Third District Court of Appeal

State of Florida

Opinion filed August 19, 2020.
Not final until disposition of timely filed motion for rehearing.

Nos. 3D20-0357, 3D20-0355, 3D20-0354
Lower Tribunal Nos. 19-19520, 19-2293,19-2287

Mathieu Massa, et al.,
Appellants,

vs.

Michael Ridard Hospitality LLC f/k/a Ridard Investments LLC, et al.,
Appellees.

Appeals from the Circuit Court for Miami-Dade County, Valerie R. Manno Schurr, Judge.

Dickinson Wright PLLC, Catherine F. Hoffman and Vijay G. Brijbasi (Fort Lauderdale), for appellants.

Genovese Joblove & Battista, P.A., Michael D. Joblove and Jean-Pierre Bado; Law Office of John H. Schulte, and John H. Schulte, for appellees.

Before LINDSEY, HENDON and GORDO, JJ.

GORDO, J.

Mathieu Massa, Massa Investment Group LLC[1] and 1111 SW 1 Ave LLC[2] appeal the trial court's order granting Michael Ridard Hospitality LLC's motion to compel arbitration and stay the lower court proceedings. Ridard Hospitality sought to compel arbitration based on the terms of an employment agreement between Mr. Hospitality LLC[3] and Michael Ridard, both non-parties to the underlying suit. Because the trial court ordered nonsignatories to an agreement to arbitrate without an evidentiary hearing, we reverse and remand for further proceedings.

RELEVANT FACTUAL AND PROCEDURAL BACKGROUND

Mr. Massa and Mr. Ridard had a working relationship for several years. As part of that relationship, Mr. Ridard entered into an employment agreement with Mr. Hospitality LLC. Due to disputed events, Mr. Ridard was terminated in December of 2018.

Following Mr. Ridard's termination, separate lawsuits were filed by varying entities. Some lawsuits related to alleged breaches of the employment agreement and others, including the underlying suit, stemmed from breaches of other agreements between different parties. In the lawsuit relevant to the instant appeal, Mr. Massa and Massa Investment sued to recover from Ridard Investments based

[1] Mr. Massa is the 100% owner of Massa Investment Group LLC.
[2] 1111 SW 1 Ave LLC is owned by Massa Investment (90%) and Ridard Investments (10%). 1111 SW 1 Ave LLC will be referred to as "1111" throughout this opinion.
[3] Mr. Hospitality LLC is owned by Massa Investment (90%) and Ridard Investments (10%).

on alleged breaches of the operating agreement of 1111. The suit alleged that Ridard Investments failed to provide an initial capital contribution of $250,000.00, which it agreed to pay in exchange for its 10% ownership interests in 1111, and that it was unjustly enriched as a result. The complaint also sought a judicial order expelling Mr. Ridard as a member of Mr. Hospitality and 1111, pursuant to Section 605.0602(6), Florida Statutes. The operating agreement between the parties in this appeal included a provision that stated, "In the event of any dispute arising hereunder, the parties agree to submit to the jurisdiction and venue of Miami-Dade, Florida courts." It did not contain an arbitration provision.

Ridard Hospitality subsequently filed a motion to compel arbitration claiming that an arbitration clause contained in Mr. Ridard's employment agreement with Mr. Hospitality was enforceable in this case against the nonsignatory entities. Mr. Massa, Massa Investment and 1111 objected on the grounds that the operating agreement required the parties to litigate their claims, the parties were not signatories to the employment agreement, and there was no nexus between the claims in this case and those subject to arbitration under the employment agreement.

Ridard Hospitality countered that although the parties to the underlying suit were nonsignatories to the employment agreement, one of the legal exceptions for compelling nonsignatories to arbitrate applied. Ridard Hospitality proffered that in referring to "management agreements," the employment agreement incorporated the

operating agreement for 1111. No such management agreement, however, was offered or admitted in evidence for the trial court's review and consideration.

The trial court held a special set, non-evidentiary hearing. Based only upon competing evidentiary proffers and legal arguments disputing the applicable law, the court granted Ridard Hospitality's motion, finding that the underlying claims were within the scope of the employment agreement. It further found that the arbitration provision in the employment agreement was broad enough to encompass claims arising from separate agreements. This appeal followed.

