In The
Court of Appeals
Seventh District of Texas at Amarillo

No. 07-21-00097-CV

IN THE MATTER OF THE MARRIAGE OF
CHRISTIAN B. BOWERS AND JAMIE C. BOWERS

On Appeal from the 201st District Court
Travis County, Texas[1]
Trial Court No. D-1-FM-19-002809, Honorable Orlinda Naranjo, Presiding

October 22, 2021

OPINION

Before QUINN, C.J., and PIRTLE and PARKER, JJ.

This interlocutory appeal arises in the context of the divorce proceeding between appellant, Christian B. Bowers, and appellee, Jamie C. Bowers.[2] Following the filing of their divorce proceeding in 2019, disputes arose between Christian and Jamie regarding the operation and management of Bola Pizza, LLC, a business owned by the couple.

[1] Pursuant to the Supreme Court's docket equalization efforts, this case was transferred to this Court from the Third Court of Appeals. *See* TEX. GOV'T CODE ANN. § 73.001.

[2] Because the parties share a surname, we will refer to them by their first names for clarity.

Christian filed this appeal after the trial court denied his motion to compel arbitration pursuant to Bola Pizza's company agreement.[3] We reverse the decision of the trial court.

Background

Christian and Jamie were married in 2004. In November of 2011, they formed Bola Pizza, LLC, a Texas limited liability company. They are the sole members and managers of the company, each owning a 50% membership interest. In April of 2019, Christian filed for divorce from Jamie, who filed a counterpetition for divorce. Both parties attached to their pleadings a copy of the Travis County Standing Order Regarding Children, Property, and Conduct of the Parties, as required by the Travis County District Clerk. The standing order, which was promulgated by the district courts of Travis County and applies in every divorce suit filed there, includes provisions intended to protect the parties and preserve their property while the lawsuit is pending. Among other things, parties are ordered to refrain from "[d]estroying, removing, concealing, encumbering, transferring, or otherwise harming or reducing the value of the property of one or both of the parties" and from "[s]elling, transferring, assigning, mortgaging, encumbering, or in any other manner alienating any of the property of either party, whether personal property or real estate property, and whether separate or community, except as specifically authorized by [the] order."

During the pendency of the divorce, disputes arose between the parties concerning the operation of their business. In December of 2019, Christian sought injunctive relief

[3] This Court has jurisdiction over Christian's interlocutory appeal under section 171.098 of the Texas Civil Practice and Remedies Code. *See* TEX. CIV. PRAC. & REM. CODE ANN. § 171.098(a)(1).

and temporary orders related to the company's operations and assets. Jamie responded with a request that company-related disputes be resolved pursuant to the terms of the company agreement. Under the mandatory dispute resolution procedure in Bola Pizza's company agreement, any court proceeding brought by an owner against another owner of the company must first be submitted to mediation and, barring resolution of the dispute through mediation, binding arbitration. The trial court required the parties to attend mediation/arbitration.

Following arbitration on January 27, 2020, the arbitrator entered an award addressing issues related to the management and control of the business, such as the parties' day-to-day duties, access to the premises, and business expenditures. Jamie filed a motion in the trial court to enforce the arbitration award. The trial court entered temporary orders in April of 2020 in accordance with the January arbitration award. Jamie added Bola Pizza as a party to the divorce proceeding and filed a motion to compel mediation/arbitration on June 10.

On August 19, 2020, Christian notified Jamie of his offer to buy her membership interest in the company for a total purchase price of $1,500,000. Christian's notice was given pursuant to the buyout option contained in the company agreement, which provides:

> Each Member (the "Offering Member") may at any time, including during a pending Proceeding, give written notice to all of the other Members of the Offering Member's desire to either (i) sell all of the Offering Member's Membership Interest in the Company to the other Member(s) or (ii) buy all of another Member's Membership Interests in the Company, specifying therein the price per Unit and the other terms and conditions upon which the Offering Member will buy or sell. The other Member(s) shall have an option, for a period of sixty (60) days after receiving such notice, to elect to purchase the Membership Interest of the Offering Member at the same price per Unit and upon the same terms and conditions that the Offering Member

> is offering to purchase the other Member's Membership Interests, the transaction to be closed in the manner specified in this Article 11 with thirty (30) days after the end of such sixty (60) day period. If such option to purchase is not exercised by any Member within the aforementioned period of sixty (60) days, then the Offering Member shall be obligated to purchase the membership interests of the other Member(s) at the price per Unit and upon the terms and conditions specified in the aforementioned notice, and the Members receiving the notice shall be obligated to sell their membership interests to the Offering Member upon such terms and conditions, the transaction to be closed in the manner specified in Article 11 within thirty (30) days after the end of such sixty (60) day period.

