IN THE SUPREME COURT OF MISSISSIPPI

NO. 2012-CA-01045-SCT

RICHARD A. FREESE, DENNIS C. SWEET, III, TIM GOSS, SHEILA M. BOSSIER, d/b/a SHEILA M. BOSSIER, ATTORNEY AT LAW, PLLC, BOSSIER & ASSOCIATES, PLLC, SWEET & FREESE, PLLC, DENNIS C. SWEET, III, P.A., d/b/a SWEET & ASSOCIATES, THE FREESE LAW FIRM, P.C., FREESE & GOSS, PLLC AND MEDRESOLVE, PLLC

v.

DON A. MITCHELL

DATE OF JUDGMENT:	06/11/2012
TRIAL JUDGE:	HON. DAN H. FAIRLY
TRIAL COURT ATTORNEYS:	JEFFREY M. TILLOTSON ANSELM J. McLAURIN SHEILA M. BOSSIER RICHARD ARTHUR FREESE R. DAVID KAUFMAN ROBERT RICHARD CIRILLI, JR. CHUCK McRAE GRETA KEMP
COURT FROM WHICH APPEALED:	RANKIN COUNTY CHANCERY COURT
ATTORNEYS FOR APPELLANTS:	R. DAVID KAUFMAN R. RICHARD CIRILLI, JR. JEFFREY M. TILLOTSON SHEILA M. BOSSIER RICHARD A. FREESE
ATTORNEYS FOR APPELLEE:	CHUCK McRAE GRETA L. KEMP
NATURE OF THE CASE:	CIVIL - CONTRACT
DISPOSITION:	AFFIRMED - 05/15/2014
MOTION FOR REHEARING FILED:	
MANDATE ISSUED:	

CONSOLIDATED WITH

NO. 2013-CA-00361-SCT

RICHARD A. FREESE, DENNIS C. SWEET, III, TIM GOSS, SHEILA M. BOSSIER d/b/a SHEILA M. BOSSIER, ATTORNEY AT LAW, PLLC, BOSSIER & ASSOCIATES, PLLC, SWEET & FREESE, PLLC, DENNIS C. SWEET, III, P.A. d/b/a SWEET & ASSOCIATES AND FREESE & GOSS, PLLC

v.

McHUGH FULLER LAW GROUP

DATE OF JUDGMENT:	01/17/2013
TRIAL JUDGE:	HON. DAN H. FAIRLY
COURT FROM WHICH APPEALED:	RANKIN COUNTY CHANCERY COURT
ATTORNEYS FOR APPELLANTS:	R. DAVID KAUFMAN R. RICHARD CIRILLI, JR. JEFFREY M. TILLOTSON SHEILA M. BOSSIER RICHARD A. FREESE
ATTORNEYS FOR APPELLEE:	CHUCK McRAE GRETA L. KEMP
NATURE OF THE CASE:	CIVIL - CONTRACT
DISPOSITION:	AFFIRMED - 05/15/2014
MOTION FOR REHEARING FILED:	
MANDATE ISSUED:	

BEFORE WALLER, C.J., CHANDLER AND KING, JJ.

WALLER, CHIEF JUSTICE, FOR THE COURT:

¶1. The appellants in this consolidated appeal challenge the Rankin County Chancery Court's denial of their motions to compel arbitration of claims brought against them by Don A. Mitchell and the McHugh Fuller Law Group, PLLC. Finding no error, we affirm.

FACTS

¶2. This case concerns a fee dispute between associated attorneys arising out of mass-tort cases in Copiah County between 2005 and 2010. The first appeal arises out of a joint-venture agreement between Don A. Mitchell and the law firm of Sweet & Freeese, PLLC. The second appeal arises out of an alleged oral referral agreement between McHugh Fuller Law Group, PLLC, and the members of the joint venture. The relevant facts leading up to the instant dispute are as follows.

I. Mitchell and Sweet & Freese form the Joint Venture.

¶3. During the summer of 2005, Attorney Don A. Mitchell began representing Copiah County residents who claimed to have been injured by the improper disposal and elimination of certain toxic chemicals (polychlorinated biphenyls, or PCBs) at a Crystal Springs manufacturing facility. Mitchell attained representation of approximately 3,000 potential plaintiffs for a mass-tort suit related to the PCB contamination ("the PCB litigation"). To assist in this representation, Sheila Bossier, another attorney involved in the PCB litigation, recommended that Mitchell associate the law firm Sweet & Freese, PLLC, to pursue his clients' claims.

