

STATE OF MICHIGAN
COURT OF APPEALS

SHORE FINANCIAL SERVICES, INC., d/b/a
SHORE MORTGAGE,

Plaintiff-Appellant,

v

MATTHEW J. CHAPOTON,

Defendant-Appellee.

UNPUBLISHED
September 16, 2008

No. 279329
Oakland Circuit Court
LC No. 2006-079658-CK

Before: Whitbeck, P.J., and Bandstra and Donofrio, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court order granting defendant's motion for summary disposition. Because, according to the plain language of the contract between the parties, the trial court erred when it sent plaintiff's equitable claims to arbitration, but properly found that plaintiff's claims for money damages were required to go to arbitration, we affirm in part and reverse in part. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Plaintiff and defendant entered into an employment agreement on July 12, 2004. The agreement included both a provision to protect confidential information of plaintiff and a non-compete clause. The agreement also contained the following provision, "[a]ny controversy or claim arising out of or relating to this Agreement, or the breach thereof, may be addressed in a court with equitable jurisdiction and any monetary dispute shall be settled by arbitration." In August 2006, defendant signed an employment agreement with a different mortgage company. Defendant did not resign from his position with plaintiff until December 2006.

Plaintiff filed its complaint in this case seeking specific performance of the contract and injunctive relief to restrain defendant from breaching the confidentiality and non-compete provisions of the agreement. Also in its complaint, plaintiff requested monetary damages to compensate for breach of contract, multiple tort claims, and injury due to an alleged statutory violation. In addition, plaintiff sought attorney fees, interest, and court costs. The trial court granted summary disposition in favor of defendant ruling that nothing in the contract precluded arbitration for plaintiff's equitable claims and because, according to the contract, arbitration was mandatory for the monetary claims. Plaintiff now appeals.

On appeal, plaintiff argues that its claims for injunctive relief and specific performance are not subject to arbitration and therefore should not have been dismissed by the trial court. A trial court's decision on a motion for summary disposition is also reviewed de novo. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). Summary disposition is permitted under MCR 2.116(C)(7) where "[t]he claim is barred because of release, payment, prior judgment, immunity granted by law, statute of limitations, statute of frauds, an agreement to arbitrate, infancy or other disability of the moving party, or assignment or other disposition of the claim before commencement of the action." MCR 2.116(C)(7). Further, a trial court's determination that an issue is subject to arbitration is reviewed de novo. *Rooyakker & Sitz, PLLC v Plante & Moran, PLLC*, 276 Mich App 146, 152; 742 NW2d 409 (2007).

The fundamental goal of contract interpretation is to determine and enforce the parties' intent by reading the agreement as a whole and applying the plain language used by the parties to reach their agreement. *Dobbelaere v Auto-Owners Ins. Co.*, 275 Mich App 527, 529; 740 NW2d 503 (2007). When the language of a contract is unambiguous, it is construed and enforced as written. *Quality Products & Concepts Co v Nagel Precision, Inc.*, 469 Mich 362, 375; 666 NW2d 251 (2003). A contract is ambiguous "when its provisions are capable of conflicting interpretations." *Klapp v United Ins Group Agency, Inc.*, 468 Mich 459, 467; 663 NW2d 447 (2003). Courts must consider three questions to determine if an issue is subject to arbitration: "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." *Fromm v MEEMIC Ins Co*, 264 Mich App 302, 305-306; 690 NW2d 528 (2004).

In the instant case, the operative provision in the parties' agreement is unambiguous. It provided that "[a]ny controversy or claim arising out of or relating to this Agreement, or the breach thereof, may be addressed in a court with equitable jurisdiction and any monetary dispute shall be settled by arbitration." Based on the permissive language of this provision, plaintiff was clearly permitted to bring any equitable claims, including its claims for specific performance of the contract and injunctive relief to restrain defendant from breaching the confidentiality and non-compete provisions of the agreement, in a court action. Thus, the trial court erred when it declined to review plaintiff's equitable claims and instead sent them to arbitration by virtue of its grant of defendant's motion for summary disposition.

Next, we address plaintiff's claims for monetary damages including damages to compensate it for breach of contract, multiple tort claims, and injury due to an alleged statutory violation, as well as requests for fees and costs. Again, we look to the plain language of the contractual provision at issue when we analyze these claims. The provision uses mandatory language and states specifically that "any monetary dispute shall be settled by arbitration." Thus, plaintiff's remaining claims for money damages must be brought in arbitration under the plain language of the contract.

In sum, when signing the agreement the parties agreed that equitable issues could be brought either in a court with equitable jurisdiction or in arbitration, but monetary issues must be heard in arbitration, thus the trial court erred when it declined to hear plaintiff's equitable claims but did not err when it sent plaintiff's claims for money damages to arbitration.

Affirmed in part and reversed in part and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ William C. Whitbeck

/s/ Richard A. Bandstra

/s/ Pat M. Donofrio