STATE OF MINNESOTA
IN COURT OF APPEALS

A09-0284

James J. Benincasa, et al.,
Appellants,

vs.

Michael J. Antonello, et al.,
Defendants,

Benistar 419 Plan Services, Inc.,
plan sponsor for the Benistar 419 Plan and Trust, et al.,
Respondents,

The Lafayette Life Insurance Company,
Respondent.

Filed September 15, 2009
Affirmed in part and reversed in part
Worke, Judge

Hennepin County District Court
File No. 27-CV-07-24553

Mark J. Kallenbach, 2260 Ridge Drive, Suite 13, Minneapolis, MN 55416 (for appellants)

Thomas A. Gilligan, Jr., Kimberly K. Scott, Christopher G. Angell, Murnane Brandt, 30 East Seventh Street, Suite 3200, St. Paul, MN 55101 (for respondents Benistar 419 Plan Services, Inc., plan sponsor for the Benistar 419 Plan and Trust, et al.)

David P. Pearson, Thomas H. Boyd, Justice Ericson Lindell, Winthrop & Weinstine, P.A., 225 South Sixth Street, Suite 3500, Minneapolis, MN 55402 (for respondent The Lafayette Life Insurance Company)

Considered and decided by Worke, Presiding Judge; Connolly, Judge; and Schellhas, Judge.

U N P U B L I S H E D O P I N I O N

WORKE, Judge

Appellants argue that the district court abused its discretion in awarding rule 11 attorney fees and costs to respondents Benistar 419 Plan Services, Inc., plan sponsor for the Benistar 419 Plan and Trust, and The Lafayette Life Insurance Company for commencing contemporaneous actions in district court and with the American Arbitration Association (AAA) when appellants and Benistar had an arbitration agreement. Appellants also argue that even if respondents are entitled to attorney fees and costs, the district court abused its discretion in the amount awarded. Lafayette challenges the district court's referral of the matter to the AAA when it was not a party to the arbitration agreement. We affirm the district court's award of attorney fees and costs to Benistar and the district court's dismissal of the matter. But because Lafayette did not bring a rule 11 motion, we reverse the district court's award of attorney fees and costs to Lafayette, and we also reverse the district court's referral of Lafayette to the AAA.

FACTS

Appellants James J. and Jody L. Benincasa are the president and vice-president of Mortgage$ Unlimited, Inc. (MUI). Respondents Benistar 419 Plan Services, Inc., plan sponsor for the Benistar 419 Plan and Trust, et al., and Benistar Admin. Services, Inc., plan administrator for the Benistar 419 Plan and Trust (Benistar), sponsor and administer the Benistar 419 Plan and Trust (419 Plan). The 419 Plan is a welfare-benefit plan that

provides tax incentives to small employers who contribute to one trust of pooled assets. The 419 Plan shifts the risk of providing benefits from an individual employer to the multiple employers participating in the plan.

In 2001, after consulting with their attorneys and financial advisors, defendants Michael J. Antonello and Thomas M. Petracek, appellants agreed to participate in the 419 Plan. On November 30, 2001, appellants entered into a formal agreement with Benistar. Among other things, appellants agreed that:

> Any dispute or controversy arising under or in connection with this Agreement or with respect to the Employer's participation in the [419] Plan shall be settled by Arbitration, conducted by a single arbitrator in New York City in accordance with the rules of the [AAA] then in effect. The expense of the arbitrator shall be shared equally by the Employer and the Administrator. The decision of the arbitrator shall be final and binding, and judgment may be entered on the arbitrator's award in any court having jurisdiction.

In conjunction with MUI's participation in the 419 Plan, appellants applied to respondent The Lafayette Life Insurance Company for insurance policies. Appellants signed a hold-harmless agreement, and acknowledged that Lafayette was serving only in the capacity of a life-insurance provider. Appellants agreed to hold Lafayette and its agents

> harmless as to any and all consequences of [] participation in [the 419 Plan], including but not limited to any tax consequences or disallowances of deduction for contribution to the [419 Plan], and will not seek contribution or reimbursement from [] Lafayette [] for any loss, liability, damages, settlements, claims, taxes, penalties or fines, or for any expenses of litigation or administrative proceedings with all persons, entities or government agencies, including,

> without limitation, attorneys' fees and costs, directly or indirectly arising out of, or in any way related to the existence or administration of the [419 Plan] and its purchase of life insurance.

