AFFIRMED and Opinion Filed October 14, 2020

In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-20-00200-CV

ALLCAPCORP, LTD. CO. D/B/A ALLEGIANCE CAPITAL CORPORATION, Appellant
V.
JOHN R. SLOAN AND J. SLOAN HOLDINGS, LLC, INDIVIDUALLY AND DERIVATIVELY ON BEHALF OF ALLCAPCORP, LTD. CO. D/B/A ALLEGIANCE CAPITAL, Appellees

On Appeal from the 116th Judicial District Court
Dallas County, Texas
Trial Court Cause No. DC-19-09287

MEMORANDUM OPINION

Before Chief Justice Burns, and Justices Myers and Nowell
Opinion by Chief Justice Burns

In this appeal we decide whether the trial court abused its discretion in denying a motion to compel arbitration and motion to stay. Because we conclude the relevant arbitration provision does not clearly and unmistakably delegate authority to decide disputes about arbitrability to the arbitrator, and the parties' dispute does not raise an issue within the scope of the arbitration provision, we affirm.

FACTUAL BACKGROUND

In 2007, John Sloan and his wholly owned entity Sloan Holdings, LLC (collectively, "Sloan") entered into an Independent Project Director Agreement (the "IPDA") with ALLCAPCORP, Ltd. Co. d/b/a Allegiance Capital ("Allegiance Capital"). Allegiance Capital contracted to obtain Sloan's investment banking and financial services for itself and its clients. The IDPA designated Sloan as an independent contractor, expressly excluded other roles, and described and defined the "Professional Services" Sloan would provide. It provided that any fees paid to Sloan were for his independent contractor services and provided a fee structure for those payments. The IDPA also governed the parties' rights and obligations regarding indemnity, confidential and proprietary business information, outside business activities, interference with or circumvention of business relationships, and competition for clients, contractors, and consultants.

The IDPA included a narrow arbitration provision, which provided in relevant part:

> In the event any dispute arises out of the service provided by the IPD pursuant to this Agreement, which cannot be resolved by the parties to the Agreement, such dispute shall be submitted to final and binding arbitration. The arbitration shall be conducted in accordance with the rules of the American Arbitration Association ("AAA"). . . . Arbitration of such disputes is mandatory in lieu of any and all civil causes of action and lawsuits either party may have against the other arising out of the services provided by the IPD pursuant to this Agreement; provided, however, that any claim Principal has for breach of the covenants

> contained in sections 8, 10 and 11 of this Agreement shall **not** be subject to mandatory arbitration, and may be pursued in a court of law or equity. (emphasis original).

In 2012, after he had worked for Allegiance Capital as an independent contractor for five years, Sloan purchased a membership interest. Following the purchase, Sloan owned 24% of Allegiance Capital, Allegiance M & A Capital, Inc. ("Allegiance M & A") owned 52%, and Lonsdale Group, LLC owned 24%. Two years later, the three members executed an Amended and Restated Company Agreement ("the Company Agreement") which memorialized the respective ownership interests, and the members' respective rights and obligations. The parties agree the Company Agreement required that the board of directors determine and direct profit distributions to owners in proportion to each members' ownership; included no arbitration provision; and made no reference to the IDPA.[1]

A few months after the members executed the Company Agreement, using company assets, Allegiance Capital purchased Lonsdale Group's interest. Following that purchase, Allegiance M & A and Sloan were Allegiance Capital's remaining owners.

In 2016, the parties amended the IDPA to memorialize their agreement regarding new management responsibilities assumed by Sloan, and his compensation for those duties. The IDPA Amendment left the commission structure

[1] Our record does not include a copy of the Company Agreement.

intact for transactions Sloan participated in as a banker, and added Sloan's entitlement to receive a "distribution payment" of $500,000 and bonus override payments determined by income earned by Allegiance Capital during any calendar year. Sloan claims that between 2014 and 2018, it received no cash distributions incident to its ownership.

Sloan filed suit against Allegiance M & A, Allegiance Capital and others, contending that although Allegiance Capital purchased the Lonsdale Group's interest, it allocated all of the newly-purchased interest to Allegiance M & A and paid Lonsdale Group's distribution entirely to Allegiance M & A. Sloan also asserted that Allegiance Capital made additional disproportionate distributions to Allegiance M & A, without providing notice or a corresponding distribution to Sloan.

