NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

HISTOPATHOLOGY SERVICES, LLC,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
	:	
v.	:	
	:	
UROLOGIC CONSULTANTS OF SOUTHEASTERN PENNSYLVANIA, Appellant	:	
	:	
	:	No. 3256 EDA 2014

Appeal from the Order Entered October 17, 2014
In the Court of Common Pleas of Philadelphia County
Civil Division No(s).: 1626 May Term, 2014

BEFORE: BOWES, MUNDY, and FITZGERALD,* JJ.

MEMORANDUM BY FITZGERALD, J.: **FILED AUGUST 03, 2015**

Appellant, Urologic Consultants of Southeastern Pennsylvania ("Urologic"), appeals from the order entered in the Philadelphia Court of Common Pleas denying its motion for partial judgment on the pleadings, which also requested arbitration. Urologic argues the trial court erred in failing to determine the threshold issue of whether a binding arbitration agreement existed between the parties. We vacate and remand.

We state the facts as alleged in the complaint. Appellee, HistoPathology Services, LLC, specializes in pathology; Urologic specializes in urology. HistoPathology's Compl., 5/15/14, at ¶¶ 4-5. In March 2012,

* Former Justice specially assigned to the Superior Court.

HistoPathology and Urologic entered a Laboratory Consulting Agreement,[1] where HistoPathology agreed to provide consulting services and supplies to Urologic so that Urologic could open a laboratory. ***Id.*** at ¶ 6.

In April 2012, HistoPathology presented Urologic with a Professional Services Agreement, where HistoPathology offered to perform pathology interpretations for Urologic's patients. ***Id.*** at ¶ 7. The Professional Services Agreement contains the following arbitration provisions:

> 7.1 Covered Claims. [HistoPathology] and [Urolologic] agree to the resolution by arbitration of all claims or controversies ("claims"), whether or not arising out of this Agreement (or its termination), that either party may have against the other party.
>
> 7.2 Arbitration. Any dispute arising with respect to this Agreement, its making or validity, its interpretation, or its breach shall be settled by arbitration in Montgomery County, Pennsylvania pursuant to the then-pertaining rules of the American Health Lawyers Association's dispute resolution procedure. Such arbitration shall be the sole and exclusive remedy for such disputes except as otherwise provided in this Agreement. Any award rendered shall be final and conclusive upon the parties, and a judgment may be entered in any court having jurisdiction.

Professional Services Agreement at 4-5.

[1] An addendum to the Laboratory Consulting Agreement provides: "Any argument or claim about the Contract will be finally settled by compulsory arbitration according to the Commercial Arbitration Rules of the American Arbitration Association ("AAA")." Laboratory Consulting Services Agreement, HIPPA Business Associate Addendum to Laboratory Consulting Services Agreement at 11.

Although the agreement was not executed, HistoPathology furnished these services and billed Urologic monthly. ***Id.*** at ¶¶ 7-8. On December 13, 2013, Histopathology sent Urologic a final invoice totaling $731,075.29, which Urologic did not dispute ***Id.*** at ¶ 9. HistoPathology alleges Urologic has billed Medicare and other intermediaries for services and supplies detailed in the final invoice without "pass[ing] through" payments to HistoPathology. ***Id.*** at ¶ 11.

On May 14, 2014, HistoPathology sued Urologic for breaching the Laboratory Consulting Agreement and the Professional Services Agreement. ***Id.*** at ¶¶ 13-14. On June 27, 2014, Urologic filed preliminary objections, requesting arbitration per Section 7.2 in the Professional Services Agreement. The trial court denied the preliminary objections as untimely. Order, 8/12/14.

