[Cite as *Locum Med. Group, L.L.C. v. VJC Med., L.L.C.*, 2015-Ohio-3037.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 102512

LOCUM MEDICAL GROUP, L.L.C.

PLAINTIFF-APPELLEE

vs.

VJC MEDICAL, L.L.C., ET AL.

DEFENDANTS-APPELLANTS

JUDGMENT:
AFFIRMED

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CV-14-832068

BEFORE: E.T. Gallagher, J., Kilbane, P.J., and Boyle, J.

RELEASED AND JOURNALIZED: July 30, 2015

ATTORNEYS FOR APPELLANTS

Christine M. Garritano
Christopher Bondra
Roetzel & Andress, L.P.A.
1375 East Ninth Street
One Cleveland Center, Ninth Floor
Cleveland, Ohio 44114

ATTORNEY FOR APPELLEE

P. Wesley Lambert
Brouse McDowell
388 South Main Street, Suite 500
Akron, Ohio 443011

EILEEN T. GALLAGHER, J.:

{¶1} Defendants-appellants, VJC Medical, L.L.C., 2 Guys and a Doc, L.L.C., and John Callahan, d.b.a. VJC Medical (collectively "VJC"), appeal the denial of their motion to stay proceedings and to compel arbitration. They assign the following error for our review.

> 1. The trial court erred by denying defendants' motion to stay proceedings and compel arbitration.

{¶2} We find no merit to the appeal and affirm the trial court's judgment.

I. Facts and Procedural History

{¶3} Plaintiff-appellee, Locum Medical Group, L.L.C. ("Locum"), is a healthcare staffing firm that places healthcare professionals with hospitals and medical practices. Locum contracted with VJC on the belief that it was a physician recruitment and staffing firm that places physicians at hospitals and medical practices as well as other staffing firms such as Locum.

{¶4} Locum and VJC began doing business together in 2011 after the parties executed two agreements (1) the "Fee Sharing Agreement," and (2) the "Client Agreement." The Fee Sharing Agreement, which the parties signed in March 2011, defined the terms under which the parties were to divide the gross revenue received as a result of their joint efforts to permanently or temporarily place physicians with their client hospitals and medical practices. Paragraph 7.1 of the Fee Sharing Agreement included the following arbitration provision:

> Any unforeseen disputes arising under this agreement which cannot be settled between the two parties will first be submitted to the American Arbitration Association (AAA) for arbitration, and judgment upon the award rendered under the arbitrator(s) may be entered into any court having jurisdiction thereof. The two parties with the dispute agree that arbitration by the AAA will be a final and binding resolution. If arbitration is brought by either party to enforce this agreement, the prevailing party shall be entitled to recover reasonable attorney fees in such suit or action, including any appeal thereof, or any claim of bankruptcy.

{¶5} Pursuant to the terms of the Client Agreement, Locum agreed to pay healthcare practitioner fees and expenses, and VJC agreed to reimburse Locum for these expenses. The Client Agreement, which was signed two months after the Fee Sharing Agreement, did not include an arbitration agreement. Instead, paragraph 7.5 of the Client Agreement provides:

> This agreement will be construed in accordance with the laws of the State of Ohio and any litigation, action or proceeding arising out of, in connection with or relating to this Agreement[,] will be instituted in the appropriate court based on monetary jurisdiction in Cuyahoga County, Ohio.

{¶6} The Client Agreement also states in paragraph 7.3:

> This Agreement, along with LMG's Client Policies and Procedures, the Fee Schedule, and any [Letter of Engagement] is the complete agreement between the parties, and may be changed only by bilateral written agreement.

With respect to expenses, the Client Agreement states that an accompanying "signed Fee Schedule identifies expected rates to which Client agrees prior to [sic] [Locum] begins recruiting. The signed [Letter of Engagement] identifies the specific rates for each assignment." The Fee Schedule referenced in the Client Agreement states, in relevant part:

> We understand that this is not an exclusive arrangement. However, you agree that any services to your organization or any related/affiliated organization by the candidate(s) we present whom you have not contacted regarding these dates will be arranged through LMG under the terms of the LMG Client Agreement and the rates outlined below. You also agree that you (or any related affiliate) will not hire any candidate presented by LMG as a permanent employee without written consent from LMG and payment of a permanent placement fee. Your signature confirms the rates are generally agreeable and that you authorize us to search for candidates to fill your need. Following acceptance of a candidate, aspects of any coverage arrangements will be worked out among the parties, subject to the terms of the Client Agreement.

