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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA22-576

Filed 21 February 2023

Gaston County, No. 21 CVS 4249

JOHN GRIFFING, Plaintiff,

v.

GRAY, LAYTON, KERSH, SOLOMON, FURR & SMITH, P.A., Defendant,

v.

JOHN GRIFFING, Counterclaim Defendant.

Appeal by defendant from order entered 24 February 2022 by Judge Reginald E. McKnight in Gaston County Superior Court. Heard in the Court of Appeals 24 January 2023.

Amanda C. Dure and Joseph L. Anderson for plaintiff-appellee John Griffing.

Bell, Davis & Pitt, P.A., by Edward B. Davis and Kevin J. Roak, for defendant-appellant Gray, Layton, Kersh, Solomon, Furr & Smith, P.A.

ZACHARY, Judge.

Defendant Gray, Layton, Kersh, Solomon, Furr & Smith, P.A. (“Gray Layton”) appeals from the trial court’s order denying with prejudice its motion to compel arbitration. After careful review, we vacate and remand to the trial court for entry of

an order containing findings of fact “which sustain its determination regarding the validity and applicability of the arbitration provisions” of the parties’ various agreements, and evidence the basis of that determination. *Pineville Forest Homeowners Ass’n v. Portrait Homes Constr. Co.*, 175 N.C. App. 380, 387, 623 S.E.2d 620, 625 (2006).

Background

Plaintiff John Griffing joined Gray Layton as a shareholder on or about 6 March 2000. The shareholder agreement did not contain an arbitration clause.

Together with its offer to join the firm, Gray Layton offered Plaintiff the option to buy into COBRA Properties, L.L.P., the entity from which Gray Layton leased office space. On or about 20 April 2001, Plaintiff bought into COBRA Properties, and in August 2018, he purchased an additional interest in the partnership.

Under the lease agreement between COBRA Properties and Gray Layton, the office rent was scheduled to increase by three percent annually. The lease agreement did not contain an arbitration clause.

Pursuant to the COBRA Properties partnership agreement, its members receive prorated shares of the rental income. The agreement further provides that “[a]ny controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled, if allowed by law, by arbitration[.]”

In 2012, the shareholders of Gray Layton “decided to accept a large class action case on a contingent fee basis.” The Gray Layton shareholders entered into an

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agreement with two associates regarding the class action lawsuit, pursuant to which “[t]he individual shareholders in [Gray Layton] agreed to pay the expenses and overhead for the class action litigation.” In addition, the associates agreed to “devote a substantial amount of time and attention” to the lawsuit in exchange for each receiving ten percent of the gross attorney’s fees. Seventy percent of the gross fees were to be “divided in shares among the undersigned ‘Participating Attorneys’”; Plaintiff signed the agreement as one such “participating attorney.” The agreement also provided that “the parties agree to submit their dispute(s) to binding arbitration to be conducted in Gastonia, NC.”

On 31 October 2019, Plaintiff left Gray Layton as a result of the financial burden of “carrying his overhead for his profit center” and “paying for firm overhead to the other shareholders[.]” On 25 October 2021, Plaintiff filed a complaint in Gaston County Superior Court against Gray Layton, alleging breach of contract and failure to provide Plaintiff with a shareholder accounting or to allow Plaintiff to inspect Gray Layton’s books and records.

Concerning the breach of contract claim, Plaintiff asserted that Gray Layton “violated the shareholder agreements as well as other side agreements” by failing to: (1) buy back his stock in Gray Layton within sixty days of his departure from the firm; (2) buy back his stock “at the agreed upon price”; (3) “adequately compensate [Plaintiff] for the revenue stream he brought into the firm”; (4) “properly allocate overhead against the cost centers that used the services provided by the entire firm”;

(5) pay the COBRA Properties partners “the 3% rent increases as required by the lease” between Gray Layton and COBRA Properties; and (6) reimburse Plaintiff for the expenses that he advanced for the class action lawsuit. Plaintiff attached to his complaint copies of the Gray Layton shareholder agreement, the COBRA Properties partnership agreement, the lease agreement between COBRA Properties and Gray Layton, and the intrafirm agreement regarding the class action litigation.

On 10 January 2022, Gray Layton filed its answer, generally denying the allegations of Plaintiff’s complaint and advancing several affirmative defenses. Gray Layton also asserted counterclaims for breach of contract and conversion. On 14 January 2022, Gray Layton filed a motion to compel arbitration.

The motion came on for hearing in Gaston County Superior Court on 21 February 2022. In an order entered on 24 February 2022, the trial court denied Gray Layton’s motion with prejudice, concluding that “this matter is not subject to arbitration[.]” Gray Layton timely appealed.

