

No. 1-13-1924

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(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

CAPITAL REPORTING COMPANY,)	Appeal from the Circuit Court
)	of Cook County.
Plaintiff-Appellee,)	
)	No. 13 CH 1776
v.)	
)	
JENNIFER KRIPAS,)	Honorable Mary Anne Mason,
)	Judge Presiding
Defendant-Appellant.)	

PRESIDING JUSTICE SIMON delivered the judgment of the court.
Justices Harris and Liu concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court did not err in finding that defendant's claims of malicious prosecution and abuse of process were beyond the scope of the parties' arbitration agreement.

¶ 2 Defendant Jennifer Kripas appeals from an order of the Circuit Court of Cook County granting plaintiff Capital Reporting Company's motion to dismiss or stay arbitration and directing the American Arbitration Association ("AAA") to dismiss Kripas' arbitration case (Case No. 51-160-01404-12 02-LRB-C). For the following reasons, we affirm.

¶ 3 BACKGROUND

¶ 4 Capital Reporting is a District of Columbia corporation that maintains an office in Chicago. The company provides court reporting and related services to the legal community. Jennifer Kripas is a former employee of Capital Reporting. Kripas was employed at the company's office in Chicago. During her time with Capital Reporting, Kripas entered into four separate written employment agreements. Three of the four agreements in some way address the issue of arbitration. The most recent agreement, executed on June 15, 2010, contains a paragraph that states:

"ARBITRATION

In the event of any dispute of any nature, Kripas and [Capital Reporting] shall be required to submit the matter to binding arbitration with each side to bear its own legal fees and costs associated with the arbitration[.] [I]n the event that Kripas and [Capital Reporting] cannot agree on an arbitrator, [the] parties shall be required to resolve the matter through binding arbitration under the rules and supervision of the American Arbitration Association ("AAA") and its successors or assigns, and any fees assessed by the AAA for the services of the arbitrator will be divided equally by the parties. In order to facilitate resolution of all disputes, controversies, or claims, Kripas and [Capital Reporting] agree to keep negotiations, arbitrations, and settlement terms strictly confidential."

¶ 5 Kripas resigned from Capital Reporting and began to work for U.S. Legal, a company that provides similar services. When Capital Reporting learned that Kripas was working for U.S. Legal, it filed a lawsuit against her in the Circuit Court of Cook County for alleged violations of covenants not to compete. Capital Reporting also named U.S. Legal as a respondent-in-discovery.

No. 1-13-1924

Thereafter, U.S. Legal terminated Kripas' employment, and Capital Reporting voluntarily dismissed the suit.

¶ 6 Kripas then submitted a demand for arbitration to AAA interposing claims for malicious prosecution and for abuse of process. AAA selected an arbitrator, Vicki Lafer Abrahamson, but there is no indication that the arbitration process went any further. Instead, Capital Reporting filed this case in the circuit court seeking a declaration that the claims asserted by Kripas in the arbitration case were not arbitrable. Capital Reporting eventually moved to stay or dismiss the arbitration. The motion was fully briefed and a hearing was held. The trial judge found that Kripas' claims for malicious prosecution and abuse of process were not within the scope of the relevant arbitration clause and directed AAA to dismiss the case. This appeal followed.

¶ 7 ANALYSIS

¶ 8 This appeal arises from a final judgment. The standard of review in an appeal from a trial court's decision to enjoin an arbitration is *de novo*. *Travis v. American Mfrs. Mut. Ins. Co.*, 335 Ill. App. 3d 1171, 1174 (2002). Additionally, when there are no issues of fact, whether the parties agreed to arbitrate a matter under the terms of their agreement is a question of law subject to *de novo* review. *Niles Township High School District 219 v. Illinois Education Labor Relations Board*, 379 Ill. App. 3d 22, 26 (2008).

¶ 9 There is some dispute between the parties as to what jurisdiction's law should apply and what statute governs the dispute. Kripas argues that because the case involves interstate commerce and the parties' citizenship is diverse, the dispute is governed by federal law and the Federal Arbitration Act (9 U.S.C. § 1 *et seq.*). However, Kripas bases her right to arbitrate on the parties' June 15, 2010 agreement. That agreement provides that it "shall be construed and enforced in

No. 1-13-1924

accordance with the laws of the District of Columbia." The parties then proceed to predominately rely upon Illinois law for their respective positions. Nevertheless, and as is discussed more fully below, neither the choice of law nor which statute is applied change the analysis or outcome of this appeal.