¶4. Mitchell and Sweet & Freese ("the Joint Venture") entered into a Joint Venture and Representation Agreement ("JVA") on February 28, 2006. The JVA, which did not contain an arbitration clause, set out the allocation of work responsibilities, costs, expenses, and fees among the members of the Joint Venture. The JVA applied to "all claims referred by Don Mitchell to Sweet & Freese, which are part of the PCB litigation." The JVA explicitly did not apply to "any other PCB claims which Sweet & Freese may handle, which were not referred by Mitchell." Under the JVA, Sweet & Freese would receive two-thirds of the net

attorneys' fees from the PCB litigation, and Mitchell would receive the remaining one-third. Finally, the parties agreed that the JVA could be amended only by written agreement.

¶5. Mitchell informed his clients that Sweet & Freese, as well as Bossier, would be assisting in the PCB litigation. Bossier was not a member of the Joint Venture, but she was employed by the Joint Venture and was to be compensated from Sweet & Freese's share of the attorneys' fees in the PCB litigation.

II. McHugh Fuller refers clients to the Joint Venture.

¶6. During the time Mitchell was gathering clients for the PCB litigation, the law firm of McHugh Fuller Law Group, PLLC, had been retained by approximately 1,000 Copiah County residents who claimed to have been affected by PCB contamination. Some time prior to April 17, 2007, Michael J. Fuller contacted Mitchell to discuss the possibility of the Joint Venture accepting representation of McHugh Fuller's PCB clients. In exchange for the referral, McHugh Fuller requested a "consultation/referral fee" of ten percent of the attorneys' fees recovered on behalf of the clients it referred to the Joint Venture. The terms of Mitchell's agreement with McHugh Fuller were not reduced to a separate writing; nevertheless, McHugh Fuller transferred its PCB client list to Mitchell on May 9, 2007. After receiving McHugh Fuller's PCB client files, Mitchell then referred those clients to the Joint Venture as part of the PCB litigation. A major dispute in McHugh Fuller's subsequent lawsuit is whether Sweet & Freese was aware that these clients were referred from McHugh Fuller and were subject to a referral-fee agreement.

III. Freese & Goss replaces Sweet & Freese in the PCB litigation.

¶7. Sometime after the execution of the JVA, the record does not reflect when exactly, Dennis Sweet and Richard Freese ended their business relationship and began operating their own law firms.[1] In April 2007, Freese merged with Tim Goss to form the law firm Freese & Goss, PLLC. Throughout the remainder of the PCB litigation, it appears that Freese & Goss was substituted for Sweet & Freese to represent the Joint Venture's clients, though Freese & Goss did not join the JVA, nor was the JVA ever amended or terminated.

IV. The Joint Venture terminates representation of most of its clients and files suit on behalf of its remaining clients.

¶8. By the spring of 2008, the Joint Venture represented more than 3,300 clients in the PCB litigation. Later, the Joint Venture terminated representation of approximately 3,000 PCB clients, approximately 968 of whom had been referred to the Joint Venture by McHugh Fuller. The Joint Venture was then left with 348 PCB clients, the majority of whom had been referred to the Joint Venture directly by Mitchell.

¶9. One federal lawsuit and two state lawsuits were filed on behalf of the Joint Venture's remaining PCB clients. These 348 clients became known as the "Filed Clients," as they were named plaintiffs in the PCB lawsuits. Approximately ninety-nine of the Filed Clients had been referred by McHugh Fuller.

V. Former clients are re-signed to settle with PCB defendant B.W.

[1]Freese & Goss claims that Sweet & Freese has dissolved. However, Sweet & Freese has not filed any documents with the Mississippi Secretary of State reflecting its dissolution.

¶10. In the spring of 2010, the parties to the PCB litigation were actively engaged in settlement negotiations. B.W.,[2] one of the PCB defendants, indicated that it would agree to a settlement only if it received releases from all Filed Clients as well as 3,000 other claimants not named in the PCB lawsuits. Therefore, Freese & Goss and Mitchell began contacting the Joint Venture's previously terminated clients to sign them up for a settlement with B.W. Between April and May of 2010, Freese & Goss and Mitchell undertook representation of approximately 3,000 additional PCB clients, consisting of both new clients and former clients who previously had been terminated from the Joint Venture. These clients became known as the "Unfiled Clients," because no lawsuit was ever filed on their behalf in the PCB litigation. Freese & Goss notified Mitchell that representation of the Unfiled Clients fell outside the scope of the JVA and required a new agreement regarding the allocation of fees and expenses related to those clients. No such agreement appears in the record, however, and the original JVA was never terminated.