Allegiance Capital filed a general denial in which it asserted "[a]ll or part of the claims and issues" raised in Sloan's' Petition were subject to arbitration.[2] In its motion to compel arbitration, Allegiance Capital argued payments made to Sloan pursuant to the IDPA but after his acquisition of an ownership interest were compensation for his independent contractor services as well as ownership

[2] Allegiance Capital later filed a counterclaim, alleging Sloan breached its fiduciary duty to Allegiance Capital with respect to information known to Sloan but not disclosed prior to Allegiance Capital's purchase of the Lonsdale ownership interest. The counterclaim does not implicate any facts related to payments or distributions made to Sloan.

distributions. Allegiance Capital argued this defensive issue—whether amounts paid to Sloan pursuant to the IDPA were ownership distributions—fell within the scope of the IDPA's arbitration provision and was "central to all claims" therefore requiring a stay of the entire lawsuit, while the arbitrator determined the nature of the payments.

After a hearing for which no transcript exists, the trial court denied the motion to compel arbitration and this appeal followed. In three issues, Allegiance Capital complains the trial court abused its discretion in 1) failing to compel arbitration because the arbitration provision required the arbitrator to decide whether Allegiance Capital's defensive argument falls within the scope of the provision; 2) its motion to compel arbitration addressed only those issues and parties subject to arbitration; and 3) failing to stay the case pending arbitration since the arbitrable issues are central to the claims asserted against all defendants.

DISCUSSION

A. Standard of review

With respect to its denial of Allegiance Capital's motion to compel arbitration, we review the trial court's arbitrability determinations, which are questions of law, de novo. *Henry v. Cash Biz, LP*, 551 S.W.3d 111, 115 (Tex. 2018), cert. denied, 139 S. Ct. 184, 202 L. Ed. 2d 40 (2018)*; Trafigura Pte. Ltd. v. CNA Metals Ltd.*, 526 S.W.3d 612, 615 (Tex. App.—Houston [14th Dist.] 2017, no pet.). Factual

determinations, however, if supported by evidence, receive deference. *Henry*, 551 S.W.3d at 115. The absence of findings of fact or conclusion of law explaining the trial court's ruling permit us to uphold the ruling on any appropriate legal theory presented below. *Lakeway Homes, Inc. v. White*, No. 05-15-01455-CV, 2016 WL 3453559, at *3 (Tex. App.—Dallas June 23, 2016, no pet.).

As the party seeking arbitration, Allegiance Capital was required to establish the existence of a valid arbitration agreement and claims falling within the scope of the agreement. *In re Kellogg Brown & Root, Inc.,* 166 S.W.3d 732, 737 (Tex. 2005) (orig. proceeding). No dispute exists as to the first requirement and we conclude Allegiance Capital failed to carry its burden with respect to the second.

B. Allegiance Capital failed to demonstrate clear and unmistakable intent to delegate arbitrability

Allegiance Capital asserts the trial court erred in denying its motion to compel arbitration because it contends the IDPA's incorporation of the AAA rules mandated that the trial court allow the arbitrator to decide if its defensive argument—whether payments made pursuant to the IDPA were also made as distributions required by the Company Agreement—fell within the scope of the arbitration provision. Sloan counters that the absence of "clear and unmistakable" evidence necessary to demonstrate the parties' agreement to delegate that question to an arbitrator required that the trial court decide it.

