

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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NSK CORP.,

Plaintiff-Appellant,

v

ROBERT BOSCH CORP.,

Defendant-Appellee.

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UNPUBLISHED  
February 24, 2009

No. 283048  
Washtenaw Circuit Court  
LC No. 2007-000992-CK

Before: Sawyer, P.J., and Servitto and M. J. Kelly, JJ.

PER CURIAM.

In this declaratory action, plaintiff appeals as of right a trial court order granting summary disposition in defendant's favor and dismissing plaintiff's complaint. Because the trial court properly determined that the instant matter is subject to an arbitration agreement between the parties, we affirm.

Plaintiff manufactures hub and wheel bearing assemblies and, pursuant to annual purchase orders from defendant, manufactured such bearings for defendant. In 2005, the parties had a dispute over pricing and delivery of the bearings. This dispute led to the initiation of a civil action by defendant against plaintiff in the state of Indiana. The parties settled the Indiana suit by entering into a supply agreement that detailed, among other things, the terms under which plaintiff would supply defendant with hub and wheel bearing assemblies from that point forward.

In 2007, defendant advised plaintiff it was entitled to offset approximately \$703,000.00 billed by plaintiff for the bearings, as overcharges and for fraudulent misrepresentation with respect to the bearings. While defendant paid the claimed offset amount, it filed a demand for arbitration with the American Arbitration Association concerning reimbursement for the same, relying on an arbitration provision contained in the "terms and conditions" referenced in the parties' supply agreement. Plaintiff thereafter initiated the instant action, seeking a declaration that the arbitration clause does not apply to defendant's claim and that defendant is not entitled to reimbursement for the \$703,000.00 payment.

In lieu of answering plaintiff's complaint, defendant moved for summary disposition pursuant to MCR 2.116(C)(7). According to defendant, the arbitration agreement governed the parties' present dispute and should be enforced. The trial court agreed, granting defendant's motion and dismissing plaintiff's complaint.

MCR 2.116(C)(7) allows a defendant to move for summary disposition on the ground that the plaintiff's claim is barred because of an agreement to arbitrate. “We review a trial court's grant or denial of a motion for summary disposition under MCR 2.116(C)(7) de novo to determine whether the moving party was entitled to judgment as a matter of law.” *Watts v Polaczyk*, 242 Mich App 600, 603; 619 NW2d 714 (2000). In reviewing a motion under subsection (C)(7), this Court accepts as true the plaintiff's well-pleaded allegations, construing them in plaintiff's favor, and considers the pleadings, affidavits, depositions, admissions, and documentary evidence filed or submitted by the parties to determine whether a genuine issue of material fact exists. *Id.* The determination of the arbitrability of a dispute is a question of law that is also subject to de novo review. *Madison District Public Schools v Myers*, 247 Mich App 583, 594; 637 NW2d 526 (2001).

On appeal, plaintiff first argues that the trial court erred in holding that the arbitration clause was applicable to the entire supply agreement and that defendant's claims are thus subject to arbitration. According to plaintiff, the arbitration clause, contained in the “terms and conditions” referenced in the supply agreement, applies only to two limited issues: 1) all issues arising out of or related to the purchase order referred to in the supply agreement and, 2) disputes over part volumes referred to in the supply agreement. Plaintiff asserts that defendant's instant claims do not fall within the scope of the above, as they concern issues of alleged misrepresentation in entering into the supply agreement and cancellation costs that were already resolved in the supply agreement. We disagree.

Michigan public policy favors arbitration to resolve disputes. *Rembert v Ryan's Family Steak Houses, Inc.*, 235 Mich App 118, 127-128; 596 NW2d 208 (1999). Generally, the parties' agreement or contract determines the scope of arbitration. *Fromm v MEEMIC Ins Co*, 264 Mich App 302, 305-306; 690 NW2d 528 (2004). When interpreting a contract, a court must determine the parties' intent. *In re Egbert R Smith Trust*, 480 Mich 19, 24, 745 NW2d 754 (2008). When the contractual language is clear, the unambiguous language represents the parties' intent as a matter of law and the contract must be enforced as written. *Id.*

To ascertain the arbitrability of an issue, [a] court must consider whether there is an arbitration provision in the parties' contract, whether the disputed issue is arguably within the arbitration clause, and whether the dispute is expressly exempt from arbitration by the terms of the contract. The court should resolve all conflicts in favor of arbitration. However, a court should not interpret a contract's language beyond determining whether arbitration applies and should not allow the parties to divide their disputes between the court and an arbitrator. [*Rooyakker & Sitz, PLLC v Plante & Moran, PLLC*, 276 Mich App 146, 163; 742 NW2d 409 (2007) (citations omitted)].