¶11. Each Unfiled Client who entered (or re-entered) the PCB litigation signed a new representation agreement ("the Retainer Agreement") to which Freese & Goss, Mitchell, and the client were parties. The Retainer Agreement included an arbitration clause that provided:

> Any and all disputes, controversies, claims or demands arising out of, or relating to this agreement or any provision hereto, including but not limited to services of attorneys to Client, distribution of proceeds, expenses charged, fees paid or other attorneys, or any matter related to the relationship between attorneys and Client whether in contract or tort, or otherwise, at law or in equity, for damages or any other requested relief, shall be resolved by binding arbitration[.]

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[2]The PCB defendants will remain anonymous, as their identities are subject to confidentiality provisions contained in their settlement agreements with the PCB plaintiffs.

The Retainer Agreement governed the general rights and duties attendant to the attorney-client relationship; it did not contain any provisions governing fee-splitting or allocation of expenses among associated attorneys.

VI. The Filed and Unfiled Clients settle with the PCB Defendants.

¶12. Ultimately, the parties to the PCB litigation reached two separate settlements. Each settlement involved a different combination of plaintiffs and defendants.

A. The D.W. Settlement

¶13. On May 25, 2010, the Filed Clients reached a settlement with PCB defendant D.W. and related parties. The parties to the D.W. settlement entered into a Confidential Master Settlement Agreement ("the D.W. Settlement Agreement"), which included the following arbitration clause:

> The Parties and Participating Claimants agree that any dispute as to the interpretation of, or performance or breach of any obligation under, or any other issue, claim or controversy arising out of this Agreement or the Release, shall be submitted exclusively to and resolved in a final and binding arbitration.

The term "Parties" was defined as the Filed Clients and their counsel on the one hand, and the D.W. defendants on the other hand. The Unfiled Clients did not participate in this settlement.

B. The B.W. Settlement

¶14. On July 30, 2010, the Filed Clients and Unfiled Clients entered into a settlement with PCB defendant B.W. and related parties. The parties to the B.W. settlement entered into a Confidential Master Settlement Agreement ("the B.W. Settlement Agreement"), which included the following arbitration clause:

> With respect to Unfiled Claimants who elect to become Participating Claimants, any dispute as to the interpretation of, or performance or breach of any obligation under, or any other issue, claim or controversy arising out of this Settlement Agreement or any Settlement Agreement and Release, shall be submitted exclusively to and resolved in a final and binding arbitration.

Freese & Goss executed the B.W. Settlement Agreement behalf of the Unfiled Clients and their counsel.

VII. Mitchell disputes his portion of the attorneys' fees from the settlements.

¶15. On January 19, 2011, Mitchell met with Freese to discuss fees and expenses related to the PCB litigation. By this point, Freese & Goss had received all settlement funds from the PCB defendants. The D.W. settlement funds had been disbursed to the Filed Clients, and the B.W. settlement funds were being calculated for disbursement. At the meeting, Freese gave Mitchell a document representing the estimated total amount of attorneys' fees owed to Mitchell as a result of the PCB settlements. Mitchell claims that Freese could not explain how the fee amount had been calculated, nor did he have documentation to support the amount.

¶16. On February 9, 2011, Freese & Goss sent Mitchell a check for $258,545.79, reflecting partial payment of his attorneys' fees for the D.W. settlement. This action sparked an ongoing dispute between Mitchell and Freese & Goss regarding the correct calculation of Mitchell's fee. Mitchell claimed that he was never given a complete breakdown of the settlement disbursements to each client, and that Freese & Goss had overcharged him for unexplained litigation expenses. Mitchell also continued to assert his position that he was owed one-third of the attorneys' fees collected from the Filed *and* Unfiled Clients. Freese

responded that Mitchell had agreed to receive only ten percent of the attorneys' fees collected from the Unfiled Clients, and that he now considered Mitchell's entire share of the fee to be in dispute.

