IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Dr. David R. Noyes,	:	
Appellant	:	
	:	
v.	:	
	:	No. 77 C.D. 2010
Phoenixville Area School District	:	Submitted: July 9, 2010

BEFORE: HONORABLE BERNARD L. McGINLEY, Judge
HONORABLE ROBERT SIMPSON, Judge
HONORABLE JIM FLAHERTY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE McGINLEY FILED: October 28, 2010

Dr. David R. Noyes (Dr. Noyes), the former Superintendent of the Phoenixville Area School District (School District), appeals from the order of the Court of Common Pleas of Chester County (trial court) which entered summary judgment in favor of the School District on all claims contained in Dr. Noyes' Complaint for Declaratory Judgment.

In his Complaint for Declaratory Judgment, Dr. Noyes alleged that the School District's "breach of Employment Agreement" action filed against him on October 20, 2008, before the American Arbitration Association (AAA) was not subject to arbitration. He asked the trial court to declare that the AAA lacked subject matter jurisdiction. Alternatively, he asked the trial court to prohibit the School District from proceeding in arbitration until a court of competent jurisdiction determined that the underlying claim was subject to arbitration under the Employment Agreement's Arbitration Clause.

The parties filed cross-motions for summary judgment. The trial court found that the School District's breach of Employment Agreement claim fell "squarely and unambiguously" within the Arbitration Clause and entered judgment in favor of the School District.

Dr. Noyes' Employment Agreement And Arbitration Clause

On June 21, 2001, Dr. Noyes signed an Employment Agreement to serve as the Superintendent of the School District. Dr. Noyes' duties as Superintendent were set forth in Article II, Section 2.01 of the Employment Agreement:

> ARTICLE II – DUTIES OF SUPERINTENDENT
>
> 2.01. Description of Duties.
>
> (a) The Superintendent shall be charged with the administration of the schools under the direction of the Board. The Superintendent shall be the Chief Executive Officer of the School District and, as such, shall be responsible for:
>
> (1) recommending the employment of all employees and directing and assigning teachers and other employees of the School District under his supervision;
>
> (2) organizing, supervising, and arranging the administrative and supervisory staff;
>
> (3) suggesting policies, regulations, rules and procedures deemed necessary for the efficient and proper operation of the School District;
>
> (4) setting yearly objectives for the School District consistent with the direction and priorities established by the Board;

> (5) establishing and maintaining effective procedures and controls for the expenditures of all school funds in accordance with the annual school budget, subject to the direction and approval of the Board;
>
> (6) involving the Board no later than the end of February each year in the preparation of the yearly budget;
>
> (7) providing the Board members with information pertinent to their legislative roles;
>
> (8) preparing and submitting to the Board all matters requiring legal action;
>
> (9) attending Board meetings and committee meetings as may be required from time to time, and submitting a Superintendent's report at the Board's regular meeting;
>
> (10) informing the Board as to the operation of the school system and making recommendations for the more efficient operation thereof;
>
> (11) maintaining regular contact with Board members individually and through the Board President;
>
> (12) performing all duties incident to the office of the School District Superintendent as set forth in the School Code and such other duties as may legally be prescribed by the Board.

Employment Agreement, June 21, 2001, at Reproduced Record (R.R.) at 38a-39a.

At the heart of this dispute is the Arbitration Clause of Dr. Noyes' Employment Agreement which required that "*any dispute about the terms of*" Dr. Noyes' employment including "*the terms and conditions of*" the Employment Agreement must be arbitrated:

> Dispute Resolution *If there is any dispute about the terms of Superintendent's employment, which includes the terms and conditions of this Agreement*, the parties agree to resolve such dispute by submission to the American Arbitration Association, which shall appoint an arbitrator in accordance with its rules and whose decision shall be final and binding upon the parties.

Employment Agreement at ¶6.04; R.R at 43a. (Emphasis added).

