

STATE OF MICHIGAN
COURT OF APPEALS

COLLETTE T. ROGERS,

Plaintiff-Appellant,

v

SELECTIVE GROUP, INC. a/k/a OXFORD
ESTATES LAND, a/k/a SELECTIVE BUILDING
COMPANY, a/k/a WOOD OAKS LAND FUND,
a/k/a SELECTIVE GROUP NEW HOME
CENTER, a/k/a SELECTIVE HOMES, a/k/a
SELECTIVE SECURITIES, INC., a/k/a
SELECTIVE LAND COMPANY,
RAMBLEWOOD FOREST ESTATE
DEVELOPMENT COMPANY, NEW
REALTIES, INC., a/k/a CENTURY 21
ASSOCIATES, and CITY OF FARMINGTON
HILLS,

Defendants-Appellees.

UNPUBLISHED
November 26, 2002

No. 225423
Oakland Circuit Court
LC No. 97-537210-CH

Before: Jansen, P.J., and Holbrook, Jr., and Cooper, JJ.

PER CURIAM.

Plaintiff appeals by leave granted, challenging the trial court's December 3, 1997, order dismissing her claim against the Selective Group, Inc. defendants, and the February 9, 2000, order dismissing her claim against defendant New Realities, Inc., a/k/a Century 21 Associates, without prejudice. We reverse and remand for further proceedings.

The underlying facts are undisputed. Plaintiff filed a complaint in 1997 against Selective Group, Inc., Ramblewood Forest Estates Development Company ("Ramblewood"), New Realities, Inc., and the City of Farmington Hills, arising from her failure to close on the purchase of a condominium unit from Ramblewood. As an affirmative defense, the Selective Group and Ramblewood raised the existence of an arbitration clause in a building contract between plaintiff and Ramblewood, the developer of the property. In July 1997, the Selective Group and Ramblewood moved for summary disposition, seeking enforcement of the arbitration clause. The trial court granted an evidentiary hearing to determine whether the arbitration clause was enforceable.

At an evidentiary hearing on October 17, 1997, the trial court ruled on the record that the arbitration clause was binding, dismissed the action, and referred it to arbitration. On the record, the trial court stated: "The Court dismisses the action in this court and refers the matter to arbitration. That is not a determination on the validity of the claim." On December 3, 1997, the trial court entered an order dismissing the case "as to all SELECTIVE GROUP Defendants in accordance with the ruling of October 17, 1997." This order did not identify New Realities, Inc. as a party affected by the order, nor did it direct all parties to arbitration. Subsequently, plaintiff moved for rehearing or reconsideration, claiming that, except with regard to defendant Ramblewood, the case should remain in circuit court and not proceed to arbitration. In an opinion and order entered on December 17, 1997, the trial court denied plaintiff's motion for rehearing or reconsideration, stating that plaintiff had not demonstrated a palpable error.

Almost one year later, plaintiff began arbitration proceedings before the American Arbitration Association against Selective Group and Ramblewood. Because Selective Group was not a party to the arbitration agreement, it objected to being named a party to the arbitration proceedings. Plaintiff subsequently filed a motion in circuit court to clarify the December 3, 1997, order, requesting that it reflect that only defendant Ramblewood was bound by the arbitration provision and that the matter be reinstated as to the Selective Group and New Realities, Inc. At a hearing on December 2, 1998, the trial court denied plaintiff's motion, stating that the entire case had been dismissed.

Thereafter, plaintiff again moved for clarification of the December 3, 1997, order, arguing that the order dismissed the case only as to the Selective Group defendants, not New Realities, Inc. On October 20, 1999, the trial court again refused to amend the December 3, 1997, order, ruling that the entire case had been dismissed and instructed plaintiff to file an appeal if she believed the court was in error.

On December 7, 1999, plaintiff moved for entry of a final judgment. According to plaintiff, it could not seek an appeal of the trial court's decision because there was no final order or judgment, because the December 3, 1997, order left this case open as to defendant New Realities, Inc. Following a hearing, the trial court entered an order on February 9, 2000, dismissing, without prejudice, New Realities, Inc. At the hearing, the trial court instructed plaintiff's counsel to take up the issue whether the February 9, 2000, order constituted a final order for appeal purposes under MCR 2.604. On February 23, 2000, plaintiff filed an appeal as of right with this Court.

In their brief on appeal, defendants argue that this appeal should be dismissed because the order appealed from was not a final order appealable as of right. After the parties filed their briefs, this Court agreed, but then entered an order on March 6, 2002, directing that plaintiff's claim of appeal would be treated as an application for leave to appeal and granted the appeal. Accordingly, this Court has jurisdiction over plaintiff's appeal.

We agree that the trial court erred in dismissing plaintiff's claims as to defendants Selective Group, Inc. and New Realities, Inc. on the basis of the arbitration provision in the building contract between plaintiff and Ramblewood.

As this Court stated in *Beattie v Autostyle Plastics, Inc.*, 217 Mich App 572, 577-78; 552 NW2d 181 (1996):

An arbitration agreement is a contract by which the parties forego their rights to proceed in civil court in lieu of submitting their dispute to a panel of arbitrators. . . . The scope of the arbitration is determined by the contract. . . . Independent of the contract, an arbitration panel has no jurisdiction over a particular dispute.

The jurisdiction of the arbitrator is established by the parties' contract. *Id.* Although plaintiff entered into a building contract with defendant Ramblewood that contained an arbitration clause, neither Selective Group, Inc., nor New Realities, Inc. were parties to this contract. Thus, plaintiff did not agree to pursue her claims against these defendants through arbitration. *See EEOC v Waffle House, Inc.*, 534 US 279; 122 S Ct 754, 764; 151 L Ed 2d 755 (2002) ("It goes without saying that a contract cannot bind a nonparty.") Therefore, the arbitration clause in the building contract with Ramblewood is not enforceable to compel plaintiff to arbitrate her claims against either Selective Group, Inc. or New Realities, Inc. *Heurtebise v Reliable Business Computers, Inc.*, 452 Mich 405, 413; 550 NW2d 243 (1996). Accordingly, the trial court erred in dismissing plaintiff's claims against Selective Group, Inc. and New Realities, Inc.. We reverse the trial court's orders of dismissal as to these two defendants and remand for further proceedings.

Reversed and remanded. We do not retain jurisdiction.

/s/ Kathleen Jansen
/s/ Donald E. Holbrook, Jr.
/s/ Jessica R. Cooper