

2011 IL App (1st) 102451-U

No. 1-10-2451

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FIFTH DIVISION  
December 30, 2011

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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GRANT THORNTON, LLP,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 2010 L 698
	)	
A. BLAIR STOVER, JR.,	)	Honorable
	)	Daniel J. Pierce,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE HOWSE delivered the judgment of the court.  
Justices Joseph Gordon and McBride concurred in the judgment.

**ORDER**

¶ 1 **HELD:** Because there was not a sufficient showing of a written agreement between the parties to arbitrate any claims arising from defendant's employment as a principal at an accounting firm, the trial court abused its discretion in granting plaintiff's application to compel arbitration.

¶ 2 Plaintiff Grant Thornton, LLP brought an action against defendant A. Blair Stover Jr. to compel Stover to arbitrate claims he brought against Grant Thornton in a Missouri

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identification action. The trial court granted the application and ordered Stover to arbitrate all of his claims brought against Grant Thornton in the indemnification action. Stover appeals, contending the trial court erred in compelling arbitration of his claims. For the reasons that follow, we reverse the trial court's order and remand the cause for further proceedings.

¶ 3 BACKGROUND

¶ 4 On December 9, 2009, Stover filed a lawsuit in Missouri state court against Grant Thornton, seeking a declaration that Grant Thornton must indemnify him for past and future attorney's fees, expenses and judgments related to civil claims that have been, or may be, asserted against him based on his work while employed at Grant Thornton as a tax attorney. Grant Thornton filed a motion to stay the Missouri case and initiated an action in the Cook County Circuit Court to compel arbitration of Stover's claims under Illinois law. Grant Thornton attached a written "Principals' Agreement" in support of its application to compel arbitration. The Principals' Agreement, which on its cover is dated December 1, 1997, contains a general arbitration clause requiring "any claim or controversy arising out of or relating to this agreement or the breach or the alleged breach hereof" to be submitted to arbitration in Chicago, Illinois. The arbitration clause provides the "law of the State of Illinois

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shall govern all questions concerning the interpretation of this agreement and any claims or controversies which may arise hereunder or which may relate to this agreement." Grant Thornton noted Stover was employed by them from December 20, 1993, through September 1, 2001. Stover was promoted to a full equity "principal" at Grant Thornton in 2000. The Principals' Agreement attached to the arbitration application is unsigned by either party.

¶ 5 In his motion to dismiss the arbitration application, Stover noted that neither the application to compel arbitration nor the attached written Principals' Agreement itself indicated Stover ever signed any such agreement. In his sworn affidavit, Stover averred he was made a "principal" in Grant Thornton during the summer of 2000. Stover averred that although Grant Thornton presented him with a form of "partnership agreement" at the time he was made a principal, he had concerns regarding the terms of the document and never signed it. Stover said that while he made Grant Thornton aware of his concerns, "Grant Thornton did not ever address those concerns; nor did Grant Thornton ever require me to sign that document (or any other form of partnership agreement)."

¶ 6 In its response, Grant Thornton alleged Stover was bound to the written agreement--and the arbitration clause contained

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within--to the same extent as if he had signed it. Grant Thornton alleged that even if Stover had not signed the agreement, his acceptance of the benefits of the principal position at Grant Thornton meant he was estopped from disclaiming the terms of the agreement under Illinois law. Grant Thornton argued Stover's allegation that he could have accepted a "principal" position within a large accounting firm, without being bound by the written agreement that governed every principal within the firm, simply did not withstand scrutiny.

¶ 7 Following a hearing, the trial court granted Grant Thornton's application to compel arbitration. The trial court found that:

"although [Stover] did not sign the principals agreement, his actions are sufficient to constitute acceptance of the principals agreement. [Stover] specifically accepted benefits described in the agreement, including partnership income and the automobile allowance. No other written agreements were required to be signed by [Stover] relating to these benefits, and no other written agreement was ever signed by these parties governing Mr. Stover's

employment."

While the trial court recognized defendant raised concerns about the agreement's terms and refused to sign the document, the court found:

"he did not stop performing or attempt to rescind the contract. So the Court finds that the principals agreement governs the parties' relationship, including the arbitration provision."