Facts which Gave Rise to the School District's Arbitration Dispute against Dr. Noyes

In September of 2003, the School Board had the opportunity to purchase a parcel of land from Raymond C. Davis and Sons, Inc. (Seller), in Eastpike Township upon which the School District planned to build an elementary school.

Dr. Noyes and the School District's Business Manager, Michelle Diekow (Ms. Diekow), who reported directly to Dr. Noyes, worked with the School District's attorneys and the Seller to complete the sale of the property.

A draft of the Agreement of Sale was prepared by the School District's attorneys and sent to Ms. Diekow and Dr. Noyes. Critical to this controversy is a provision which gave the School District the right to request from the Seller the removal of construction debris on the property and/or remediation of any environmental issues uncovered during a 60-day investigation period. If such a request was made, the Seller had the option to remediate the property or terminate the Agreement and return the School District's deposit.

The School Board initially approved the Agreement of Sale at a June 17, 2004, meeting. After the School Board approved the Agreement of Sale, the

School District hired Synergy Environmental, Inc. to conduct an environmental analysis of the property. Several reports prepared by Synergy indicated the presence of a dump, groundwater contamination and a nearby Superfund site.[1] Consequently, the School District extended the 60-day investigation period several times to allow for further investigation of the environmental condition of the property with the investigation period officially ending on December 17, 2004.

On February 18, 2005, the School Board's President signed the final Agreement of Sale to purchase the property for $1.8 million. Thereafter, the School District called the Seller and requested that someone remove the construction debris on the property but the Seller refused because the investigation period had expired.

In June 2008, due to concerns raised by parents about the environmental issues associated with the property, the School Board voted 6 to 2 to abandon the project. Dr. Noyes retired on June 30, 2008.

School District's Dispute Before the American Arbitration Association

In October 2008, the School District filed a "Breach of Employment Agreement" claim with AAA against Dr. Noyes for $3 million for losses incurred. The School District claimed that Dr. Noyes breached his Employment Agreement by failing to advise the School Board of its right to demand that the seller

[1] A Superfund site is a toxic site which has been placed on the National Priorities List (NPL), a list of polluted sites requiring cleanup which is maintained by the United States Environmental Protective Agency (EPA).

remediate the property before the 60-day investigation period expired under the Agreement of Sale's remediation provision.[2]

According to the School District, no demand was made of the Seller to remediate the Property before the investigation period expired because the School Board "did not know of the right" to do so. The School District blamed the School Board's lack of knowledge on Dr. Noyes because he failed to inform them of the environmental issues and he failed to inform them of the right to request the Seller to remediate. The School District claimed that Dr. Noyes was required under his Employment Agreement to communicate legal advice received from the School District's solicitor to the School Board, forward reports concerning environmental issues to the School Board, and apprise the School Board of negotiations with landowners.

During an "interview" under oath conducted by the School District's attorneys on August 21, 2008, Dr. Noyes testified, among other things, that the Board members received a copy of the Agreement of Sale. He stated he believed based on Synergy's representations that the environmental issues were "not significant to keep us from going forward" and that he relied on Synergy to "let us know if the environmental issues were unconquerable." Notes of Testimony, August 21, 2008, (N.T., 8/21/08), at 162; R.R. at 402a. He testified that several Board members who were on the Buildings and Grounds Committee knew full well of the extent of the pollution and were involved in discussions regarding the site. He also testified that he relied on the School District's attorneys to advise him

[2] The School District also filed a separate lawsuit against the seller of the property in the Chester County Court of Common Pleas which is pending at Case No. 2008-12931, Phoenixville
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"if there were problems with the site that would prohibit building a school on it." N.T., 8/21/08, at 162; R.R. at 402a. He testified that Synergy and the attorneys concluded that it was "okay to build a school." Id.

Before the Arbitrator, Dr. Noyes objected to the "arbitrability" of the School District's breach of Employment Agreement dispute before the AAA as being beyond the scope of the Arbitration Clause.

