

DISTRICT COURT OF APPEAL OF FLORIDA, SECOND DISTRICT

Greenbrook NH, LLC v. Estate of Sayre ex rel. Raymond

150 So. 3d 878 (Fla. 2d DCA 2014) · No. 2D13-4009 · Decided November 7, 2014

SUMMARY

The Florida Second District Court of Appeal held that an arbitration agreement signed upon admission to a skilled nursing facility remained valid and enforceable despite portions of the executed copy being obscured by a photocopying error. The court concluded that the agreement contained sufficient terms to establish the parties' intent to arbitrate and that statutory provisions could address any gap concerning the selection of a neutral arbitrator. The court reversed and remanded with directions to grant the motion to compel arbitration.

CASE DETAILS

COURT	District Court of Appeal of Florida, Second District
WRITING FOR THE COURT	LaROSE, Judge; LaROSE; CASANUEVA; SLEET
JURISDICTION	Florida
DECIDED	November 7, 2014
DOCKET	2D13-4009
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Interlocutory appeal under Florida Rule of Appellate Procedure 9.130 from a nonfinal order denying a nursing facility's motion to compel arbitration and motion to stay proceedings.
STANDARD OF REVIEW	Factual findings are reviewed for competent, substantial evidence; construction of the arbitration provision and application of law to the facts are reviewed de novo.
PRECEDENTIAL VALUE	published opinion
PARTIES	Greenbrook NH, LLC, Greystone Healthcare Management Corp., Monika K. Peters, Michelle E. Upton v. The Estate of Alene M. Sayre, by and through Annette M. Raymond, Personal Representative

TOPICS

[contracts](#)[nursing home liability](#)[interlocutory appeal](#)[appellate jurisdiction](#)[standard of review](#)

PRACTICE AREAS

contract law

arbitration

nursing home liability

appellate procedure

QUESTIONS PRESENTED

1. Whether an arbitration agreement remains valid and enforceable when portions of the executed copy, including the title, part of the arbitration-panel procedure, and part of a severability clause, are obscured by a photocopying error.
2. Whether the Florida Arbitration Code supplies or cures the omitted procedural term concerning selection of a neutral arbitrator or umpire.

HOLDINGS

1. The arbitration agreement was valid and enforceable because the unobscured provisions, read as a whole, sufficiently demonstrated the parties' intent to arbitrate and supplied definite terms concerning the matters to be arbitrated and the procedure for arbitration.
2. An arbitration agreement is enforceable when the signatory has a meaningful opportunity to review it, obtain guidance, and accept or reject its terms; on these facts, Raymond had such an opportunity and signed with a clear intent to arbitrate potential disputes.

KEY QUOTATIONS

"The polestar guiding us in the construction of a written arbitration agreement, as with any contract, is the parties' intent." (-3-)

"If a party has 'a meaningful opportunity to review the arbitration agreement, to obtain guidance, and to accept or reject the terms of the arbitration agreement,' the agreement is enforceable." (-5-)

FACTUAL BACKGROUND

Alene Sayre lived at Greenbrook, a skilled nursing facility, for most of 2011. Her daughter, Annette Raymond, acting as Sayre's legally authorized representative, signed an arbitration agreement requiring arbitration of disputes arising from Sayre's stay. After Raymond, as personal representative of Sayre's estate, sued Greenbrook for negligence and violation of nursing-home residents' rights, Greenbrook sought to enforce the agreement, which contained portions obscured by a photocopying error but was accompanied by a complete unsigned copy.

PROCEDURAL HISTORY

The estate sued Greenbrook for negligence and violation of Florida nursing-home residents' rights. Greenbrook moved to compel arbitration based on an arbitration agreement signed by the decedent's legally authorized representative and moved to stay the proceedings. The circuit court denied the motions after finding that portions of the agreement obscured by a photocopying error were material and rendered the agreement invalid. The Second District reversed and remanded with directions to grant the motion to compel arbitration.

DISPOSITION

REMAND INSTRUCTIONS

Reverse the order denying the motion to compel arbitration and remand with directions to grant the motion to compel arbitration.

