Affirmed and Opinion filed September 15, 2022.

In The

Fourteenth Court of Appeals

NO. 14-21-00634-CV

CASH AMERICA PAWN LP, Appellant

V.

VICTORIA MEZA, Appellee

On Appeal from the 11th District Court
Harris County, Texas
Trial Court Cause No. 2021-35695

OPINION

Two questions are presented in this interlocutory appeal from an order denying a motion to compel arbitration: first, whether a premises liability claim is subject to an arbitration provision contained within a pawn transaction agreement; and second, whether the case should be submitted to an arbitrator pursuant to an arbitral delegation clause. The trial court implicitly determined that the answer to both questions was "no." For the reasons given below, we agree with the trial court and affirm its order.

BACKGROUND

In 2017, Victoria Meza went to a Cash America location in Pasadena, Texas, where the parties mutually agreed that Meza would pawn two nail guns for two hundred dollars. The agreement was reduced to writing, and the writing contained an arbitration provision, which stated as follows:

> Each party to this agreement agrees to binding arbitration ("agreement"), under the Federal Arbitration Act, and hereby expressly waives any right to trial by jury of any claim, demand, action, or cause of action whatsoever, or claims for injunctive relief arising under this agreement or in any way connected with, related or incidental to the dealings between the parties with respect to this agreement, or the transactions contemplated by this agreement in each case, or in any way arising out of or between the relationship between the parties whether now existing or hereafter arising, and whether sounding in contract, tort, equity, or otherwise (hereinafter collectively, "disputes").
>
> The agreement also contained the following arbitral delegation clause:
>
> All disputes, including issues of arbitrability, will be conducted in the county of the customer's billing address, in accordance with the American Arbitration Association's rules and procedures. A single, neutral arbitrator chosen by the parties will conduct the arbitration.

Meza performed her obligations under the agreement by timely repaying the two hundred dollars, plus interest. Cash America also performed its obligations under the agreement by returning the nail guns to Meza. Both performances occurred in 2017, bringing the contract to a close.

Two years later, in 2019, Meza visited a different Cash America location in Houston, Texas, and while shopping there for a trailer, she allegedly tripped and fell due to an unspecified dangerous condition on the ground. Meza then filed suit against Cash America, asserting a single cause of action for premises liability.

Cash America moved to compel arbitration. In its motion, Cash America argued that Meza's premises liability claim was subject to the parties' previously executed arbitration agreement because that agreement brought within its scope all disputes arising out of both the agreement and the parties' relationship, even if those disputes arose in the future and sounded in tort. Cash America further argued that arbitration must be compelled because the parties had mutually agreed to delegate all questions of arbitrability to binding arbitration.

Meza filed a response, in which she argued that her premises liability claim was not subject to the arbitration agreement because her claim had no causal nexus to the agreement itself. Meza emphasized that the agreement concerned her nail guns, which she pawned in 2017 at a Cash America location in Pasadena, not her visit in 2019 to a different Cash America location in Houston, where she allegedly suffered physical injuries while shopping for a trailer.

The trial court agreed with Meza and signed an order denying Cash America's motion to compel arbitration. Cash America now timely brings this interlocutory appeal of that order.

ANALYSIS

I. The premises liability claim does not fall within the scope of the arbitration agreement.

We review a trial court's order denying a motion to compel arbitration for an abuse of discretion. *See Henry v. Cash Biz, LP*, 551 S.W.3d 111, 115 (Tex. 2018). Under this standard, we defer to the trial court's factual determinations if they are supported by the evidence, but we review the trial court's legal determinations de novo. *Id.*

As the party seeking to compel arbitration, Cash America had the burden of showing (1) that a valid arbitration agreement exists and (2) that Meza's claim fell

within the scope of that agreement. *See G.T. Leach Builders, LLC v. Sapphire V.P., LP*, 458 S.W.3d 502, 524 (Tex. 2015).

To satisfy the first burden, Cash America attached to its motion a complete copy of its earlier agreement with Meza. The agreement consists of only two pages. The first page contains the terms governing the pawn transaction of the two nail guns. The second page contains the arbitration provision, along with the signatures of the two parties.

Meza has not challenged whether this agreement is valid. Instead, she has challenged only whether her premises liability claim falls within the scope of the agreement, which concerns Cash America's second burden.

The scope of an arbitration clause is a legal determination that we consider de novo. *See McReynolds v. Elston*, 222 S.W.3d 731, 740 (Tex. App.—Houston [14th Dist.] 2007, no pet.). There is a presumption favoring arbitration, which generally requires that we resolve doubts as to the scope of the agreement in favor of coverage. *Id.* But this presumption is not without limits and cannot serve to stretch a contractual clause beyond the scope intended by the parties. *Id.*

When considering the intent of the parties—and therefore the scope of the agreement—we look at the plain language of the agreement. *See Wagner v. Apache Corporation*, 627 S.W.3d 277, 286 (Tex. 2021). We reproduce the key language from that agreement here:

> Each party to this agreement agrees to binding arbitration ("agreement"), under the Federal Arbitration Act, and hereby expressly waives any right to trial by jury of any claim, demand, action, or cause of action whatsoever, or claims for injunctive relief arising under this agreement or in any way connected with, related or incidental to the dealings between the parties with respect to this agreement, or the transactions contemplated by this agreement in each case, or in any way arising out of or between the relationship between the parties whether

> now existing or hereafter arising, and whether sounding in contract, tort, equity, or otherwise (hereinafter collectively, "disputes").

