STATE OF MINNESOTA

IN SUPREME COURT

A19-1923

Court of Appeals — Gildea, C.J.

Glacier Park Iron Ore Properties, LLC,

Appellant,

vs.

Filed: June 30, 2021
Office of Appellate Courts

United States Steel Corporation,

Respondent.

Beatrice C. Franklin, William Christopher Carmody, Shawn J. Rabin, Susman Godfrey L.L.P., New York, New York; and

Richard E. Prebich, Hannah Forti, Prebich Law Office, P.C., Hibbing, Minnesota; and

Andy Borland, Sellman, Borland & Simon PLLC, Hibbing, Minnesota, for appellant.

Andrew R. Stanton, Jones Day, Pittsburg, Pennsylvania; and

Andrew M. Luger, Benjamin L. Ellison, Andrew P. Leiendecker, Jones Day, Minneapolis, Minnesota; and

Leon F. DeJulius, Jr., Jones Day, New York, New York, for respondent.

S Y L L A B U S

1. Unless clear and unmistakable evidence shows that the parties intended to delegate the issue to an arbitrator, the court, not the arbitrator, decides whether a dispute governed by the Federal Arbitration Act is arbitrable.

2. Because the contract at issue does not provide clear and unmistakable evidence that the parties intended to delegate arbitrability to an arbitrator, the district court properly considered whether the dispute was arbitrable and correctly concluded that it was not.

Affirmed.

O P I N I O N

GILDEA, Chief Justice.

This appeal asks us to determine who—the district court or the arbitrator—decides whether the parties' dispute is subject to arbitration. The district court determined that the court, not the arbitrator, was to decide arbitrability and that the parties' dispute was not subject to arbitration. The court of appeals affirmed. Because we conclude that the court is the decision-maker and that the district court correctly concluded that the parties' dispute was not subject to arbitration, we affirm.

FACTS

Appellant Glacier Park Iron Ore Properties, LLC (Glacier Park) sought to compel arbitration of its dispute with respondent United States Steel Corporation (U.S. Steel). The parties' dispute arises from the Carmi-Enterprise Lease (Lease) that U.S. Steel negotiated and signed with the Great Northern Iron Ore Properties Trust (Trust). The Trust terminated

in 2015, and the remainder of the Trust's assets, including its rights under the Lease, were conveyed to Glacier Park.

Glacier Park alleges that U.S. Steel wrongly procured the Lease through a breach of the Trust's fiduciary duty. It further argues that U.S. Steel aided and abetted the Trust's breach of duty and it seeks recession of the Lease. In March 2019, Glacier Park served an arbitration demand on U.S. Steel, and the parties agreed to suspend arbitration in an attempt to resolve the dispute without litigation. That agreement expired in August 2019, at which point Glacier Park filed its complaint in district court. It then filed a motion to stay further court proceedings pending arbitration and to compel the parties to engage in arbitration.

The district court denied Glacier Park's motion. The district court determined that the Minnesota Revised Uniform Arbitration Act ("MRUAA"), Minn. Stat. § 572B.06 (2020), and the Federal Arbitration Act ("FAA"), 9 U.S.C. § 3, dictate that the court, not arbitrators, should decide the meaning of the arbitration clause and thus the arbitrability of the dispute. The district court further concluded that the arbitration clause in the Lease does not require arbitration of Glacier Park's claim.

The court of appeals affirmed. The court of appeals held that the MRUAA supersedes the "reasonably debatable" standard adopted in *Atcas v. Credit Clearing Corp. of America*, 197 N.W.2d 448 (Minn. 1972), *overruled by Onvoy, Inc. v. SHAL, LLC*, 669 N.W.2d 344 (Minn. 2003),[1] and thus the district court decides arbitrability unless the

[1] In *Atcas*, a case arising under Minnesota's arbitration statute, Minn. Stat. §§ 572.08–.09 (1971), we said that "if the intention of the parties is reasonably debatable as to the scope of the arbitration clause, the issue of arbitrability is to be initially determined by the arbitrator." 197 N.W.2d at 452. The Legislature amended Minnesota's

parties agree otherwise. The court of appeals went on to conclude that, because the Lease is silent as to whether an arbitrator or district court decides arbitrability, the district court appropriately decided the question. Finally, the court of appeals concluded that Glacier Park's breach of fiduciary duty claim is not subject to mandatory arbitration under the Lease. *Glacier Park Iron Ore Props., LLC v. U.S. Steel Corp.*, 948 N.W.2d 686, 697 (Minn. App. 2020). We granted Glacier Park's petition for further review.