Jamie responded to the notice by filing a motion to enforce the Travis County Standing Orders and the trial court's temporary orders, which she argued precluded the exercise of the buyout provision during the pendency of the divorce.

Christian then filed a motion to compel arbitration, asserting that Jamie should be ordered to make an election under the buyout provision or, if a dispute existed, compelled to arbitrate.[4] He requested, in the alternative, a partial lift of the trial court's standing order to allow for arbitration. The trial court denied Christian's motion on April 7, 2021 "pursuant to Texas Family Code Section 6.501." It is from this order that Christian appeals.

Standard of Review

We review a trial court's order denying a motion to compel arbitration for abuse of discretion. *Henry v. Cash Biz, LP*, 551 S.W.3d 111, 115 (Tex. 2018). A trial court abuses its discretion if it reaches a decision so arbitrary and unreasonable that it amounts to a clear and prejudicial error of law or if it clearly fails to correctly analyze or apply the law.

[4] In his motion, Christian stated that while he was amenable to mediation prior to the initiation of arbitration, he sought a direct referral to arbitration given the ineffectiveness of the parties' previous mediations.

In re Olshan Found. Repair Co., 328 S.W.3d 883, 888 (Tex. 2010) (orig. proceeding). Under this standard, we defer to the trial court's factual determinations if they are supported by the evidence, but we review its legal determinations de novo. *Carr v. Main Carr Dev., LLC*, 337 S.W.3d 489, 494 (Tex. App.—Dallas 2011, pet. denied).

Analysis

Christian raises two issues on appeal: first, he argues that the trial court erred in relying on section 6.501 of the Texas Family Code and its standing orders to deny him his right to arbitration, and second, he asserts that the trial court abused its discretion by denying his motion to compel arbitration. Because the two issues involve related discussions, we will consider them together.

The Conflict

The question presented in this case is whether a party to a pending divorce proceeding can compel the other party to arbitrate a business dispute concerning the sale of one party's interest in a limited liability company when that interest is subject to the trial court's standing order prohibiting the transfer or encumbrance of community assets.[5] Christian maintains that he and Jamie contractually agreed to resolve company-related disagreements through mediation and, if mediation was unsuccessful, binding arbitration. He asserts that he was required to seek arbitration to resolve the impasse resulting from Jamie's failure to respond to his notice of buyout as required by the agreement. Jamie, on the other hand, argues that the trial court properly exercised its authority to decline to

[5] The parties do not dispute that their interests in Bola Pizza, which were acquired during their marriage, are community property.

compel arbitration in a suit for the dissolution of a marriage. She claims that enforcement of the buyout provision would result in a transfer, sale, or encumbrance of community property, which is prohibited by the trial court's standing order.

The Arbitration Agreement

Texas caselaw has long enshrined a preference in favor of enforcing valid contractual arbitration agreements. *See, e.g., RSL Funding, LLC v. Newsome*, 569 S.W.3d 116, 121 (Tex. 2018). A party seeking to compel arbitration must establish (1) the existence of a valid, enforceable arbitration agreement and (2) that the claims at issue fall within the scope of that agreement. *Bonsmara Nat. Beef Co. v. Hart of Tex. Cattle Feeders, LLC*, 603 S.W.3d 385, 397 (Tex. 2020). Once a party seeking to compel arbitration establishes the existence of a valid arbitration agreement and that the claims at issue fall within the scope of that agreement, the burden shifts to the party seeking to avoid arbitration to prove an affirmative defense to the provision's enforcement, such as fraud, duress, or waiver. *Henry*, 551 S.W.3d at 115; *In re Oakwood Mobile Homes, Inc.*, 987 S.W.2d 571, 573 (Tex. 1999) (orig. proceeding) (per curiam).

A presumption exists in favor of arbitration and courts are required to resolve doubts regarding arbitrability in favor of referring the dispute to arbitration. *In re FirstMerit Bank, N.A.*, 52 S.W.3d 749, 753 (Tex. 2001) (orig. proceeding). A court has no discretion but to compel arbitration and stay its own proceedings when a claim falls within the scope of a valid arbitration agreement and there are no defenses to its enforcement. *Richmont Holdings, Inc. v. Superior Recharge Sys., L.L.C.*, 392 S.W.3d 633, 635 (Tex. 2013) (per curiam).

Here, Jamie does not dispute the validity of the company agreement's arbitration provision; indeed, the parties have invoked and relied on the provision to resolve other company-related disputes that have arisen over the course of the divorce. Rather, Jamie submits that the court's ruling to deny the motion is soundly within its statutory authority under section 6.6015 of the Texas Family Code.

