2014 IL App (4th) 130220-U

NO. 4-13-0220

FILED
January 23, 2014
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

RJW WILLIAMS FARMS, INC., an Illinois Corporation, Plaintiff-Appellant, v. TOPFLIGHT GRAIN COOPERATIVE, INC., and THE NATIONAL GRAIN AND FEED ASSOCIATION, Defendants-Appellees.	))))))))	Appeal from Circuit Court of Piatt County No. 12CH57 Honorable William Hugh Finson, Judge Presiding.

JUSTICE POPE delivered the judgment of the court.
Presiding Justice Appleton and Justice Holder White concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not err in granting Topflight's motion to dismiss RJW's complaint for declaratory and injunctive relief to stop arbitration where RJW concedes it contracted to have the parties' underlying contract dispute heard in arbitration.

¶ 2 This case arises from a dispute concerning 10 alleged contracts for the sale of grain between plaintiff, RJW Williams Farms, Inc. (grain seller) (RJW) and defendant, Topflight Grain Cooperative, Inc. (grain purchaser) (Topflight). Each contract included a provision providing for dispute resolution through arbitration by the National Grain and Feed Association (NGFA). RJW filed a complaint for declaratory and injunctive relief against Topflight and NGFA requesting a temporary restraining order, preliminary injunction, and permanent injunction to stop the arbitration process, arguing, *inter alia*, NGFA did not have jurisdiction to

arbitrate the parties' dispute. Topflight filed a motion to dismiss, arguing RJW signed 3 arbitration services contracts, which provided for arbitration of all 10 grain contracts. NGFA filed its own motion to dismiss, arguing the arbitration contracts gave it jurisdiction to arbitrate the matter and it possessed arbitral immunity from suit. Thereafter, the trial court dismissed RJW's complaint with prejudice.

¶ 3 RJW appeals, arguing it cannot be compelled to submit to arbitration where NGFA does not have jurisdiction over the parties. We affirm and allow NGFA's motion for sanctions.

¶ 4 I. BACKGROUND

¶ 5 Topflight and RJW have a history of doing business together and have entered into contracts for the purchase of grain in the past. The parties have also, on at least one other occasion, had a contract dispute arbitrated by NGFA. See *Topflight Grain Cooperative, Inc. v. RJW Williams Farms, Inc.*, 2013 IL App (4th) 121079-U, ¶12.

¶ 6 In the instant case, Topflight alleged it entered into 10 contracts with RJW for the sale of grain (contract Nos. 16738, 17880, 16546, 16547, 16706, 16739, 16740, 16783, 17191, and 17192). Each contract included a clause providing any disputes would be submitted to arbitration by NGFA. Specifically, the arbitration clause provided the following:

> "Arbitration: The parties to this contract agree that the sole remedy for resolution of any and all disagreement or disputes arising under this Contract shall be through arbitration proceedings before the National Grain and Feed Association (NGFA) under NGFA Arbitration Rules. The decision and award determined

> through such arbitration shall be final and binding upon the Buyer and Seller. Judgement [*sic*] upon the arbitration award may be entered and enforced in any Court having jurisdiction thereof."

According to its brief, NGFA is a national trade association founded in 1896. It has been administering an arbitration system and resolving disputes involving, *inter alia*, grain transactions since 1901. A dispute arose and Topflight filed for arbitration. A default judgment in the amount of $2.5 million was entered against RJW. (While the record does not reflect the basis for the entry of the default judgement, we note RJW does not argue it did not receive notice of the arbitration proceedings.)

¶ 7 On March 7, 2012, RJW filed its "Motion to Set Aside Default Judgment" with NGFA. On March 13, 2012, NGFA responded as follows:

> "We are in receipt of your March 7, 2012, application to vacate the default judgment entered in this case, along with your check for the arbitration services fee. In accordance with NGFA Arbitration Rules Section 5(e), your request is hereby granted, provided that you also execute and return the arbitration services agreement, which was sent to you previously. Enclosed please find another copy of the arbitration services contract, to be promptly signed and witnessed as indicated."

