

STATE OF MICHIGAN
COURT OF APPEALS

RICHARD HUGH MCDERMOTT,

Plaintiff-Appellant,

v

IRA REYNOLDS NEWBLE II,

Defendant-Appellee.

UNPUBLISHED

July 20, 2010

No. 288899

Oakland Circuit Court

LC No. 2007-083989-CK

Before: K. F. KELLY, P.J., and WILDER and GLEICHER, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's order granting defendant summary disposition under MCR 2.116(C)(7). We affirm.

I. BASIC FACTS

In 1997, plaintiff, a sports agent, met with defendant, a former college basketball player, to discuss the future of defendant's basketball career. Allegedly, the parties entered into an oral agreement wherein the parties agreed that plaintiff would provide defendant services that would help defendant become a National Basketball Association (NBA) player, including on-the-court training, career mentoring and guidance, as well as encouragement. In return, defendant allegedly promised to pay plaintiff four percent of all of his NBA basketball earnings over the course of his entire NBA career, to pay plaintiff 20 percent of all future endorsement income and 10 percent of all income earned from playing overseas, and to always use plaintiff as his NBA agent. Defendant denies that he ever entered into such an agreement with plaintiff.

Plaintiff and defendant began working together and, by April of 1998, defendant had become involved in the minor league basketball clubs scouted by the NBA. Anticipating that defendant would soon become an NBA player, plaintiff applied for and became a certified NBA player agent, authorized by the National Basketball Player's Association (NBPA) to represent NBA players in salary negotiations. The NBPA is the sole bargaining representative of all NBA players, but it delegates some of its exclusive bargaining authority to "player agents" who are permitted to negotiate on behalf of NBA players within the confines of both the NBA-NBPA Collective Bargaining Agreement and the NBPA Regulations Governing Player Agents (NBPA Regulations). The NBPA Regulations mandate that player agents and players use a standard form contract, known as the Standard Player Agent Contract (SPAC).

Accordingly, in April 1998, plaintiff and defendant entered into a SPAC, which governed plaintiff's representation of defendant. Section 7 of the SPAC is an arbitration clause, which states:

Any and all disputes between the Player and the Agent involving the meaning, interpretation, application, or enforcement of this Agreement or the obligations of the parties under this Agreement shall be resolved exclusively through the Arbitration procedure set forth in Section 5 of the NBPA Regulations Governing Player Agents. . . . [I]f any arbitration hearing takes place, the NBPA may participate and present, by testimony or otherwise, any evidence relevant to the dispute. Because of the uniquely internal nature of any such dispute that may arise under this Agreement, the Player and the Agent agree that the arbitrator's award shall constitute a final and binding resolution of the dispute and neither party will seek judicial review on any ground.

Section 9 of the SPAC further includes an integration clause, which provides:

This Agreement sets forth the entire agreement between the parties. This Agreement cannot be amended or changed orally and any writing amendments or changes shall be effective only to the extent that they are consistent with the Standard Form Agreement approved by the NBPA.

This Agreement replaces and supersedes any agreement between the parties entered into at any time on or after March 7, 1986 providing fees for services performed as defined in Sections 2 and 3 above.

Sections 2 and 3, state in part:

2. Contract Services

Commencing on the date of this Agreement, the Agent agrees to represent the Player—to the extent requested by the Player—in conducting individual compensation negotiations for the performance of the Player's services as a professional basketball player with the Player's NBA club.

[If the Agent will not be "conducting individual compensation negotiations," then insert in lieu of those words: "in assisting, advising or counseling the Player in connection with individual compensation negotiations."] After a contract with the Player's club is executed, the Agent agrees to continue to assist, advise and counsel the Player in enforcing his rights under that contract.

In performing these services the Agent is the NBPA's delegated representative and is acting in a fiduciary capacity on behalf of the Player. In no event shall the Agent have the authority to bind or commit the Player in any manner without the express prior consent of the Player and in no event shall the Agent execute a player contract on behalf of the Player.

3. Compensation for Services

The Player shall pay fees to the Agent for services performed pursuant to this Agreement

In 2000, defendant was drafted into the NBA and began playing for the San Antonio Spurs. Plaintiff received a percentage of defendant's earnings consistent with the SPAC. On September 4, 2001, however, defendant terminated the SPAC and selected a new agent. Defendant, for the time period relevant to this lawsuit, continued to play professional basketball in the NBA and no longer paid plaintiff any fees.

