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NO. COA05-1311

NORTH CAROLINA COURT OF APPEALS

Filed: 18 April 2006

ANN ADAMS,
Plaintiff,

v.

Forsyth County
No. 05 CVS 3707

ROBERT N. PULLIAM;
ROBERT N. PULLIAM CPA/ABV,
PLLC; and CENTERMARK, LLC,
Defendants.

Appeal by defendants from judgment entered 27 July 2005 by Judge A. Moses Massey in Forsyth County Superior Court. Heard in the Court of Appeals 30 March 2006.

Robinson & Lawing, LLP, by Adam R. Smart, Norwood Robinson, and Michael L. Robinson, for plaintiff-appellee.

Wilson & Iseman, LLP, by G. Gray Wilson and Maria C. Papoulias, and Sharpless & Stavola, PA, by Frederick K. Sharpless, for defendants-appellants.

STEELMAN, Judge.

In April 2000, plaintiff was involved in an equitable distribution dispute with her estranged husband. Plaintiff retained the services of defendant, Robert N. Pulliam, a Certified Public Accountant (CPA) and business evaluator to assist her. On 19 April 2000, Pulliam submitted a letter to plaintiff, which he had drafted and represented as a standard fee agreement. Plaintiff and defendant, Robert N. Pulliam, CPA/ABV, on behalf of Pulliam

Financial Group, PLLC, signed the agreement. The agreement contained an arbitration provision whereby the parties agreed to submit any dispute which arose from the contract to binding arbitration.

A dispute arose regarding plaintiff's payment for services provided by Pulliam. On 13 October 2004, defendant, CenterMark, LLC, filed a demand for arbitration with the American Arbitration Association (AAA) seeking payment in the amount of \$56,814.05 and asserting their right to arbitrate the claim under the terms of the 19 April 2000 agreement. At some time subsequent to 19 April 2000, Pulliam and CenterMark contemplated a merger, which was never consummated. The arbitration proceeding was stayed while the parties attempted to resolve the dispute through mediation. When the mediation was unsuccessful, the AAA lifted the stay and the parties continued with the arbitration proceeding. Plaintiff participated in the arbitration proceeding before filing her action in superior court.

On 9 June 2005, plaintiff instituted this action in Forsyth County Superior Court alleging breach of contract, fraud, constructive fraud, negligent misrepresentation, and unfair or deceptive trade practices. On 24 June 2005, plaintiff filed a motion to dismiss or stay arbitration. On 8 July 2005, defendants filed a motion to compel arbitration. The trial court granted plaintiff's motion to dismiss and denied defendants' motion to compel arbitration. Defendants appeal.

Before we can address defendants' arguments on appeal, we must address the matter of standing. First, we must determine who were the parties to the 19 April 2000 agreement so that we can determine whether the party who brought the arbitration proceeding, CenterMark, had standing to do so.

Generally, one who is not a party to an arbitration agreement lacks standing to compel arbitration. Non-signatories to an arbitration agreement may be bound by or enforce an arbitration agreement executed by other parties under theories arising out of common law principles of contract and agency law. Under the theory of agency, an agent can assume the protection of the contract which the principal has signed. Courts have applied this principle to allow for non-signatory agents to avail themselves of the protection of their principal's arbitration agreement.

Brown v. Centex Homes, ___ N.C. App. ___, ___, 615 S.E.2d 86, 88 (2005). The parties who signed the agreement were Ms. Adams and Mr. Pulliam in his representative capacity as owner and managing partner of Pulliam, PLLC. CenterMark, the party who filed the demand for arbitration with the AAA, did not sign the agreement, was not a party to the agreement, nor did it succeed to any of the rights of either of the parties who did sign the agreement. Defendants contend CenterMark is the same entity as Robert N. Pulliam CPA/ABV, PLLC (Pulliam PLLC)¹. However, Mr. Pulliam's affidavit indicates a contemplated merger between Pulliam Financial Group and CenterMark was never finalized. Thus, CenterMark did not succeed to any rights of Pulliam, PLLC, nor did it have standing to

¹ Pulliam, PLLC was originally named Pulliam Financial Group, however, it's Articles of Organization were amended to rename the company Robert N. Pulliam CPA/ABV, PLLC.

compel arbitration of a dispute under the 19 April 2000 agreement. On 19 July 2005, the day before plaintiff's motion to stay or dismiss the arbitration was scheduled to be heard, CenterMark attempted to amend the demand for arbitration to add Robert N. Pulliam and Robert N. Pulliam CPA/ABV, PLLC as claimants. However, there is nothing in the record to indicate whether the AAA granted the motion to amend. As appellants, defendants have the burden of ensuring that all necessary information was included in the record on appeal as required by Rule 9 of the Rules of Appellate Procedure. *Tucker v. City of Kannapolis*, 159 N.C. App. 174, 176, 582 S.E.2d 697, 698 (2003). Since it appears from the record on appeal that defendant CenterMark lacked standing to compel arbitration, we must hold the trial court did not err in granting plaintiff's motion to dismiss the arbitration and denying defendants' motion to compel arbitration.

AFFIRMED.

Judges MCCULLOUGH and CALABRIA concur.

Report per Rule 30(e).