Unless clear and unmistakable evidence demonstrates the parties delegated arbitrability questions to the arbitrator, courts resolve challenges regarding which claims fall within the scope of an arbitration provision. *In re Weekley Homes, L.P.*, 180 S.W.3d 127, 130 (Tex. 2005); *Saxa Inc. v. DFD Architecture Inc.*, 312 S.W.3d 224, 229 (Tex. App.—Dallas 2010, pet. denied). The "unmistakable clarity standard" serves the principle that "'a party can be forced to arbitrate only those issues it specifically has agreed to submit to arbitration and protects unwilling parties from compelled arbitration of matters they reasonably expected a judge, not an arbitrator, would decide.'" *Jody James Farms, JV v. Altman Group, Inc.*, 547 S.W.3d 624, 631 (Tex. 2018) (quoting *First Options of Chicago, Inc. v. Kaplan*, 514 U.S. 938, 945 (1995)). To determine whether delegation occurred, "a court must examine the arbitration agreement to decide if, when construed under the relevant state law, the agreement evidences a clear and unmistakable intention that the arbitrators will have the authority to determine the scope of arbitration." *Saxa Inc.*, 312 S.W.3d at 229; *Roe v. Ladymon*, 318 S.W.3d 502, 512 (Tex. App.—Dallas 2010, no pet.) ("The 'who decides' question of arbitrability also turns upon the agreement of the parties, and that 'a court must defer to an arbitrator's arbitrability decision *when* the parties submitted that matter to arbitration.'") (quoting *First Options,* 514 U.S. at 944)). "Simply put, the . . . [incorporated] rules may give an arbitrator the ability to decide if an agreement is valid, but the terms of the agreement itself govern

whether the arbitrator gets to decide this question in the first instance." *Lucchese Boot Co. v. Rodriguez*, 473 S.W.3d 373, 384 (Tex. App. —Fort Worth 2009, orig. proceeding); *see also Rent-A-Ctr., W., Inc. v. Jackson*, 561 U.S. 63, 70 (2010) ("clear and unmistakable" requirement "pertains to the parties' *manifestation of intent*" regarding delegation).

Allegiance Capital argues incorporation of the AAA Commercial Rules[3] evidences clear and unmistakable intent that arbitrability was delegated, relying on numerous cases for that specific holding. Indeed, when coupled with a broad arbitration provision, virtually all courts hold incorporation of those and similar rules evidences the parties' intent to delegate arbitrability. *Berry Y&V Fabricators, LLC v. Bambace*, 604 S.W.3d 482, 487 (Tex. App. —Houston [14th Dist.] 2020, no pet.); *Dow Roofing Sys., LLC v. Great Comm'n Baptist Church*, No. 02-16-00395-CV, 2017 WL 3298264, at *3 (Tex. App.—Fort Worth Aug. 3, 2017, pet. denied); *Petrofac, Inc. v. DynMcDermott Petroleum Operations Co.*, 687 F.3d 671, 675 (5th Cir. 2012); *Saxa Inc.*, 312 S.W.3d at 230. Sloan argues, however, that the clarity of the parties' intent dissipates when delegation relies solely on incorporation by reference and the arbitration provision carves out certain subjects or is otherwise

[3] AAA Rule 7(a) provides "[t]he arbitrator shall have the power to rule on his or her own jurisdiction, including any objections with respect to the existence, scope, or validity of the arbitration agreement or to the arbitrability of any claim or counterclaim." AM. ARBITRATION ASS'N, COMMERCIAL ARBITRATION RULES AND MEDIATION PROCEDURES 13 (2013), https://www.adr.org/sites/default/files/Commercial% 20Rules.pdf.

narrow. *Lucchese Boot Co.,* 473 S.W.3d at 381-84 ("In light of the arbitration agreement's narrow application, incorporation of the . . . [AAA] rules giving an arbitrator the ability to review his own jurisdiction . . . is not dispositive."); *see also Burlington Res. Oil & Gas Co. LP v. San Juan Basin Royalty Tr.*, 249 S.W.3d 34, 39–40 (Tex. App.—Houston [1st Dist.] 2007, pet. denied); *Mem'l Hermann Health Sys. v. Blue Cross Blue Shield of Texas*, CV H-17-2661, 2017 WL 5593523, at *8 (S.D. Tex. Nov. 17, 2017). Sloan argues each of the authorities upon which Allegiance Capital relies for its "majority view" perspective rests on a broad arbitration provision.

Allegiance Capital argues factual distinctions in the arbitration provision at issue or the gateway issue subject to delegation distinguishes the authorities on which Sloan relies. For instance, Allegiance Capital argues that the delegation provision in *Burlington Res. Oil & Gas Co. LP.*, 249 S.W.3d at 39–40 was itself limited by the narrow arbitration provision. We agree. But the clear and unmistakable evidence that the parties *did not* delegate arbitrability based on the provision at issue there does not diminish the principles upon which the *Burlington Resources* court relied for its broader decision that mere incorporation of the AAA rules did not evidence clear and unmistakable intent.