Dr. Noyes' Complaint for Declaratory Judgment

On June 15, 2009, Dr. Noyes filed a Complaint for Declaratory and Injunctive Relief challenging the "arbitrability" of the School District's underlying breach of Employment Agreement claim.

Dr. Noyes argued that the Arbitration Clause only applied to disputes "*about the terms of his employment*," which included matters such as his qualifications, tenure, compensation, benefits, and performance evaluations. He asserted that the underlying claim was not a "*dispute about the terms and conditions of*" his employment. Rather, he claimed that the underlying claim was a negligence claim disguised as a breach of contract action. He argued that the negligence action was barred by time and immunity, and was not subject to arbitration under the Arbitration clause.

On September 22, 2009, the Arbitrator agreed to hold the Arbitration proceedings in abeyance pending guidance from the court concerning arbitrability.

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School District's Motion for Summary Judgment

On September 16, 2006, the School District moved for summary judgment. It argued that the Arbitration Clause was intended to cover a dispute for failure to perform under the Employment Agreement. The School District argued that Dr. Noyes was responsible under his Employment Agreement for the School District's day-to-day tasks with the duty to keep the School Board informed at all times. The School District asserted that Dr. Noyes was contractually obligated to keep the School Board apprised of all matters requiring legal action and of all matters concerning the operation of the School District.

According to the School District, each of these claims pertained to conduct required of Dr. Noyes by contract, specifically by Article II of the Employment Agreement, and Dr. Noyes' breach of those duties by his acts and omissions.

The School District interpreted the phrase "*[i]f there is any dispute about the terms of Superintendent's employment, which includes the terms and conditions of this Agreement*" to include a breach of the Employment Agreement itself. It contended that the underlying claim was based upon Dr. Noyes' breach of the terms and conditions of the Employment Agreement, namely his contractual duties under Article II. Therefore, the action before the AAA was within the scope of the Arbitration Clause.

Dr. Noyes' Motion for Summary Judgment

Dr. Noyes cross filed a summary judgment and essentially raised the same issue presented in his Complaint for Declaratory Judgment. Dr. Noyes

argued that the School District's claim was not subject to arbitration before the AAA under the clear language of the Arbitration Clause.

Trial Court's Order

On January 4, 2010, the trial court denied Dr. Noyes' motion for summary judgment and entered judgment in favor of the School District. The trial court interpreted the Arbitration Clause at issue as all-encompassing and found that it contained no limiting language. It concluded the School District's claim that Dr. Noyes failed to perform his duties under §2.01 of the Employment Agreement constituted a dispute "*about the terms*" of the Superintendent's employment which the parties agreed would be submitted to arbitration.

Discussion

On appeal[3], Dr. Noyes argues that the trial court erred when it concluded that the School District's underlying claim was subject to arbitration. He asserts that he never contemplated, bargained for, or agreed to, litigate a claim for damages for breach of his Employment Agreement in the AAA forum, where he would be deprived of subpoena power over documents and witnesses, and the opportunity to join culpable parties. He contends the Arbitration Clause was narrowly tailored to cover only disputes "*about the terms and conditions*" of his employment as set forth in the Employment Agreement. He maintains that disputes pertaining to the "*terms and conditions*" of his employment would be

[3] This Court's scope of review of an order granting or denying summary judgment is limited to determining whether the trial court committed an error of law or abused its discretion. Salerno v. LaBarr, 632 A.2d 1002 (Pa. Cmwlth. 1993). Summary judgment is only appropriate when, after examining the record in the light most favorable to the non-moving party, there is no

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those questioning or seeking clarification of his qualifications, tenure, compensation, benefits, and performance evaluations. He complains that the trial court interpreted the Arbitration Clause too broadly, as though it was all-encompassing. He claims that the AAA claim is beyond the scope of the narrow provision and the trial court erred when it concluded that the parties agreed to arbitrate this dispute.