On October 22, 2003, Jody Benincasa signed a certificate of coverage confirming MUI's participation in the 419 Plan, which provided that "[a]ll unresolved disputes or claims under the Plan will be settled by arbitration in New York, New York." In December 2003, Jody Benincasa terminated from the 419 Plan. In February 2004, appellants changed ownership of the 419 Plan to respondent Grist Mill Trust Welfare Benefit Plan. Appellants signed an agreement, which provided that "[a]ll unresolved disputes or claims under the Plan will be settled by arbitration in New York, New York." Appellants also signed an administration-fee agreement, which included an arbitration clause identical to the one found in the agreement with Benistar. On April 13, 2004, appellants terminated the plan with Grist Mill Trust and purchased the insurance policies for 10% of their cash-surrender value.

In November 2007, appellants filed a complaint against respondents and defendants alleging, among other things, breach of fiduciary duty; breach of contract; fraud—intentional misrepresentation; negligent misrepresentation; violation of regulation of business of financial planning; unjust enrichment; civil conspiracy; and violation of the consumer fraud act. Simultaneously, appellants filed a demand for arbitration against Benistar with the AAA in New York, New York. Lafayette filed a counterclaim alleging breach of contract.

In March 2008, Benistar moved for sanctions against appellants, pursuant to Minn. R. Civ. P. 11 and Minn. Stat. § 549.211 (2008), for asserting baseless claims against Benistar and refusing to dismiss the district-court action. In April 2008, Benistar and Lafayette moved for summary judgment. The district court granted the motions. The district court also found that appellants violated rule 11 and awarded Benistar $34,948.78 and Lafayette $38,339.65 in attorney fees and costs. The district court dismissed the matter without prejudice and referred the entire matter to the AAA. This appeal follows.

D E C I S I O N

Benistar Attorney Fees and Costs

Appellants argue that the district court abused its discretion in awarding attorney fees and costs to Benistar, pursuant to Minn. R. Civ. P. 11. We review a district court's decision on a rule 11 motion for abuse of discretion. *Gibson v. Coldwell Banker Burnet*, 659 N.W.2d 782, 787 (Minn. App. 2003).

Appellants contend that the district court abused its discretion because their filing in district court was not for an improper purpose and sanctions may not be awarded against a represented party. Rule 11 provides for the imposition of sanctions when a party violates the rule. *See* Minn. R. Civ. P. 11.02 (representations to court), .03 (sanctions). Rule 11 provides that parties and their attorneys may be sanctioned for presenting a pleading or motion for an improper purpose or without sufficient evidentiary support. Minn. R. Civ. P. 11.02(a), (c), .03. But "[a] [r]ule 11 sanction should not be imposed when counsel has an objectively reasonable basis for pursuing a factual or legal claim or when a competent attorney could form a reasonable belief a pleading is well-

grounded in fact and law." *Bergmann v. Lee Data Corp*., 467 N.W.2d 636, 641 (Minn. App. 1991) (quotation omitted), *review denied* (Minn. May 23, 1991).

The district court concluded that the district-court filing was done for an improper purpose. The district court found that because appellants agreed to arbitration, Benistar should not have been forced to spend attorney fees and costs to defend the matter in district court. The record supports this finding. Appellants signed several documents, all with similar arbitration language. Appellants even filed a claim with the AAA and never challenged that arbitration is the appropriate forum for their claims. Appellants contend that they filed in both forums because the statute of limitations was running on their claims. But the arbitration clauses are clear and broad; thus, expiration of the statute of limitations should not have been a concern—appellants should have filed only with the AAA. Appellants also contend that district courts in similar actions ruled that the district court had jurisdiction. But appellants do not provide any authority demonstrating the precedential value of a district court order. Additionally, appellants discovered these similar cases in March 2008 and January 2009—not in 2007 when they were crafting their complaint. Furthermore, Benistar's attorney wrote to appellants' attorney in December 2007, providing an opportunity to withdraw the pleadings. Benistar's attorney wrote to appellants' attorney twice again in early March 2008, providing opportunities to dismiss the complaint. Each time, appellants' attorney refused to dismiss the complaint. For these reasons, the district court did not abuse its discretion in awarding attorney fees because appellants knowingly and improperly filed a claim in district court when they agreed to arbitrate in New York.

Appellants also argue that they cannot be sanctioned as a represented party. Under the rule, "[m]onetary sanctions may not be awarded against a represented party for a violation of Rule 11.02*(b)*." Minn. R. Civ. P. 11.03(b)(1) (emphasis added). Rule 11.02(b) provides that when presenting a pleading, motion, or other paper, an attorney or unrepresented party

> is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, . . . the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law.