PROCEDURAL HISTORY

I. Mitchell files suit against Freese & Goss.

¶17. On February 10, 2012, Mitchell filed a complaint in Rankin County Chancery Court against Richard Freese, Dennis Sweet, Tim Goss, Sheila Bossier, Sweet & Freese, Freese & Goss, Sweet & Associates, Bossier & Associates, and various other entities related to the PCB litigation,[3] alleging concealment, breach of fiduciary duty, fraud/conversion, unjust enrichment, and breach of contract.[4] Mitchell demanded an accounting of all settlement funds received from the PCB defendants, all expenses claimed or paid from the settlement funds, and all amounts disbursed to the PCB clients. Mitchell also sought damages for the fees wrongfully withheld from him, as well as punitive damages.

¶18. Freese & Goss filed a motion to compel arbitration of Mitchell's claims on February 27, 2012. Freese & Goss asserted that Mitchell's claims were covered by the arbitration clauses contained in the Unfiled Clients' Retainer Agreements, the D.W. Settlement Agreement, and the B.W. Settlement Agreement. After a hearing on June 11, 2012, the chancery court denied the motion to compel arbitration. Subsequently, this Court granted

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[3]From this point on, we will refer to the appellants collectively as "Freese & Goss," because the majority of Mitchell's claims are against Freese & Goss, and his claims against the other appellants generally arise out of their relationship with Freese & Goss.

[4]Mitchell amended his complaint on February 15, 2012.

Freese & Goss's request to stay all proceedings in the lower court pending an appeal of the arbitration issue.[5]

II. McHugh Fuller files suit against Freese & Goss.

¶19. On September 27, 2012, while the appeal in Mitchell's case was pending before this Court, McHugh Fuller filed a complaint against Freese & Goss[6] in Rankin County Chancery Court, alleging breach of implied/quasi-contract, unjust enrichment, breach of duty of good faith and fair dealing and other fiduciary duties, civil conspiracy/conspiracy to defraud, fraud/fraudulent concealment, and conversion. McHugh Fuller claimed that it was a third-party beneficiary to the JVA and was entitled to ten percent of the attorneys' fees collected from the clients it had referred to the Joint Venture. McHugh Fuller argued that Freese & Goss willfully had breached an implied agreement by refusing to pay the referral fee. McHugh Fuller requested an equitable accounting of all moneys disbursed in the PCB settlements, monetary damages in satisfaction of the terms of the implied referral-fee agreement, injunctive relief prohibiting Freese & Goss from disposing of funds derived from McHugh Fuller's referrals, and punitive damages.

¶20. On December 3, 2012, Freese & Goss filed a motion to compel arbitration of McHugh Fuller's claims. The chancery court denied the motion to compel arbitration but granted

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[5]This Court has jurisdiction to hear an appeal challenging a lower court's order denying a motion to compel arbitration, even though such an order is not a typical final judgment. *See* ***Tupelo Auto Sales, Ltd. v. Scott***, 844 So. 2d 1167, 1170 (Miss. 2003).

[6]McHugh did not name MedResolve, LLC, as a defendant in its complaint but added several unknown individuals and entities as defendants. Otherwise, the defendants in the two cases are the same.

Freese & Goss's subsequent motion to stay the litigation pending the appeal in Mitchell's case. Freese & Goss then filed a notice of appeal in the McHugh Fuller case.

¶21. This Court ordered the Mitchell case and the McHugh Fuller cases to be consolidated. On appeal, Freese & Goss argues that the chancery court erred in denying its motions to compel arbitration.

STANDARD OF REVIEW

¶22. This Court reviews *de novo* the grant or denial of a motion to compel arbitration. ***East Ford, Inc. v. Taylor***, 826 So. 2d 709, 713 (Miss. 2002) (citing ***Webb v. Investacorp, Inc.***, 89 F.3d 252, 258 (5th Cir. 1996)). The scope of such review is limited, however; this Court does not review the merits of the underlying claim. ***Harrison County Commercial Lot, LLC v. H. Gordon Myrick, Inc.***, 107 So. 3d 943, 949 (Miss. 2013) (citing ***Smith Barney, Inc. v. Henry***, 775 So. 2d 722, 725 (Miss. 2001)). "All doubts concerning the scope of arbitrable issues, the construction of contract language, and asserted defenses to arbitration must be resolved in favor of arbitration." ***Slater-Moore v. Goeldner***, 113 So. 3d 521, 528 (Miss. 2013) (citing ***MS Credit Ctr., Inc. v. Horton***, 926 So. 2d 167, 175 (Miss. 2006)).