Arbitration

It is well settled that arbitration is a matter of contract. United Steelworkers of America v. Warrior & Gulf Navigation Co., 363 U.S. 574, 582 (1960). "Absent an express agreement between the parties to submit their dispute to arbitration, a court may not compel arbitration." Hazelton Area School District v. Bosak, 671 A.2d 277, 282 (Pa. Cmwlth. 1996).

To determine whether the School District's claim for breach of Employment Agreement is arbitrable, this Court must engage in the two-prong analysis set forth in the City of Scranton v. Heffler, Radetich & Saitta, LLP, 871 A.2d 875 (Pa. Cmwth. 2005):

> In order to determine whether … a claim is subject to arbitration, a court must engage in a two-prong analysis. A court must first determine whether a valid agreement exists[4] and then it must determine whether the dispute is within the scope of that agreement.

City of Scranton, 871 A.2d at 880.

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genuine issue of material fact, and the moving party clearly establishes that he is entitled to judgment as a mater of law. Id.

[4] The parties do not dispute that a valid agreement exists.

The determination of whether the parties' dispute is within the scope of their agreement requires a review of the specific language of the arbitration clause. The scope of arbitration is determined by the intention of the parties as ascertained in accordance with the rules governing contracts generally. Smay v. E.R. Stuebner, Inc., 864 A.2d 1266 (Pa. Super. 2004). In determining the parties' intent, a court must first look to the express language as found inside the four corners of the agreement. PBS Coal., Inc. v. Hardhat Mining, Inc., 632 A.2d 903 (Pa. Super. 1993). As with all contracts, agreements to arbitrate must be construed strictly and should not be extended by implication. Id.

Here, the trial court concluded that the Arbitration Clause was sufficiently broad to encompass the breach of employment contract claim because the claim was "*about the terms of*" Dr. Noyes' employment. The trial court reasoned that since the underlying claim alleged that Dr. Noyes breached his Employment Agreement, "*the terms of* the Superintendent's employment [were] called into question." Trial Court Opinion, March 29, 2010, at 7 (Emphasis added). In essence, the trial court concluded that "*about the terms of*" was all-encompassing language, synonymous with the "*arising out of or relating to*" which appears in cases involving the scope of "unlimited" arbitration clauses.

In Ambridge Borough Water Authority v. Columbia, 458 Pa. 546, 328 A.2d 498 (1974), the Supreme Court addressed whether a dispute concerning an employment contract was subject to arbitration before the AAA. There, J.Z. Columbia (Columbia) was employed by Ambridge Borough Water Authority (Authority) as plant manager. After his employment was terminated Columbia

claimed that the Authority owed him monies under his contract. Paragraph 17 of Columbia's employment contract provided:

> That *any controversy or claim arising out of or relating to this Agreement or the breach thereof* shall be settled by arbitration in accordance with the rules of the American Arbitration Association… (Emphasis added).

Ambridge, 458 Pa. at 547-548, 328 A.2d at 499.

The Supreme Court found that the parties' dispute was encompassed within the arbitration clause because it was "framed in the broadest conceivable language from which it must be concluded that the parties intended the scope of submission [to arbitration] to be unlimited." Ambridge, 458 Pa. at 551, 328 A.2d at 501.

In Smay, the Superior Court confronted a similar issue of whether an indemnity claim was within the scope of an arbitration clause contained in a construction contract. There, Rodney Smay (Smay) was injured when he was working on a construction project for the Conrad Weiser School District (school district). Smay filed a workers' compensation claim against his employer, Greiner Industries, and a civil complaint against the school district, the architect and others. The architect and school district filed joinder complaints against Greiner and sought indemnification under the construction contract the school district had executed with Greiner. The construction contract contained an arbitration clause which provided: "*any controversy or Claim arising out of or related to the contract, or the breach thereof*, shall be settled by arbitration." Smay, 864 A.2d at 1271. The Superior Court found that the arbitration clause was unrestricted and,

therefore, it encompassed all disputes that related to the parties' contractual obligations, including the obligation to indemnify.