Thus, the parties agreed to arbitrate any dispute "arising under this agreement"; any dispute "connected with, related or incidental to the dealings between the parties with respect to this agreement, or the transactions contemplated by this agreement"; and any dispute "arising out of or between the relationship between the parties." All of this language signifies an intent to arbitrate disputes relating to the underlying pawn transaction. Indeed, the arbitration provision immediately follows the terms governing that pawn transaction.

Cash America still contends that the premises liability claim falls within the scope of the agreement, emphasizing in particular the final clause which states that the parties agreed to arbitrate any dispute "in any way arising out of or between the relationship between the parties whether now existing or hereafter arising, and whether sounding in contract, tort, equity, or otherwise." Cash America believes that, through this language, the parties agreed to arbitrate any future dispute, so long as the dispute arose between the parties' "relationship," even if that relationship exists as between an invitee and a premises owner. But to accept this argument, we would have to conclude that the parties intended to arbitrate every possible dispute between them into perpetuity—no matter the dispute's connection to the underlying pawn transaction. There is nothing to support a holding that the parties intended for such a limitless scope.

We believe that a dispute arises between the parties' relationship if the dispute is related to the underlying agreement—i.e., the earlier pawn transaction. Meza's premises liability claim has no relationship to that pawn transaction. As explained above, the pawn transaction had ended, with both parties having fully performed their obligations two years before the premises liability claim ever arose. We

therefore conclude that Meza's premises liability claim does not fall within the scope of the arbitration agreement.

II. The case should not be submitted to an arbitrator pursuant to the arbitral delegation clause.

Cash America argues in the alternative that the case should be sent to an arbitrator because the parties mutually agreed to delegate questions of arbitrability to an arbitrator.

In support of this argument, Cash America relies primarily on *RSL Funding, LLC v. Newsome*, 569 S.W.3d 116 (Tex. 2018). But that case is distinguishable on the facts. The plaintiff in that case entered into a contract to assign the proceeds of his structured settlement in exchange for a lump sum payment. *Id.* at 119. The contract contained an arbitration provision, as well as an arbitral delegation clause, but before the contract could be implemented, it had to be approved by a judge. *Id.* The judge entered one order approving the contract. *Id.* But later, after the expiration of the court's plenary power, the judge believed that the order contained a clerical error, and the judge entered a nunc pro tunc order. *Id.* The parties disputed whether the error was clerical or judicial, and thus whether the judge had the power to enter this second order, and they also disputed whether a court or an arbitrator had the authority to answer that question on the merits. *Id.* at 119–20. The Supreme Court of Texas ultimately held that this gateway issue had to be decided by an arbitrator, pursuant to the parties' arbitral delegation clause. *Id.* at 123.

The dispute in *RSL Funding* had an obvious connection to the underlying agreement containing the arbitral delegation clause. The same connection can be found in the disputes in the other lower court cases cited by Cash America:

- *Trafigura Pte. Ltd. v. CNA Metals Ltd.*, 526 S.W.3d 612 (Tex. App.—Houston [14th Dist.] 2017, no pet.) (the agreement was a contract for

the sale of iron ore, and the dispute was whether a party had conspired to fraudulently purchase iron ore from a third party);

- *Berry Y&V Fabricators, LLC v. Bambace*, 604 S.W.3d 482 (Tex. App.—Houston [14th Dist.] no pet.) (the agreement was an employment contract, and the dispute was whether the plaintiff had been sexually harassed at work and subjected to a hostile work environment);

- *Taylor Morrison of Tex., Inc. v. Klein*, Nos. 14-20-00520-CV & 14-20-00532-CV, 2021 WL 5459222 (Tex. App.—Houston [14th Dist.] Nov. 23, 2022, no pet.) (mem. op.) (the agreement was a purchase agreement for a home, and the dispute was whether there had been construction defects that resulted in significant mold growth);

- *Taylor Morrison of Tex., Inc. v. Skufca*, — S.W.3d —, 2021 WL 6138979 (Tex. App.—Houston [1st Dist.] 2021, no pet.) (same as *Klein*); and

- *Tejas Tubular Prods., Inc. v. Palacios*, No. 01-21-00136-CV, 2021 WL 5364767 (Tex. App.—Houston [1st Dist.] Nov. 18, 2021, no pet.) (mem. op) (the agreement concerned the employment relationship, and that dispute was whether negligence resulted in an on-the-job hand injury).

By contrast, there is no connection at all between Meza's premises liability claim and her earlier agreement with Cash America. The premises liability claim arose out of Meza's visit in 2019 to a Cash America location in Houston, in which she was shopping for a trailer, whereas the earlier agreement arose out of Meza's visit in 2017 to a different Cash America location in Pasadena, in which she pawned

two nail guns. These were two completely discrete events. In fact, by the time that the premises liability claim arose, the earlier pawn transaction had concluded because both parties had already fully performed under their contract.

Cash America has not cited to any authority in which an arbitral delegation clause was enforced under even remotely similar facts. In the absence of such authority, we do not believe that *RSL Funding* or any of the other cases cited by Cash America can be extended to a situation such as this where there is no nexus at all between the claim and the agreement containing the delegation clause.

We accordingly conclude that the trial court was not required to send this case to an arbitrator pursuant to an arbitral delegation clause.

CONCLUSION

The trial court's order is affirmed.

/s/ Tracy Christopher
Chief Justice

Panel consists of Chief Justice Christopher and Justices Wise and Jewell.