

NEBRASKA SUPREME COURT

Frohberg Electric Company, Inc. v. Grossenburg Implement, Inc., and Kiehm Construction, Inc.

297 Neb. 356 (2017) · No. No. S-16-987 · Decided July 28, 2017

SUMMARY

The Nebraska Supreme Court held that a subcontract unambiguously incorporated a mandatory arbitration provision from the general contract. Because the subcontract involved interstate commerce, the Federal Arbitration Act applied, and the parties were required to pursue mediation before arbitration. The court reversed the district court and remanded with directions to stay the action and compel arbitration.

CASE DETAILS

COURT	Nebraska Supreme Court
WRITING FOR THE COURT	Cassel, J.; Heavican, C.J.; Wright, J.; Miller-Lerman, J.; Stacy, J.; Kelch, J.; Funke, J.
JURISDICTION	Nebraska
DECIDED	July 28, 2017
DOCKET	No. S-16-987
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Appeal from an order of the Wayne County District Court denying the owner and general contractor's motion to compel arbitration or, alternatively, dismiss the subcontractor's complaint.
STANDARD OF REVIEW	The meaning of a contract, whether a contract is ambiguous, and arbitrability are questions of law reviewed independently of the lower court's conclusions. Because the issue concerned the formation or existence of an arbitration agreement, the court applied state law, subject to the Federal Arbitration Act's equal-treatment principle.
PRECEDENTIAL VALUE	Published Nebraska Supreme Court opinion; precedential.
PARTIES	Grossenburg Implement, Inc., Kiehm Construction, Inc. v. Frohberg Electric Company, Inc.

TOPICS

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PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether the subcontract unambiguously incorporated the general contract's arbitration and mediation provisions.
2. Whether the subcontract's arbitration agreement was governed by the Federal Arbitration Act because it involved interstate commerce.
3. Whether the defendants were entitled to an order staying the action and compelling mediation followed by arbitration.

HOLDINGS

1. The subcontract unambiguously incorporated a mutually binding arbitration agreement from the general contract, notwithstanding that the provision appeared under the heading "The Contractor Agrees as Follows."
2. The incorporated agreement required the parties to attempt mediation as a condition precedent to binding arbitration, and the dispute was subject to that process.
3. The Federal Arbitration Act governed the subcontract because the contract contained an arbitration clause and involved interstate commerce.
4. The district court should have granted the motion to compel arbitration and stayed the action pending mediation and, if necessary, arbitration.

KEY QUOTATIONS

"A contract is ambiguous when a word, phrase, or provision in the contract has, or is susceptible of, at least two reasonable but conflicting interpretations or meanings." (363)

"Therefore, the FAA applied and the agreement is presumed valid, irrevocable, and enforceable." (365)

"We reverse the district court's order and remand the cause with directions that the court enter an order staying the action and compelling arbitration pursuant to the agreement." (366)

FACTUAL BACKGROUND

Grossenburg Implement, a Nebraska corporation, entered into a general construction contract with Kiehm Construction, a Minnesota corporation. Kiehm subcontracted with Frohberg Electric, a Nebraska corporation, for electrical services and materials. The subcontract referenced and incorporated the general contract and included a provision stating that disputes between the contractor and subcontractor would be resolved by arbitration in the manner provided in the general contract. After a payment dispute arose, Frohberg filed suit and obtained a construction lien, while Grossenburg and Kiehm sought to compel arbitration.

PROCEDURAL HISTORY

Frohberg Electric sued Grossenburg Implement and Kiehm Construction concerning payment for electrical services and sought to foreclose a construction lien. The defendants moved to compel arbitration under an arbitration provision in the general contract that they contended was incorporated into the subcontract. The district court denied the motion, concluding that the subcontract did not bind Frohberg to the general contract's dispute-resolution provisions. The Nebraska Supreme Court reversed and remanded with directions to stay the action and compel mediation followed by arbitration.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The district court was directed to enter an order staying the action and compelling arbitration pursuant to the agreement. The parties were required first to attempt mediation and then to submit the dispute to arbitration if mediation was unsuccessful.

CASES CITED

- Facilities Cost Mgmt. Group v. Otoe Cty. Sch. Dist., 291 Neb. 642, 868 N.W.2d 67 (2015)
- Wilczewski v. Charter West Nat. Bank, 295 Neb. 254, 889 N.W.2d 63 (2016)
- David Fiala, Ltd. v. Harrison, 290 Neb. 418, 860 N.W.2d 391 (2015)
- Southland Corp. v. Keating, 465 U.S. 1, 19-20, 104 S. Ct. 852, 79 L. Ed. 2d 1 (1984)
- Washington Mut. Finance Group, LLC v. Bailey, 364 F.3d 260, 264 (5th Cir. 2004)
- ISC Holding AG v. Nobel Biocare Investments N.V., 351 Fed. Appx. 480 (2d Cir. 2009)
- CardioNet, Inc. v. CIGNA Health Corp., 751 F.3d 165, 173 (3d Cir. 2014)
- Dasher v. RBC Bank (USA), 745 F.3d 1111, 1116 (11th Cir. 2014)
- Paul Revere Variable Annuity Ins. v. Kirschhofer, 226 F.3d 15 (1st Cir. 2000)
- Kindred Nursing Centers Ltd. v. Clark, 137 S. Ct. 1421, 197 L. Ed. 2d 806 (2017)
- Flores v. Flores-Guerrero, 290 Neb. 248, 859 N.W.2d 578 (2015)