And, finally, in Pittsburgh Logistics Systems, Inc. v. Professional Transportation and Logistics, Inc., 803 A.2d 776 (Pa. Super. 2002), the arbitration clause at issue provided: "*all claims, disputes an other matters and questions arising out of or relating to this Agreement, or the breach thereof*, shall be resolved by means of arbitration." There, the Superior Court held that the transportation company's tort claims for misappropriation of trade secrets, breach of fiduciary duty and intentional interference with prospective contracts, arose from the underlying contract and were, thus, encompassed by the contract's arbitration provision.

This Court must agree with Dr. Noyes based on the above cases, that the trial court interpreted the Arbitration Clause too broadly when it concluded that the phrase "about the terms of" was all-encompassing. Unlike the above-cited cases the Arbitration Clause did not include sweeping language which indicated the parties' intention to arbitrate this breach of contract claim before the AAA. Rather, it appears from the plain language that the parties intended to arbitrate only matters concerning the interpretation and construction of the terms of the Employment Agreement and the conditions of Dr. Noyes' employment. This is evidenced by language which expressly limited the use of arbitration to disputes "*about* the terms of" and "the conditions of…."

The issue of whether Dr. Noyes' breached his Employment Agreement may not, as the trial court unfortunately concluded, reasonably be characterized as a dispute "*about the terms [or conditions] of* his employment."

Rather, in this context, the terms and conditions of Dr. Noyes' employment clearly refer to the circumstances and arrangements that parties agreed upon pursuant to which he would act as Superintendent. A dispute *about* these *terms and conditions* might include an issue relating to clarification of the responsibilities, duties or rights of the parties. A claim that Dr. Noyes breached the Agreement itself goes over and above a dispute about the terms or conditions of his employment. In other words, whether Dr. Noyes was supposed to or required to perform a particular function under the terms of his Agreement is different than whether he did or did not.

As the above cases demonstrate, an unlimited arbitration provision that provides for arbitration of "any" claim "arising out of" or "relating to" a contract is indicative of the intent to arbitrate a claim that implicates a contractual obligation. Smay, 864 A.2d at 1276. That language is simply not present here.

Another case which is instructive is Muhlenberg Township School District v. Pennsylvania Fortunato Construction Company, 460 Pa. 260, 333 A.2d 184 (1975). There, our Supreme Court had to confront whether certain disputes under a construction contract were to be submitted to arbitration or litigated. The contract provided:

> 1. Should either party to this Contract *suffer damage in any manner* because of any wrongful act or negligence of the other party of or anyone employed by him, then he shall be reimbursed by the other party for such damages. (Emphasis added).
>
> 2. *Claims* under this clause shall be made in writing to the party liable within a reasonable time at the first observance of such damage and not later than the time of final payment, except as expressly stipulated otherwise in

> the case of faulty work or materials, and *shall be adjusted by agreement or arbitration*. (Emphasis added).

The Muhlenberg Township School District had sought to enjoin the construction company from seeking arbitration with respect to disputed matters under a construction contract on the ground that the claims were not arbitrable. The Muhlenberg Township School District contended that the arbitration clause was limited to only personal or property injury claims. However, based on the unrestrained language in the Agreement, the Supreme Court disagreed: "[t]o 'suffer damage in any manner' in our opinion is all inclusive." Muhlenberg, 460 Pa. at 264, 333 A.2d at 186. It further held that "claims" meant "all claims." Id.

Again, the language of the Arbitration Clause here is narrowly tailored to disputes over terms and conditions. There was no agreement to arbitrate the School District's breach of Employment Agreement claim.

Because the trial court erred when it construed the plain language of the Arbitration Agreement, its order is reversed.

BERNARD L. McGINLEY, Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

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Appellant	:	
	:	
v.	:	
	:	No. 77 C.D. 2010
Phoenixville Area School District	:	

O R D E R

AND NOW, this 28th day of October, 2010, the Order of the Court of Common Pleas of Chester County in the above-captioned case is hereby reversed.

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BERNARD L. McGINLEY, Judge