> "Here, the Arbitration Agreement restricted the arbitrator's reach only to specifically identified "audit disputes," and for specific amounts. There is not a clear and unmistakable indication that the parties authorized an arbitrator to decide the arbitrability of claims or amounts

> not specifically identified in the Arbitration Agreement. Moreover, the agreement provided that to the extent there was any conflict between the parties' agreement and the AAA rules, any such conflict would be resolved in favor of the agreement."

Id. at 41.

We also observe that the *Burlington Resources* court relied on decisions from other jurisdictions in which the arbitration and delegation provisions differed significantly from the one it interpreted, but nonetheless concluded a court should consider the language of the specific arbitration provision at issue, rather than "blindly apply[ing] the majority view regarding the effect of mere reference to AAA rules and ignore the 'clear and unmistakable' standard. . ." *Id.* at 42.

Similarly, although Allegiance Capital asserts *Lucchese Boot* addressed a different gateway issue, that court also addressed arbitrability, and its broad analysis and holding apply here. *Id.* at 473 S.W.3d at 384. First, the *Lucchese Boot* court distinguished the "majority view" cases in which incorporation of the AAA rules sufficed to provide clear and unmistakable intent to delegate arbitrability because "[in] those cases, the arbitration agreements either applied specifically to gateway issues or otherwise purported to apply to *all* disputes between an employer and employee, meaning that procedural rules giving an arbitrator the power to rule on whether a claim is even subject to arbitration were consistent with the parties' intent to completely exclude the courts from the dispute-resolution process." *Id.* at 382. The court then examined the arbitration provision at issue, which established a

narrow and specific scope covering only defined "Covered Disputes," expressly excluded additional "Claims Not Covered," and which provided arbitration required by the agreement would be "conducted pursuant to the TAMS Employment Arbitration Rules." *Id.* at 381; 383. It then concluded

> Given that the agreement's plain language purports to restrict the arbitrator's power to hear only certain classes of disputes, we will not read an unwritten clause into the agreement that enlarges the arbitrator's ability to rule on unenumerated gateway issue disputes based on silence or mere incorporation by reference of general arbitration rules. . . Simply put, the TAMS rules may give an arbitrator the ability to decide if an agreement is valid, but the terms of the agreement itself govern whether the arbitrator gets to decide this question in the first instance. Here, the parties did not express a clear intent to submit gateway issues to an arbitrator, and the trial court properly retained jurisdiction to rule on arbitrability.

Id. at 383–84 (internal citations and quotations omitted).

Based on the similarity of the IDPA's arbitration provision to the one at issue in *Lucchese Boot*, we are compelled to reach the same conclusion. The IDPA evidences conflicting intent regarding the "who decides" question. On the one hand, the parties agreed the AAA rules would govern any arbitration, which in turn, grant the arbitrator authority to rule on his or her own jurisdiction. But at the same time, the parties significantly limited the scope of the arbitration provision in two ways: by requiring arbitration only of disputes "arising out of" the services provided by Sloan pursuant to the IDPA, and by expressly excluding disputes arising out of the IDPA for any alleged breach by Sloane of the confidentiality, non-circumvention, or

non-solicitation provisions. Moreover, years after entering into the IDPA, the parties executed the Company Agreement, but omitted any arbitration provision from that agreement.

Reading the arbitration provision in its entirety, we cannot conclude the agreement evidences clear and unmistakable intent that an arbitrator will resolve *all* issues regarding the scope of the agreement, when the parties agreed the arbitrator had authority to decide only a limited subset of claims and also expressly negated the arbitrator's right to decide *anything* with respect to some claims. *Lucchese Boot Co.*, 473 S.W.3d at 384; *see also Americo Life, Inc. v. Myer*, 440 S.W.3d 18, 24 (Tex. 2014) ("When an arbitration agreement incorporates by reference outside rules, 'the specific provisions in the arbitration agreement take precedence and the arbitration rules are incorporated only to the extent that they do not conflict with the express provisions of the arbitration agreement.'") (quoting *Szuts v. Dean Witter Reynolds, Inc.*, 931 F.2d 830, 832 (11th Cir.1991)).

