UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO

Aquarion AG v. Peakview Partners, LLC

Aquarion AG · No. 25-cv-02024-NRN · Decided March 27, 2026

SUMMARY

The United States District Court for the District of Colorado granted in part Aquarion AG's motion to dismiss Peakview Partners, LLC's counterclaims. The court held that it, rather than an arbitrator, must decide whether Aquarion, a nonsignatory alleged to be a successor-in-interest to the original contracting party, is bound by the arbitration agreement and whether the parties agreed to arbitrate arbitrability. The court dismissed Peakview's first counterclaim seeking a declaration that an arbitrator must decide arbitrability and reserved judgment on the remaining counterclaims and motion arguments.

CASE DETAILS

COURT	United States District Court for the District of Colorado
WRITING FOR THE COURT	N. Reid Neureiter
JURISDICTION	United States District Court for the District of Colorado
DECIDED	March 27, 2026
DOCKET	25-cv-02024-NRN
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiff moved under Federal Rule of Civil Procedure 12(b)(6) to dismiss defendant's counterclaims. The court granted the motion in part, dismissing the first counterclaim seeking a declaration that an arbitrator, rather than the court, must decide arbitrability, and reserved judgment on the remaining counterclaims and arguments.
STANDARD OF REVIEW	On a motion to dismiss, the court considered whether Peakview stated a legally cognizable claim for a declaration that an arbitrator, rather than the court, must decide arbitrability. Under the Federal Arbitration Act, when the existence or making of an arbitration agreement is disputed, the court must determine that issue; a presumption of arbitrability does not apply.
PRECEDENTIAL VALUE	unpublished district court order; persuasive value only

TOPICS

arbitration · motions to dismiss · civil procedure · commercial litigation · contracts

PRACTICE AREAS

civil procedure · arbitration · contracts · commercial litigation · corporate law

QUESTIONS PRESENTED

1. Whether the court or an arbitrator must decide whether a nonsignatory successor-in-interest is bound by an arbitration agreement.
2. Whether the arbitration agreement contained clear and unmistakable evidence that the parties agreed to arbitrate the gateway issue of arbitrability.
3. Whether Peakview's first counterclaim seeking a declaration that an arbitrator must decide arbitrability stated a legally viable claim.

HOLDINGS

1. The court, not an arbitrator, must decide whether Aquarion is bound by the arbitration agreement because Aquarion was not a signatory and the existence of an arbitration agreement between Aquarion and Peakview was disputed.
2. The agreement did not provide clear and unmistakable evidence that the parties agreed to arbitrate arbitrability; therefore, the court could not delegate the threshold issue to an arbitrator.
3. Peakview's first counterclaim was dismissed as a matter of law because the court, rather than an arbitrator, must decide the threshold arbitrability issue.

KEY QUOTATIONS

> *"The question is not whether this dispute is arbitrable. There is a contract that provides for arbitration—that much is obvious. Peakview is a party to that agreement. The question is whether Aquarion is (or should be) bound by that same arbitration agreement. And the threshold question is, who decides that issue."* (at 8)

> *"The merits of a dispute is a first-order disagreement. The parties may also have a second-order dispute—whether they agreed to arbitrate the merits—as well as a third-order dispute—who should have the primary power to decide the second matter."* (at 9)

> *"The agreement's mere statement that it would extend to ANSE's "successor organizations" was not an "unmistakable agreement to arbitrate" on the part of Stucco."* (at 11)

> *"To use the arbitration clause to "demand that arbitrators settle the question of who are the parties to the agreement puts the proverbial cart—the question of whether the arbitration agreement is valid—before the horse—whether a non-signatory has anything to do with a contract it did not clearly sign.""* (at 11)

FACTUAL BACKGROUND

Wotan AG, then operating under the name Aquarion AG, entered into an investment-banking agreement with Peakview that included a Colorado arbitration provision. After Wotan failed to pay Peakview's transaction success fee, Peakview obtained an arbitration award and a Denver District Court judgment against Wotan. A newly incorporated entity, now named Aquarion AG, acquired certain assets from Wotan under an asset purchase agreement that allegedly disclaimed universal succession and the assumption of liabilities. Peakview sought to arbitrate against Aquarion as Wotan's alleged successor, while Aquarion disputed that it was bound by Wotan's arbitration agreement.

PROCEDURAL HISTORY

Wotan AG, formerly named Aquarion AG, entered into an agreement with Peakview Partners, LLC containing an arbitration provision. After Wotan failed to pay a transaction success fee, Peakview obtained an arbitration award and a Denver District Court judgment against Wotan. Peakview then commenced arbitration against the newly incorporated Aquarion AG on a successor-liability theory. Aquarion filed this action seeking declarations concerning arbitrability, successor liability, and arbitral jurisdiction; Peakview answered and asserted counterclaims. Aquarion moved to dismiss the counterclaims, and the court resolved only the threshold arbitrability question.

DISPOSITION

other

CASES CITED

- BRM Construction, Inc. v. Marais Gaylord, L.L.C., 181 P.3d 283, 285-86 (Colo. App. 2007)
- Prima Paint Corp. v. Flood & Conklin Manufacturing Co., 388 U.S. 395, 404 (1967)
- City & County of Denver v. District Court In & For City & County of Denver, 939 P.2d 1353, 1363-64 (Colo. 1997)
- AT&T Technologies, Inc. v. Communications Workers of America, 475 U.S. 643, 648-49 (1986)
- Coinbase, Inc. v. Suski, 602 U.S. 143, 143 (2024)
- McAllister Bros. v. A & S Transportation Co., 621 F.2d 519, 522 (2d Cir. 1980)
- United Steelworkers of America v. Warrior & Gulf Navigation Co., 363 U.S. 574, 582 (1960)
- Volt Information Sciences, Inc. v. Board of Trustees, 489 U.S. 468, 478 (1989)
- First Options of Chicago, Inc. v. Kaplan, 514 U.S. 938, 944 (1995)
- Dumais v. American Golf Corp., 299 F.3d 1216, 1220 (10th Cir. 2002)
- Riley Manufacturing Co. v. Anchor Glass Container Corp., 157 F.3d 775, 779 (10th Cir. 1998)
- SCOR Reinsurance Co. v. Ace American Reinsurance Co., 362 F.3d 1288, 1290 (10th Cir. 2004)
- Spahr v. Se غالب? Medical Group, Inc., 330 F.3d 1266, 1270 (10th Cir. 2003)
- I.S. Joseph Co. v. Michigan Sugar Co., 803 F.2d 396, 399-400 (8th Cir. 1986)
- Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc., 473 U.S. 614, 626 (1985)
- Wheat, First Securities, Inc. v. Green, 993 F.2d 814, 815-19 (11th Cir. 1993)
- National Union Fire Insurance Co. of Pittsburgh, PA v. Stucco Systems, LLC, 289 F. Supp. 3d 457, 466 (S.D.N.Y. 2018)

- Sandvik AB v. Advent International Corp., 220 F.3d 99, 107 n.5 (3d Cir. 2000)
- Magnolia Capital Advisors, Inc. v. Bear Stearns & Co., 272 F. App'x 782, 785 (11th Cir. 2008)
- Bruni v. Didion, 73 Cal. Rptr. 3d 395, 407 (Cal. Ct. App. 2008), as modified (Mar. 24, 2008)
- Rent-A-Center, West, Inc. v. Jackson, 561 U.S. 63, 68-69 (2010)