¶ 8 Stover filed a motion to reconsider, or, in the alternative, to modify the court's order compelling arbitration. Stover alleged that even if the trial court declined to reconsider its order compelling arbitration, the court should modify its order to indicate arbitration applied only to indemnification for claims that occurred based on work Stover performed after he was promoted to principal at Grant Thornton. The court denied Stover's motion to reconsider or modify the order. Stover appeals.

#### ¶ 9 ANALYSIS

##### ¶ 10 I. Standard of Review

¶ 11 Stover contends the trial court erred in granting Grant Thornton's application to compel arbitration. Specifically, Stover contends the trial court erred in determining a written

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agreement to arbitrate existed between the parties.

¶ 12 Initially, we note the parties disagree regarding the standard of review that should apply to the trial court's order in this case. Stover contends that because the trial court did not conduct an evidentiary hearing and made no specific factual findings, and its decision was based purely on questions of law, the trial court's decision to compel arbitration is subject to *de novo* review. See *Fosler v. Midwest Care Center II, Inc.*, 398 Ill. App. 3d 563, 566 (2009). Grant Thornton recognizes a split in authority exists regarding whether a trial court's ruling on a request to compel arbitration should be reviewed *de novo* or for an abuse of discretion. See *Glazer's Distributors of Illinois, Inc. v. NWS-Illinois, LLC.*, 376 Ill. App. 3d 411, 423-24 (2007). Notwithstanding, Grant Thornton contends the trial court necessarily made factual determinations in this case when it determined Stover was bound by the unsigned written Principals' Agreement, and, therefore, the more deferential abuse of discretion standard should apply because the issue constitutes a mixed question of law and fact. See *Glazer's Distributors of Illinois, Inc.*, 376 Ill. App. 3d at 423.

¶ 13 Although we recognize the trial court did not conduct a full evidentiary hearing with regard to the application to compel arbitration, we agree with Grant Thornton that the resolution of

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the application required the court to address both factual and legal issues. See *Hedlund and Hanley, LLC v. Board of Trustees of Community College District No. 508*, 376 Ill. App. 3d 200, 205 (2007) ("Whether a contract exists, its terms and the intent of the parties are questions of fact to be determined by the trier of fact.") Accordingly, we review the trial court's decision here for an abuse of discretion.

¶ 14 II. Written Agreement to Arbitrate

¶ 15 The only issue before a reviewing court in an appeal from an interlocutory order granting a motion to compel arbitration is whether there was a sufficient showing to sustain the order. *Heider v. Knautz*, 396 Ill. App. 3d 553, 559 (2009). Illinois courts favor arbitration because it allows for "an easier, more expeditious and less expensive [disposition of disputes] than [does] litigation." *Feldheim v. Sims*, 326 Ill. App. 3d 302, 309 (2001).

¶ 16 Section 2(a) of the Illinois Uniform Arbitration Act (Act) (710 ILCS 5/2(a) (West 2008)) provides:

"On application of a party showing an agreement described in Section 1, and the opposing party's refusal to arbitrate, the court shall order the parties to proceed with arbitration, but if the opposing party denies

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the existence of the agreement to arbitrate, the court shall proceed summarily to the determination of the issues so raised and shall order arbitration if found for the moving party, otherwise, the application shall be denied."

¶ 17 Section 1 of the Act provides:

"A written agreement to submit any controversy to arbitration or a provision in a written contract to submit to arbitration any controversy thereafter arising between the parties is valid, enforceable and irrevocable save upon such grounds as exist for revocation of any contract." 710 ILCS 5/1 (West 2008).

¶ 18 While Grant Thornton concedes it cannot show that Stover ever signed the written Principals' Agreement containing the arbitration clause, it contends Stover clearly accepted the benefits of being a principal within Grant Thornton, and, therefore, is bound by the written agreement's terms. Accordingly, the central issue in this case is whether the trial court abused its discretion in determining Stover was bound by the unsigned Principals' Agreement, and, accordingly, the

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arbitration provision by virtue of his conduct.