In her brief, Jamie argues that this Court need not opine on the scope of the company agreement's arbitration clause; nonetheless, because Jamie suggests that arbitration of the buyout provision is beyond that scope, we will address the issue.

Both federal and state law strongly favor arbitration. *Cantella & Co., Inc. v. Goodwin*, 924 S.W.2d 943, 944 (Tex. 1996) (orig. proceeding) (per curiam). We resolve any doubts about the scope of an arbitration agreement in favor of arbitration and we focus on the factual allegations rather than the legal causes of action asserted. *Henry*, 551 S.W.3d at 115. If the facts alleged in support of a claim are "intertwined with" or "occur[] as a direct result from" the contract that contains the arbitration agreement, then the claim is within the scope of the arbitration agreement. *In re Dillard Dep't Stores, Inc.*, 186 S.W.3d 514, 516 (Tex. 2006) (orig. proceeding) (per curiam).

Section 12.02 of the company agreement governs when the mediation-then-arbitration dispute resolution procedure applies, providing: "If a Company-related dispute exists between Members that may disrupt the business, or become a court Proceeding, the Members shall resolve the disagreement according to the following dispute resolution procedure . . . ." In section 12.03, the parties agreed that this was "the exclusive

procedure as to resolving intra-Member and intra-Manager disputes relating to the business of the Company."

It is undisputed that Christian initiated the buyout process, specifically referencing the option set forth in section 11.02 of the company agreement and providing Jamie 60 days to make her election. Jamie refused to engage in the process. Christian then asserted that Jamie had breached the parties' agreement and sought arbitration.

Christian's invocation of the buyout provision and his allegations that Jamie breached the agreement are matters arising directly from the company agreement. Jamie's refusal to follow the buyout procedure set forth in the company agreement led to a "company-related dispute" intended to be resolved by arbitration. *See, e.g., Spradley v. Spradley*, No. 03-13-00745-CV, 2014 Tex. App. LEXIS 3244, at *5-6 (Tex. App.—Austin Mar. 26, 2014, no pet.) (mem. op.) (wife's challenges to settlement agreement's enforceability were within scope of arbitration provision with scope covering "any other dispute . . . with regard to the interpretation or performance of [the] agreement" and including "disputes regarding drafting").

Jamie asserts that "business operations disputes" are arbitrable under the company agreement, but the instant dispute over the buyout provision is not. She argues that, in seeking to enforce the buyout provision, Christian is in fact attempting to bind the trial court to an arbitrated division of the parties' community property business, which is beyond the scope of the company agreement. We are unpersuaded by this argument.

In section 13.02 of their company agreement, entitled "Divorce Between Members," Christian and Jamie decided:

> [i]f a divorce Proceeding takes place between Members, the divorcing Members acknowledge and agree that, to the extent the divorcing Members reach a resolution as to Company matters and assets and Membership Interests using methods provided for in this Agreement (including the Buyout provision in Article 11, and the dispute resolution procedures in Article 12), each divorcing Member mutually agrees to execute any additional documents deemed necessary by the other divorcing Member to ensure that the disposition of the divorce Proceeding(s) incorporates the prior settlement between the divorcing Members as to the Company matters and assets, and Membership Interests.

This provision reflects that Christian and Jamie contemplated that, should a divorce occur, they might have disputes concerning business operations, company assets, and membership interests. They agreed to resolve those disputes using the provisions and procedures set forth in the company agreement, including the buyout provision and the mediation/arbitration provision. Christian and Jamie did not contractually agree that only business operations disputes, and not membership interest disputes, would be arbitrated in the event of a divorce proceeding. They did not agree that the buyout provision would become ineffective or unenforceable upon a party's filing for divorce. "We have long held that courts will not rewrite agreements to insert provisions parties could have included or to imply restraints for which they have not bargained." *Tenneco Inc. v. Enter. Prods. Co.*, 925 S.W.2d 640, 646 (Tex. 1996).

Moreover, the buyout provision contemplates an end result of either Christian's purchase of Jamie's membership interest or Jamie's purchase of Christian's membership interest. Neither outcome changes the character of the community property. Neither outcome removes any membership interest in the company from the community estate. Thus, enforcement of the buyout provision does not interfere with the trial court's authority

to divide the marital estate.[6] *See* TEX. FAM. CODE ANN. § 7.001 (in divorce proceeding, trial court is charged with dividing community estate in "just and right" manner, considering rights of both parties); *Mandell v. Mandell*, 310 S.W.3d 531, 539 (Tex. App.—Fort Worth 2010, pet. denied) (spouse is only entitled to division of property that community owns at time of divorce).

