order granting defendants' motion for summary disposition and compelling arbitration. We affirm in part and reverse in part.

Plaintiff argues that he only agreed to arbitrate claims arising out of his commodity futures trading account and, therefore, the trial court erred in ordering him to arbitrate claims arising from his original relationship with defendants. We agree.

"The existence of an arbitration agreement and the enforceability of its terms are judicial questions" that are reviewed de novo. *Watts v Polaczyk*, 242 Mich App 600, 603; 619 NW2d 714 (2000). Similarly, a trial court's grant of summary disposition under MCR 2.116(C)(7) is reviewed de novo to determine whether the prevailing party was entitled to judgment as a matter of law. See *Maiden v Rozwood*, 461 Mich 109, 118-119, 122; 597 NW2d 817 (1999); see also *Guerra v Garratt*, 222 Mich App 285, 288-289; 564 NW2d 121 (1997).

"[T]he scope of a court's consideration [of] whether an issue is arbitrable is sharply limited." *Federal Kemper Ins Co v American Bankers Ins Co of Florida*, 137 Mich App 134, 139; 357 NW2d 834 (1984), quoting *American Fidelity Fire Ins Co v Barry*, 80 Mich App 670, 673; 264 NW2d 92 (1978). "To ascertain the arbitrability of an issue, a 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." *DeCaminada v Coopers & Lybrand, LLP*, 232 Mich App 492, 496-497; 591 NW2d 364 (1998), citing *Burns v Olde Discount Corp*, 212 Mich App 576, 580; 538 NW2d 686 (1995). Clearly, a party cannot be required to arbitrate an issue that the party has not agreed to submit to arbitration. *Hetrick v David A Friedman, DPM, PC*, 237

Mich App 264, 266-267; 602 NW2d 603 (1999). However, “[i]f a claim on its face is governed by the contract, it should be decided by the arbitrator unless strong evidence demonstrates that the matter is outside the scope of the arbitration provision.” *Federal Kemper, supra* at 139, quoting *American Fidelity, supra* at 673. Courts are to refrain from evaluating the merits of the parties’ dispute, and the terms of the parties’ substantive agreement. *American Fidelity, supra* at 676.

The arbitration agreement signed by plaintiff states as follows:

Any controversies arising out of or relating to any of my accounts, to transactions with you and/or your officers, directors, employees and/or agents for me[,] or to this agreement or the breach thereof, or relating to transactions or accounts maintained by me with your predecessor firms by merger, acquisition or other business combination from the inception of such accounts, shall be settled by arbitration in accordance with the rules, then in effect, of any contract market where the transaction(s) giving rise to the controversy were or could have been executed[,] or of the National Futures Association[,] or of the Board of Directors of the New York Stock Exchange, Inc. The laws of the State of New York, without giving effect to its principles of conflicts of laws, shall govern any arbitration. [Emphasis added in part and omitted in part.]

Looking at the context of the documents executed by plaintiff, including the arbitration agreement, which references the Commodity Exchange Act, the Commodity Futures Trading Commission, the National Futures Association, and the New York Stock Exchange, there is strong evidence indicating that the arbitration agreement referred solely to exchange-related disputes, and the terms “transactions” and “accounts” clearly referenced plaintiff’s commodities trading account or any other trading accounts. In fact, the arbitration agreement was part of a document titled, “Commodity Client Agreement.”

Plaintiff’s claims relating to the advice concerning the sale of plaintiff’s corn crop were not associated with any exchange-related trading accounts. Rather, these claims arose out of a separate and distinct contract with defendant’s predecessor, E.F. Hutton, entitled “AGREEMENT HUTTON AGRICULTURAL INFORMATION SERVICES,” which provided for consulting services unrelated to regulated transactions. This contract had no arbitration clause and stated:

This agreement is separate and distinct from any other agreement the parties may have entered into or may in the future enter into. This agreement does not in any manner alter any other agreements the parties may have. This agreement sets forth completely the parties['] understanding of their respective rights and obligations relating to the subject matter noted herein.” [Emphasis added.]

Therefore, the circuit court erred in dismissing the claims relating solely to the first contract.

This leaves plaintiff’s claims that were in fact related to a commodities trading account. Those claims are clearly covered by the arbitration agreement. Plaintiff argues that the arbitration agreement is invalid because it fails to comply with the rules of the New York Stock Exchange. Because plaintiff does not cite any authority in support of this argument, we deem it abandoned. “It is not enough for an appellant in his brief simply to announce a position or assert

an error and then leave it up to this Court to discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments, and then search for authority either to sustain or reject his position.” *Mudge v Macomb Co*, 458 Mich 87, 104-105; 580 NW2d 845 (1998), quoting *Mitcham v Detroit*, 355 Mich 182, 203; 94 NW2d 388 (1959). Therefore, the exchange-related claims were properly dismissed because of the arbitration agreement.

Reversed in part and affirmed in part.

/s/ Helene N. White
/s/ William B. Murphy
/s/ E. Thomas Fitzgerald