DISCUSSION

I. Whether the trial court erred in denying the motion to compel arbitration of Mitchell's claims.

¶23. The parties agree that the Federal Arbitration Act (FAA), codified in 9 U.S.C. § 1 *et seq*., applies to the arbitration provisions at issue here because they are "written provision[s] in a contract evidencing a transaction involving commerce." 9 U.S.C. § 2 (2006); *see also* ***Scruggs v. Wyatt***, 60 So. 3d 758, 766-67 (applying the FAA to an arbitration clause in an

attorney joint-venture agreement). In determining the validity of a motion to compel arbitration under the FAA, this Court employs the two-prong analysis set out in ***East Ford, Inc. v. Taylor***, 826 So. 2d 709, 713 (Miss. 2002). We must determine (1) whether the parties agreed to arbitrate the dispute, and (2) whether legal constraints external to the parties' agreement bar arbitration of the dispute. ***Id.***

A. Whether the parties agreed to arbitrate the dispute.

¶24. "The first prong [of the ***East Ford*** test] has two considerations: (1) whether there is a valid arbitration agreement and (2) whether the parties' dispute is within the scope of the arbitration agreement." ***Id***. Because the parties agree that the arbitration provisions at issue are valid and enforceable under the FAA, the first consideration of the first prong is not in dispute. Mitchell disputes only the scope of the arbitration provisions.

¶25. Under the second consideration of the first prong, "two questions must be answered: (1) whether the proper forum for determining the scope of the arbitration agreement is in court or in arbitration, and (2) whether the arbitration agreement encompasses the dispute." ***Greater Canton Ford Mercury, Inc. v. Ables***, 948 So. 2d 417, 421-22 (Miss. 2007) (citations omitted). The parties agree that court is the proper forum for determining the scope of the arbitration agreements. *See* ***id.*** at 422 (quoting ***AT&T Techs., Inc. v. Commc'ns Workers of America, et al.***, 475 U.S. 643, 649, 106 S. Ct. 1415, 89 L. Ed. 2d 648 (1986)) ("Whether a party is bound by an arbitration agreement is generally considered an issue for the courts, not the arbitrator, '*[u]nless the parties clearly and unmistakably provide otherwise.*'") (emphasis in original). Therefore, this Court must decide only whether the arbitration agreement encompasses the parties' dispute. Three arbitration clauses arguably apply to

Mitchell's claims: the Retainer Agreement, the B.W. Settlement Agreement, and the D.W. Settlement Agreement. We will address each agreement separately.

1. The Retainer Agreement

¶26. The Retainer Agreement was executed "between DON MITCHELL, ESQ. and FREESE & GOSS, PLLC (hereinafter Attorneys) and [Unfiled Client's name] (hereinafter Client)" and governs the typical rights and obligations of the attorney-client relationship.[7] Freese & Goss argues that Mitchell's allegations are related to the Retainer Agreement and therefore must be arbitrated.

¶27. The Retainer Agreement's arbitration clause provides that any disputes "arising out, of or related to" the agreement must be resolved by arbitration. An arbitration clause governing disputes "related to" a contract is considered to be a "broad" arbitration clause. ***Horton***, 926 So. 2d at 176. "Because broad arbitration language is capable of expansive reach, courts have held that 'it is only necessary that the dispute 'touch' matters covered by [the contract] to be arbitrable.'" ***Horton***, 926 So. 2d at 176 (citing ***Pennzoil Exploration and Prod. Co. v. Ramco Energy Ltd.***, 139 F.3d 1061, 1068 (5th Cir. 1998)). However, "even broad arbitration clauses have their limits." ***Pennzoil***, 139 F.3d at 1067 n.8. *See*, *e.g.*, ***Smith ex rel. Smith v. Captain D's, LLC***, 963 So. 2d 1116, 1120 (Miss. 2007) (holding that provision in employment contract requiring arbitration of all claims "arising out of or relating