LEGAL ANALYSIS

Under the Florida Constitution, state courts are "open to every person for redress of any injury." Art. I, § 21, Fla. Const. Thus, the first element to consider in determining whether the parties should be compelled to arbitrate is whether a valid arbitration agreement exists between the parties. See Coventry Health Care of Fla., Inc. v. Crosswinds Rehab, Inc., 259 So. 3d 306, 307 (Fla. 3d DCA 2018) (citing Seifert v. U.S. Home Corp., 750 So. 2d 633, 636 (Fla. 1999)); see also Infinity Design Builders, Inc. v. Hutchinson, 964 So. 2d 752, 755 (Fla. 5th DCA 2007) ("In deciding whether arbitration is required, therefore, one must necessarily begin by asking whether the parties contractually agreed to arbitrate."). A party who has not agreed "to be bound by an arbitration agreement cannot be compelled to arbitrate." Sitarik v. JFK Med. Ctr. Ltd. P'ships (JFK), 7 So. 3d 576, 578 (Fla. 4th DCA 2009)

(quoting Regency Island Dunes, Inc. v. Foley & Assoc. Constr. Co., 697 So. 2d 217 (Fla. 4th DCA 1997)).

"Nonsignatories have been held to be bound to arbitration agreements under the theories of (1) incorporation by reference; (2) assumption; (3) agency; (4) veil piercing/alter ego; and (5) estoppel." Liberty Comms., Inc. v. MCI Telecomms. Corp., 733 So. 2d 571, 574 (Fla. 5th DCA 1999) (citations omitted). "[A] nonsignatory to an arbitration agreement may be bound to arbitrate if the nonsignatory has received something more than an incidental or consequential benefit of the contract, or if the nonsignatory is specifically the intended third-party beneficiary of the contract." Germann v. Age Inst. of Fla., Inc., 912 So. 2d 590, 592 (Fla. 2d DCA 2005) (citations omitted).

"[W]here the facts relating to the elements the trial court is required to consider in determining a motion to compel arbitration are disputed, the trial court is required to hold an evidentiary hearing in order to resolve the matter." Tandem Health Care of St. Petersburg, Inc. v. Whitney, 897 So. 2d 531, 533 (Fla. 2d DCA 2005) (citations omitted).

In the instant case, there is no evidence in the record that would permit the trial court to compel the nonsignatories to arbitrate their disputes.[4] Mr. Massa,

[4] For example, while the trial court considered and heard the argument of counsel on the applicability of the incorporation by reference exception, it failed to take any evidence on this issue. Ridard Hospitality did not introduce any agreements that

Massa Investment and 1111 disputed the facts that would have permitted the trial court to find otherwise. Thus, the trial court was required to hold an evidentiary hearing prior to entering an order compelling Mr. Massa, Massa Investment, 1111, and Ridard Hospitality—all nonsignatories to the employment agreement—to arbitrate in this case.[5] See Doctors Assocs., Inc. v. Thomas, 898 So. 2d 159, 163 (Fla. 4th DCA 2005) (Whether "[n]on-signatories may be bound to an arbitration agreement . . . is an issue of fact that does not appear to have been addressed by the trial court. Accordingly, we reverse . . . ."). As such, we reverse the order granting the motion to compel arbitration.

Reversed and remanded for proceedings consistent with this opinion.

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were allegedly incorporated in the employment agreement and may have provided a basis to bind the nonsignatories to arbitrate. It also did not offer any testimony or present any other evidence on this point. As a result, on the record before us, we are unable to determine that exception applies. The agency exception is similarly inapplicable on the record before us without additional evidence. The mere fact that Mr. Massa executed an employment agreement as an agent of Mr. Hospitality does not de facto mean that he is bound to arbitrate claims against him personally. See, e.g., Liberty Comms., 733 So. 2d at 575 ("Signing a contract as an agent for a disclosed principal is not sufficient to bind the agent to arbitrate claims against him personally." (citing McCarthy v. Azure, 22 F.3d 351, 361 (1st Cir. 1994))).

[5] The parties also briefed the trial court's finding that there was a nexus between the underlying claims and the claims between the employment agreement signatories subject to arbitration. Because it is undisputed that the parties to the underlying suit were nonsignatories to the employment agreement and because the trial court did not hold an evidentiary hearing as required, we need not reach the merits of this issue.