

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

ARIA HEALTH,

IN THE SUPERIOR COURT OF
PENNSYLVANIA

v.

R WORLD ENERGY SOLUTIONS, LLC AND
ALL PHASE ELECTRIC CO.

APPEAL OF: R WORLD ENERGY
SOLUTIONS, LLC

No. 2664 EDA 2016

Appeal from the Order Entered August 8, 2016
in the Court of Common Pleas of Philadelphia County
Civil Division at No.: May Term, 2016 No. 160500973

BEFORE: SHOGAN, J., SOLANO, J., and PLATT, J.*

MEMORANDUM BY PLATT, J.:

FILED APRIL 20, 2017

Appellant, R World Energy Solutions, LLC, appeals from the trial court's August 8, 2016 order denying its preliminary objection in the nature of a motion to compel arbitration. We affirm.

In its opinion, the trial court fully and correctly sets forth the relevant facts and procedural history of this case.¹ (**See** Trial Court Opinion, 9/14/16, at 1-3). Therefore, we have no reason to restate them.

* Retired Senior Judge assigned to the Superior Court.

On appeal, Appellant raises the following issue for our review:

- I. Whether the trial court committed an error of law and abused its discretion in failing to find that Appellee Aria Health's claims, in whole or in part, were subject to arbitration[?]

(Appellant's Brief, at 3) (unnecessary capitalization omitted).

We begin by noting that our review of a claim that the trial court improperly denied preliminary objections in the nature of a petition to compel arbitration is limited to determining whether the trial court's findings are supported by substantial evidence and whether the trial court abused its discretion in denying the petition. As contract interpretation is a question of law, our review of the trial court's decision is *de novo* and our scope is plenary.

Petersen v. Kindred Healthcare, Inc., — A.3d —, 2017 WL 429569, at *2 (Pa. Super. filed Feb. 1, 2017) (citations omitted).

After a thorough review of the record, the parties' briefs, the applicable law, and the well-reasoned opinion of the trial court, we conclude that there is no merit to the issue Appellant has raised on appeal. The trial court opinion properly disposes of the question presented. (**See** Trial Ct. Op., at 3-5) (finding that: (1) there is no arbitration clause in contract between Appellant and Appellee; (2) there is an arbitration clause contained in manufacturer's warranty provided by equipment manufacturer Gesper USA; (3) Gesper is not a party to this action; (4) arbitration agreement only

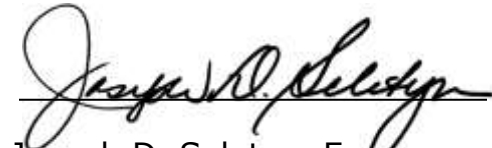
(Footnote Continued) _____

¹ The trial court did not order Appellant to file a concise statement of errors complained of on appeal. It filed an opinion on September 14, 2016. **See** Pa.R.A.P. 1925.

covers disputes arising out of manufacturer's warranty; (5) Appellee does not allege in complaint that any Gesper equipment was defective; and (6) claims in instant matter do not implicate warranty because they only concern conduct and workmanship of Appellant in designing and installing equipment). Accordingly, we affirm on the basis of the trial court's opinion.

Order affirmed.

Judgment Entered.

A handwritten signature in black ink, appearing to read "Joseph D. Seletyn", is written over a horizontal line.

Joseph D. Seletyn, Esq.
Prothonotary

Date: 4/20/2017

A04031-17

**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
TRIAL DIVISION-CIVIL**

ARIA HEALTH,	:	May Term 2016
	:	
Plaintiff,	:	
	:	
v.	:	No. 973
	:	
R WORLD ENERGY SOLUTIONS, LLC, and	:	
	:	COMMERCE PROGRAM
ALLPHASE ELECTRIC CO.,	:	
	:	Control Number 16070474
Defendants.	:	
	:	2664 EDA 2016

OPINION

GLAZER, J.

September 14, 2016

This opinion is submitted relative to an appeal of this court's order dated August 8, 2016 overruling defendant R World Energy Solutions, LLC's preliminary objection pursuant to Pa. R. Civ. P. 1028 (a)(6).¹ For the reasons discussed below, the court's order should be affirmed.

The plaintiff is Aria Health ("Aria") a non-profit domestic health care provider with three hospital campus facilities located in or near Philadelphia. Defendants are R World Energy Solutions, LLC and All Phase Electric Co. Defendant R World Energy Solutions, LLC ("R World") is a full service sales and engineering energy firm that works closely with its clients to reduce the amount of energy consumed with state of the art conservation products to reduce costs. In February 2013, Aria entered into a contract with R World to install an electrical surge protection and power quality and optimization system ("system") at Aria's three hospitals for

¹ "While an order denying preliminary objections is generally not appealable, there exists ... a narrow exception to this oft-stated rule for cases in which the appeal is taken from an order denying a petition to compel arbitration." *Midomo Co., Inc. v. Presbyterian Hous. Dev. Co.*, 739 A.2d 180, 184 (Pa.Super.1999) (internal quotations and brackets omitted). A party may appeal from an order denying a preliminary objection in the form of a petition to compel arbitration. *Stewart v. GGNSC-Canonsburg, L.P.*, 9 A.3d 215, 218 (Pa.Super.2010).



over \$800,000. The systems were designed by R World to accomplish power factor correction, surge protection and energy savings. In March, 2013, R World also proposed the installation of certain equipment for the electrical surge protection and power quality and optimization system. R World allegedly represented to Aria that its team of contractors would install the system at the building main panels, applicable sub-panels and requisite loads and that the installation would be in accordance with local electrical codes. R World allegedly guaranteed a ten percent reduction in annual electrical usage and costs. R World hired defendant All Phase Electric Co. ("All Phase") to install the electrical surge protection and power quality and optimization system at Aria's hospitals. R World and All Phase allegedly installed the system between May through August 2013.

