[Cite as *Hepperly v. Sickles*, 2015-Ohio-2223.]

IN THE COURT OF APPEALS

TWELFTH APPELLATE DISTRICT OF OHIO

WARREN COUNTY

RACHELLE R. HEPPERLY, et al.,	:	
		CASE NO. CA2014-12-147
Plaintiffs-Appellees,	:	
		O P I N I O N
	:	6/8/2015
- vs -		
	:	
JAMES V. SICKLES, et al.,	:	
Defendants-Appellants.	:	

CIVIL APPEAL FROM WARREN COUNTY COURT OF COMMON PLEAS
Case No. 14CV85726

Andrew P. George, P.O. Box 36, 1160 East Main Street, Lebanon, Ohio 45036, for plaintiffs-appellees

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S. POWELL, P.J.

{¶ 1} Defendant-appellant, Katahdin Forest Products Company, a supplier of log home materials, appeals from a decision of the Warren County Court of Common Pleas denying its motion to compel arbitration. For the reasons outlined below, we affirm the decision of the trial court.[1]

1. Pursuant to Loc.R. 6(A), we have sua sponte removed this appeal from the accelerated calendar.

{¶ 2} In 2011, plaintiffs-appellees, James K. and Rachelle R. Hepperly, wanted to build a log home in Warren County and met with James V. Sickles, who, along with Ronald Sickles, does business as Iron City Log Homes. At the meeting, James Sickles indicated he could construct a log home for the Hepperlys and recommended that they purchase a log home construction kit from Katahdin.[2]

{¶ 3} After visiting Katahdin's website that claimed its local dealers, including Iron City Log Homes, "provide the finest craftsmanship available," the Hepperlys entered into a contract with Katahdin whereby Katahdin was to supply a log home kit (supply contract). The supply contract contained an arbitration clause, providing in part, "Arbitration: All disputes and claims arising out of or relating to this Proposal/Contract shall be submitted to arbitration * * *." The supply contract also contained a warranty clause and an integration clause. Katahdin supplied the material for the Hepperlys' log home and the Hepperlys paid the amount due pursuant to the supply contract.

{¶ 4} Although Katahdin supplied the material for the log home, construction was never completed. Furthermore, James Sickles and Ronald Sickles failed to pay subcontractors and suppliers despite indicating the subcontractors and suppliers had been paid in full. In May 2014, the Hepperlys filed suit against several defendants, including James Sickles, Ronald Sickles, and Katahdin, alleging breach of contract, unjust enrichment, violation of the Ohio Consumer Sales Practices Act, fraud, and liability for joint venture. The only claim specifically relevant to Katahdin was joint venture. By alleging joint venture, the Hepplerys claimed that all defendants were liable for the actions of the other defendants. The Hepperlys also sought punitive damages.

{¶ 5} Katahdin filed a motion to compel arbitration and to dismiss the complaint due

2. Two construction contracts were entered, one with Iron City Log Homes and one with Tom Wolford Construction. James Sickles is affiliated with both Iron City Log Homes and Tom Wolford Construction.

to the arbitration clause contained in the supply contract. The Hepperlys then filed a motion for default judgment against James Sickles and Ronald Sickles because they failed to respond. Default judgment was entered against James Sickles and Ronald Sickles in the amount of $99,381.06 in actual damages and $5,000 in statutory damages pursuant to R.C. 1345.09 for violation of the Ohio Consumer Sales Practices Act. After default judgment was entered, the trial court then denied Katahdin's motion to compel arbitration and to dismiss the complaint from which Katahdin now appeals, asserting one assignment of error for review.

{¶ 6} THE TRIAL COURT ERRED IN DENYING KATAHDIN'S MOTION TO COMPEL ARBITRATION.

{¶ 7} Katahdin argues the trial court erred in failing to compel arbitration because the arbitration clause contained in the supply contract was broad in scope and governed the parties' entire relationship. In support of this claim, Katahdin contends but for the supply contract, no relationship would exist between the Hepperlys and Katahdin. In contrast, the Hepperlys maintain the arbitration clause contained in the supply contract does not govern the claim alleged against Katahdin for joint venture because it creates a separate relationship between the parties distinct from the supply contract. We agree with the Hepperlys.