¶ 19 An agreement to arbitrate is a matter of contract, and Illinois contract law determines whether the parties actually agreed to arbitrate future disputes. *Peterson v. Residential Alternatives of Illinois, Inc.*, 402 Ill. App. 3d 240, 245 (2010). Ordinarily, one of the acts forming the execution of a written contract is its signing. *Hedlund and Hanley, LLC v. Board of Trustees of Community College District No. 508*, 376 Ill. App. 3d 200, 206 (2007). However, "[i]t is well settled that a party named in a contract may, by his acts and conduct, indicate his assent to its terms and become bound by its provisions even though he has not signed it." *Landmark Properties, Inc. v. Architects International-Chicago*, 172 Ill. App. 3d 379, 383 (1988). For a course of conduct to act as consent to a contract, however, it must be clear that the conduct relates to the specific contract in question. *Landmark Properties, Inc.*, 172 Ill. App. 3d at 383.

¶ 20 In *Melena v. Anheuser-Busch, Inc.*, 219 Ill. 2d 135, 152 (2006), an employer, Anheuser-Busch, Inc., mailed a letter to its nonunion employees at a distribution center in Mt. Vernon announcing the implementation of a "Dispute Resolution Program." The new program included and outlined a binding arbitration provision, which required arbitration of any employment-related

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claims against the company or individual managers acting within the scope of their employment. The letter noted that "by continuing or accepting an offer of employment" with Anheuser-Busch, all employees to whom the policy was applicable "agree as a condition of employment to submit all covered claims to the dispute resolution program." Employees were also provided an employee handbook, which outlined the dispute resolution program and arbitration provisions in detail. The employees, including the plaintiff, signed an "Employee Acknowledgment and Understanding" form, which provided the employee was responsible for reading the handbook, familiarizing themselves with its contents and adhering to all company policies and procedures. When the plaintiff filed a retaliatory discharge complaint against Anheuser-Busch, Anheuser-Busch moved to dismiss the complaint and compel arbitration. The circuit court denied the motion and the appellate court affirmed.

¶ 21 Our supreme court noted that in Illinois, "an offer, an acceptance and consideration are the basic ingredients of a contract." *Melena*, 219 Ill. 2d at 151. The court held Anheuser-Busch's introduction of the Dispute Resolution Program, and its mailing of materials related to the program to its employees, constituted an "offer." By continuing her employment with the company, the plaintiff "both accepted the offer and provided the

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necessary consideration." *Melena*, 219 Ill. 2d at 151-52, citing *Duldulao v. Saint Mary of Nazareth Hospital Center*, 115 Ill. 2d 482, 490 (1987). Because the plaintiff continued working for Anheuser-Busch for over three years after the initial implementation of the program and for just shy of over two years after signing the acknowledgment form, the court held the agreement to arbitrate covered claims arising from the employment relationship was enforceable. *Melena*, 219 Ill. 2d at 152. In reaching its conclusion, the court rejected the contention that the agreement was unenforceable because it was offered on a "take it or leave it basis." The court noted various federal circuit courts of appeal have rejected the notion that such contracts are unconscionable or adhesive in nature. *Melena*, 219 Ill. 2d at 152-53.

¶ 22 Here, in support of its application to compel arbitration, Grant Thornton attached a document labeled as a "Principals' Agreement," which has the date December 1, 1997, on the title sheet. Stover's signature does not appear on the attached "Principals' Agreement;" nor is he specifically named anywhere in the document itself or on the signature page. In support of its contention that Stover was nevertheless bound under the terms of the written agreement, Grant Thornton presented several of Stover's IRS tax documents, which indicated he received certain

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benefits consistent with being a principal at Grant Thornton in 2000 and 2001--including profit sharing and an automobile allowance--consistent with what is outlined in the attached written agreement's terms.

¶ 23 Stover's un rebutted affidavit established he was presented with a written "Principals' Agreement" after being elevated to the position of "principal" within Grant Thornton sometime during the summer of 2000. Stover averred, however, that he "had concerns about the terms of that document, and never signed it." Stover said that while Grant Thornton was aware of his concerns with the agreement, "Grant Thornton did not ever address those concerns; nor did Grant Thornton ever require me to sign that document (or any other form of partnership agreement)." The record indicates Stover continued to work at Grant Thornton as a principal from sometime in the summer of 2000 until September 2001.

¶ 24 Based on the record before us, we find there was not a showing of a written agreement to arbitrate claims between the parties sufficient to sustain an order to compel arbitration. Unlike the employer in *Melena*, Grant Thornton has failed to present sufficient evidence to suggest Stover was aware that by continuing or accepting an offer of employment as a principal with Grant Thornton, he was agreeing as a condition of that

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employment to be bound by all of the terms--including the arbitration provision--outlined in the attached "Principals' Agreement."