The district court, however, found that appellants violated rule 11.02*(a)*, which provides, that by presenting a pleading, motion, or other paper to the court, an attorney or unrepresented party is certifying that "it is not being presented for any improper purpose." (Emphasis added.) Therefore, appellants' argument is misplaced.

Appellants contend that even if Benistar is entitled to attorney fees and costs, the district court's award of $34,948.78 is excessive and an abuse of discretion. A district court has "wide discretion in determining the type of sanctions it deems necessary." *Peterson v. Hinz*, 605 N.W.2d 414, 417 (Minn. App. 2000), *review denied* (Minn. Apr. 18, 2000). A district court "has the discretion to impose a sanction in the amount sufficient to deter future litigation abuse, even if the amount is greater than the amount of attorney fees." *Gibson v. Trs. of Minn. State Basic Bldg. Trades Fringe Benefits Funds*, 703 N.W.2d 864, 871 (Minn. App. 2005), *vacated in part on other grounds* (Minn. Dec. 13, 2005).

Benistar's attorneys provided the court with its rates and documentation of the fees incurred by Benistar in defending the district-court action. The district court found that "Benistar [] claim[s] $34,948.78 in fees and costs, based on hourly rates ranging from $100 to $210. The attorney who billed the most time charged $175 per hour." The district court concluded that the fees were reasonable, stating:

> Benistar's counsel charged immensely reasonable hourly rates and billed an appropriate amount of hours relative to the high complexity of this case. The senior counsel . . . billed [a] higher rate[] but appropriately fewer hours than did the more junior counsel on the files. This case is highly complex, involving a series of contracts and entities, and a large amount of money.

The district court further concluded that it was appropriate for Benistar to have retained counsel with necessary experience. The district court did not abuse its discretion.

Lafayette Attorney Fees and Costs

Appellants argue that the district court abused its discretion in awarding attorney fees and costs to Lafayette. This issue is reviewed for an abuse of discretion. *Gibson*, 659 N.W.2d at 787. The district court awarded Lafayette attorney fees and costs based on appellants' rule 11 violation. But Lafayette did not file a rule 11 motion with the court. Lafayette concedes this point, but suggests that we affirm the district court based on a different theory. *See Brecht v. Schramm*, 266 N.W.2d 514, 520 (Minn. 1978) (stating that if the district court arrives at a correct decision, "that decision should not be overturned regardless of the theory upon which it is based").

Lafayette argues that because appellants signed a hold-harmless agreement, they breached that agreement by filing a claim against Lafayette and Lafayette is entitled to

damages as a result of that breach. In its breach-of-contract counterclaim, Lafayette moved to recover attorney fees and costs. The district court, however, declined to award attorney fees and costs based on that claim. Instead, the district court awarded Lafayette's attorney fees and costs based on appellants' rule 11 violation. Lafayette did not bring a rule 11 motion; therefore, Lafayette was not entitled to recover attorney fees and costs, and the district court abused its discretion in awarding attorney fees and costs to Lafayette. *See* Minn. R. Civ. P. 11.03(a) (mandating that a motion for sanctions must be made separate from other motions and must specifically describe the alleged violation).

Referral of Lafayette to the AAA

Lafayette argues that the district court erred in ordering the entire matter to the AAA because it was not a party to the arbitration agreements. The district court stated that "there is no doubt that Lafayette was not a direct party . . . to the Benistar contracts containing the broad arbitration clauses," but nonetheless referred the entire case, including appellants' claims against Lafayette, to arbitration. The district court determined that Lafayette was involved in appellants' and Benistar's contractual relationship sufficiently to be bound by the arbitration clause. The district court also concluded that it would be judicially efficient to refer all claims to arbitration. A district court's decision concerning the arbitrability of disputes is reviewed de novo. *Amdahl v. Green Giant Co.*, 497 N.W.2d 319, 322 (Minn. App. 1993).

The district court erred in referring appellants' claims against Lafayette to arbitration because "arbitration is a matter of contract and a party cannot be required to

submit to arbitration any dispute which he has not agreed so to submit." *AT&T Techs., Inc. v. Commc'ns Workers of Am.*, 475 U.S. 643, 648, 106 S. Ct. 1415, 1418 (1986) (quotation omitted). Because Lafayette never agreed to arbitration, the district court should not have ordered Lafayette to arbitration. Appellants filed with the AAA only as it relates to Benistar. Thus, although the district court dismissed the matter and ordered the parties to the AAA, the referral should have pertained only to Benistar. We therefore affirm the district court's dismissal without prejudice, but we reverse the district court's referral of Lafayette to the AAA.

Affirmed in part and reversed in part.