CASES CITED

- Zephyr Haven Health & Rehabilitation Center, Inc. v. Hardin, 122 So. 3d 916, 919 (Fla. 2d DCA 2013), review denied, 135 So. 3d 287 (Fla. 2014)
- Woebse v. Health Care & Retirement Corp. of America, 977 So. 2d 630, 632 (Fla. 2d DCA 2008)
- Bland, ex rel. Coker v. Health Care & Retirement Corp. of America, 927 So. 2d 252, 255 (Fla. 2d DCA 2006)
- Shotts v. OP Winter Haven, Inc., 86 So. 3d 456 (Fla. 2011)
- Bergman v. DeIulio, 826 So. 2d 500, 503 (Fla. 4th DCA 2002)
- Malone & Hyde, Inc. v. RTC Transportation, Inc., 515 So. 2d 365, 366 (Fla. 4th DCA 1987)
- Crastvell Trading Ltd. v. Marengere, 90 So. 3d 349, 353 (Fla. 4th DCA 2012)
- SCG Harbourwood, LLC v. Hanyan, 93 So. 3d 1197, 1200 (Fla. 2d DCA 2012)
- Tampa HCP, LLC v. Bachor, 72 So. 3d 323, 328 (Fla. 2d DCA 2011)

OPINION

LAROSE, J.

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION AND, IF FILED, DETERMINED IN THE DISTRICT COURT OF APPEAL OF FLORIDA SECOND DISTRICT GREENBROOK NH, LLC; GREYSTONE) HEALTHCARE MANAGEMENT CORP.;) MONIKA K. PETERS; and MICHELLE E.) UPTON (as to APOLLO HEALTH AND) REHABILITATION CENTER),)) Appellants,)) v.) Case No. 2D13-4009) THE ESTATE OF ALENE M. SAYRE,) by and through ANNETTE M. RAYMOND,) Personal Representative,)) Appellee.) _____) Opinion filed November 7, 2014.

Appeal pursuant to Fla. R. App. P. 9.130 from the Circuit Court for Pinellas County; Anthony Rondolino, Judge. Thomas A. Valdez and Sheila K. Nicholson of Quintairos, Prieto Wood & Boyer, P.A., Tampa, for Appellants. Isaac R. Ruiz-Carus, Donna K. Hanes, and Megan L. Gisclar of Wilkes & McHugh, P.A., Tampa, for Appellee. LaROSE, Judge. Greenbrook NH, LLC, et al. (Greenbrook), appeals the trial court's nonfinal order denying its motion to dismiss and compel arbitration and motion to stay proceedings.

See § 682.03, Fla.Stat. (2010) (delineating "[p]roceedings to compel and to stay arbitration"). We have jurisdiction, see Fla. R. App. P. 9.130(a)(3)(C)(iv), and reverse. Greenbrook is a skilled nursing facility in St. Petersburg. Alene Sayre lived there for most of 2011. Thereafter, Annette

Raymond, Ms. Sayre's daughter, as personal representative of her mother's estate, sued Greenbrook for negligence and for violation of her mother's nursing home residents' rights.

See §§ 400.022-.023, Fla. Stat. (2010) (addressing residents' rights and civil enforcement). Upon Ms. Sayre's admission to Greenbrook, Ms. Raymond, as her mother's legally authorized representative, signed an arbitration agreement requiring Ms. Sayre to arbitrate all disputes that may arise from her stay at Greenbrook.

After Ms. Raymond filed suit, Greenbrook sought to enforce that agreement. At the hearing on the motion to compel arbitration, Greenbrook presented a copy of the signed arbitration agreement. Three portions were obscured -- the title and portions of two terms.¹ Greenbrook also presented to the trial court a complete, but unsigned, copy of the form arbitration agreement.

Ms. Raymond argued that the obscured portions rendered the agreement incomplete and, therefore, invalid. The trial court agreed and denied the motion to compel arbitration. Greenbrook contends, here, that, despite the photocopying error, the arbitration agreement is valid because the omitted portions do not alter the parties' 1 The photocopying error appears to be due to copying that resulted in the top two or three lines of all three pages of the agreement being obscured. -2- intent to create a binding contract to arbitrate.

According to Greenbrook, the remaining terms of the agreement were sufficiently clear and definite to form a contract. We agree. Appellate review of the trial court's factual findings involves determining whether competent, substantial evidence supports the findings. *Zephyr Haven Health & Rehab Ctr., Inc. v. Hardin*, 122 So. 3d 916, 919 (Fla. 2d DCA 2013), review denied, 135 So.

3d 287 (Fla. 2014); *Woebse v. Health Care & Ret. Corp. of Am.*, 977 So. 2d 630, 632 (Fla. 2d DCA 2008). "[T]he standard of review applicable to the trial court's construction of the arbitration provision and to its application of the law to the facts... is de novo review." *Woebse*, 977 So. 2d at 632.