We also find support in the presumption favoring judicial resolution absent the clear and unmistakable evidence to the contrary. *Jody James Farms, JV*, 547 S.W.3d at 632 ("What might seem like a chicken-and-egg problem is resolved by application of the presumption favoring a judicial determination."). Likewise, our conclusion gives weight to every word in the arbitration provision, including "such" which qualifies and limits which disputes shall be submitted to arbitration, and

therefore also qualifies "the" arbitration that will be conducted according to the AAA rules. *See Choice! Power, L.P. v. Feeley*, 501 S.W.3d 199, 206 (Tex. App.—Houston [1st Dist.] 2016, no pet.).

Federal law compels the same conclusion.[4] In *Memorial Hermann* the court construed one agreement that included a narrow arbitration provision and incorporated the AAA rules, as well as additional oral and written agreements entered eight years later regarding which the parties did not agree to arbitration. 2017 WL 5593523, at *3. As in this matter, the plaintiff asserted the dispute at issue arose from the later contract, and that given the narrow scope of the arbitration provision in the earlier contract, incorporation of the AAA rules failed to demonstrate "clear and unmistakable" intent to delegate arbitrability. *Id.* at *8. The court agreed and concluded that the insurer failed to carry its burden to demonstrate that the dispute at issue fell within the scope of the arbitration provision. "Moreover, defendant has not cited and the court has not found any authority holding that a narrow arbitration agreement coupled with incorporation by reference of rules giving an arbitrator power to rule on his own jurisdiction is enough to show that the parties

[4] We rely on cases governed by the Federal Arbitration Act as well as the Texas Arbitration Act, as do the parties and our sister courts. The IDPA does not specify which statute applies, and the issues governing this dispute are subject to the same principles regardless of which statute applies. *Southwinds Express Constr., LLC v. D.H. Griffin of Tex., Inc.*, 513 S.W.3d 66, 71 (Tex. App.—Houston [14th Dist.] 2016, no pet.) (utilizing cases interpreting FAA and TAA, where governing principles are identical); *see also In re D. Wilson Const. Co.*, 196 S.W.3d 774, 780 (Tex. 2006) (FAA and TAA are not mutually exclusive absent preemption).

clearly and unmistakably agreed to arbitrate arbitrability." *Id.* Allegiance Capital's contention that the 2016 Amendment does not constitute a second agreement like the two at issue in *Memorial Hermann,* ignores the Company Agreement, from which Sloan contends it claims arise. Likewise, as noted by Allegiance Capital, although *Memorial Hermann* was decided prior to *Arnold v. Homeaway, Inc.*, 890 F.3d 546, 553 (5th Cir. 2018) in which the Fifth Circuit held "[t]he mere fact that an arbitration provision does not apply to every possible claim does not render the parties' intent to delegate threshold questions about that provision less clear," Allegiance Capital's argument disregards the *Arnold* court's reliance on a broad arbitration clause which included only a narrow carve-out for claims qualifying for disposition in small claims court. *Id.* at 553. Moreover, in concluding the parties had delegated arbitrability, the *Arnold* court also held, "[w]e do not foreclose that a contract might incorporate the AAA rules but nonetheless otherwise muddy the clarity of the parties' intent to delegate." *Id.* Later, in *Archer & White Sales, Inc. v. Henry Schein, Inc.*, 935 F.3d 274, 279 (5th Cir. 2019), cert. granted, 207 L. Ed. 2d 1050 (June 15, 2020) and cert. denied, 207 L. Ed. 2d 1053 (June 15, 2020) given an arbitration provision that incorporated the AAA rules but also included a carve-out that expressly modified delegation, the Fifth Circuit concluded the agreement at issue lacked clear and unmistakable intent to delegate arbitrability. *See also J2 Res., LLC v. Wood River Pipe Lines, LLC*, 4:20-CV-2161, 2020 WL 4227424, at *8 (S.D.

Tex. July 23, 2020) (observing circuit split regarding federal law addressing clarity of delegation based on incorporation of AAA rules in the face of a narrow arbitration clause, but following *Archer & White* and concluding agreement lacked clear and unmistakable intent to delegate). As in *Luchesse Boot, Burlington Resources, Archer & White*, *Memorial Hermann*, and *J2 Resources*, we conclude the narrow arbitration provision at issue here, subject to additional carve-outs and bounded by a subsequent agreement which included no arbitration provision, fails to provide clear and unmistakable evidence of intent to delegate arbitrability to the arbitrator.[5] Allegiance Capital failed to demonstrate clear and unmistakable intent to delegate arbitrability, and the trial court did not err in deciding whether Allegiance Capital's defensive issue fell within the scope of the provision. We overrule Allegiance Capital's first issue.

