[Cite as *Frazier v. Am. Family Ins. Co.*, 2010-Ohio-3733.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 94438

KESHA FRAZIER

PLAINTIFF-APPELLEE

vs.

AMERICAN FAMILY INSURANCE CO.

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CV-695305

BEFORE: Gallagher, A.J., Rocco, J., and Sweeney, J.

RELEASED AND JOURNALIZED: August 12, 2010

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SEAN C. GALLAGHER, A.J.:

{¶ 1} Appellant, American Family Insurance Company ("American Family"), appeals the decision of the Cuyahoga County Court of Common Pleas that stayed the action and compelled arbitration in this matter. For the reasons stated herein, we affirm the decision of the trial court.

{¶ 2} On June 9, 2009, appellee, Kesha Frazier, filed a complaint for

declaratory judgment and other relief against defendants, American Family and Chase Home Finance, LLC ("Chase"). The complaint was filed after American Family denied Frazier's claim for fire loss to her home under a homeowner's policy of insurance. Chase is listed on the policy as a mortgagee. The fire reportedly occurred on May 26, 2008. American Family denied the claim by letter dated April 22, 2009, citing intentional concealment and material misrepresentations as the reason for the denial of coverage and its voiding of the policy.

{¶ 3} After initial pleadings were filed, Frazier filed a combined motion for declaratory relief and to compel arbitration. The trial court granted the motion, stayed the action, and referred the matter to arbitration. The court found that "the issue involved in this action is referable to arbitration under an agreement in writing for arbitration." American Family timely filed this appeal.

{¶ 4} American Family raises three assignments of error for our review. We begin with the third assignment of error, which provides as follows: "3. The trial court erred in referring the dispute to arbitration when the subject of the dispute is not arbitratable [sic] under the policy terms."

{¶ 5} In general, a trial court's judgment on a motion to stay proceedings and compel arbitration is reviewed under the abuse of discretion standard. *Eagle v. Fred Martin Motor Co.*, 157 Ohio App.3d 150,

2004-Ohio-829, 809 N.E.2d 1161, ¶ 10. An abuse of discretion implies that the trial court's actions were unreasonable, arbitrary, or unconscionable. *State ex rel. Sartini v. Yost*, 96 Ohio St.3d 37, 41, 2002-Ohio-3317, 770 N.E.2d 584, ¶ 21.

{¶ 6} Ohio courts recognize a presumption in favor of arbitration when the matter in dispute falls within the scope of the arbitration provision. *Taylor Bldg. Corp. of Am. v. Benfield*, 117 Ohio St.3d 352, 2008-Ohio-938, 884 N.E.2d 12, ¶ 27. In construing an insurance contract, it is well established that provisions that are reasonably susceptible of more than one interpretation will be construed strictly against the insurer and liberally in favor of the insured. *Branham v. CIGNA HealthCare of Ohio, Inc.*, 81 Ohio St.3d 388, 390, 1998-Ohio-615, 692 N.E.2d 137.

{¶ 7} In the case sub judice, the arbitration provision provides in pertinent part as follows: "In making a claim under the property coverages, if **you** or **we** cannot agree as to the amount of liability the controversy may be settled by arbitration. * * * ." (Emphasis in original.)

{¶ 8} The arbitration clause indicates that disputes as to the "amount of liability" for property coverage may be settled by arbitration. American Family argues that this clause is limited to disputes as to the amount of liability under the property damage section of the insurance policy. It asserts that disputes involving false or fraudulent representations are not subject to

the arbitration provision. Frazier claims that the phrase is ambiguous and can be read as permitting arbitration when there is a disagreement as to the amount of damages for which American Family is liable, or when the parties disagree as to whether American Family is liable to provide coverage.

{¶ 9} We must recognize that the fact of American Family's liability and the amount the insurer must pay for property loss or damage require two separate determinations. By determining that Frazier was not entitled to coverage under the policy, American Family effectively determined that it had no liability under the policy, i.e., its "amount of liability." American Family did not draft the arbitration clause to clearly limit its scope to disputes as to the amount of property loss. Rather, we agree with Frazier that the policy can be read to permit arbitration of disputes over coverage and damages. Considering the policy favoring arbitration and construing contract language against the drafter, we find that the trial court properly compelled arbitration in this matter. Accordingly, we overrule American Family's third assignment of error.

{¶ 10} Appellant's first and second assignments of error challenge the timeliness of the lawsuit and the demand for arbitration. American Family argues that the trial court erred by failing to address the issue of Frazier's compliance with the policy's one-year suit filing limitation and 60-day demand for arbitration provision. When a contract contains an enforceable arbitration

clause, claims that relate to the contract generally are properly left to the arbitrator in the first instance. See *Taylor Bldg. Corp. of Am.*, supra at ¶ 42. Therefore, issues as to whether Frazier complied with the contractual time limits and whether such requirements may have been extended or excused are all questions bearing on the substantive performance of the contract that should be determined by the arbitrator. See *Bd. of Library Trustees, Shaker Hts. Pub. Library v. Ozanne Constr. Co., Inc.* (1995), 100 Ohio App.3d 26, 30, 651 N.E.2d 1356. American Family's first and second assignments of error are overruled.

Judgment affirmed.

It is ordered that appellee recover from appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to said court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

SEAN C. GALLAGHER, ADMINISTRATIVE JUDGE

KENNETH A. ROCCO, J., and
JAMES J. SWEENEY, J., CONCUR