Any doubts about whether the dispute is subject to arbitration should be resolved in favor of arbitration. *Fromm, supra* at 306.

The supply agreement settling the parties' Indiana litigation provides:

Purchase Order. Upon execution of this Agreement, Bosch shall issue a blanket purchase order for each of the Products . . . The Bosch “Purchase Order Terms

and Conditions” in effect on the Effective date and accessible on the Internet at [www.Boschsuppliers.com](http://www.Boschsuppliers.com) (the “POTC”) shall govern this Agreement and such purchase order without regard to any different terms and conditions referenced or set forth in such purchase order. . .

The “terms and conditions” undisputedly includes the following provision:

The parties agree to submit all disputes between them arising out of or related to the Purchase order or the breach, alleged breach or interpretation thereof to binding arbitration . . .

The supply agreement language that the “purchase order terms and conditions. . . shall govern this Agreement” is very broad. There is no language limiting application of the terms and conditions only to specific provision in the agreement. Instead, the plain language contained in the above requires that the terms and conditions shall govern “this” agreement—clearly, the entire agreement. The language being clear and unambiguous, we enforce the contract as written (See, *In re Egbert R Smith Trust, supra*) and find that *any* issue that arises out of or concerns the supply agreement is arbitrable. Had the parties intended otherwise, they could have included specific limiting language within the supply agreement exempting issues or provisions from application of the terms and conditions. In fact, the agreement sets forth several specific exceptions. For example, the parties agreed that the indemnification provision referenced in the terms and conditions shall have no force or effect and provided in the agreement that such provisions “shall be deleted in their entirety.” Notably, however, there is no exception set forth with respect to the arbitration clause.

The entire supply agreement being governed by the terms and conditions, and, therefore, the arbitration clause, we must next resolve whether the disputed issues fall within the scope of arbitration clause. In a May 2007 letter to plaintiff, defendant indicated that its claimed setoff was based upon (1) its understanding that the supply agreement was intended to compensate plaintiff for installation of a “dedicated line” and that plaintiff was producing parts for other customers on that line; (2) pricing, (3) future anticipated warranty claims. In its request for arbitration, defendant described the present disputes in the following manner:

This is an action regarding disputes related to a supply agreement between Bosch and NSK. Bosch is seeking reimbursement for payments made to NSK based upon representations NSK made that are not accurate. In addition, Bosch is seeking reimbursement for overpayments it made to NSK in the purchase of bearings between August 2006 and April 2007 based upon an erroneous application of the pricing formula. Bosch contends that the supply agreement contains a mistake and does not reflect the parties’ true agreement. In the alternative, Bosch contends that NSK has acted inequitably and perhaps fraudulently in its dealings with Bosch, which would justify an equitable reformation of the supply agreement and reimbursement to Bosch.

The primary disputes, as posited by defendant concern the application and interpretation of the supply agreement. Absent the existence of the supply agreement, then, there would be little in dispute. There could obviously be no disagreement concerning the terms and application of a non-existent agreement. The supply agreement’s very existence is what gives rise to the

bulk of the parties' disagreements. As for defendant's disputes involving pricing and overpayments for parts, it appears that these involve parts supplied pursuant to the supply agreement and the specific subjects (pricing, etc.) were addressed in the supply agreement. Given that the parts provided to defendant subsequent to the Indiana litigation were born out of the supply agreement, and that the remaining disputes arise from the settlement (memorialized in the supply agreement) the disputes are subject to arbitration, as set forth in the terms and conditions.

Plaintiff's remaining arguments, that the trial court failed to ascertain the parties' intent in determining that the arbitration clause governed the instant dispute, and that the court essentially rewrote the parties' agreement, contrary to law, are without merit. In rendering its decision, the trial court accurately stated the principals employed in discerning the parties' intent with respect to arbitration and applied those principals to the case at hand. The trial court also looked to the plain, unambiguous language contained within the parties' supply agreement and enforced the agreement as written.

Affirmed.

/s/ David H. Sawyer  
/s/ Deborah A. Servitto  
/s/ Michael J. Kelly