¶ 8 On April 3, 2012, James Williams, the vice-president of RJW, signed 3 arbitration services contracts (Nos. 2565, 2600, and 2603), collectively covering all 10 grain contracts. The explicit terms of the arbitration contracts stated the parties agreed to submit their dispute

regarding the underlying 10 contracts to NGFA for arbitration. Specifically, each arbitration contract provided the following:

> "For the purpose of avoiding the delay and expense of litigation, the undersigned parties hereby agree to submit the following controversy to arbitration by the National Grain and Feed Association (NGFA) for resolution.
>
> ***
>
> The parties agree to comply with all NGFA Arbitration Rules, including, but not limited to, those rules requiring the parties to advance approximate expenses when an oral hearing is requested. The parties agree that noncompliance with any NGFA Arbitration Rules may result in a default judgment
>
> The parties further agree to abide by the decision reached in this case and the decision shall be final, subject to the NGFA Arbitration Rules relating to appeals."

It is undisputed Williams signed the three arbitration contracts and the contracts covered all 10 grain contracts.

¶ 9 In an April 13, 2012, letter, which was sent to NGFA along with the arbitration contracts, RJW's attorney wrote the following:

> "Enclosed please find the Arbitration Services Contracts for Case Nos. 2565, 2600, [and] 2603 as signed by my client, James Williams, on behalf of RJW Williams Farms. These contracts are

> signed and provided under protest given that our position is that the contract provision 'that the decision should [*sic*] be final' is contrary to Illinois Law in that a party always has a right to object to the procedure and substantive decision ultimately issued by an arbitrator. Your letter of March 30, 2012[,] acknowledges this possibility.
>
> These contracts are only being submitted because of your assertion that if 'the arbitration services contracts are not executed and returned... the default judgments entered previously will be reinstated."

Thereafter, the three arbitration cases (Nos. 2565, 2600, and 2603) proceeded. Both parties participated in the process and the briefing schedule was completed.

¶ 10 On November 9, 2012, while the arbitration cases were still open and pending with NGFA, RJW filed a "Complaint for Declaratory Relief and Injunctive Relief" in the trial court to stop the arbitration process. RJW's complaint named both Topflight and NGFA and argued NGFA did not have jurisdiction to arbitrate the dispute regarding the 10 underlying contracts.

¶ 11 On November 14, 2012, the trial court entered a temporary restraining order, enjoining the arbitration proceedings and setting the matter for a hearing on RJW's request for a preliminary injunction.

¶ 12 On November 21, 2013, Topflight filed a combined motion to dismiss RJW's complaint pursuant to section 2-619.1 of the Code of Civil Procedure (Procedure Code) (735

ILCS 5/2-619.1 (West 2010) (allowing combined motions under section 2-615 (735 ILCS 5/2-615 (West 2010)) and section 2-619 (735 ILCS 5/2-619 (West 2010))). In its motion, Topflight argued RJW was not entitled to injunctive relief from arbitration where NGFA clearly had jurisdiction to arbitrate the 10 disputed contracts because (1) RJW entered into 10 enforceable contracts, each having it own arbitration clause, and (2) RJW subsequently signed 3 arbitration services contracts covering those 10 contracts. As a result, Topflight maintained arbitration was RJW's only remedy.

¶ 13 On November 26, 2012, NGFA filed its own motion to dismiss, arguing (1) it had arbitral immunity from suit and (2) its jurisdiction was proper because RJW had signed the arbitration services contracts.

¶ 14 Following a December 17, 2012, hearing, the trial court granted both Topflight's and NGFA's motions on section 2-619 grounds and dismissed the matter with prejudice.

¶ 15 In its February 15, 2013, written order, the trial court found RJW acknowledged signing the three arbitration services contracts. The court rejected RJW's claim it only signed the contracts under duress. The court found duress will only invalidate a contract where it is induced by a wrongful act, which was not the case here. The court concluded the arbitration contracts were valid and enforceable. The court noted those contracts made arbitration mandatory regardless of the validity of the underlying 10 grain contracts and "by themselves are sufficient to require dismissal under Section 2-619." As a result, the court concluded RJW "must pursue any remedies it believes it has against Topflight in arbitration, not the courts." As to NGFA, the court found "NGFA enjoys arbitral immunity, and that [its] immunity completely defeats or negates [RJW's] cause of action against it."

