Fourth Court of Appeals
San Antonio, Texas

MEMORANDUM OPINION

No. 04-18-00797-CV

SPRUCE LENDING, INC.,
Appellant

v.

Marcos **GARCIA**,
Appellee

From the County Court at Law No. 3, Bexar County, Texas
Trial Court No. 2018CV04617
Honorable David J. Rodriguez, Judge Presiding

Opinion by: Patricia O. Alvarez, Justice

Sitting: Patricia O. Alvarez, Justice
Luz Elena D. Chapa, Justice
Liza A. Rodriguez, Justice

Delivered and Filed: April 3, 2019

REVERSED AND REMANDED

In the dispute underlying this interlocutory appeal, Appellant Spruce Lending, Inc. moved to compel arbitration of Appellee Marcos Garcia's claims pertaining to a home solar system installation which Spruce financed. The trial court denied Spruce's motion, and Spruce appeals.

Because Garcia challenged the contract as a whole, and the arbitration agreement directs such questions to arbitration, the trial court erred by denying Spruce's motion to compel arbitration. We reverse the trial court's order and remand this cause to the trial court.

BACKGROUND

A sales representative for Rodeo Solar, LLC dba New Sun Energies contacted Marcos Garcia at his home regarding the purchase of a solar panel system for Garcia's home. Garcia chose to contract with Rodeo Solar for the solar panel system; he executed an installation contract with Rodeo Solar and a financing agreement with Spruce. After problems arose with the installation, Garcia sued Rodeo Solar and Spruce.

Spruce answered and asserted that its financing agreement with Garcia includes a valid arbitration provision which compels arbitration of any dispute or argument concerning the validity of the contract. The arbitration provision of the financing agreement expressly states that the agreement is governed by the Federal Arbitration Act (FAA), and neither party argues otherwise. Although Garcia argued that there was, in effect, no agreement to arbitrate because the installation contract and financing agreement failed to comply with consumer protection statutes, and the contracts were void as a matter of law,[1] Spruce moved to compel arbitration.

The trial court denied Spruce's motion, and Spruce filed this interlocutory appeal. Before we address the parties' arguments, we briefly recite the applicable law and standards of review.

APPLICABLE LAW, STANDARDS OF REVIEW

"A party seeking to compel arbitration [under the FAA] must establish the existence of a valid arbitration agreement and that the claims at issue fall within the scope of that agreement." *Henry v. Cash Biz, LP*, 551 S.W.3d 111, 115 (Tex. 2018); *accord In re Rubiola*, 334 S.W.3d 220, 223 (Tex. 2011) (orig. proceeding).

[1] *See, e.g.*, TEX. BUS. & COM. CODE ANN. § 601.201 ("A sale or contract entered into under a consumer transaction in violation of Section 601.053(b) or Subchapter D is void.").

We determine whether a valid agreement to arbitrate exists by applying "ordinary principles of state contract law." *In re Rubiola*, 334 S.W.3d at 224; *accord J.M. Davidson, Inc. v. Webster*, 128 S.W.3d 223, 227 (Tex. 2003).

If a party produces a contract that includes an arbitration agreement, and the contract contains each essential element, the party has met its burden to establish a valid arbitration agreement. *See J.M. Davidson*, 128 S.W.3d at 227–28; *Specialty Select Care Ctr. of San Antonio, L.L.C. v. Owen*, 499 S.W.3d 37, 43 (Tex. App.—San Antonio 2016, no pet.) (quoting *Speedemissions, Inc. v. Bear Gate, L.P.*, 404 S.W.3d 34, 43 (Tex. App.—Houston [1st Dist.] 2013, no pet.)) ("Under Texas law, '[t]he elements needed to form a valid and binding contract are (1) an offer; (2) acceptance in strict compliance with the offer's terms; (3) a meeting of the minds; (4) consent by both parties; (5) execution and delivery; and (6) consideration.'").

We determine whether a claim falls within the scope of an arbitration agreement by examining the facts alleged in the plaintiff's petition and the terms of the arbitration agreement. *See RSL Funding, LLC v. Pippins*, 499 S.W.3d 423, 431 (Tex. 2016) (citing *In re Rubiola*, 334 S.W.3d at 225). If the arbitration agreement includes the type of claim or challenge the alleged facts raised, the issue is within the agreement's scope. *See In re Rubiola*, 334 S.W.3d at 224; *In re FirstMerit Bank, N.A.*, 52 S.W.3d 749, 754–55 (Tex. 2001) (orig. proceeding).

Whether a valid arbitration agreement exists and whether the claims are within the scope of the arbitration agreement are questions of law we review de novo. *See Henry*, 551 S.W.3d at 115; *In re Labatt Food Serv., L.P.*, 279 S.W.3d 640, 643 (Tex. 2009) (orig. proceeding); *Amateur Athletic Union of the U.S., Inc. v. Bray*, 499 S.W.3d 96, 102 (Tex. App.—San Antonio 2016, no pet.).

PARTIES' ARGUMENTS

Spruce argues it produced a valid arbitration agreement, Garcia's challenge to the validity of the contract and financing agreement are within the arbitration agreement's scope, and Garcia's challenges to the contracts as a whole must go to the arbitrator.