[7]Among other things, the Retainer Agreement provides that the attorneys would receive forty-five percent of any settlement or fifty percent of any judgment won at trial; that the attorneys would advance all litigation costs and expenses and would be reimbursed from the settlement or judgment funds; that the attorneys could associate with additional counsel to prosecute the case; and that the attorneys could negotiate a settlement on behalf of the client.

to" application for employment, employment, and cessation of employment, was not broad enough to require arbitration of employee's sexual-battery claim). In determining whether a particular claim falls within the scope of an arbitration agreement, this Court has adopted the federal courts' instruction to "focus on factual allegations in the complaint rather than the legal causes of action asserted." ***Waste Mgmt., Inc. v. Residuos Industriales Multiqum, S.A.***, 372 F.3d 339, 344 (5th Cir. 2004) (quoting ***Smith/Enron Cogeneration Ltd. P'ship v. Smith Cogeneration Int'l***, 198 F.3d 88, 99 (2d Cir. 1999)). Mitchell's claims can be summarized by the following factual allegations: (1) he was not paid the correct portion of the attorneys' fees collected from the PCB settlements, (2) he was overcharged for litigation expenses, and (3) Freese & Goss failed to provide Mitchell with an accounting of the funds disbursed to the clients.

¶28. Freese & Goss argues that, because the Retainer Agreement contains provisions generally governing attorneys' fees and expenses, Mitchell's claims "touch matters covered by" the Retainer Agreement. Freese & Goss believes this argument is supported by our holding in ***Scruggs v. Wyatt***, 60 So. 3d 758 (Miss. 2011). In ***Scruggs***, an attorney whose law firm was a member of a single-purpose joint venture sued another member of the joint venture to recover his share of fees for work he allegedly had performed for the joint venture. ***Id.*** at 761. This Court held that the plaintiff's claims were subject to the arbitration clause contained in the joint-venture agreement executed by his law firm, even though he had not signed the agreement personally. ***Id.*** at 773. In so holding, this Court found that the plaintiff's claims clearly "touched matters covered by" the joint-venture agreement because he had claimed to be a "fee-sharing participant" in the joint venture and alleged that the

defendant had breached the joint venture-agreement itself. ***Id.*** at 769. Under the factual allegations in the plaintiff's complaint, the defendants' liability could not be determined without direct reference to the joint-venture agreement, "the sole and only agreement of the members" of the joint venture. ***Id.***

¶29. This case presents critical factual differences that distinguish it from ***Scruggs***. The ***Scruggs*** plaintiff was attempting to enforce a joint-venture agreement among attorneys that contained a broad arbitration clause requiring arbitration of "[a]ny dispute arising under or relating to the terms of this agreement[.]" ***Id***. at 761. Here, Mitchell also is attempting to enforce a joint-venture agreement among attorneys, but the JVA does *not* contain an arbitration clause. Freese & Goss attempts to liken the joint-venture agreement in ***Scruggs*** to the Retainer Agreement in this case. But, unlike the joint-venture agreement in ***Scruggs***, which explicitly governed the rights and obligations of the members of the joint venture, the Retainer Agreement does not provide for or even contemplate the allocation of fees and expenses among attorneys in the PCB litigation. Therefore, we find that Mitchell's claims against Freese & Goss are not "related to" the Retainer Agreement.

¶30. In addition, no evidence in the record suggests that the parties to the Retainer Agreement intended for internal disputes among attorneys to be subject to arbitration. It is true that this Court has "readily acknowledged that there is a strong federal policy favoring arbitration." ***Pre-Paid Legal Services v. Battle***, 873 So. 2d 79, 84 (Miss. 2004) (citations omitted). However, because arbitration is a matter of contract, "a party cannot be required to submit to arbitration any dispute which he has not agreed so to submit." ***Id***. at 83 (quoting ***AT&T Techs., Inc.***, 475 U.S. at 648). We must not "override the clear intent of the parties,

or reach a result inconsistent with the plain text of the contract, simply because the policy favoring arbitration is implicated." ***EEOC v. Waffle House, Inc.***, 534 U.S. 279, 294, 122 S. Ct. 754, 151 L. Ed. 2d 755 (2002). "Our law requires this Court to accept the plain meaning of a contract as the intent of the parties if no ambiguity exists." ***B.C. Rogers Poultry, Inc. v. Wedgeworth***, 911 So. 2d 483, 487 (Miss. 2005) (finding arbitration clause in contract did not apply retroactively, where contract contained no language suggesting parties had agreed to retroactive application, and where parties' prior agreements did not contain arbitration clauses).

