

Commonwealth Of Kentucky

Court Of Appeals

NO. 1999-CA-001954-MR

QUEENSWAY FINANCIAL HOLDINGS, LTD. (QUEENSWAY)
AND PARADIGM INSURANCE COMPANY

APPELLANTS

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE EDWIN A. SCHROERING, JR., JUDGE
ACTION NO. 99-CI-002216

DAVE SAHNI & ASSOCIATES, INC.
AND DAVINDER SAHNI

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: HUDDLESTON, JOHNSON, AND SCHRODER, JUDGES.

SCHRODER, JUDGE: Appellants, Queensway Financial Holdings, Ltd. and Paradigm Insurance Company, appeal from an order of the Jefferson Circuit Court denying appellants' motion to dismiss appellees' complaint and/or compel arbitration pursuant to an arbitration provision in a Merger Agreement. As the trial court did not err in finding that the arbitration clause in the Merger Agreement did not apply to, and could not be enforced against, appellees, we affirm.

On November 26, 1997, Queensway Financial Holdings, Ltd. ("Queensway") and Paradigm Acquisition Corporation (a wholly

owned subsidiary of Queensway) entered into a Merger Agreement with Tri-Star Investments ("Investments"). Investments was a wholly owned subsidiary of Tri-Star Holding ("Holding"), of which appellee Davinder Sahni ("Sahni") is the majority shareholder. (The opinion of the trial court described Sahni as the sole shareholder in Holding; Appellees' brief states Sahni is the majority, not the sole, shareholder in Holding.) Pursuant to the Merger Agreement, Investments merged into Paradigm Acquisition Corporation. Paradigm Acquisition Corporation then became the owner of Paradigm Insurance Company, which was a subsidiary of Investments. Section 8.2 of the Merger Agreement contains an arbitration clause which states, "Any controversy, claim or dispute arising out of or relating to this Agreement, and not resolved in good faith negotiation as required by Section 8.1, shall be resolved by binding arbitration as provided herein" Section 9.8 of the Merger Agreement states, "This Agreement and the schedules hereto . . . constitutes the entire contract between the parties pertaining to the subject matter hereof."

On December 31, 1997, appellants Queensway and Paradigm Insurance Co. entered into an Employment Agreement with appellees Dave Sahni & Associates, Inc. ("DSA") and Sahni. The Employment Agreement was attached as a schedule to the Merger Agreement, and reflected that DSA would perform consulting and financial management services for Paradigm Insurance Co. and that Sahni would continue in his position as President and Chief Executive

Officer of Paradigm Insurance Co. Section 6(C) of the Employment Agreement stated as follows:

Governing Law; Consent to Jurisdiction. This agreement and the parties rights and obligations hereunder shall be governed by the laws of the Commonwealth of Kentucky and the parties hereby consent to the exclusive jurisdiction of any state or federal court located in the Commonwealth of Kentucky for the adjudication of any dispute arising hereunder or in connection with the formation of this agreement.

On April 7, 1999, alleging that DSA and Sahni had breached representations and warranties in the Merger Agreement, appellants terminated the Employment Agreement. As a result, on April 16, 1999, appellees, DSA and Sahni, filed a breach of contract action in Jefferson Circuit Court against appellants, Queensway and Paradigm Insurance Co. On June 15, 1999, appellants moved the court to dismiss appellees' complaint and/or compel arbitration pursuant to the terms of the Merger Agreement. On July 19, 1999, DSA and Sahni filed a response opposing the motion, arguing that the Employment Agreement does not contain an arbitration requirement, and, as DSA and Sahni were not parties to the Merger Agreement, they are not bound by its arbitration provisions. On July 29, 1999, the court entered an order denying appellants' motion, finding that DSA and Sahni were not parties

to the Merger Agreement, and therefore not bound by its provisions. The trial court's opinion stated, in part:

In the case at hand, the Court finds that the arbitration contained in the Merger Agreement, valid or not under KRS 417.060, does not apply to the parties to the Employment Agreement. The parties to the Merger Agreement were Queensway, Paradigm Acquisitions, and Tri-Star Investments. The parties to the Employment Agreement were Mr. Sahni, DSA, Queensway, and Paradigm Insurance. While the Merger Agreement may have incorporated the Employment Agreement, and bound certain provisions of the Employment Agreement to the arbitration clause, the Merger Agreement cannot bind uninvolved parties to its provisions. (Emphasis added.)

The Court recognizes that Mr. Sahni was the sole shareholder of Tri-Star Holdings, which owned Tri-Star Investments, a party to the Merger agreement. However, the record contains no evidence that would support piecing [sic] the corporate veil, or otherwise binding Mr. Sahni personally to the contract provisions agreed to by Tri-Star

Investments. Therefore, the Court holds that the arbitration clause in the Merger Agreement does not apply to and cannot be enforced against the parties to the Employment Agreement only.

This appeal followed.

Appellants first argue that the Employment Agreement was an integral part of, and incorporated into, the Merger Agreement, and, as such, any controversy arising under the Employment Agreement is subject to the arbitration provisions of the Merger Agreement. Appellants allege that the trial court erred in addressing the issue of incorporating the Employment Agreement into the Merger Agreement, contending their interpretation of the language "the Merger Agreement may have incorporated the Employment Agreement, and bound certain provisions of the Employment Agreement to the arbitration clause. . . ." renders the illogical holding that even though certain provisions of the Employment Agreement may be subject to the arbitration provisions, the parties to the Employment Agreement are not. It is clear to us that the court is saying that inasmuch as the Employment Agreement is being transferred with the merger, it may be subject to arbitration between the parties to the merger (Investments, Queensway, and Paradigm Acquisition Corp.), but as to the parties to the Employment Agreement (DSA, Sahni, Queensway, and Paradigm Insurance Co.), they are bound by

the terms of the Employment Agreement, which does not include arbitration.

We next address appellants' argument that appellees are third party beneficiaries to the Merger Agreement and hence subject to its arbitration provisions. We recognize, as did the trial court, that Sahni is the sole or majority shareholder in Holding, of which Investments, a party to the Merger Agreement, was a wholly owned subsidiary. However, a corporation is generally recognized as distinct from its shareholders, officers, and directors. Holsclaw v. Kenilworth Insurance Company, Ky. App., 644 S.W.2d 353, 355 (1982). The trial court found that there was no evidence that would support piercing the corporate veil or otherwise binding Mr. Sahni personally to the contract provisions agreed to by Investments. Having reviewed the record, we cannot say that the trial court erred in so finding.

Appellants finally argue that the arbitration provisions in the Merger Agreement are enforceable against appellees pursuant to the Uniform Arbitration Act, KRS Chapter 417, as the dispute regarding the Employment Agreement arose out of an alleged breach of the Merger Agreement which contained an arbitration clause. In light of our previous analysis, we agree with the trial court that, "valid or not under KRS 417.060", the arbitration provisions contained in the Merger Agreement do not apply to the parties to the Employment Agreement.

The judgment of the Jefferson Circuit Court is affirmed.

ALL CONCUR.

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