¶ 16 This appeal followed.

¶ 17 II. ANALYSIS

¶ 18 On appeal, RJW argues (1) it cannot be compelled to submit to arbitration where questions exist regarding the validity of the underlying contracts and (2) NGFA does not have jurisdiction to arbitrate the dispute. We disagree.

¶ 19 A. Motion To Dismiss

¶ 20 "The purpose of a section 2-619 motion to dismiss is to dispose of issues of law and easily proved issues of fact at the outset of litigation." *Van Meter v. Darien Park District*, 207 Ill. 2d 359, 367, 799 N.E.2d 273, 278 (2003). "A section 2-619 motion admits as true all well-pleaded facts, along with all reasonable inferences that can be gleaned from those facts." *Porter v. Decatur Memorial Hospital*, 227 Ill. 2d 343, 352, 882 N.E.2d 583, 588 (2008). "Essentially, the defendant is saying in such a motion, 'Yes, the complaint was legally sufficient, but an affirmative matter exists that defeats the claim.' [Citations.]" *Winters v. Wangler*, 386 Ill. App. 3d 788, 792, 898 N.E.2d 776, 779 (2008) (characterizing a section 2-619 motion as a "Yes, but" motion).

¶ 21 On appeal from a section 2-619 motion, the reviewing court must determine "whether there is a genuine issue of material fact and whether defendant is entitled to judgment as a matter of law." *Illinois Graphics Co. v. Nickum*, 159 Ill. 2d 469, 494, 639 N.E.2d 1282, 1293-94 (1994). The court must construe the pleadings and supporting documents in favor of the nonmoving party. *Czarobski v. Lata*, 227 Ill. 2d 364, 369, 882 N.E.2d 536, 539 (2008). The standard of review for a section 2-619 motion is *de novo*. *Czarobski*, 227 Ill. 2d at 369, 882 N.E.2d at 539.

¶ 22 A trial court may dismiss a complaint under section 2-619(a)(9) of the Procedure Code "when the asserted claim is barred by other affirmative matter that defeats the claim or voids its legal effect." *Turner v. Fletcher*, 302 Ill. App. 3d 1051, 1055, 706 N.E.2d 514, 517 (1999). "The right to arbitration is treated as 'affirmative matter' that defeats the claim." *Hollingshead v. A.G. Edwards & Sons, Inc.*, 396 Ill. App. 3d 1095, 1101, 920 N.E.2d 1254, 1260 (2009) (citing *Griffith v. Wilmette Harbor Ass'n*, 378 Ill. App. 3d 173, 180, 881 N.E.2d 512, 519 (2007)); *Travis v. American Manufacturers Mutual Insurance Co.*, 335 Ill. App. 3d 1171, 1174, 782 N.E.2d 322, 325 (2002) (recognizing a motion to dismiss based on the right to arbitration).

¶ 23 Thus, the controlling issue in this case is whether Topflight and RJW agreed to arbitrate their dispute. See *Donaldson, Lufkin & Jenrette Futures, Inc. v. Barr*, 124 Ill. 2d 435, 444, 530 N.E.2d 439, 443 (1988). As any obligation to arbitrate would ordinarily be derived from the parties' contract, the threshold question of whether a valid contract existed between the parties would first have to be resolved. See *Salsitz v. Kreiss*, 198 Ill. 2d 1, 13, 761 N.E.2d 724, 731 (2001). However, here, it is undisputed RJW subsequently signed the three arbitration services contracts. In signing those contracts, RJW agreed to arbitrate the parties' dispute regarding the 10 underlying grain contracts. Illinois law favors the enforcement of agreements to arbitrate disputes (*Donaldson*, 124 Ill. 2d at 443, 530 N.E.2d at 443) and "[p]arties who execute a contract containing a valid arbitration clause are irrevocably committed to arbitrate all disputes clearly arising under the agreement." *TDE Ltd. v. Israel*, 185 Ill. App. 3d 1059, 1063, 541 N.E.2d 1281, 1284 (1989). Illinois public policy also favors arbitration as a dispute-resolution mechanism because it "promotes the economical and efficient resolution of disputes." *Phoenix Insurance Co. v. Rosen*, 242 Ill. 2d 48, 59, 949 N.E.2d 639, 647 (2011). " 'Where there is a valid