On August 28, 2014, Urologic filed an Answer with New Matter asserting that because it "never consented to the terms of the Professional Services Agreement," HistoPathology's complaint failed to state a claim. Urologic's Answer with New Matter, 8/28/14, at 6. Alternatively, Urologic asserted that "to the extent the parties were bound by the Professional Services Agreement, [the] court lack[ed] jurisdiction over [the] matter" because of the arbitration clause. ***Id.***

On September 19, 2014, Urologic filed a Motion for Partial Judgment on the Pleadings. Urologic reiterated that it never consented to the terms of

the Professional Services Agreement, therefore, HistoPathology "fail[ed] to state a claim upon which relief [could] be granted", and alternatively, that the court was without jurisdiction because of the arbitration provision. Urologic's Mem. of Law in Supp. of Mot. for Partial J. on the Pleadings, 9/19/14, at 5. On October 17, 2014, the trial court denied Urologic's motion, and on November 7, 2014, Urologic timely appealed. On December 8, 2014, the trial court ordered Urologic to file a Pa.R.A.P. 1925(b) statement, which it did on December 12, 2014.[2]

On January 5, 2015, the court issued its Pa.R.A.P. 1925(a) decision, recommending Urologic's appeal be quashed as interlocutory:

> The trial court is of the opinion that the instant appeal is interlocutory and should be quashed. While it denied [Urologic's] motion for partial judgment on the pleadings and refused to send the parties to arbitration, there is no indication from the pleadings themselves and the attached unsigned professional services agreement that the parties agreed to be bound by the arbitration clause.
>
> This created a factual issue which made the grant of the motion improper. ***See Parish v. Horn***, 768 A.2d 1214, 1215 n. 1 (Pa. Comwlth. 2001), aff'd, 791 A.2d 1155 (Pa. 2002). The defendant's alternative argument that plaintiff's breach of contract count should be dismissed because the parties did not sign the professional services contract did not help to clarify the issue. While the lower court endorses the enforcement of arbitration agreements whenever possible, it cannot do so without evidence that

[2] The trial court initially noted Urologic did not comply with Rule 1925(b). Trial Ct. Op., 1/5/15. That same day, the trial court issued a supplementary opinion explaining that although Urologic's 1925(b) statement did not appear on the docket, it timely complied. Supplemental Op., 1/5/15, at 1.

> the parties agreed to submit to arbitration. However, such agreements are upheld only where it is clear that the parties have agreed to arbitrate in [a] clear and unmistakable manner. ***Quiles v. Fin. Exch. Co.***, 879 A.2d 281, 287 (Pa. Super. 2005). Based on the pleadings and attachments, it is not clear that the parties agreed to arbitrate.

Supplemental Op. at 1-2.

Urologic raises the following issue for review:

> Under Pennsylvania law, a trial must decide whether a party agreed to arbitrate a dispute at the outset of a civil proceeding. Here, although [Appellant] moved the trial court to decide the threshold jurisdiction question of whether the parties' dispute must be arbitrated, the trial court did not decide this jurisdictional question and denied [Appellant's] petition. Did the trial court err in denying [Appellant's] petition without ruling on whether the parties' claims are subject to an arbitration agreement?

Urologic's Brief at 4.

Urologic argues the trial court erred by not holding the underlying dispute was subject to arbitration because "the issue of whether a particular dispute falls within a contractual arbitration provision is a matter of law for the court to decide." ***Id.*** at 9 (quoting ***Shadduck v. Christopher J. Kaclik, Inc.***, 713 A.2d 635, 637 (Pa. Super. 1998)). Urologic further contends "the issue of whether a party agreed to arbitrate a dispute is a threshold, jurisdictional question that must be decided by the court." ***Id.*** (quoting ***Gaffer Ins. Co. v. Discover Reinsurance. Co.***, 936 A.2d 1109, 1111 n.5 (Pa. Super. 2007)). Additionally, Urologic asserts if there is insufficient information to determination whether the parties agreed to arbitrate, then

"case law provides that a hearing may be required to resolve this issue." ***Id.*** at 10. (citing ***Schwarz v. Wells Fargo Advisors, LLC***, 58 A.3d 1270, 1273 n.1 (Pa. Super. 2012)). Lastly, Urologic claims "the trial court abused its discretion and erred when it failed to hold a hearing, permit jurisdictional discovery, or make a threshold determination whether a binding arbitration agreement existed between the parties." ***Id.*** at 11. We hold Urologic is due relief.