ANALYSIS

Glacier Park argues that the court of appeals erred in holding that the "reasonably debatable" standard does not apply and it contends that under that standard, an arbitrator, not the district court, should decide whether the dispute is subject to arbitration. In the alternative, Glacier Park argues that even if we were to adopt the "clear and unmistakable" standard that federal courts have applied under the FAA, the arbitrator should still decide the arbitrability of the dispute. For its part, U.S. Steel urges us to apply the federal standard, but it argues that under either standard, the parties did not intend to delegate the question of arbitrability to the arbitrator. U.S. Steel also argues that the claim here is not subject to arbitration. The parties' dispute, which involves issues of contract and statutory interpretation, presents questions of law that we review de novo. *Onvoy, Inc.*, 669 N.W.2d at 349; *Getz v. Peace*, 934 N.W.2d 347, 353 (Minn. 2019).

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statute in 2010 when it adopted the MRUAA. *See* Act of Apr. 19, 2010, ch. 264, art. 1, § 6, 2010 Minn. Laws 499, 501 (codified at Minn. Stat. § 572B.06). The court of appeals held that with the passage of the MRUAA, the Legislature effectively superseded the "reasonably debatable" standard. *Glacier Park Iron Ore Props., LLC v. U. S. Steel Corp.*, 948 N.W.2d 686, 692–93 (Minn. App. 2020). We need not resolve this statutory interpretation question because federal law controls here.

I.

We consider first which decision-maker—the district court or the arbitrator—determines whether Glacier Park's claim is arbitrable. The parties dispute the standard we should apply to that question. Glacier Park argues that we should apply the "reasonably debatable" standard from *Atcas*. But we developed that standard in a case that arose under Minnesota's arbitration statute. *See* 197 N.W.2d at 340. The parties agree that the FAA, not Minnesota's statute, controls here because this case involves interstate commerce. *See Onvoy, Inc.*, 669 N.W.2d at 351 (holding that in cases involving interstate commerce, Minnesota courts must analyze the case under the FAA and federal cases interpreting that act). Because the FAA controls, we look to federal law.

Under federal law, parties to a contract "may agree to have an arbitrator decide not only the merits of a particular dispute but also gateway questions of arbitrability, such as whether the parties have agreed to arbitrate or whether their agreement covers a particular controversy." *Henry Shein, Inc. v. Archer & White Sales, Inc.*, 586 U.S. ___, ___ 139 S. Ct. 524, 529 (2019) (citation omitted) (internal quotation marks omitted). And when parties agree to arbitrate arbitrability, a court may not disregard that agreement. *Id.* But the FAA provides that, in the absence of an agreement otherwise, the court is to decide arbitrability. 9 U.S.C. § 3.[2]

Interpreting the federal statute, the Supreme Court has adopted a clear and unmistakable evidence standard to determine whether the parties agreed to arbitrate

[2] Minnesota's statute is in accord. *See* Minn. Stat. § 572B.06.

arbitrability. *See First Options of Chi., Inc. v. Kaplan*, 514 U.S. 938, 943–44 (1995). Using that standard, "[c]ourts should not assume that the parties agreed to arbitrate arbitrability unless there is 'clea[r] and unmistakabl[e]' evidence that they did so." *Id.* (quoting *AT & T Tech., Inc. v. Commc'ns Workers of Am.*, 475 U.S. 643, 649 (1986)) (alterations in *First Options*). Given that federal law applies to this case, we are bound to apply the clear and unmistakable standard to determine whether the parties agreed to delegate arbitrability to the arbitrator.

In urging us to reach a different conclusion, Glacier Park cites *First Options* to argue that federal precedent teaches that state law applies when a court determines whether contracting parties intended to delegate arbitrability questions. 514 U.S. at 944. Because *First Options* looks to state law principles, Glacier Park argues that we should adhere to the reasonably debatable standard from *Atcas*. Glacier Park's argument misinterprets *First Options*.