{¶ 8} Whether an agreement creates a duty for parties to arbitrate is a question of law, and the standard of review on appeal is de novo. *McKenzie v. Cintas Corp.*, 12th Dist. Warren No. CA2012-11-110, 2013-Ohio-1310, ¶ 11; *Council of Smaller Ents. v. Gates, McDonald & Co.*, 80 Ohio St.3d 661 (1998). Arbitration is favored as a method of dispute resolution. *Williams v. Aetna Fin. Co.*, 83 Ohio St.3d 464, 471 (1998). The strong public policy in favor of arbitration is codified in Ohio's Arbitration Act, which permits a court to compel arbitration if an action involves an issue subject to an arbitration agreement. R.C. 2711.03(A). This presumption in favor of arbitration is strengthened when an arbitration clause is broad in scope as "only the most forceful evidence of a purpose to exclude the

claim from arbitration will remove the dispute from consideration by the arbitrators." *Composite Concepts Co., Inc. v. Berkenhoff*, 12th Dist. Warren No. CA2009-11-149, 2010-Ohio-2713, ¶ 26; *Academy of Medicine of Cincinnati v. Aetna Health, Inc.*, 108 Ohio St.3d 185, 2006-Ohio-657 (classifying an arbitration clause purporting to cover "any disputes" as a broad clause).

{¶ 9} The Ohio Supreme Court has set forth four general principles that guide arbitrability. First, arbitration is a matter of contract and no party can be required to submit to arbitration unless it has agreed to so submit. *Academy of Medicine of Cincinnati* at ¶ 11. Second, the question of whether parties agreed to arbitrate is for the court and not the arbitrator. *Id.* at ¶ 12. Third, in considering whether the parties agreed to submit to arbitration, the court is not to rule on the merits of the underlying claim. *Id.* at ¶ 13. Fourth, if a contract contains an arbitration clause, there is a presumption of arbitrability so that "an order to arbitrate the particular grievance should not be denied unless it may be said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute." *Id.* at ¶ 14.

{¶ 10} Katahdin asserts that the first and fourth principles are especially relevant in this case as (1) the parties agreed to arbitration when they signed the supply contract and (2) the Hepperlys cannot say with positive assurance that the arbitration clause contained therein does not cover the current dispute. However, the Ohio Supreme Court has recognized that the existence of a contract does not mean *every* dispute between parties is arbitrable. *Academy of Medicine of Cincinnati* at ¶ 29. Rather, in evaluating whether a contractual relationship between parties is irrelevant or controlling, it is proper "to ask if an action could be maintained without reference to the contract or relationship at issue." *Id.* at ¶ 24, citing *Fazio v. Lehman Bros.*, 340 F.3d 386, 395 (6th Cir.2003). By asking this question, courts are able to make determinations of arbitrability based on factual allegations in the

complaint, which prevents mandatory arbitration when the disputed matter is unrelated to the subject of the contract containing the arbitration clause. *Academy of Medicine of Cincinnati* at ¶ 29.

{¶ 11} In this instance, whether or not the Hepperlys and Katahdin had entered into the supply contract, the Hepperlys could have pursued a claim against Katahdin for joint venture. Joint venture is defined as

> an association of persons with intent, by way of contract, express or implied, to engage in and carry out a single business adventure for joint profit, for which purpose they combine their efforts, property, money, skill and knowledge, without creating a partnership, and agree that there shall be a community of interest among them as to the purpose of the undertaking, and that each coadventurer shall stand in the relation of principal, as well as agent, as to each of the other coadventurers.

Al Johnson Const. Co. v. Kosydar, 42 Ohio St.2d 29 (1975), paragraph one of the syllabus.

{¶ 12} In their amended complaint, the Hepperlys alleged that all of the defendants "are in a business arrangement in the marketing, sale and construction business and collaborate on construction contracts and projects." By directing business to one another as alleged by the Hepperlys, the defendants make a share of profits through joint venture, and as such, all defendants are liable for the acts of the other. To support their joint venture claim, the Hepperlys alleged Katahdin recommended Iron City Log Homes through advertising on its website that indicated all of its local dealers, including Iron City Log Homes, "provide the finest craftsmanship available." Further, the Hepperlys alleged James Sickles recommended they purchase a log home construction kit from Katahdin.[3]

{¶ 13} The claim alleged for joint venture is based on reciprocal recommendations of the other's services. Katahdin's website listed Iron City Log Homes as a recommended

3. While Katahdin argued below and mentioned in its brief that the Hepperlys failed to allege the material elements of a joint venture claim, we need not address this argument as it was not raised in an assignment of error.

dealer and James Sickles suggested the Hepperlys purchase a log home kit from Katahdin. The alleged implied contract creating a joint venture between all defendants is separate and distinct from the supply contract between the Hepperlys and Katahdin. As such, the Hepperlys' claim for joint venture could have been brought regardless of the supply contract's existence. Therefore, because the Hepperlys' claim for joint venture may be maintained without reference to the supply contract, the arbitration clause contained therein is not controlling.

{¶ 14} In light of the foregoing, because the arbitration clause contained in the supply contract is not applicable to the Hepperlys' claim against Katahdin for joint venture, we find that the trial court properly denied Katahdin's motion to compel arbitration. Katahdin's sole assignment of error is overruled.

{¶ 15} Judgment affirmed.

RINGLAND and HENDRICKSON, JJ., concur.