Recently, this Court restated its well-established standard governing an appeal from a denial of a motion to compel arbitration:

> We review a trial court's denial of a motion to compel arbitration for an abuse of discretion and to determine whether the trial court's findings are supported by substantial evidence. In doing so, we employ a two-part test to determine whether the trial court should have compelled arbitration. The first determination is whether a valid agreement to arbitrate exists. The second determination is whether the dispute is within the scope of the agreement.
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> Whether a claim is within the scope of an arbitration provision is a matter of contract, and as with all questions of law, our review of the trial court's conclusion is plenary. The scope of arbitration is determined by the intention of the parties as ascertained in accordance with the rules governing contracts generally. These are questions of law and our review is plenary.
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> Arbitration is a matter of contract, and parties to a contract cannot be compelled to arbitrate a given issue absent an agreement between them to arbitrate that issue. Even though it is now the policy of the law to favor settlement of disputes by arbitration and to promote the swift and orderly disposition of claims, arbitration agreements are to be strictly construed and such agreements should not be extended by implication.

Elwyn v. DeLuca, 48 A.3d 457, 461 (Pa. Super. 2012) (citations and quotation marks omitted). An abuse of discretion occurs where the trial court "reaches a conclusion that overrides or misapplies the law, or where the judgment exercised is manifestly unreasonable, or is the result of partiality, prejudice, bias, or ill will." ***Brady v. Urbas***, 111 A.3d 1155, 1161 (Pa. 2015) (citing ***Commonwealth v. Wright***, 78 A.3d 1070, 1086 (Pa. Super. 2013)).

Instantly, Urologic requested arbitration in its second request for relief. Although Urologic's motion is "not precisely in the form of a petition to compel arbitration", this court "will not exalt form over substance."[3] ***See Midomo Co., Inc. v. Presbyterian Hous. Dev. Co.***, 739 A.2d 180 (Pa. Super. 1999) (citing ***Olivetti Corp. of Am. v. Silia Prop., Inc.***, 467 A.2d 321, 322 (Pa. 1983)). In ***Midomo***, the appellant contested the trial court's denial of its preliminary objections requesting arbitration. ***Id.*** at 182. In deciding to construe the appellant's preliminary objection as a petition to compel arbitration, this Court explained that "[w]hile an order denying preliminary objections is generally not appealable, '[t]here exists . . . a narrow exception to this oft-stated rule for cases in which the appeal is taken from an order denying a petition to compel arbitration.'" ***Id.*** at 184. (quoting ***Shadduck***, 713 A.2d at 636). Similar to ***Midomo***, because

[3] We do not condone Urologic's procedural missteps.

Urologic's motion for partial judgment on the pleadings also requested arbitration, we construe its motion as a petition to compel arbitration. ***See id.***

When petitioning the court to compel arbitration:

> **(a) Compelling arbitration.—**On application to a court to compel arbitration made by a party showing an agreement described in section 7303 (relating to validity of agreement to arbitrate) and a showing that an opposing party refused to arbitrate, the court shall order the parties to proceed with arbitration. If the opposing party denies the existence of an agreement to arbitrate, the court shall proceed summarily to determine the issue so raised and shall order the parties to proceed with arbitration if it finds for the moving party. Otherwise, the application shall be denied.

42 Pa.C.S. § 7304(a).

> A written agreement to subject any existing controversy to arbitration or a provision in a written agreement to submit to arbitration any controversy thereafter arising between parties is valid, enforceable and irrevocable, save upon such grounds as exist at law or in equity relating to the validity, enforceability or revocation of any contract.

42 Pa.C.S. § 7303. "The statute provides no guidance as to the procedure a trial court should employ in 'summarily' determining whether an agreement to arbitrate exists[,] [and] [w]hile the statute['']s language affords no basis for concluding that a hearing is always required, one may be necessary in some cases." ***Schwarz***, 58 A.3d at 1273 n.1.

When considering the validity of arbitration agreements:

> Courts have consistently expressed the sentiment that agreements to arbitrate are generally favored. Such agreements will be upheld when the agreement is specific

> enough (*i.e.*, unambiguous) . . . . Case law generally equates the process of interpreting agreements to arbitrate with that of interpreting contracts, applying the same principles in both types of cases. It is well established that:
>
> > Nothing is better settled than that in order to constitute a contract there must be an offer on one side and an unconditional acceptance on the other. So as long as any condition is not acceded to by both parties to the contract, the dealings are mere negotiations and may be terminated at any time by either party while they are pending. There must be a meeting of minds in order to constitute a contract. This doctrine is very familiar and has been recognized many times in our courts.

