[Cite as *Cooper v. Chateau Estate Homes, L.L.C.*, 2010-Ohio-5186.]

IN THE COURT OF APPEALS

TWELFTH APPELLATE DISTRICT OF OHIO

WARREN COUNTY

KAREN R. COOPER,	:	
Plaintiff-Appellant,	:	CASE NO. CA2010-07-061
	:	O P I N I O N
- vs -		10/25/2010
	:	
CHATEAU ESTATE HOMES, LLC, et al.,	:	
Defendants-Appellees.	:	

CIVIL APPEAL FROM WARREN COUNTY COURT OF COMMON PLEAS
Case No. 10CV77150

Keating Muething & Klekamp PLL, William A. Posey, Brian A. Riddell, One East Fourth Street, Suite 1400, Cincinnati, Ohio 45202, for plaintiff-appellant

Aronoff, Rosen & Hunt, Patrick M. O'Neill, Edward P. Akin, 2200 U.S. Bank Tower, 425 Walnut Street, Cincinnati, Ohio 45202, for defendant-appellee, Chateau Estate Homes, LLC

RINGLAND, J.

{¶1} Plaintiff-appellant, Karen R. Cooper, appeals a decision of the Warren County Court of Common Pleas to compel arbitration and stay the proceedings pending arbitration.[1]

{¶2} In 2008, appellant became interested in building a home in the Long Cove subdivision in Deerfield Township, Warren County, Ohio. In April 2008, appellant negotiated

an agreement to build a custom home with Todd W. Clifford, an agent of Spencer-Hill, a developer of the subdivision, and Chateau Custom Homes. Appellant executed a lot hold agreement, granting her a first right of refusal to purchase a lot in the subdivision and paid Spencer-Hill a deposit of $10,000.

{¶3} Appellant hired an architect. During the initial design meeting between appellant and the architect, Clifford persuaded appellant to design a larger home. Appellant and Spencer-Hill entered into a second contract to construct the larger home and paid the company an additional deposit of $10,000.

{¶4} Appellant was unable to secure a loan sufficient to finance the construction of the new house. According to appellant, Clifford promised her that he would be able to obtain financing on her behalf if she entered into another contract for construction because he, Chateau, and Spencer-Hill had relationships with certain banks. Appellant entered into another new construction contract, whereby she agreed to pay Chateau up to $1,599,000 to construct the new house. At the time she executed the contract, she paid another $10,000 deposit.

{¶5} Once again, financing could not be obtained for construction of the home. As a result, appellant terminated the construction contract. Appellees refused to return appellant's $30,000. Further, appellant alleges that she was "required to purchase a pre-existing home at another location for approximately $200,000 more than the agreed-upon price in the construction contract."

{¶6} Based upon appellant's termination of the construction contract, appellees filed a demand for arbitration with the American Arbitration Association. Rather than file an answering statement with the AAA, appellant filed a complaint in the Warren County Court of

1. Pursuant to Loc.R. 6(A), we sua sponte remove this case from the accelerated calendar and place it on the regular calendar for purposes of issuing this opinion.

Common Pleas against Spencer-Hill, Chateau, and Clifford, individually and as an agent of Spencer-Hill and Chateau. Appellant alleged that she was induced to enter into the parties' final written contract by Cooper's oral promise to secure financing. Appellant claimed appellees breached the oral contract by failing to secure financing. Appellant also brought claims for promissory estoppel, unjust enrichment, and fraud for inducing her to enter into the third construction contract. Appellant notes that she did not assert a claim against appellees for breach of the construction contract. Appellees filed a motion to stay the proceedings pending arbitration in accordance with R.C. 2711.02. The trial court issued an order staying the proceedings "pending completion of arbitration in accordance with the contract." Appellant timely appeals, raising a single assignment of error:

{¶7} "THE TRIAL COURT ERRED IN GRANTING APPELLEE'S MOTION TO STAY ACTION PENDING ARBITRATION."

{¶8} The focus of our inquiry centers upon the arbitration provision contained in the contract between Chateau and appellant. The contract, which was drafted by Chateau, contains 14 numbered sections. Section 7 is labeled "CONTRACTOR'S WARRANTY" and has five paragraphs. Each paragraph discusses either the terms or exclusions of the limited warranty. The final paragraph of Section 7 provides in its entirety:

{¶9} "Purchaser shall provide contractor written notice of any claims and contractor shall have thirty days to remedy or offset such claim. Any controversy, claim or other matter arising out of or relating to this Contract, or the breach thereof, shall be settled in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrator(s) shall be entered in any court having jurisdiction thereof. All such controversies, claims or other matters regarding construction shall be resolved in accordance with the Industry Standards Manual, which establishes the standard by which the Builder's performance shall be governed."

{¶10} Appellant argues that the arbitration clause only applies to construction defects, where performance of the builder is at issue following completion of the home, due to the wording and placement of the clause in the contractor's warranty section of the contract. Appellees, on the other hand, urge that the arbitration clause is applicable to any and all disputes arising under the contract.

