IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT, IN AND FOR ORANGE COUNTY, FLORIDA

CASE NO.: 2011-CV-32
Lower Court Case No.: 2010-CC-18231

JOHN G. LECHNER,
Appellant,

v.

JAMES K. YARBROUGH,
Appellee.
_____/

Appeal from the County Court,
for Orange County,
Deborah B. Ansbro, County Judge.

Lisa R. Patten, Esquire,
for Appellant.

Dorothy K. LaGamba, Esquire,
for Appellee.

Before MUNYON, APTE, EVANS, J.J.

PER CURIAM.

FINAL ORDER REVERSING TRIAL COURT'S ORDER

James K. Yarbrough ("Appellee") brought an action against John G. Lechner ("Appellant") for breach of a purchase of practice agreement for failure to pay commissions and fees earned. Appellant timely appeals the trial court's order rendered March 22, 2011 denying Appellant's motion to compel arbitration. This Court has jurisdiction pursuant to Florida Rule of Appellate Procedure 9.030(c)(1)(B) and dispenses with oral argument pursuant to Florida Rule of Appellate Procedure 9.320.

On or about December 31, 2009, Appellant, a branch manager and principal for Raymond James Financial Services, Inc. ("Raymond James") and Appellee, a former financial advisor registered with Raymond James who worked directly under Appellant, entered into a purchase of practice agreement ("Agreement") whereby Appellant agreed to purchase Appellee's existing client accounts with Raymond James. The Agreement provided that when Appellant received commissions from Appellee's former client accounts, he was to pay Appellee a commission. Thereafter, a dispute arose between the parties as to the Agreement whereupon the parties attempted to mediate the dispute. After reaching an impasse in mediation, Appellee filed his complaint against Appellant for breach of contract.

On December 6, 2010, Appellant filed his motion to compel arbitration of the claims raised by Appellee in his complaint. Appellant's basis for the motion was that the provisions in the Agreement designated Florida law as controlling and also provided that all claims arising out of the Agreement were subject to arbitration. Specifically, the Agreement stated in that "any dispute or claim arising out of or relating to the subject matter, interpretation or breach of the Agreement shall be submitted to arbitration…" On March 22, 2011, without hearing, the trial court entered an order denying the motion stating that the arbitration provision did not contain the necessary relevant and material information to allow the parties to have a "meeting of the minds" with respect to arbitration and therefore the provision was not enforceable. Subsequently, on April 21, 2011, Appellant's motion for reconsideration of the ruling was heard and the trial court denied the motion on May 9, 2011.

On Appeal, Appellant argues that the trial court erred in denying his motion to compel arbitration because the parties entered into a valid, binding arbitration agreement contained in the Agreement and the omission of the arbitrator and place where the arbitration would take

place does not create an ambiguity that would prevent enforcement of the arbitration clause. Appellant further argues that the trial court erred in failing to recognize that arbitration is strongly favored under both federal and state law which requires arbitration pursuant to the written agreement signed by the parties. Conversely, Appellee argues that the trial court's order should be affirmed as there was no meeting of the minds within the alleged Agreement when reviewing the four corners of the document as the other paragraphs within the Agreement create ambiguity as to the intent of the parties to choose a forum.

Standard of Review

Whether a particular issue is subject to arbitration is a matter of contract interpretation, and, therefore, the standard of review is de novo. *Hirshenson v. Spaccio*, 800 So. 2d 670, 674 (Fla. 5th DCA 2001). It is well established that in appellate proceedings the decision of a trial court is presumed to be correct and the burden is on the appellant to demonstrate error. Interpretation of a contract is a question of law, and an appellate court may reach a construction contrary to that of the trial court. *Gowni v. Makar*, 940 So. 2d 1226, 1229 (Fla. 5th DCA 2006); *Applegate v. Barnett Bank of Tallahassee*, 377 So. 2d 1150, 1152 (Fla. 1979); *Wright v. Wright*, 431 So. 2d 177, 178 (Fla. 5th DCA 1983); and *Whitley v. Royal Trails Property Owners' Ass'n, Inc.*, 910 So. 2d 381, 383 (Fla. 5th DCA 2005).

Appellant's Arguments Discussed

Argument A: Appellant argues that both Florida and federal law favor arbitration where a valid agreement to arbitrate has been executed, citing *Seifert v. U.S. Home Corp.*, 750 So. 2d 633, 636 (Fla. 1999) and *Dean Witter, Reynolds, Inc. v. Byrd*, 470 U.S. 213, 218, 105 S. Ct. 1238, 1241 (1985). Moreover, Appellant argues that, as with federal law, Florida law

holds that the "arbitration clauses are to be given the broadest possible interpretation in order to accomplish the purpose of resolving controversies outside of the courts." *Hirshenson v. Spaccio*, 800 So. 2d 670, 674 (Fla. 5th DCA 2001) quoting *Ocwen v. Holman*, 769 So. 2d 481, 483 (Fla. 4th DCA 2000) *(emphasis added).* Also, in *Seifert*, the Florida Supreme Court addressed that the three elements to consider when ruling on a motion to compel arbitration of a given dispute are: (1) whether a valid written agreement to arbitrate exists, (2) whether an arbitrable issue exists, and (3) whether the right to arbitration was waived. Thus, as Appellant argues, if a valid arbitration agreement exists and has not been waived, arbitration of a dispute as to claims within the scope of the arbitration agreement is required. *Seifert Homes, 750 So. 2d at 636.*

Argument B: Appellant argues that the parties' failure to agree upon the arbitrator and location of the arbitration does not render the arbitration clause unenforceable. Therefore, the trial court's ruling that the arbitration provision was unenforceable because the parties failed to designate the arbitration organization, arbitrator, and the place of arbitration, is contrary to statutory authority which allows for the court to appoint the arbitrator in such circumstances and to enforce the agreement. Appellant stresses that under Florida law, an omission within an arbitration agreement relating to appointment of an arbitrator and location of arbitration is not deemed a material omission and will not render the agreement unenforceable.