Quiles, 879 A.2d at 285 (citations omitted).

In ***Quiles***, the parties disputed the existence of a valid arbitration agreement. ***Id.*** at 284. An employee sued her previous employer, who then filed a petition to compel arbitration pursuant to the employee handbook. ***Id.*** at 283. The employee contested the validity of the arbitration agreement, claiming her employer never gave her a copy of the handbook but admitted she signed a form confirming that she read it. ***Id.*** at 284. "[T]he trial court held an evidentiary hearing to determine . . . whether a valid agreement to arbitrate existed." ***Id.*** After the hearing, the trial court concluded the parties did not agree to arbitrate:

> Specifically, the court found that because [the employee] never received the [h]andbook, she could not have been fully informed of the arbitration policy and provisions. . . . Under such circumstances the court determined there was no "meeting of the minds on any of the handbook terms, including the arbitration procedure."

Id. (citations omitted). This Court affirmed, explaining "without first having been given a copy of the [h]andbook", the employee could not have agreed to arbitration. ***Id.*** at 288. Further, "[w]ithout her acceptance, there was no contract formed between the parties and, thus, no grounds to compel arbitration . . . ." ***Id.***

In ***Keystone Tech. Grp., Inc. v. Kerr Grp., Inc.***, 824 A.2d 1223 (Pa. Super. 2003), the parties disputed an agreement for the sale of land. ***Id.*** at 1224. The prospective purchaser filed a complaint for specific performance of the sales agreement, and shortly after filed a petition to compel arbitration pursuant to an arbitration provision contained in the sales agreement. ***Id.*** at 1224-25. The trial court "determined that because certain explicit conditions precedent to the enforceability of the contract had not occurred, the contract, and therefore the arbitration provision contained therein, never had legal effect." ***Id.*** at 1227.

This Court found it necessary to vacate the order denying the petition to compel arbitration and remand the case, reasoning:

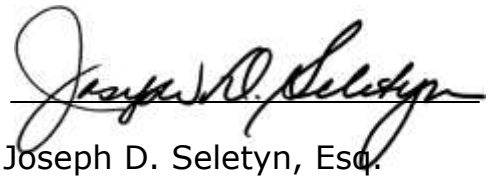
> In the present case, the trial court did not conduct an evidentiary hearing regarding the satisfaction of the conditions precedent. Moreover, the certified record contains only the pleadings and the attachments thereto,[ ] and is devoid of any evidence regarding the satisfaction of the conditions precedent. We lack, therefore, the requisite "substantial evidence" necessary to sustain the trial court's finding that the conditions precedent had not been met. We similarly lack, however, substantial evidence that conditions precedent in fact had been satisfied.

Id. at 1228.

Instantly, just as in ***Quiles***, Urologic and HistoPathology dispute whether arbitration is appropriate and the pleadings and attachments do not offer any clarification. ***See Quiles***, 879 A.2d at 284. As noted above, HistoPathology sued Urologic for breaching two contracts. Urologic, however, countered the second contract—the Professional Services Agreement—was never signed, but if it was binding, then arbitration is proper. Further, as in ***Keystone*** and in contrast to ***Quiles***, the trial court in this matter did not conduct an evidentiary hearing to supplement the information in the pleadings and attachments. ***See Keystone*** 824 A.2d at 1228; ***see Quiles***, 879 A.2d at 284. Thus, similar to both ***Quiles*** and ***Keystone***, there was insufficient evidence to determine whether the parties actually agreed to arbitrate—particularly since HistoPathology sued for breach of the contract containing the arbitration provision—and an evidentiary hearing is appropriate. ***See Quiles***, 879 A.2d at 284; ***see Keystone***, 824 A.2d at 1228. For these reasons, the trial court abused its discretion by not holding an evidentiary hearing to determine whether arbitration is appropriate. ***See Elwyn***, 48 A.3d at 461; ***see Brady v. Urbas***, 111 A.3d at 1161. Thus, we remand for an evidentiary hearing and any other proceedings deemed necessary to resolve whether the parties agreed to arbitrate. ***See Keystone***, 824 A.2d at 1228.

Order vacated. Case remanded with instructions. Jurisdiction relinquished.

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 8/3/2015