In assessing the enforceability of an arbitration agreement, we inquire "(1) whether there is a valid written agreement to arbitrate, (2) whether an arbitrable issue exists, and (3) whether the right to arbitration was waived." *Bland, ex rel. Coker v. Health Care & Ret. Corp. of Am.*, 927 So. 2d 252, 255 (Fla. 2d DCA 2006), abrogated on other grounds by *Shotts v. OP Winter Haven, Inc.*, 86 So.

3d 456 (Fla. 2011). This case involves only the first issue—whether, despite a photocopying error, the arbitration agreement is valid. There can be no quarrel that a contract cannot stand if it is missing the "essential terms of an agreement." *Bergman v. DeIulio*, 826 So. 2d 500, 503 (Fla. 4th DCA 2002).

The essential terms of an arbitration agreement include "the form and procedure for arbitration, the number of arbitrators, how the arbitrators were to be selected, or... the issues to be decided by

arbitration." *Malone & Hyde, Inc. v. RTC Transp., Inc.*, 515 So. 2d 365, 366 (Fla. 4th DCA 1987). These factors are not exhaustive; they offer an outline of an arbitration agreement's basic terms.

The terms must be definite enough so that the parties have some idea as to what matters are to be -3- arbitrated and provide some procedure by which arbitration is to be effected. See *id.* The polestar guiding us in the construction of a written arbitration agreement, as with any contract, is the parties' intent. *Crastvell Trading Ltd. v. Marengere*, 90 So. 3d 349, 353 (Fla.

4th DCA 2012). We discern that intent "from the total writing and not particular provisions or disjointed parts." *SCG Harbourwood, LLC v. Hanyan*, 93 So. 3d 1197, 1200 (Fla. 2d DCA 2012). The trial court found that the arbitration agreement's obscured portions were material, thus making the agreement infirm.

The missing language included the title classifying the document as an arbitration agreement, the three-arbitrator panel's decision-making process, and a portion of a severability clause. Even with these supposed deficiencies, the agreement contained clarifying and supplementary terms, establishing a valid and enforceable agreement.

First, we conclude that the title was not necessary; even a passing review of the document established that it was an arbitration agreement. Second, the executed agreement omitted the last step of the arbitration panel process, when applicable.

The unobscured provision provided in part, To the extent the parties cannot agree upon a single arbitrator, each side shall choose a single non-neutral arbitrator (a total of two), who will in turn choose a third arbitrator to serve as a neutral/umpire.

In the latter case, all three arbitrators shall participate in the hearing but the... The obscured portion continued, single arbitrator will decide the controversy, and the decision shall be binding on all parties, and may be enforced by a court of competent jurisdiction. With or without the non-neutral arbitrators, the agreement, even if obscured, contemplates that the neutral arbitrator/umpire will be the ultimate decision maker.

In -4- another provision of the agreement, the parties adopted the Florida Arbitration Code. See §§ 682.01-.22. Section 682.04 provides, in part, that if the agreement on a panel of arbitrators fails or cannot be followed, the court, on application of a party to the agreement, shall appoint one or more arbitrators or an umpire. This statutory provision, in light of the agreement's obscured language, would cure or fill the gap should the need for a neutral umpire become an issue.

Third, it was obvious that the agreement contained a severability clause. Indeed, read as whole, the arbitration agreement, even as obscured, informed the parties that the agreement would not fail if a court deemed any portion invalid. See also § 682.22. If a party has "a meaningful opportunity to

review the arbitration agreement, to obtain guidance, and to accept or reject the terms of the arbitration agreement," the agreement is enforceable.

Tampa HCP, LLC v. Bachor, 72 So. 3d 323, 328 (Fla. 2d DCA 2011). Ms. Raymond had an opportunity to review the arbitration agreement before signing it for her mother. The record is unclear if Greenbrook presented Ms. Raymond with an obscured arbitration agreement, or if the photocopying error occurred after signing. If Ms. Raymond saw the agreement's omitted and obscured portions, she could have asked for a clean copy to sign instead of signing a clearly obscured copy with portions omitted.

Ms. Raymond could have refused to sign the arbitration agreement and demanded a clean copy. If, however, the agreement included the now omitted portions, Ms. Raymond had the opportunity to review the document, signing with the clear intent to arbitrate potential disputes.

On these facts, the agreement was valid and enforceable. Accordingly, we reverse the order denying the motion to compel arbitration. -5- Reversed and remanded with directions to grant the motion to compel arbitration. CASANUEVA and SLEET, JJ., Concur. -6-