C. The trial court did not abuse its discretion in determining Allegiance Capital's defensive argument fell outside the scope of the arbitration provision

In recognition of Sloan's new management responsibilities, the IPDA Amendment required a "distribution payment" to Sloan, made quarterly, as well as

[5] We also reject reliance on *Corpus Christi Island Apartment Villas Mgmt. Group LLC v. Underwriters at Lloyd's London*, 2:19-CV-188, 2019 WL 8273959, at *3 (S.D. Tex. Oct. 18, 2019) as proposed by Allegiance Capital. Although the arbitration clause at issue in that case was narrow, rather than delegation pursuant to incorporation of the AAA rules it included an express delegation clause referring all questions of formation and validity to the arbitrator. *Id.* at *2. Moreover, the challenging party contested only the scope of the clause—not delegation. *Id.* at *3. Accordingly, we conclude these differences negate any persuasive value.

other compensation. In its motion to compel arbitration, Allegiance Capital asserted some of the payments it made to Sloan pursuant to the IDPA Amendment were distributions for Sloan's ownership interest. Allegiance Capital contends its defensive issue negates Sloan's argument that Sloan received nothing for its ownership interest in violation of the Company Agreement, and that the defensive issue falls within the scope of the arbitration provision. Allegiance Capital also argues the trial court could not decide this issue based on the merits of the argument, i.e., whether such payments were made as ownership distributions.

Sloan contends Allegiance Capital's arguments ignore the differences between the Company Agreement, the alleged breach of which are the basis for Sloan's claims, and the IDPA and its Amendment. Sloan asserts the agreements include wholly different payment structures, and even if "distributions" were made pursuant to the IDPA Amendment, that agreement requires payments only for Sloan's services—not distributions owed incident to ownership. Sloan also contends a court need not decide Allegiance Capital's defensive argument in deciding whether Allegiance Capital breached the Company Agreement, because it asserts the argument provides only the inverse of Sloan's argument, and both arguments can be decided solely by reference to the Company Agreement.

Once the party seeking arbitration proves the existence of an enforceable agreement to arbitrate, a strong presumption favoring arbitration arises. *G.T. Leach*

Builders, LLC v. Sapphire V.P., LP, 458 S.W.3d 502, 521 (Tex. 2015). "Even the exceptionally strong policy favoring arbitration [however,] cannot justify requiring litigants to forego a judicial remedy when they have not agreed to do so." *Carr v. Main Carr Dev., LLC*, 337 S.W.3d 489, 496 (Tex. App.—Dallas 2011, pet. denied); *Branch Law Firm, L.L.P. v. Osborn*, 447 S.W.3d 390, 397 (Tex. App.—Houston [14th Dist.] 2014, no pet.) ("strong presumption cannot be used to stretch the language of the MSA pertaining to arbitration beyond the scope intended by the parties or to allow modification of the unambiguous meaning of this arbitration language."). On the contrary, courts cannot compel arbitration absent an agreement to arbitrate the dispute in question. *Daniel K. Hagood, P.C. v. Kapai*, No. 05-18-01485-CV, 2019 WL 4010778, at *3 (Tex. App.—Dallas Aug. 26, 2019, pet. denied) (mem op.); *In re Sino Swearingen Aircraft Corp.*, No. 05-03-01618-CV, 2004 WL 1193960, at *1 (Tex. App.—Dallas June 1, 2004, no pet.) (mem. op).

Doubts about the scope of an arbitration agreement are resolved in favor of arbitration. *In re FirstMerit Bank, N.A.*, 52 S.W.3d 749, 753 (Tex. 2001) (orig. proceeding). In deciding whether claims fall within the scope of an arbitration agreement, we focus on the factual allegations rather than legal causes of action asserted. *Id.* at 754. Subject to the parole evidence rule, in seeking the parties' intent, we also consider the facts and circumstances surrounding the formation of

the contract. *Houston Expl. Co. v. Wellington Underwriting Agencies, Ltd.*, 352 S.W.3d 462, 469 (Tex. 2011) (courts may consider surrounding circumstances that inform, rather than vary or contradict a contract).