Because Christian met his burden of establishing that the dispute at hand falls within the scope of a valid arbitration agreement, the burden then shifted to Jamie to plead and prove a defense to enforcement of the arbitration agreement. The defense offered by Jamie is the trial court's authority under section 6.6015(b) of the Family Code, which allows the trial court to stay or refuse to compel arbitration "on any other ground provided by law." *See* TEX. FAM. CODE ANN. § 6.6015(b) ("A determination under this section that a contract is valid and enforceable does not affect the court's authority to stay arbitration or refuse to compel arbitration on any other ground provided by law."). She reasons that the trial court relied on such an "other ground provided by law," namely section 6.501 of the Family Code, to properly refuse to compel arbitration. Section 6.501 authorizes courts to render temporary restraining orders, such as the one in place in this case, for the protection of parties and preservation of their property. *See* TEX. FAM. CODE ANN. § 6.501(a).

[6] This opinion should not be read to restrict the trial court's authority to divide the marital estate once arbitration is completed or restrict the trial court's authority pursuant to section 6.501(a)(6) to prohibit the parties from encumbering or transferring to third parties any community interest owned now or acquired via an arbitration award during the pendency of the divorce. Nor should today's opinion be read to authorize the arbitrator to partition the marital estate, that duty remaining the domain of the trial court.

We acknowledge that the trial court has an interest in keeping the parties and their property in a stable position pending resolution of the underlying divorce. However, Texas has a "strong public policy favoring freedom of contract" that is "firmly embedded in our jurisprudence." *Philadelphia Indem. Ins. Co. v. White*, 490 S.W.3d 468, 471 (Tex. 2016). Texas law recognizes that parties "shall have the utmost liberty of contracting, and that their contracts when entered into freely and voluntarily shall be held sacred and shall be enforced by [c]ourts." *Gym-N-I Playgrounds, Inc. v. Snider*, 220 S.W.3d 905, 912 (Tex. 2007). The public policy favoring enforcement of contracts encompasses agreements that directly affect the division of property acquired during marriage. *See, e.g., Beck v. Beck*, 814 S.W.2d 745, 749 (Tex. 1991) (enforcing premarital agreement providing that income from separate properties would be separate property of owner spouse); *Cahill v. Jones-Cahill*, No. 04-20-00008-CV, 2021 Tex. App. LEXIS 243, at *19 (Tex. App.—San Antonio Jan. 13, 2021, no pet.) (mem. op.) (confirming arbitrator's decision regarding marital property rights pursuant to premarital agreement); *Nesmith v. Berger*, 64 S.W.3d 110, 117 (Tex. App.—Austin 2001, pet. denied) (op. on reh'g) (enforcing parties' postnuptial agreement asserting all property would be separate); *Winger v. Pianka*, 831 S.W.2d 853, 853, 857-858 (Tex. App.—Austin 1992, writ denied) (enforcing parties' premarital agreement "to waive any and all rights to 'community property'" if marriage terminated in divorce); *Chiles v. Chiles*, 779 S.W.2d 127, 128 (Tex. App.—Houston [14th Dist.] 1989, writ denied) (op. on reh'g) (enforcing parties' premarital agreement precluding acquisition of community property during marriage).

Jamie has cited no cases relying on section 6.501 or section 6.6015 of the Family Code as authority for denying arbitration under a valid arbitration agreement. In light of

this lack of authority, we are unconvinced that the interplay between the company agreement and the divorce proceeding creates a defense to enforcement of the arbitration agreement for which the parties bargained. *See, e.g., Royston, Rayzor, Vickery, & Williams, LLP v. Lopez*, 467 S.W.3d 494, 500 (Tex. 2015) (In case upholding enforceability of arbitration provision in attorney-client contract, court noted, "The prospective attorney-client relationship adds an overlay to attorney-client employment contracts, but that overlay does not alter the basic principle that arbitration clauses in agreements are enforceable absent proof of a defense." (Internal citation omitted)).

Therefore, we conclude that Jamie failed to establish a cognizable defense to the arbitration provision. Accordingly, the trial court abused its discretion by denying Christian's motion to compel arbitration or to partially lift the trial court's standing order to allow for arbitration. *Richmont Holdings*, 392 S.W.3d at 635.

Conclusion

Because Christian met his burden of establishing a valid arbitration agreement encompassing the dispute over the buyout provision, the district court was required to compel arbitration unless Jamie pleaded and proved an affirmative defense to the arbitration provision. *See Oakwood*, 987 S.W.2d at 573. Jamie did not do so. Therefore, we reverse the district court's order denying Christian's motion and remand the case to the trial court for further proceedings consistent with this opinion.

Judy C. Parker
Justice