{¶11} The construction of written contracts is a matter of law to be resolved by the court. *Graham v. Drydock Coal Co.*, 76 Ohio St.3d 311, 313, 1996-Ohio-393. Thus, when reviewing issues of contract interpretation, this court applies a de novo standard of review. *Merritt v. Anderson*, Fayette App. No. CA2008-04-101, 2009-Ohio-1730, ¶18, citing *Taylor Bldg. Corp. of Am. v. Benfield*, 117 Ohio St.3d 352, 2008-Ohio-938, ¶37. Any factual findings by the trial court must be accorded appropriate deference. *Taylor Bldg.* at ¶2.

{¶12} The primary role of the court in reviewing a contract is to ascertain and give effect to the intent of the parties. *Hamilton Ins. Serv., Inc. v. Nationwide Ins. Cos.*, 86 Ohio St.3d 270, 273, 1999-Ohio-162. A contract that is, by its terms, 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.* (1989), 46 Ohio St.3d 51, syllabus. A contract is ambiguous if its provisions are susceptible to two or more reasonable interpretations. *Covington v. Lucia*, 151 Ohio App.3d 409, 2003-Ohio-346, ¶18. "[W]here there is doubt or ambiguity in the language of a contract it will be construed strictly against the party who prepared it. * * * In other words, he who speaks must speak plainly or the other party may explain to his own advantage." *McKay Mach. Co. v. Rodman* (1967), 11 Ohio St.2d 77, 80. See, also, *Westfield Ins. Co. v. Galatis*, 100 Ohio St.3d 216, 2003-Ohio-5849, ¶14. Whether a contract's terms are clear or ambiguous is a question of law for the court. *Westfield Ins. Co. v. HULS Am., Inc.* (1998) 128 Ohio App.3d 270, 291.

{¶13} The contract in this case contains a provision relating to Chateau's obligation to

secure financing for appellant. The contract also includes an integration clause which provides, "[t]he parties agree that this Contract constitutes their entire agreement with respect to the subject matter hereof and supersedes any prior understanding, agreements or representations."

{¶14} Appellees urge the phrase "[a]ny controversy, claim or other matter arising out of or relating to this Contract, or the breach thereof, shall be settled in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association" is unambiguous and compels arbitration of this matter. Appellees refer to *Composite Concepts Co., Inc. v. Berkenhoff*, Warren App. No. CA2009-11-149, 2010-Ohio-2713, where this court recently reviewed an arbitration clause in a patent licensing agreement. Id. at ¶2. This court found that the phrase "[a]ny dispute arising hereunder" required arbitration of the parties' dispute. Id. at ¶27. When viewed in isolation, the arbitration clause in this case potentially indicates, like *Composite Concepts*, that all claims between the parties must be arbitrated.

{¶15} However, when read in context of the entire section of the contract and surrounding sentences, the arbitration clause is susceptible to multiple interpretations because "the actual placement or typography of the words in the printed contract, as well as the structure and punctuation used in drafting the contract, must be considered along with the words themselves." *Farrell v. Deuble*, 175 Ohio App.3d 646, 2008-Ohio-1124, ¶21, citing *Reeder v. Cetnarowski* (1988), 47 Ohio App.3d 90, 92.

{¶16} The agreement in this case is a construction contract, designating Chateau's responsibilities in building the home and appellant's payment obligations. As described above, Section 7, which contains the arbitration provision, is labeled as "CONTRACTOR'S WARRANTY." The section describes the limited warranty furnished by Chateau to appellant and the various subject matter covered or excluded from the warranty. The section states that Chateau will furnish to appellant a limited warranty consistent with the "Industry

Standards Manual promulgated by the Home Builder's Association of Greater Cincinnati." The "Industry Standards Manual" is referenced multiple times throughout Section 7.

{¶17} The final paragraph, which contains the arbitration clause, is the notice provision for bringing claims under the warranty. The first sentence states that appellant must provide written notice of any claims to Chateau. The second sentence is the arbitration clause. The third sentence states that all claims or controversies will be resolved in accordance with the "Industry Standards Manual."

{¶18} Reading the arbitration clause in the context of the entire section of the contract it is encompassed within as well as the specific paragraph in which it appears, ambiguity exists because the clause appears to apply only to claims arising from the warranty. Neither Section 7 nor the paragraph surrounding the arbitration clause refer or mention the contractor's failure to secure financing listed in Section 3 of the contract. The sentence preceding the arbitration clause allows 30 days for Chateau "to remedy or offset" claims. This sentence references defects with the construction of the home. The sentence which follows the arbitration clause refers to the "Industry Standards Manual" referenced throughout the warranty section. Based upon the clause's placement between these warranty terms, it appears the arbitration provision is similarly referencing the warranty.

{¶19} If Chateau wished for the arbitration clause to be applicable to the parties' entire agreement, it should have placed the clause in a conspicuous location, such as a separate paragraph or section, not buried in the section describing the "CONTRACTOR'S WARRANTY." Due to the dubious placement of the clause, we must construe the ambiguity against Chateau. Accordingly, we find that the arbitration clause appears applicable only to construction defects under the contractor's warranty, not Chateau's promise to secure financing for appellant which is the subject of her complaint.

{¶20} Appellant's sole assignment of error is sustained.

{¶21} The decision of the trial court to stay proceedings pending arbitration is reversed and this cause is remanded for further proceedings.

YOUNG, P.J., and POWELL, J., concur.

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