¶ 25 Initially, we note that besides Grant Thornton's bare assertions in its application, nothing in the record indicates the written "Principals' Agreement" Grant Thornton attached in support of its application to compel arbitration is the same written agreement Stover was actually presented with--and ultimately refused to sign--when he was promoted to "principal" in the summer of 2000. Stover's name does not appear on the signature page or anywhere else within the document itself. Although we recognize the document is clearly entitled as a "Principals' Agreement," we note Grant Thornton failed to present any evidence to suggest every "principal" at Grant Thornton was required to sign or be bound by this exact agreement upon being promoted to the position of principal.

¶ 26 While Grant Thornton contends Stover could not be a principal without assent to the agreement, nothing in the record or the attached agreement itself specifically indicates Stover's continued employment as a principal was ever conditioned upon signing or assenting to this exact agreement. Nor does the attached "Principals' Agreement" itself indicate every principal at Grant Thornton is necessarily bound by this specific

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agreement's exact terms. In fact, the agreement specifically notes the intended parties to the attached agreement are Grant Thornton and the "*undersigned* principal;" not all principals of the company. Our conclusion that Stover was not necessarily bound by this agreement's terms is also bolstered by the fact that Grant Thornton apparently allowed Stover to continue as a principal at the firm for just over a year, even though Stover's unrebutted affidavit establishes he explicitly refused to sign the actual Principals' Agreement presented to him and informed Grant Thornton of his decision.

¶ 27 Moreover, we disagree that by merely accepting the title "principal" and being compensated in a manner consistent with what the submitted "Principals' Agreement" outlines, Stover engaged in a course of conduct sufficient to establish his consent to all of the written agreement's terms and conditions. Again, we note Stover's unrebutted affidavit established he explicitly refused to sign the Principals' Agreement that was presented to him because he disagreed with certain terms therein. Nevertheless, Grant Thornton apparently allowed him to continue in the position of "principal" for more than a year without such an agreement in place. While the record reflects Stover was compensated in line with how a principal would be compensated at Grant Thornton, no evidence sufficiently establishes he was ever

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ultimately required to agree--either implicitly or explicitly--to be bound by all of the terms in the specific attached written Principals' Agreement in exchange for such compensation.

¶ 28 Notwithstanding, Grant Thornton contends the trial court properly determined Stover could not hold the position of principal within a large accounting firm without being bound by a written agreement governing his relationship with the firm.

Grant Thornton contends we should not be expected to believe that becoming a principal with an equity interest in a firm the size and scope of Grant Thornton is the sort of business arrangement that is undertaken without assent to a written agreement.

¶ 29 As Stover properly notes, however, this court has recognized a written partnership agreement is not required in order for a valid partnership to exist. See *Englestein v. Mackie*, 35 Ill. App. 2d 276, 288 (1962) ("As between the parties, the existence of a partnership relationship is a question of intention to be gathered from all the facts and circumstances. Written articles of agreement are not necessary, for a partnership may exist under a verbal agreement, and circumstances may be sufficient to establish such an agreement.") While Grant Thornton contends this general proposition of law should not apply because it is "a large enterprise with offices throughout the country," it cites no case law to support such a distinction.

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¶ 30 Although Grant Thornton also contends *Englestein* is distinguishable because Stover was made a "principal" in the firm and not a "partner," we note Grant Thornton's own brief explains "so that Grant Thornton may give persons who are not CPAs, such as Stover, the attributes, prerogatives, and benefits generally equivalent to those of a partner in the firm, it offers selected non-CPAs the position of principal within the firm." We find Stover's designation as a principal, rather than a partner, amounts to a distinction without a difference for purposes of determining whether a written agreement was necessary here to formalize such a relationship. Moreover, we note we have not discovered--and Grant Thornton has not cited--either a Missouri or an Illinois proposition of law that provides an employee of a firm cannot be made a principal within that firm absent acquiescence to a written agreement.

¶ 31 Because there was not a showing of a written agreement to arbitrate between the parties sufficient to sustain the order to compel arbitration, we find the trial court erred in granting Grant Thornton's application in this case.

¶ 32 CONCLUSION

¶ 33 For the above stated reasons, we reverse the trial court's order compelling arbitration. We remand the cause for further proceedings.

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¶ 34 Reversed and remanded.