In June 2007, plaintiff, in pro per, filed a complaint alleging that defendant breached the 1997 oral promise and also asserting a claim of promissory estoppel. Plaintiff contended that he should be awarded four percent of defendant's NBA earnings from 2002 through 2008, 20 percent of all endorsements, 10 percent from playing basketball overseas, and compensatory damages for lost profits and damage to his reputation and business. Defendant moved for summary disposition under MCR 2.116(C)(7), arguing that the SPAC constituted the parties whole agreement and that the dispute was barred by the SPAC's arbitration clause. The trial court agreed and granted summary disposition in defendant's favor. This appeal followed.

II. STANDARDS OF REVIEW

We review de novo a trial court's decision on a motion for summary disposition. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). Under MCR 2.116(C)(7), summary disposition is properly granted if a claim is barred by an agreement to arbitrate. A trial court's determination that an issue is subject to arbitration is also reviewed de novo. *Rooyakker & Sitz, PLLC v Plante & Moran, PLLC*, 276 Mich App 146, 152; 742 NW2d 409 (2007).

III. ANALYSIS

Plaintiff argues that the services he provided defendant under the alleged 1997 oral agreement are different than those covered under the SPAC and therefore, the SPAC's integration clause has no effect. He then argues that because his oral contract is outside the SPAC, the arbitration clause does not apply. We disagree.

We enforce contracts according to their terms. *Reicher v SET Enterprises, Inc*, 283 Mich App 657, 664; 770 NW2d 902 (2009). A court will examine the contractual language and give the words their plain and ordinary meanings. *English v Blue Cross Blue Shield of Mich*, 263 Mich App 449, 471-472; 688 NW2d 523 (2004). A clear and unambiguous contractual provision reflects the parties' intent and it will be construed and enforced as written. *Burkhardt v Bailey*, 260 Mich App 636, 656; 680 NW2d 453 (2004). "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." *Burns v Olde Discount Corp*, 212 Mich App 576, 580; 538 NW2d 686 (1995). "[A]ny doubts about the arbitrability of an issue should

be resolved in favor of arbitration.” *DeCaminada v Coopers & Lybrand*, 232 Mich App 492, 499; 591 NW2d 364 (1999).

Section 7 of the SPAC provides, in part:

Any and all disputes between the Player and the Agent involving the meaning, interpretation, application, or enforcement of this Agreement or the obligations of the parties under this Agreement shall be resolved exclusively through the Arbitration procedure set forth in Section 5 of the NBPA Regulations Governing Player Agents. . . . [I]f any arbitration hearing takes place, the NBPA may participate and present, by testimony or otherwise, any evidence relevant to the dispute. Because of the uniquely internal nature of any such dispute that may arise under this Agreement, the Player and the Agent agree that the arbitrator’s award shall constitute a final and binding resolution of the dispute and neither party will seek judicial review on any ground. [Emphasis added.]

Plaintiff concedes that this clause subjects the parties to arbitration but argues that because plaintiff’s services were different than those contemplated under the SPAC, they are not covered by the arbitration clause. This position, however, ignores the potential effect of the integration clause, which provides in pertinent part:

This Agreement sets forth the entire agreement between the parties.

* * *

This Agreement replaces and supersedes any agreement between the parties entered into at any time on or after March 7, 1986 providing fees for services performed as defined in Sections 2 and 3 above. [Emphasis added.]¹

The dispute at issue here, particularly the potential effect of the integration clause, is arguably within the arbitration provision. It concerns the meaning and enforcement of the SPAC. The dispute also relates to the contested nature of the services plaintiff provided defendant. These contested issues are not expressly exempt from arbitration by the terms of the contract. *Burns*, 212 Mich App at 580. Because “any doubts about the arbitrability of an issue should be resolved in favor of arbitration,” *DeCaminada*, 232 Mich App 499, the trial court did not err by granting summary disposition in defendant’s favor.

¹ Section 2 construes services broadly, to include “conducting individual compensation negotiations,” “assisting, advising or counseling the Player in connection with individual compensation negotiations,” as well as providing post-contract services to “assist, advise and counsel the Player in enforcing his rights under that contract.” With regard to compensation for these services, section 3 provides, “The Player shall pay fees to the Agent for services performed”

Affirmed.

/s/ Kirsten Frank Kelly
/s/ Kurtis T. Wilder
/s/ Elizabeth L. Gleicher