Garcia responds that Spruce failed to prove the existence of a valid contract and arbitration agreement, and because the formation of the installation contract and the financing agreement did not comply with state and federal statutes, the contracts are void as a matter of law.

DISCUSSION

We begin with the question of whether there is a valid arbitration agreement.

A. Existence of a Valid Arbitration Agreement

The first part of Spruce's burden was to establish the existence of valid arbitration agreement. *See Henry*, 551 S.W.3d at 115; *In re Rubiola*, 334 S.W.3d at 223. Spruce produced a copy of the home improvement contract and the financing agreement. The financing agreement contains an arbitration provision, and the financing agreement is signed by Rodeo Solar's agent and Garcia. *See In re Rubiola*, 334 S.W.3d at 224 (applying Texas contract law principles); *Owen*, 499 S.W.3d at 43 (contract elements).

In his affidavit, Garcia states he accepted the terms Rodeo Solar offered for the solar panel system installation, he decided to contract with Rodeo Solar, and he signed the contract and financing agreement. For purposes of our review, we take Garcia's statements as true. *See Cedillo v. Immobiliere Jeuness Establissement*, 476 S.W.3d 557, 564 (Tex. App.—Houston [14th Dist.] 2015, pet. denied) (citing *In re Jebbia*, 26 S.W.3d 753, 756–57 (Tex. App.—Houston [14th Dist.] 2000, no pet.)) ("A motion to compel arbitration is similar to a motion for partial summary judgment and is subject to the same evidentiary standards.").

The record shows that the financing agreement contains each essential element of a contract. *Cf. Owen*, 499 S.W.3d at 43 (contract elements). We conclude Spruce conclusively established the existence of a valid arbitration agreement. *See J.M. Davidson*, 128 S.W.3d at 228; *Owen*, 499 S.W.3d at 43.

We next address whether Garcia's challenges are in the scope of the arbitration agreement.

B. Challenges Within Scope

Here, the arbitration provision in the financing agreement states that "any dispute or argument that concerns the validity or enforceability of this Contract as a whole is for the arbitrator, not a court, to decide." This language's scope is quite broad. *Cf. In re FirstMerit Bank*, 52 S.W.3d at 754–55 (similar language); *Schmidt Land Servs., Inc. v. UniFirst Corp.*, 432 S.W.3d 470, 473 (Tex. App.—San Antonio 2014, pet. denied) (same).

Garcia's petition alleges that any contract between himself and Spruce is void because Rodeo Solar and Spruce failed to comply with certain state and federal consumer protection and contract formation statutes. *See, e.g.*, TEX. BUS. & COM. CODE ANN. §§ 601.052, .053, .201.

We conclude that Garcia's allegations comprise a "dispute or argument that concerns the validity or enforceability" of the contract and financing agreement, and his challenges to the contract and financing agreement are within the scope of the arbitration agreement. *See In re FirstMerit Bank*, 52 S.W.3d at 754–55; *Schmidt Land Servs.*, 432 S.W.3d at 473.

C. Defenses

To resist arbitration, Garcia claims that under Texas contract law, the installation contract and financing agreement were void *ab initio* because of Rodeo Solar's and Spruce's alleged failures to comply with the state and federal consumer protection requirements, *see, e.g.*, TEX. BUS. & COM. CODE ANN. §§ 601.002(a), .052, .053, and thus the arbitration agreement is unenforceable, *cf. Buckeye Check Cashing, Inc. v. Cardegna*, 546 U.S. 440, 443 (2006).

But under *Buckeye*, even if there were contract formation issues, the arbitration agreement is nevertheless severable as a matter of law, *see id.* at 445–46 ("[A]s a matter of substantive federal arbitration law, an arbitration provision is severable from the remainder of the contract."), and Garcia did not specifically challenge the arbitration agreement's validity, *cf. id.*; *In re Labatt Food Serv.*, 279 S.W.3d at 648; *Forest Oil Corp. v. McAllen*, 268 S.W.3d 51, 56 (Tex. 2008).

Further, Garcia's challenges to the validity of the contract and financing agreement are within the arbitration agreement's scope. *See In re FirstMerit Bank*, 52 S.W.3d at 754–55; *Schmidt Land Servs.*, 432 S.W.3d at 473.

Garcia's challenges to the entire contract and financing agreement are questions for the arbitrator, not the trial court. *See Buckeye*, 546 U.S. at 446; *In re Labatt Food Serv.*, 279 S.W.3d at 648; *Forest Oil*, 268 S.W.3d at 56.

We sustain Spruce's issues.

CONCLUSION

Because Garcia challenged the validity of the entire contract and financing agreement, and the arbitration provision directs "any dispute or argument that concerns the validity or enforceability of [the contract]" to the arbitrator, Garcia's challenges are a matter for the arbitrator, and the trial court erred by denying Spruce's motion to compel arbitration.

We reverse the trial court's order, order arbitration of Garcia's challenges to the contracts' validity, and remand this cause to the trial court for further proceedings consistent with this opinion, including the trial court's grant of an appropriate stay.

Patricia O. Alvarez, Justice