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IN THE COURT OF APPEALS OF NORTH CAROLINA

2021-NCCOA-460

No. COA20-338

Filed 7 September 2021

Guilford County, No. 19 CvS 8889

EPES LOGISTICS SERVICES, INC.,

v.

STEEN MARCUSLUND, ANTHONY DE PIANTE, JILLIAN CARON, BRAD WIEDNER, LOGIN LOGISTICS, LLC, and NOBLE WORLDWIDE LOGISTICS, LLC, Defendants.

Appeal by Defendants from orders entered 24 October 2019 and 5 November 2019 by Judge R. Stuart Albright in Guilford County Superior Court. Heard in the Court of Appeals 26 May 2021.

Brooks, Pierce, McLendon, Humphrey & Leonard, LLP, by Andrew L. Rodenbough and James C. Adams, II, for the Plaintiff-Appellee.

Womble Bond Dickinson LLP, by Brent F. Powell, for the Defendants-Appellants.

DILLON, Judge.

¶ 1 Defendants Anthony De Piante, Jillian Caron, Brad Wiedner, and Noble Worldwide Logistics, LLC, (collectively, the "Noble Defendants") appealed to our Court from the trial court's Order on Motion to Compel Arbitration, Motion to Stay and Motion to Dismiss Verified Amended Complaint (the "Order"). Defendants Steen

Marcuslund and Login Logistics, LLC, (collectively, the "Marcuslund Defendants") are not involved in this appeal.

I. Background

¶ 2 Prior to 2016, Epes Logistics Services, Inc. ("Epes") was solely operating its logistics company within the United States. Epes sought to expand its business to international logistics. In November 2016, Epes entered into an agreement (the "Agreement") with Login Logistics, LLC ("Login") and its owner, Steen Marcuslund to purchase substantially all of Login's assets. Login was primarily in the business of international logistics.

¶ 3 The Agreement between Epes and the Marcuslund Defendants contained an arbitration provision, and Mr. Marcuslund also agreed to a five-year non-solicitation clause. Mr. Marcuslund remained with Epes to help the company transition to international logistics. Epes also hired many employees of Login to form its new international division, including Mr. De Piante, Ms. Caron, and Mr. Wiedner. These three individuals became the international division's new General Manager, Finance Manager, and Export Agent, respectively. These individuals were also required to sign non-solicitation agreements, which precluded them from soliciting Epes' customers during and after employment.

¶ 4 In November 2018, while still employed with Epes, Mr. De Piante and Ms. Caron formed their own logistics company, Noble Worldwide Logistics, LLC ("Noble").

In February 2019, Ms. Caron left Epes without revealing the plans for the Noble business. Three months later, Mr. Wiedner also left Epes. Finally, in July 2019, Mr. De Piante left Epes. Epes alleges that following these three employees' departure, over 30% of their international revenue was quickly lost to Noble.

¶ 5 On 1 October 2019, Epes filed a Complaint against the Noble Defendants, Mr. Marcuslund, and Login, alleging, among other claims: breach of contract, breach of fiduciary duty, unfair and deceptive trade practices, and tortious interference with contract. Epes also filed a motion for a temporary restraining order and preliminary injunction. The Noble Defendants and the Marcuslund Defendants each filed motions to dismiss for failure to state a claim and motions to compel arbitration.

¶ 6 The trial court denied Epes' motion for preliminary injunction and granted Mr. Marcuslund's motion to compel arbitration as provided in the Agreement. However, the trial court denied the Noble Defendants' identical motion to compel arbitration and their motion to dismiss. The Noble Defendants appeal the denial of these motions to our Court.

II. Analysis

¶ 7 The Noble Defendants make two arguments on appeal. We address each in turn.

A. Motion to Compel Arbitration

¶ 8 The Noble Defendants argue that the trial court erred in denying their motion

to compel arbitration. We disagree.

¶ 9 "[The] trial court's conclusion as to whether a particular dispute is subject to arbitration is a conclusion of law, reviewable *de novo* by the appellate court." *Raspet v. Buck*, 147 N.C. App. 133, 136, 554 S.E.2d 676, 678 (2001). "Under a *de novo* review, the court considers the matter anew and freely substitutes its own judgment for that of the lower tribunal." *Craig v. New Hanover Cnty. Bd. of Educ.*, 363 N.C. 334, 337, 678 S.E.2d 351, 354 (2009) (internal citation and quotation marks omitted).

¶ 10 "[W]ell-established common-law principles dictate that in an appropriate case a nonsignatory can enforce, or be bound by, an arbitration provision within a contract executed by other parties." *Ellen v. A.C. Schultes of Md., Inc.*, 172 N.C. App. 317, 320, 615 S.E.2d 729, 732 (2005) (internal citation and quotation marks omitted).

¶ 11 The Noble Defendants cite the federal rule that nonsignatories may invoke arbitration when "substantially interdependent and concerted misconduct by both the non-signatory and one or more of the signatories to the contract" is alleged. *Brantley v. Republic Mtge. Ins. Co.*, 424 F.3d 392, 396 (4th Cir. 2005) (citation omitted). However, our North Carolina courts have a slightly different test.

¶ 12 In *Smith Jamison Construction v. APAC-Atlantic, Inc.*, our Court stated that equitable estoppel principles only require arbitration when (1) "in substance the signatory's underlying complaint is based on the nonsignatory's alleged breach of the obligations and duties assigned to it in the agreement" or (2) "when the signatory to

a written agreement containing an arbitration clause must rely upon the terms of the agreement in asserting its claims against the nonsignatory." 257 N.C. App. 714, 717, 811 S.E.2d 635, 638 (2018). In other words, where the plaintiff's claims are "dependent upon legal duties imposed by North Carolina statutory or common law rather than contract law[,]" equitable estoppel does not demand arbitration. *Id*. at 718, 811 S.E.2d at 639 (quoting *A.C. Schultes*, 172 N.C. App. at 322, 615 S.E.2d at 732-33).

¶ 13 Here, the Noble Defendants were not parties to the Agreement between Epes and the Marcuslund Defendants, but they seek to invoke the arbitration provision in that Agreement. However, Epes' claims against the Noble Defendants are not dependent on the Agreement. Their claims are based on alleged breaches of duties laid out independently in North Carolina statutory or common law. Therefore, the principle of equitable estoppel does not require arbitration here. Accordingly, we conclude that the trial court did not err in denying the Noble Defendants' motion to compel arbitration.

B. Motion to Dismiss

¶ 14 The Noble Defendants argue in the alternative that the trial court erred in denying their motion to dismiss. The Noble Defendants have petitioned our Court for a writ of *certiorari* concerning this interlocutory ruling. In our discretion, we decline to evaluate the merits of this argument.

III. Conclusion

¶ 15 We conclude that the trial court did not err in denying the Noble Defendants' motion to compel arbitration. We do not reach their second assignment of error.

AFFIRMED.

Judges CARPENTER and GORE concur.

Report per Rule 30(e).