¶31. Nothing in the plain language of the Retainer Agreement suggests that the parties intended it to govern internal disputes among attorneys. The Retainer Agreement never refers to Don Mitchell and Freese & Goss as distinct parties, but only as the collective "Attorneys," and governs only the relationship between the "Attorneys" and their clients. No evidence indicates that Mitchell intended to waive his right to litigate claims against fellow attorneys by signing a contract that clearly governs only the attorney-client relationship. If the parties did agree to a separate fee agreement for the Unfiled Clients, as Freese & Goss contends, then such agreement is not bound by an arbitration clause. Accordingly, we find that interpreting the Retainer Agreement's arbitration clause to include an internal fee-sharing dispute among attorneys would be inconsistent with the plain language of the Retainer Agreement.

2. The Settlement Agreements

¶32. Freese & Goss argue that Mitchell's claims are subject to the arbitration clause contained in the D.W. and B.W. Settlement Agreements because they "arise out of" the settlement agreements.

¶33. The arbitration clauses contained in both of the settlement agreements can be described as "narrow" arbitration clauses because they require arbitration only of disputes "arising out of" the settlement agreements themselves. *See* ***Horton***, 926 So. 2d at 176 ("[N]arrow arbitration language requires arbitration of disputes that directly 'arise out of' a contract."). Specifically, the D.W. Settlement Agreement requires arbitration of "any dispute as to the interpretation of, or performance or breach of any obligation under, or any other issue, claim or controversy *arising out of this Agreement* or the Release." The B.W. Settlement Agreement uses almost identical language but specifically applies "[w]ith respect to Unfiled Claimants who elect to become Participating Claimants[.]" Federal courts have held that disputes over collateral issues generally do not fall within the scope of a narrow arbitration clause. *See* ***Louis Dreyfus Negoce S.A. v. Blystad Shipping & Trading, Inc.***, 252 F.3d 218, 224 (2d Cir. 2001); ***United Steelworkers of America, AFL-CIO-CLC v. Duluth Clinic, Ltd.***, 413 F.3d 786, 789 (8th Cir. 2005); ***Chelsea Family Pharmacy, PLLC v. Medco Health Solutions, Inc.***, 567 F.3d 1191, 1197 (10th Cir. 2009). *See also* ***Sedco, Inc. v. Petroleos Mexicanos Mexican Nat'l Oil Co. (Pemex)***, 767 F.2d 1140, 1145 n.10 (5th Cir. 1985) (quoting ***Prudential Lines, Inc. v. Exxon Corp.*** 704 F.2d 59, 65 (2d Cir. 1983) ("[I]f the clause is 'narrow,' arbitration should not be compelled unless the court determines that the dispute falls within the clause."); ***Mediterranean Enters., Inc., v. Ssangyong Corp.***, 708 F.3d 1458, 1464 (9th Cir. 1983) ("We have no difficulty finding that 'arising hereunder' is

intended to cover a much narrower scope of disputes, *i.e.*, only those relating to the interpretation and performance of the contract itself.").

¶34. We find that Mitchell's claims do not arise out of either of the settlement agreements. Most importantly, the settlement agreements govern only the terms of the settlements between the plaintiffs and the defendants in the PCB litigation. Mitchell does not claim that Freese & Goss has breached the settlement agreements, nor does he attempt to enforce any specific provision in the settlement agreements. Indeed, there is no provision in either settlement agreement governing the division of expenses or attorneys' fees that Mitchell could seek to enforce. Accordingly, there is no provision in either of the settlement agreements out of which Mitchell's claims arise. With respect to the Filed Clients, Mitchell's claims arise directly out of the JVA with Sweet & Freese. There is a dispute as to whether the JVA also governs Mitchell's claims with respect to the Unfiled Clients. But this dispute is completely collateral to the settlement agreements and is not within the scope of their narrow arbitration clauses.