Aria alleges that the system was negligently designed and installed by R World and All Phase. Aria also alleges that R World failed to properly supervise its employees as well as All Phase and its employees, hired unlicensed contractors, failed to obtain proper permits or approvals and repeatedly violated applicable building and electrical codes during the installation which have allegedly created a fire hazard.

In January 2014, the Township of Falls Bucks County requested information from defendants concerning the system, its design and installation at the Bucks County hospital. In March 2014, defendants walked off the job at the Bucks hospital and have not returned to finish their work at the three area hospitals. Aria discovered defendants' code violations in March 2016. Aria alleges it incurred damages for remediation, replacement, the loss of savings, and loss of use.

In May 2016, Aria instituted suit against R World and All Phase for negligence, negligent supervision, breach of warranties, and negligent and intentional misrepresentation against all

defendants and for breach of contract against R World. All Phase filed an answer to the complaint. R World filed preliminary objections seeking to compel arbitration as well as other objections. On August 8, 2016, this court overruled the preliminary objections. This timely appealed followed.

DISCUSSION

Pennsylvania law “favors settlement of disputes by arbitration as a means of promoting swift and orderly disposition of claims.”² A court's analysis of whether an action is required to be arbitrated is limited to determining (1) whether a valid agreement to arbitrate exists between the parties and, if so, (2) whether the dispute involved is within the scope of the arbitration provision.³ The scope of arbitration is determined by the intention of the parties as ascertained in accordance with the rules governing contracts generally.⁴

Here, Aria and R World entered into a contract in February 2013 known as the GESPER Project Agreement. R World agreed that its strategic partner GESPER USA would engineer and manufacture a surge protection and power quality system for all three of Aria health campuses. R World's team would then install the GESPER system. The contract between Aria and R World does not contain an arbitration provision and therefore a valid agreement to arbitrate does not exist between these parties. Nonetheless, R World argued that an arbitration agreement did exist. However, this dispute does not fall within the parameters of that provision.

² *School Dist. of Philadelphia v. Livingston-Rosenwinkel, P.C.*, 690 A.2d 1321, 1322-23 (Pa.Comm.w.1997), citing *Flightways Corp. v. Keystone Helicopter Corp.*, 459 Pa. 660, 662-63, 331 A.2d 184, 185 (1975); *Hazleton Area School Dist. v. Bosak*, 671 A.2d 277, 282 (Pa.Comm.w.1996).

³ *Midomo Co., Inc. v. Presbyterian Housing Development Co.*, 739 A.2d 180, 186 (Pa.Super.1999).

⁴ *Henning v. State Farm Mut. Automobile Ins. Co.*, 795 A.2d 994, 996 (Pa.Super.2002), citing, *State Farm Mut. Automobile Ins. Co. v. Coviello*, 233 F.3d 710, 716 (3rd Cir.2000).

Included with the agreement between Aria and R World is an unlimited ten year warranty provided to Aria by the manufacturer, GESPER. According to the manufacturer warranty, GESPER warranted that its series of surge and lightning protectors are free from defects in workmanship and materials for ten years from the date of delivery to the consumer. The GESPER manufacturer warranty also provided that in the event of defect, malfunction or other failure of the product not caused by misuse, improper installation or damage to the product caused while in possession of the consumer, GESPER would replace the unit for a period of ten years. The manufacturer warranty, in addition to expressly excluding responsibility for improper installation claims also excludes responsibility for improperly wired facilities.⁵

The manufacturer warranty includes the following arbitration agreement:

All claims or disputes arising out of this warranty must be submitted to binding arbitration in Lubbock, Texas, as facilitated through South Plains Association of Governments (SPAG), or if SPAG is no longer facilitating such arbitrations, then in accordance with the Texas General Arbitration Act, Section 171.001 et. seq., Tex. Civ. Prac. & Rem. Code.⁶

This arbitration agreement unambiguously and unequivocally covers only those claims or disputes arising out of the manufacturer's warranty; that is unit defect. The manufacturer, Gesper, is not a defendant in this action. There are no claims in the complaint that the Gesper unit was defective. Consequently, the claims and disputes alleged in Aria's complaint against R World do not implicate the manufacturer's warranty. On the contrary, the claims and disputes in Aria's complaint solely implicate the conduct and workmanship of R World and All Phase which

⁵ Exhibit "B" to Defendant R World's preliminary objections- Manufacturer Warranty, pg. 6, 7 of 8.

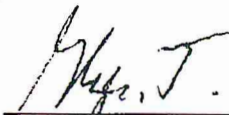
⁶ Id.

arose from the design and installation of the system.⁷ Hence, Aria's claims fall outside the scope of the arbitration agreement contained within the manufacturer's warranty.

CONCLUSION

Based on the foregoing, this court's order dated August 8, 2016 overruling the preliminary objection seeking to compel arbitration should be affirmed.

BY THE COURT,



GLAZER, J.

⁷ The system designed by R World contained the Gesper units.