{¶7} The Fee Schedule also provided that hospitalists were to be paid standard rates of $165 to $185 per hour. Expenses such as airfare, housing, and lodging were to be reimbursed at cost, and local mileage was to be reimbursed at a rate of $.50 per mile, or the "government equivalent."

{¶8} In August 2014, Locum filed a complaint against VJC in the Cuyahoga County Common Pleas Court, seeking to recover payment of unpaid invoices VJC allegedly owed under the Client Agreement and the attendant Fee Schedule. VJC filed a motion to stay proceedings and compel arbitration pursuant to the Fee Sharing Agreement. Locum opposed the motion, arguing that the parties' dispute did not fall

within the scope of the Fee Sharing Agreement, and that the arbitration provision within the Fee Sharing Agreement only applies to disputes arising under that agreement, i.e., fee sharing. Locum asserted that its complaint sought recovery of funds advanced to practitioners under the Client Agreement and attendant Fee Schedule and did not involve a fee splitting dispute. The trial court agreed with Locum and summarily denied the motion to stay and compel arbitration. This appeal followed.

II. Law and Analysis

{¶9} In the sole assignment of error, VJC argues the trial court erred in denying its motion to stay proceedings and to compel arbitration. VJC contends the court should have compelled the parties to resolve their dispute through arbitration as required by the Fee Sharing Agreement.

{¶10} Ohio courts recognize a presumption favoring arbitration when the parties' dispute falls within the scope of an arbitration agreement. *Taylor Bldg. Corp. of Am. v. Benfield*, 117 Ohio St.3d 352, 2008-Ohio-938, 884 N.E.2d 12, ¶ 27. Despite the presumption in favor of arbitration, parties cannot be compelled to arbitrate a dispute that they have not agreed to submit to arbitration. *Council of Smaller Ents. v. Gates, McDonald & Co.*, 80 Ohio St.3d 661, 665, 687 N.E.2d 1352 (1998). Thus, a trial court must stay a matter for arbitration pursuant to R.C. 2711.02(B) only if it is satisfied that "the issue involved in the action is referable to arbitration under an agreement in writing for arbitration." Therefore, a trial court has an independent duty to determine that the claims involved are subject to the arbitration provision before it can issue a stay. *Id.*

Moreover, an "arbitrator has no authority to decide issues which, under their agreement, the parties did not submit to review." *State Farm Mut. Ins. Co. v. Blevins*, 49 Ohio St.3d 165, 166, 551 N.E.2d 955 (1990).

{¶11} A contract, such as an arbitration agreement, that is clear and unambiguous, requires no real interpretation or construction and will be given the effect called for by the plain language of the contract. *Aultman Hosp. Assn. v. Community Mut. Ins. Co.*, 46 Ohio St.3d 51, 55, 544 N.E.2d 920 (1989). Interpreting the meaning and construction of contracts involves a question of law that appellate courts review de novo. *Northland Ins. Co. v. Palm Harbor Homes, Inc.*, 12th Dist. Clinton No. CA2006-07-021, 2007-Ohio-1655, ¶ 7. Therefore, the question of whether a particular claim is arbitrable is one of law for this court to decide. *Id*.

{¶12} VJC argues that pursuant to the arbitration provision contained in the Fee Sharing Agreement, the parties agreed to resolve the dispute alleged in the complaint by arbitration. The arbitration clause in the Fee Sharing Agreement expressly states that it applies to "[a]ny unforeseen disputes arising *under this agreement*." (Emphasis added.) Locum, on the other hand, contends its claim is governed by the Client Agreement, which does not include an arbitration provision. Thus, the question presented in this case is whether an arbitration clause in one agreement encompasses a dispute arising under another related agreement between the parties.

{¶13} The Sixth Circuit Court of Appeals confronted this issue in *Nestle Waters N. Am., Inc., v. Bollman*, 505 F.3d 498 (6th Cir.2007). In *Nestle*, the parties executed

several agreements by which Nestle purchased certain water rights on the Bollmans' property. The Bollmans also executed a deed conveying the water rights to Nestle. A dispute later arose as to what water was included in the sale, and the court was charged with determining whether the dispute was governed by the parties' purchase and sale agreement ("PSA") or solely by the deed that conveyed the disputed water rights. The PSA contained a detailed arbitration clause; the deed did not.

