

1-10-2426

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(3)(1).

Third Division
March 2, 2011

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

NILES PROPERTY INVESTMENTS & MANAGEMENT, LLC.,)	Appeal from the
)	Circuit Court of
)	Cook County.
Plaintiff-Appellant,)	
)	10 CH 18972
v.)	
)	
MICHAEL KIM and MEEUN YU,)	Honorable
)	William Maki,
Defendants-Appellees.)	Judge Presiding.

JUSTICE NEVILLE delivered the judgment of the court.
Justices Murphy and Steele concurred in the judgment.

ORDER

HELD: Parties to a contract that includes an arbitration clause have a right to arbitrate their disputes with other parties to the contract, even when the arbitration might affect the rights of non-parties who did not sign the contract.

Two members of a limited liability company (LLC) filed a demand for arbitration of their dispute with other members of the LLC, and they sought to implead the LLC itself as a necessary

party to the dispute. The LLC sued the two members who demanded arbitration, and it moved to stay the arbitration on grounds that only the members of the LLC, and not the LLC itself, had signed the contract that included the arbitration clause. The LLC now appeals from the trial court's denial of the motion to stay arbitration. We find that the contract between the members of the LLC gives them the right to arbitration of the disputes between the members, regardless of whether the LLC participates in the arbitration. We affirm the denial of the motion to stay the arbitration.

BACKGROUND

In June 2007, Meeun Yu (Yu) and Syng Man Rhee (Syng) signed an operating agreement that created Niles Property Investments & Management, LLC (NPIM), an LLC organized under Illinois law. Syng took 600 shares of the LLC and Yu took the remaining 400 shares. Yu and Syng named Michael Kim (Kim) as a manager of NPIM. The operating agreement permitted NPIM to enter into contracts with its members and managers. The agreement concluded with the following paragraph:

“Any controversy or claim arising out of or relating to this Agreement shall only be settled by arbitration in accordance with the rules of the American Arbitration Association, one arbitrator, and shall be enforceable in any court having competent jurisdiction.”

NPIM hired Kim to rehabilitate a building NPIM owned. In March 2009, Kim filed a mechanics lien, claiming that NPIM had not paid him fully for the rehabilitation work he completed in December 2008.

In January 2010, Syng and Yu entered into an amended operating agreement for NPIM. Syng kept only 200 shares, while Robin Rhee (Robin) became a member with 400 shares. Yu kept 350

1-10-2426

shares and Kim took the remaining 50 shares. All four members signed the amended operating agreement, but none purported to sign on behalf of NPIM. The operating agreement retained the arbitration clause from the original agreement.

A controversy arose shortly after the amended agreement went into effect. In a letter dated March 15, 2010, Kim announced his resignation from his position as a member of NPIM. That same day, Yu sent a letter demanding dissolution of NPIM, pursuant to the terms of the operating agreement. On March 24, 2010, Robin responded with letters in which he claimed that Kim had no right to resign from his position, and therefore Yu had no basis for demanding dissolution of NPIM.

On April 2, 2010, Kim and Yu filed a demand for arbitration with the American Arbitration Association. They sought a declaration that Kim had resigned, and that the operating agreement gave Yu the right to demand dissolution of NPIM. In a second count of the arbitration demand, they sought a decree stating that Syng had conducted NPIM's business with other corporations Syng controlled in a manner detrimental to Kim and Yu's interests. They sought dissolution of NPIM as their primary relief in the second count. While Kim and Yu named Syng and Robin as respondents to the arbitration, they also added NPIM as a necessary party to the arbitration proceedings.

Robin and Syng, as majority owners of NPIM, met on April 13, 2010, and signed a document in which they claimed that they further amended NPIM's operating agreement. They filed a lawsuit in NPIM's name, listing Kim and Yu as defendants, seeking (1) a judgment declaring Kim's resignation ineffective, (2) an injunction barring Kim and Yu from acting as members of NPIM, and (3) damages.

NPIM moved to stay the arbitration proceedings. It relied on *Trover v. 419 OCR, Inc.*, 397

Ill. App. 3d 403 (2010), in which the appellate court held that a member of an LLC could not compel the LLC to arbitrate a claim, even though the operating agreement for the LLC included an arbitration clause, because only the LLC's members, and not the LLC itself, had signed the operating agreement.