Here, the parties entered into two separate agreements; the IDPA and its amendment governing Sloan's services as an independent contractor, including his management services; and later, the Company Agreement which governs matters pertaining to ownership and includes no arbitration provision. The arbitration provision appears only in the IDPA and narrowly subscribes disputes that fall within its scope. It controls only disputes which "arise[] out of the *service* provided by the IPD pursuant to this Agreement." The arbitration provision also expressly carves out disputes for breach of various covenants in the IDPA, allowing litigation for those claims.

Allegiance Capital's circular argument for application of the arbitration provision defeats itself. The narrow IDPA arbitration provision applies only to disputes "arising out of the service provided" pursuant to the IDPA. Even if the trial court ultimately agrees that some payments made pursuant to the IDPA were ownership distributions, those payments would by definition not have been made for Sloan's independent contractor services. Thus, the argument itself demonstrates that any payment relied upon by Allegiance Capital as a distribution owed pursuant to the Company Agreement was by definition not made for services provided pursuant

to the IDPA and thus not within the plain language of the arbitration provision. We decline to infer intent to include a disagreement arising out of Sloan's entitlement to ownership distributions—governed solely by the Company Agreement—within the scope of the parties' narrowly drawn arbitration agreement which applies only to disputes arising from Sloan's independent contractor services. *See In re Sino Swearingen Aircraft Corp.*, 2004 WL 1193960, at *1 (concluding narrow arbitration provision in distributorship agreement did not reach dispute arising from separate purchase agreement, where contracts were not integrated, and defined terms in distributorship agreement circumscribed breadth of its scope); *IKON Office Sols., Inc. v. Eifert*, 2 S.W.3d 688, 695–96 (Tex. App.—Houston [14th Dist.] 1999, no pet.) (concluding narrow arbitration provision in employment agreement which governed disputes regarding termination of employment did not apply to claims related to fraudulent inducement of business, where Acquisition Agreement governing sale of business included no arbitration provision); *see also Daniel K. Hagood, P.C.*, 2019 WL 4010778, at *3 (concluding parties intended narrow arbitration provision governing disputes regarding "Firm's services" in one described matter only, as evidenced by limited description of the matter regarding which services would be rendered, where engagement agreement did not include additional legal matters of which both parties were aware when they contracted). Given the tortured logic upon which Allegiance Capital's argument rests, we cannot

ascribe any abuse of discretion to the trial judge in denying its motion to compel arbitration and we overrule Allegiance Capital's second issue.

Our disposition of Allegiance Capital's first two issues renders moot its third issue regarding the purported error in failing to stay the proceedings during a requested arbitration. We accordingly overrule Allegiance Capital's third issue and affirm the trial court's denial of Allegiance Capital's motion to compel arbitration and motion to stay.

/Robert D. Burns, III/
ROBERT D. BURNS, III
CHIEF JUSTICE

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Court of Appeals
Fifth District of Texas at Dallas

JUDGMENT

ALLCAPCORP, LTD. CO. D/B/A ALLEGIANCE CAPITAL CORPORATION, Appellant

No. 05-20-00200-CV V.

JOHN R. SLOAN AND J. SLOAN HOLDINGS, LLC, INDIVIDUALLY AND DERIVATIVELY ON BEHALF OF ALLCAPCORP, LTD. CO. D/B/A ALLEGIANCE CAPITAL, Appellees

On Appeal from the 116th Judicial District Court, Dallas County, Texas Trial Court Cause No. DC-19-09287. Opinion delivered by Chief Justice Burns. Justices Myers and Nowell participating.

In accordance with this Court's opinion of this date, the judgment of the trial court is **AFFIRMED**.

It is **ORDERED** that appellee JOHN R. SLOAN AND J. SLOAN HOLDINGS, LLC, INDIVIDUALLY AND DERIVATIVELY ON BEHALF OF ALLCAPCORP, LTD. CO. D/B/A ALLEGIANCE CAPITAL recover their costs of this appeal from appellant ALLCAPCORP, LTD. CO. D/B/A ALLEGIANCE CAPITAL CORPORATION.

Judgment entered October 14, 2020.