{¶14} In deciding whether a dispute falls within the scope of an arbitration agreement, the *Bollman* court held that "courts should 'ask if an action could be maintained without reference to the contract or relationship at issue. If it could, it is likely outside the scope of the arbitration agreement.'" *Id*. at 506, quoting *Fazio v. Lehman Bros., Inc.*, 340 F.3d 386, 395 (6th Cir.2003). The *Bollman* court concluded that because the proper interpretation of the deed could not be determined without reference to the PSA and the ongoing relationship between the parties, the deed was incorporated into the PSA, and therefore the arbitration clause within the PSA covered the parties' disagreement.

{¶15} In this case, the Client Agreement is the all encompassing "umbrella" agreement that defines the parties' relationship, rights, and responsibilities. Pursuant to Section 1.0 of the Client Agreement, Locum was obligated to (1) "[c]ompensate practitioners directly," (2) "[p]rovide professional liability (malpractice) insurance for practitioners," (3) "[a]rrange for transportation and/or housing of Practitioners according to [the terms in the Practitioner's] Letter of Engagement," and (4) "allow [VJC] to retain

patient fees generated by Practitioner." With respect to invoices billed to VJC for reimbursement of these expenses, paragraph 3.3 of the Client Agreement states that "[a]ll charges during Assignments will be invoiced weekly, unless agreed upon in writing in advance." Paragraph 3.4 further provides:

> All invoices are due on receipt and payable within 30 days of the invoice date. For Clients with delinquent accounts, all invoices are due and payable upon receipt. Invoices are due and payable regardless of any issues related to the Practitioner's credentials, practice style, enrollment with third party payers, clinical competence, patient complaints or any other issues related to the placement. LMG is not responsible or liable for any lost revenue or extra expense incurred by Client as a result of the Practitioner's acts or omissions. Payments are due regardless of whether either party is in breach of this Agreement or if this Agreement has otherwise been terminated.

{¶16} By contrast, the terms of the parties' Fee Sharing Agreement are limited to the percentage of placement fees to which each party is entitled upon the placement of a candidate in a medical facility or practice. It says nothing about how the parties were to share the expenses associated with each candidate. Locum's claim does not involve fee sharing; it seeks reimbursement of expenses. Therefore, because Locum's claim can be maintained without reference to the Fee Sharing Agreement, its claim falls outside the arbitration provision contained therein.

{¶17} Furthermore, paragraph 7.5 of the Client Agreement provides that any litigation arising out of, or in connection with, or relating to the Client Agreement "will be instituted in the appropriate *court* based on monetary jurisdiction in Cuyahoga County, Ohio." (Emphasis added.) Therefore, under the terms of the Client Agreement, any

dispute involving invoices and payments due for expenses Locum paid to practitioners under the Client Agreement are to be resolved in a court of law, not arbitration.

{¶18} In its complaint, Locum alleges that it performed all of its obligations under the Client Agreement and individual letters of engagement, and that VJC failed to remit payment to Locum to reimburse expenses paid to practitioners as required by the terms of the Client Agreement. Locum not only raises a claim for breach of contract, but also seeks an accounting to determine "all amounts collected by [VJC] from their clients as a result of its utilization of Locum's professionals." Locum also asserts claims for unjust enrichment, fraud, and to pierce the corporate veil. None of these claims fall within the scope of the Fee Sharing Agreement and are governed by the Client Agreement. Therefore, the trial court properly denied VJC's motion to stay and compel arbitration.

{¶19} The sole assignment of error is overruled.

III. Conclusion

{¶20} The trial court correctly overruled VJC's motion to stay and compel arbitration where the dispute did not fall within the scope of that agreement. VJC's claims relate to reimbursement of practitioner expenses as outlined in the Client Agreement and attendant Fee Schedule and are to be resolved in a court of law.

{¶21} Judgment affirmed.

It is ordered that appellee recover from appellants costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to the common pleas court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

EILEEN T. GALLAGHER, JUDGE

MARY EILEEN KILBANE, P.J., and
MARY J. BOYLE, J., CONCUR