Grounds for Appellate Review

As a preliminary matter, the trial court’s order denying Gray Layton’s motion to compel arbitration is interlocutory “because it does not determine all of the issues between the parties and directs some further proceeding preliminary to a final judgment.” *Jackson v. Home Depot, U.S.A., Inc.*, 276 N.C. App. 349, 354, 857 S.E.2d 321, 326 (2021) (citation omitted). “Ordinarily, interlocutory orders are not immediately appealable.” *Id.* (citation omitted). “However, this Court has previously

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determined that an appeal from an order denying arbitration, although interlocutory, is immediately appealable because it involves a substantial right which might be lost if appeal is delayed.” *Id.* (citation and internal quotation marks omitted); *see also Pressler v. Duke Univ.*, 199 N.C. App. 586, 590, 685 S.E.2d 6, 9 (2009). Accordingly, the interlocutory nature of the trial court’s order denying Gray Layton’s motion does not deprive this Court of jurisdiction, and we proceed to the merits of this appeal.

Discussion

On appeal, Gray Layton asserts that the trial court erred by denying its motion to compel arbitration because (1) Plaintiff’s claims are subject to multiple, valid arbitration agreements; and (2) Plaintiff’s claims are within the scope of those agreements, thereby requiring that the claims be submitted to arbitration. Gray Layton also contends that “it was improper for the trial court not to include findings of fact in its order, and that is sufficient reason to remand the case.”

“In our review of an arbitration agreement, this Court examines (1) whether the parties had a valid agreement to arbitrate, and also (2) whether the specific dispute falls within the substantive scope of that agreement.” *Earl v. CGR Dev. Corp.*, 242 N.C. App. 20, 22–23, 773 S.E.2d 551, 554 (2015) (citation and internal quotation marks omitted).

“This Court has repeatedly held the trial court must state the basis for its decision in denying a defendant’s motion to stay proceedings pending arbitration in order for this Court to properly review whether or not the trial court correctly denied

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the defendant's motion." *Id.* at 24, 773 S.E.2d at 554 (citation and internal quotation marks omitted); *see, e.g., Cornelius v. Lipscomb*, 224 N.C. App. 14, 17, 734 S.E.2d 870, 872 (2012) (reversing and remanding the trial court's order denying the defendants' motion to compel arbitration where the order "provide[d] no findings and no explanation for the basis of the court's decision to deny the motion to compel arbitration"); *U.S. Trust Co. v. Stanford Grp. Co.*, 199 N.C. App. 287, 291, 681 S.E.2d 512, 515 (2009) (reversing and remanding the trial court's order where "the order d[id] not set out the rationale underlying the trial court's decision to deny [the] defendants' motion" to compel arbitration).

Here, the trial court's order denying Gray Layton's motion to compel arbitration states:

THIS MATTER having come on regularly for hearing at the February 21, 2022 session of Civil Superior Court in Gaston County, North Carolina . . . ;

And the Court, having fully considered the premises, the briefs of the parties, the caselaw proffered by the parties and the arguments of counsel, being of the opinion that this matter is not subject to arbitration and that Defendant [Gray Layton]'s Motion to Arbitrate should be denied;

NOW, THEREFORE, it is hereby Ordered, Adjudged and Decreed that Defendant Gray Layton's Motion to Arbitrate is hereby DENIED in its entirety, with prejudice.

This order contains no findings of fact evincing "the rationale underlying the trial court's decision to deny [Gray Layton's] motion." *U.S. Trust*, 199 N.C. App. at 291, 681 S.E.2d at 515. Plaintiff attached four agreements to his complaint, and he

alleged with regard to the breach of contract claim that “Gray Layton has violated the shareholder agreements *as well as other side agreements*[.]” (Emphasis added). Two of the four referenced agreements contained mandatory arbitration clauses. However, the court neglected to state which, if either, of the two it considered to be valid agreements to arbitrate between these parties or whether the disputes raised in this action fall within the scope of any such valid agreement. *See Ellis-Don Constr., Inc. v. HNTB Corp.*, 169 N.C. App. 630, 635, 610 S.E.2d 293, 296 (2005).

Indeed, the court’s denial of Gray Layton’s motion “might have resulted from: (1) a lack of privity between the parties; (2) a lack of a binding arbitration agreement; (3) [a determination that] this specific dispute does not fall within the scope of any arbitration agreement; or[] (4) any other reason[.]” *Id.* But without any findings, “we are unable to determine the basis for the trial court’s judgment.” *Id.*

Accordingly, we must remand to the trial court for entry of a new order that contains findings of fact “which sustain its determination regarding the validity and applicability of the arbitration provisions” of the parties’ various agreements, and evidence the basis of that determination. *Pineville Forest*, 175 N.C. App. at 387, 623 S.E.2d at 625. “On remand, the trial court may hear evidence and further argument to the extent it determines in its discretion that either or both may be necessary and appropriate.” *Id.* In light of our disposition of this issue, we need not address Gray Layton’s remaining arguments.

VACATED AND REMANDED.

GRIFFING V. GRAY, LAYTON, KERSH, SOLOMON, FURR & SMITH, P.A.

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Judges HAMPSON and GRIFFIN concur.

Report per Rule 30(e).