arbitration agreement and the parties' dispute falls within the scope of that agreement, arbitration is mandatory and the trial court must compel it.' " *Griffith*, 378 Ill. App. 3d at 180, 881 N.E.2d at 519 (quoting *Travis*, 335 Ill. App. 3d at 1175, 782 N.E.2d at 325).

¶ 24 RJW argues, without citation to authority, "A party can only be compelled to arbitration if there is a valid arbitration agreement and the arbitrator has jurisdiction." While RJW repeatedly argues it did not agree to submit to arbitration, RJW does *not* argue the three arbitration services contracts signed by Williams are invalid. In fact, in its brief on appeal, RJW devotes a single sentence to the issue, stating those contracts were signed "under duress and pressure." However, RJW stops short of arguing on appeal, as it did in the trial court, the pressure and duress experienced should invalidate the agreement. We note, as the trial court did, the defense of duress would require a wrongful act, which was not alleged here. "It is well settled that, where consent to an agreement is secured merely through a demand that is lawful or upon doing or threatening to do that which a party has a legal right to do, economic duress does not exist." *Bank of America v. 108 N. State Retail, LLC*, 401 Ill. App. 3d 158, 174, 928 N.E.2d 42, 57 (2010) (finding party failed to establish duress where they only alleged they felt financial pressure to enter into the agreement)*; Hurd v. Wildman, Harrold, Allen & Dixon*, 303 Ill. App. 3d 84, 91-92, 707 N.E.2d 609, 614-15, (1999) (duress does not exist where consent to an agreement is secured through a lawful demand); *Herget National Bank of Pekin v. Theede*, 181 Ill. App. 3d 1053, 1056-57, 537 N.E.2d 1109, 1111-12 (1989) (duress does not apply where the agreement is secured through mere financial pressure). RJW instead focuses its arguments on the validity of the underlying contracts. However, the question of the validity of the underlying contracts is not before this court.

¶ 25 Further, RJW's arguments regarding the underlying contracts can be made in arbitration. RJW argues, *inter alia*, (1) Topflight never produced evidence it sent written confirmation of the contracts; (2) if RJW received written confirmation of the contracts, it was not sent within a reasonable amount of time; and (3) the signatures on the contracts are forgeries. As NGFA states in its brief, the issues raised by RJW are routinely arbitrated by NGFA. See, *e.g.*, *Sunray Cooperative v. Ron McKay Farms LLC*, NGFA Arbitration Case No. 2409 (March 26, 2010) (finding a binding enforceable contract existed where a verbal contract was confirmed in writing and signed by both buyer and seller) (*available at* http://www.ngfa.org/wp-content/uploads/decisions/2409_Decision.pdf); *Bunge Oils Inc., v. Northfolk Southern Corp.*, NGFA Arbitration Case No. 2604 (February 21, 2013) (validity of documents questioned where arbitrators were not convinced signatures on documents were from the same person) (*available at* http://www.ngfa.org/wp-content/uploads/decisions/2604_Decision.pdf). Moreover, arbitration does not automatically prevent RJW from seeking review of the arbitrator's decision. For example, if the arbitrator finds for Topflight, RJW may appeal through the NGFA's arbitration appeal process or file a motion in the circuit court to modify or vacate the award. NGFA Arbitration Rules § 9 (May 2012) (*available at* http://www.ngfa.org/wp-content/uploads/trade_rules/ 2012_Arbitration_Rules.pdf); 710 ILCS 5/12, 13 (West 2012) (providing for judicial review of an arbitrator's award).