Appellant cites the Florida Arbitration Code, section 682.04, Florida Statutes, directing that in cases where an arbitration clause does not contain information relating to the organization or person who will arbitrate the claim, the court should designate the arbitrator to administer the arbitration. Further, appellant provides ample Florida case law where the

courts have held that that an arbitration clause which fails to designate an available arbitrator or forum for dispute resolution is still enforceable. *Betts v. Fastfunding the Company, Inc.*, 60 So. 3d 1079 (Fla. 5th DCA 2011); *Estate of Perez v. Life Care Centers of America*, 23 So. 3d 741 (Fla. 5th DCA 2009); *New Port Richey Medical Investors, LLC v. Stern*, 14 So. 3d 1084 (Fla. 2d DCA 2009); and *Premier Real Estate Holdings, LLC v. Butch*, 24 So. 3d 708 (Fla. 4th DCA 2009). Also, Appellant argues that an arbitration provision can be held unenforceable in such situations only when evidence is presented showing that the choice of forum was an integral part of the arbitration agreement. *Estate of Perez, 23 So. 3d at 742.* In the instant case, Appellant points out that no such evidence was presented to the court.

In addition, Appellant analogizes the *Premier* case to the instant case. In *Premier*, a dispute arose regarding a contract for the purchase and sale of real estate. The real estate contract contained an arbitration clause which provided for arbitration to be in Dade County, Florida, but left blank the name of organization for the governing rules. However, the contract did provide that it would be construed under Florida law. The lower court denied the buyer's motion to compel arbitration because the arbitration agreement failed to set forth the rules and procedures to govern arbitration. The buyer appealed the lower court's decision and the appellate court reversed holding that the failure to designate the rules under which the arbitration would be governed did not invalidate that arbitration clause.

Accordingly, Appellant argues in the instant case, the arbitration provision in the Agreement, like in *Premier,* designated Florida law as controlling for interpretation of the Agreement. The designation of Florida law as the applicable governing body of law for any disputes arising out of the Agreement mandates that interpretation of the Agreement be governed by Florida's Arbitration Code. Therefore, per section 682.04, Florida Statutes, the

court is permitted to fill in the gaps when non-material information relating to the arbitrator is omitted in the agreement. Appellant argues that while the Agreement fails to designate the arbitrator, the omission is not fatal to enforcement of the Agreement and the lower court should have appointed an arbitrator and enforced the arbitration provision as required under the law. Lastly, Appellant provides that the customary arbitration organization to oversee disputes between financial advisors is the Financial Industry Regulatory Authority ("FINRA") that operates throughout the State of Florida in providing arbitration services to its members and associated members, including the parties herein.

Court's Findings

Upon review of the court record and the applicable statutes and case law, this Court concurs with the arguments presented by Appellant. This Court has reviewed the Agreement in its entirety and finds that the provision in the Agreement to arbitrate the claims is valid and was not waived. "The meaning of a contract is not to be gathered from any one phrase or paragraph, but from a general view of the writing as a whole, with all of its parts being compared and construed, each with reference to the others." *Gowni* at 1229 and *Whitley* at 383.

Further, the Court acknowledges that both Florida and federal law embrace a strong policy of enforcing arbitration provisions and Florida law allows the courts to fill in the gaps relating to arbitrators and forums in order to enforce the parties agreement to arbitrate. Therefore, the failure to designate the arbitrator or arbitration forum was not fatal to the enforceability of the arbitration provision. Accordingly, this Court finds that the trial court did err when denying Appellant's Motion to Compel Arbitration by concluding that the arbitration provision was unenforceable.

Based on the foregoing, it is hereby **ORDERED AND ADJUDGED** that the Order Denying Defendant's Motion to Compel Arbitration rendered March 22, 2011 is **REVERSED** and case is **REMANDED** for further proceedings consistent with this opinion.

DONE AND ORDERED in Chambers, at Orlando, Orange County, Florida on this 12th day of October, 2011.

/S/
LISA T. MUNYON
Circuit Judge

/S/
ALAN S. APTE
Circuit Judge

/S/
ROBERT M. EVANS
Circuit Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing order was furnished via U.S. mail on this 12th day of October, 2011 to: **Lisa R. Patten, Esquire,** Patten Durham Law Firm, 7575 Dr. Phillips Blvd., Suite 255, Orlando, Florida 32819 and **Dorothy K, LaGamba, Esquire,** LaGamba Law Firm, P.L., 277 W. New England Avenue, Suite A, Winter Park, Florida 32789.

/S/
Judicial Assistant