In *First Options*, the Supreme Court noted that "[w]hen deciding whether the parties agreed to arbitrate a certain matter . . . courts generally . . . should apply ordinary state-law principles that govern the formation of contracts." 514 U.S. at 944. But the Court added the following "important qualification, applicable when courts decide whether a party has agreed that arbitrators should decide arbitrability: Courts should not assume that the parties agreed to arbitrate arbitrability unless" the clear and unmistakable evidence standard is met. *Id.* The reasonably debatable standard directly conflicts with the clear and unmistakable evidence standard. Because we analyze this case under the federal statute,

we cannot apply the reasonably debatable standard, and must instead apply the clear and unmistakable standard from federal caselaw.

With the applicable standard in mind, we turn to the specific agreement at issue in order to determine whether the parties agreed to delegate arbitrability. Paragraph (A) of the Lease's arbitration provision specifies which disputes are subject to mandatory arbitration:

> In the event that any disagreement or controversy arises between [Glacier Park] and [U.S. Steel] as to whether any of [U.S. Steel]'s mining practices conform to the standards stipulated herein, or as to any fact that might affect the determination of royalty payable hereunder, or as to any fact relative to the observance or fulfillment of the terms and obligations hereof by either party, or as to any other matter herein specifically stated to be the subject of arbitration, then either party may demand that such disagreement or controversy shall be determined by final and binding arbitration in the manner hereinafter provided.[3]

This paragraph articulates the disputes that are subject to arbitration: conformance of mining practices, royalty payment determinations, any fact relative to the observance or fulfillment of the terms and obligations of the contract, and any other matter specifically stated.

The arbitration clause in the Lease does not provide that arbitrability of the claim itself is subject to arbitration. We agree with the court of appeals that this silence does not satisfy the clear and unmistakable standard. *See First Options*, 514 U.S. at 944.

But, Glacier Park argues, the breadth of the clause provides clear and unmistakable evidence that the parties intended to delegate arbitrability. Glacier Park points to broad

[3] Glacier Park does not point to, and we could not find, any other portion of the contract that specifically states that arbitrability shall be the subject of arbitration.

language in the arbitration clause describing the disputes subject to arbitration. Specifically, Glacier Park contends that a dispute as to the arbitration clause is encompassed within the meaning of "any disagreement or controversy . . . as to any fact relative to the observance or fulfillment of the terms and obligations hereof by any party." Following Glacier Park's reasoning, the clause would include *all* disputes regarding the interpretation of *any* of the terms of the agreement. There is nothing in the Lease to indicate that the parties intended this clause of the arbitration provision to be so broad. To the contrary, the fact that the parties listed out four specific categories of arbitrable issues confirms that the parties did not intend the broad agreement that Glacier Park advances.

In any event, the clear and unmistakable standard means just that. For the question of arbitrability to be subject to arbitration, the parties must express that agreement to arbitrate in clear language. No such language appears here. Because there is not clear and unmistakable evidence that the parties intended to delegate arbitrability to the arbitrator, we hold that whether the parties' breach of fiduciary claim is arbitrable is a question for the court.

II.

The district court correctly determined that it was the court's call to determine whether Glacier Park's claim was arbitrable. And in making that call, the district court concluded that it was not. We now turn to consideration of that decision and examine whether Glacier Park's substantive claim—that the Trust breached its fiduciary duty when executing the Lease and that U.S. Steel aided and abetted that breach—falls under the

Lease's arbitration provision. Determining whether a party has agreed to arbitrate a particular dispute is a matter of contract interpretation that we review de novo. *Johnson v. Piper Jaffray, Inc.*, 530 N.W.2d 790, 795 (Minn. 1995); *see First Options*, 514 U.S. at 943.