¶ 10 The first substantive issue raised by the appeal is whether the trial judge was entitled to determine whether Kripas' claims were arbitrable; or whether that was a decision that should have been made by the arbitrator. In their agreement, the parties did not express whether a judge or an arbitrator was to decide issues of arbitrability. Under federal law, "[u]nless the parties clearly and unmistakably provide otherwise, the question of whether they agreed to arbitrate is to be decided by the court, not the arbitrator." *AT&T Technologies, Inc. v. Communications Workers of America*, 475 U.S. 643, 649 (1986); see also *BG Group, PLC v. Republic of Argentina*, ___ U.S. ___, ___, 134 S. Ct. 1198, 1207 (2014) (under the Federal Arbitration Act, it is for the court to decide whether a particular arbitration clause applies to a particular type of controversy). Under District of Columbia law, the question of whether the parties' agreement creates a duty for the parties to arbitrate a particular grievance is an issue for judicial determination. *Washington Teachers' Union, Local No. 6 v. District of Columbia Public Schools*, 77 A.3d 441, 452 (D.C. 2013). These principles are in accord with Illinois law and the Illinois Arbitration Act. See *Donaldson, Lufkin & Jenrette Futures, Inc. v. Barr*, 124 Ill. 2d 435, 443-51 (1988).

¶ 11 However, Illinois courts have also recognized that "when the language of an arbitration clause is broad and it is unclear whether the subject matter of the dispute falls within the scope of [an] arbitration agreement, the question of substantive arbitrability should initially be decided by the arbitrator." *Id.* at 447-48. The *Barr* court, nonetheless, went on to observe that courts are

No. 1-13-1924

empowered to make a summary determination concerning arbitrability based on whether the agreement could reasonably be construed to encompass the claimant's grievances. *Id.* Thus, the *Barr* court held, if the dispute clearly falls within the scope of the arbitration agreement, the court should order arbitration; if it is clear that the dispute does not, arbitration should be refused. *Id.* at 448, 451. The court also explained that in unclear cases the court should initially defer the arbitrability question to the arbitrator. *Id.* at 448. Because judges are empowered to make summary determinations concerning whether particular grievances are arbitrable, the trial judge did not err by examining the issue.

¶ 12 Having decided that the trial judge was entitled to inquire into arbitrability, the second substantive issue presented by the appeal is whether Kripas' arbitration claims were clearly outside the scope of the arbitration agreement such that the trial court did not err in ordering their dismissal.

¶ 13 The arbitration provision at issue is exceedingly broad. It applies to "any dispute of any nature" between the parties. Agreements to arbitrate are to be interpreted in the same manner as any contract. *Weiss v. Waterhouse Securities, Inc.*, 335 Ill. App. 3d 875, 885 (2002). The primary goal of contract interpretation is to give effect to the intent of the parties. *Palm v. 2800 Lake Shore Drive Condominium Ass'n*, 2014 IL App (1st) 111290, ¶ 75. The words of a contract derive their meaning from the context in which they are used. *Northwest Podiatry Center, Ltd. v. Ochwat*, 2013 IL App (1st) 120458, ¶ 40.

¶ 14 Here, even though the contract states that it applies to any dispute of any nature, the agreement to arbitrate must be viewed in light of the fact that it arises in the context of Kripas' employment. The employment agreement's purpose is to set forth the parties' rights and

No. 1-13-1924

obligations concerning the employment relationship. The arbitration clause cannot reasonably be construed in the manner suggested by Kripas: that every claim that one party may have against the other for an undefined period of time is subject to arbitration. While the contract could have been more artfully drafted, it is unreasonable to interpret the arbitration provision to include any possible cause of action between the parties *ad infinitum* regardless of how it arises. See *Marks v. Bober*, 399 Ill. App. 3d 385, 391-92 (2010) (holding that when the allegation of harm is beyond the scope of the initial contractual engagement, arbitration should not be compelled).

¶ 15 The parties cannot be said to have agreed to arbitrate the present claims for malicious prosecution and abuse of process; claims that did not even arise until nearly a year after Kripas resigned from the company and had nothing to do with the terms of her employment. See *Reed v. Doctor's Associates, Inc.*, 331 Ill. App. 3d 618, 626-27 (2002) (holding that claims for malicious prosecution and abuse of process that did not derive from the parties' contractual relationship were not subject to arbitration). The claims against Capital Reporting are premised on conduct that allegedly occurred separate and apart from, and subsequent to, any interaction between the parties that related to the employment agreement. A party is not required to arbitrate where, as here, the factual allegations of the complaint seek redress for matters not covered by the agreement and matters that the parties never intended to arbitrate. See *Marks*, 399 Ill. App. 3d at 391-92.

¶ 16 It is clearly apparent that the claims Kripas sought to arbitrate are outside the ambit of the arbitration clause. Thus, the trial judge did not err by considering the arbitrability of the claims, and did not err by finding the claims to be outside the scope of the arbitration provision.

¶ 17

CONCLUSION

No. 1-13-1924

¶ 18 Accordingly, we affirm the judgment of the Circuit Court of Cook County.

¶ 19 Affirmed.