B. Whether Mitchell is estopped from denying the applicability of the arbitration clauses to his claims.

¶35. For the first time on appeal, Freese & Goss argues that Mitchell is bound by the arbitration clauses contained in the Retainer Agreement and the settlement agreements under the doctrine of direct-benefit estoppel.[8] Freese & Goss claims that, because Mitchell is

[8]"Direct-benefit estoppel 'involve[s] non-signatories who, during the life of the contract, have embraced the contract despite their non-signatory status but then, during litigation, attempt to repudiate the arbitration clause in the contract.'" ***Hellenic Inv. Fund, Inc. v. Det Norske Veritas***, 464 F.3d 514, 517-18 (5th Cir. 2006) (quoting ***E.I. DuPont de Nemours & Co. v. Rhone Poulenc Fiber & Resin Intermediates, S.A.S.***, 269 F.3d 187, 200 (3d Cir. 2001)).

seeking to benefit from the terms of the Retainer Agreement and the settlement agreements, i.e., a share of the fees derived therefrom, he should be estopped from attempting to avoid the arbitration clauses contained in those agreements. We find that Freese & Goss has waived this argument by failing to raise it before the trial court, either in its motion to compel arbitration or at the hearing on its motion. "This Court has long held that it will not consider matters raised for the first time on appeal." ***Triplett v. Mayor and Bd. of Aldermen of Vicksburg***, 758 So. 2d 399, 401 (Miss. 2000). Doing so would "depriv[e] the trial court of the opportunity to first rule on the issue, so that we can then review such trial court ruling under the appropriate standard of review." ***Alexander v. Daniel***, 904 So. 2d 172, 183 (Miss. 2005). Therefore, we decline to apply direct-benefit estoppel to Mitchell.

¶36. In sum, we find that Mitchell's claims against Freese & Goss fall outside the scope of the arbitration clauses in question. There is no evidence that the parties intended the Retainer Agreement to govern disputes among attorneys in the PCB litigation, and Mitchell's claims do not touch matters covered by that agreement. Further, Mitchell's claims do not arise out of the settlement agreements. Accordingly, the trial court properly denied the motion to compel arbitration of Mitchell's claims.

II. Whether the trial court erred in denying the motion to compel arbitration of McHugh Fuller's claims.

¶37. Freese & Goss argues that McHugh Fuller's claims are governed by the Retainer Agreement and the settlement agreements and therefore are subject to the arbitration clauses contained in those agreements. Like Mitchell, McHugh Fuller does not dispute the validity of the arbitration clauses contained in the Retainer Agreement or the Settlement Agreements.

McHugh Fuller simply argues that its claims relate only to the JVA, which does not contain an arbitration clause, and that its claims do not fall within the scope of any of the arbitration clauses in question.

¶38. McHugh Fuller was not a party to the Retainer Agreement or either of the settlement agreements. Generally, a contract cannot bind a nonparty. ***Waffle House***, 534 U.S. at 294. However, this Court has held that "a nonsignatory party may be bound to an arbitration agreement if so dictated by the ordinary principles of contract and agency." ***Miss. Care Ctr. of Greeneville, LLC v. Hinyub***, 975 So. 2d 211, 216 (Miss. 2008) (quoting ***Washington Mut. Fin. Group, LLC v. Bailey***, 364 F.3d 260, 266 (5th Cir. 2004)). "Six theories for binding a nonsignatory to an arbitration agreement have been recognized: (a) incorporation by reference; (b) assumption; (c) agency; (d) veil-piercing/alter ego; (e) estoppel; and (f) third-party beneficiary." ***Bridas S.A.P.I.C. v. Government of Turkmenistan***, 345 F.3d 347, 356 (5th Cir. 2003) (citations omitted). As it did with Mitchell's claims, Freese & Goss asserts that McHugh Fuller is bound to arbitrate its claims under the doctrine of direct-benefit estoppel.

¶39. Freese & Goss failed to raise its direct-benefit-estoppel argument before the trial court, and its other arguments hinge on a finding that McHugh Fuller, a nonsignatory, can be bound by any of the contracts in question. Therefore, we find that Freese & Goss waived this argument with respect to McHugh Fuller's claims. *See* ***Triplett***, 758 So. 2d at 401. Because McHugh Fuller is not bound by the contracts in question, its claims against Freese & Goss are not subject to arbitration.

CONCLUSION

¶40. For the foregoing reasons, we affirm the chancery court's denial of the appellants' motions to compel arbitration with respect to both Mitchell and McHugh Fuller.

¶41. **AFFIRMED.**

DICKINSON AND RANDOLPH, P.JJ., LAMAR, KITCHENS, CHANDLER, PIERCE, KING AND COLEMAN, JJ., CONCUR.