A party cannot be required to arbitrate claims that they have not agreed, by contract, to arbitrate. *Johnson*, 530 N.W.2d at 795; *AT & T Tech., Inc.*, 475 U.S. at 648. Courts examine the language of the agreement to determine the scope of the arbitration clause. *See Onvoy, Inc.*, 669 N.W.2d at 349; *First Options*, 514 U.S. at 943. When analyzing whether the substantive claim is subject to an agreement to arbitrate, "[a]ny doubt with respect to the intent of the parties regarding the scope of arbitration should be resolved in favor of arbitration." *Onvoy, Inc.*, 669 N.W.2d at 351; *see Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 24–25 (1983)

Glacier Park, citing Minn. Stat. § 572B.06(c) and *Onvoy*, argues that its claim is arbitrable because contract validity claims are presumptively arbitrable. Minnesota Statutes § 572B.06(c) states that "[a]n arbitrator shall decide whether a condition precedent to arbitrability has been fulfilled and whether a contract containing a valid agreement to arbitrate is enforceable." Glacier Park argues that this provision demonstrates that contract validity claims are presumptively arbitrable and, therefore, Glacier Park's breach of fiduciary duty claim is arbitrable even if it is not expressly covered under the Lease's arbitration clause. But, as we conclude above, the FAA, not Minnesota's statute, controls here. Moreover, to read Minn. Stat. § 572B.06(c) as broadly as Glacier Park suggests runs afoul of the well-settled principle that a party cannot be required to arbitrate claims that they have not agreed, by contract, to arbitrate. *See Granite Rock Co. v. Int'l Bhd. of*

Teamsters, 561 U.S. 287, 299 (2010) ("Arbitration is strictly a matter of consent, and thus is a way to resolve those disputes—*but only those disputes*—that the parties have agreed to submit to arbitration." (citations omitted) (internal quotation marks omitted)); *see also Johnson*, 530 N.W.2d at 795.

Glacier Park's argument regarding *Onvoy* is no more persuasive. In *Onvoy*, we held that an arbitration clause in which the parties agreed to arbitrate all claims "arising under the contract" encompassed contract formation claims. 669 N.W.2d at 351. In other words, when parties use broad arbitration clauses such as the one in *Onvoy*, courts enforce those clauses as written and the parties will need to carve out any issue they do *not* want to go to arbitration. This analysis from *Onvoy* is helpful only by way of negative inference: The Lease at issue here does not contain the broad agreement to arbitrate all claims "arising under the contract," which suggests that the parties did not, in fact, intend for the arbitration clause to apply broadly.[4]

Unlike the clause at issue in *Onvoy*, the arbitration provision in the Lease is not sufficiently broad to include contract formation claims. In fact, the Lease limits issues for arbitration to those "herein specifically stated." This language confirms that the parties did

[4] In cases where arbitration provisions have been found to include contract formation claims, the arbitration clauses are broader than that at issue here. *See Prima Paint Corp. v. Flood & Conklin Mfg. Co.*, 388 U.S. 395, 398, 406 (1967) (holding that the arbitration provision, which provides for arbitration of "[a]ny controversy or claim arising out of or relating to this Agreement, or the breach thereof," includes fraudulent inducement claims); *Houlihan v. Offerman & Co., Inc.*, 31 F.3d 692, 693–94, 696 (8th Cir. 1994) (holding that an arbitration clause covering "all controversies [between the parties] concerning any order or transaction" encompassed contract formation claims); *Onvoy, Inc.*, 669 N.W.2d at 352 ("[T]he language 'arising under' in the arbitration clause . . . appears broad enough to encompass some issues regarding contract formation.").

not make a broad agreement to arbitrate all disputes but intended to limit arbitration to the specified controversies.

Finally, Glacier Park points to the agreement to arbitrate "any disagreement or controversy between [the parties] as to any fact relative to the observance or fulfillment of the terms and obligations hereof by either party." But that clause plainly does not encompass a claim about the formation of the contract, such as Glacier Park's claim. The definitions of "observance" and "fulfillment" confirm that the clause covers disputes about a party's compliance with a requirement of the contract, not claims about the formation of the contract.[5]

In sum, the arbitration clause in the Lease identifies four specific types of disputes that the parties agreed to arbitrate. Because a claim as to contract formation, such as Glacier Park's breach of fiduciary claim, is not one of those disputes, we hold that the claim is not subject to arbitration.

CONCLUSION

For the foregoing reasons, we affirm the decision of the court of appeals.

Affirmed.

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[5] "Observance" is defined as "[t]he act or practice of observing or complying with a law, custom, command, or rule." *The American Heritage Dictionary* 1216 (5th ed. 2011). "Fulfillment" is defined as "[t]o meet a requirement or condition." *Id.* at 708.