Kim and Yu responded that the trial court should apply the reasoning of *Elf Atochem North America, Inc. v. Jaffari*, 727 A.2d 286, 293 (Del. 1999), where the Supreme Court of Delaware held that the members of an LLC were the real parties in interest when the LLC had a dispute with one of its members. The court held that the arbitration clause in the operating agreement gave the member the right to arbitration of the dispute with the LLC, even though no member signed the operating agreement on behalf of the LLC.

The trial court here found the arbitration clause in the operating agreement broader than the clause at issue in *Trover*, and therefore the court found *Trover* distinguishable. The court denied the motion to stay arbitration. NPIM filed a timely appeal pursuant to Supreme Court Rule 307(a)(1). Ill. S. Ct. R. 307(a)(1) (eff. Feb. 26, 2010).

ANALYSIS

The trial court here held no evidentiary hearing before deciding to deny the motion to stay arbitration. Therefore, we review the trial court's order *de novo*. *Trover*, 397 Ill. App. 3d at 406.

The parties ask us to decide whether a member of an LLC has a right to arbitration of a dispute with the LLC, when an arbitration clause appears in an operating agreement that governs the LLC, but the LLC did not itself sign the operating agreement. We find no need to decide the issue the parties present for our review. Kim and Yu demanded arbitration of their dispute against Syng

1-10-2426

and Robin, where the dispute arose under the amended operating agreement, which includes an arbitration clause. The arbitration of the dispute between the members of NPIM may affect the interests of NPIM, who did not sign the arbitration agreement.

Our supreme court stated the applicable principles in *Board of Managers of the Courtyards at the Woodlands Condominium Ass'n v. IKO Chicago, Inc.*, 183 Ill. 2d 66, 71-74 (1998):

“In Illinois, the general rule is that agreements to arbitrate will be enforced despite the existence of claims by third parties or of pending multiparty litigation.

[Citations.] ***

* * *

*** [O]nce the trial court determines that a valid arbitration agreement exists, the court must compel arbitration, even when the princip[al] litigation involves parties that are not signatories to the arbitration agreement.”

Thus, the trial court correctly held that it must not stay the arbitration in favor of court proceedings on NPIM’s claims.

We note that Kim and Yu sought to include NPIM as a necessary party to the arbitration. The appellate court faced a similar situation in *Van C. Argiris & Co. v. Pain/Wetzel & Assocs.*, 63 Ill. App. 3d 993 (1978). The plaintiff, Argiris, a broker, sued a number of brokers bound by an arbitration agreement which Argiris signed. Argiris also sued Kelly-Springfield, a non-broker not subject to any arbitration agreement. The brokers sought arbitration. The trial court dismissed the lawsuit against the brokers in favor of arbitration, and Argiris argued that Kelly-Springfield was a necessary party for some of the claims subject to arbitration. The appellate court affirmed the

dismissal of the claims against the brokers, so that the parties could arbitrate that part of the dispute.

As to Kelly-Springfield, the court added:

“The question of whether Kelly-Springfield is a necessary party to the interference of contract action, along with certain broker defendants, hinges on certain factual determinations in the case. These questions of fact will properly be determined by the circuit court in its consideration of the amended complaint against Kelly-Springfield. A finding Kelly-Springfield is a necessary party would be *res judicata* and must be considered by the arbitrator. Until such a finding or determination is made jurisdiction of Argiris' claim against the broker defendants is in arbitration and jurisdiction of Argiris' claim against the nonbroker defendant, Kelly-Springfield, is in the circuit court of Cook County.” *Argiris*, 63 Ill. App. 3d at 997.

Applying *Argiris* to the facts here, we find that the trial court should decide whether NPIM counts as a necessary party for the arbitration proceedings, and if it is, it should participate in the arbitration. If it is not a necessary party, the members of NPIM must arbitrate their dispute, while the trial court retains jurisdiction over the claims NPIM brings against its members as well as the claims the members bring against NPIM.

CONCLUSION

Because Kim and Yu filed an appropriate demand for arbitration of their dispute with Syng and Robin, we affirm the trial court's order denying the motion to stay arbitration.

Affirmed.