¶ 26 Here, the trial court dismissed RJW's complaint because it found the arbitration services contracts were valid and binding. RJW does not argue otherwise on appeal. The arbitration contracts confer jurisdiction on NGFA to arbitrate the underlying dispute regarding the 10 grain contracts. The court did not err in dismissing RJW's complaint.

¶ 27 B. Motion for Sanctions Taken With the Case

¶ 28 On August 16, 2013, NGFA filed a motion for sanctions against RJW pursuant to Supreme Court Rule 375(b) (eff. Feb. 1, 1994). We ordered that motion taken with the case. According to its motion, NGFA enjoys arbitral immunity from suit and, as a result, naming NGFA as a party to the instant appeal was frivolous, not taken in good faith, and caused it to needlessly expend significant resources in terms of attorney fees and costs to defend itself. NGFA requests this court order RJW to reimburse the attorney fees and costs incurred in defending this appeal.

¶ 29 In its response to NGFA's motion, RJW argues "[i]f the Complaint, legal arguments presented, and other issues presented by the case were frivolous, an experienced trial judge would not have granted a TRO." RJW then goes on to reiterate its arguments as to why the 10 underlying grain contracts were invalid.

¶ 30 Rule 375(b) provides a reviewing court may impose an appropriate sanction on a party or the party's attorney if the court determines that the appeal is frivolous or that the appeal was not taken in good faith. Ill. S. Ct. R. 375(b) (eff. Feb. 1, 1994). Under Rule 375(b), an appeal will be deemed frivolous where it is not reasonably grounded in fact and not warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law. Ill. S. Ct. R. 375(b) (eff. Feb. 1, 1994). The decision to impose Rule 375(b) sanctions is a matter left strictly to the appellate's court's discretion. *Kheirkhahvash v. Baniassadi*, 407 Ill. App. 3d 171, 182, 941 N.E.2d 1020, 1031-32 (2011).

¶ 31 "It is well established that 'an arbitrator is immune from suit for all acts which he performs in his capacity as an arbitrator.' " (Citations omitted.) *Grane v. Grane*, 143 Ill. App. 3d

979, 985, 493 N.E.2d 1112, 1117 (1986). An arbitrator is also immune to challenges to his authority or jurisdiction to arbitrate. *Grane*, 143 Ill. App. 3d at 988, 493 N.E.2d at 1119 (citing *Raitport v. Provident National Bank*, 451 F. Supp. 522, 527 (E.D. Pa. 1978)); *Tamari v. Conrad*, 552 F.2d 778, 780 (7th Cir. 1977) (arbitrators are immune even "where the authority of an arbitrator to resolve a dispute is challenged"). "[T]he reasoning to extend immunity to arbitrators is to encourage their voluntary participation in dispute resolution without being caught up in the struggle between the litigants and saddled with the burdens of defending a lawsuit." *Grane*, 143 Ill. App. 3d at 988, 493 N.E.2d at 1119 (citing *Tamari*, 552 F.2d at 781).

¶ 32 While RJW argues NGFA cannot assert arbitral immunity unless a binding and enforceable agreement to arbitration exists, it is undisputed RJW entered into valid arbitration services contracts. The NGFA derives its jurisdiction to arbitrate the parties' dispute from those contracts. RJW never argues against the validity of the arbitration contracts and simply repeats its arguments relating to the underlying grain contracts.

¶ 33 As stated, it is well established NGFA possesses immunity from suit. Accordingly, RJW's appeal was not warranted by existing law or based on a good faith argument for a modification of existing law. We therefore grant NGFA's motion for sanctions and order RJW to pay the reasonable costs and expenses incurred in defending this appeal, including attorney fees. NGFA shall submit to this court, within 14 days after the filing of this order, an affidavit listing such expenses and fees. Thereafter, RJW is allowed 14 days within which to file its objection, if any, to the amount of the fees. Absent a timely objection, RJW shall pay the fees and expenses requested by NGFA.

¶ 34 III. CONCLUSION

¶ 35 For the foregoing reasons, we affirm the trial court's decision and allow NGFA's motion for sanctions.

¶ 36 Affirmed.