2015 IL App (1st) 140761-U
No. 1-14-0761
March 31, 2015
Modified Upon Denial of Rehearing May 12, 2015

SECOND DIVISION

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

TRUSTGARD INSURANCE COMPANY,	)	Appeal from the Circuit Court
	)	Of Cook County.
Plaintiff-Appellant,	)	
	)	
v.	)	No. 2010 L 12133
	)	
G.A. CRANDALL & COMPANY, INC.,	)	The Honorable
	)	Marcia Maras,
Defendant-Appellee.	)	Judge Presiding.

JUSTICE NEVILLE delivered the judgment of the court.
Presiding Justice Simon and Justice Pierce concurred in the judgment.

ORDER

¶ 1 *Held*: When a corporation drafts and signs a contract requiring a timely demand for arbitration as a condition precedent for filing a lawsuit, the corporation that fails to make a timely demand for arbitration forfeits its claims.

¶ 2 Trustgard Insurance Company signed an agency contract authorizing G.A. Crandall & Company to sell Trustgard automobile insurance. The contract made a prompt demand for arbitration a condition precedent to the right to sue in any dispute arising under the contract. In 2010, Trustgard sued Crandall for breach of contract and negligence. The circuit court

dismissed the complaint. We find that Trustgard failed to make a timely demand for arbitration, and therefore it forfeited its right to sue Crandall for breach of contract. Trustgard could not avoid arbitration by reframing the breach of contract claim as a tort. Accordingly, we affirm the dismissal of the complaint.

¶ 3 BACKGROUND

¶ 4 In August 2005, Trustgard and Crandall signed an agency agreement that Trustgard prepared. Trustgard authorized Crandall to sell "the kinds of insurance for which a commission is specified in Schedule(s) attached" to the agreement. An attached schedule bore the heading, "ILLINOIS / TRUSTGARD INSURANCE COMPANY / COLUMBUS, OHIO," and showed a commission for automobile insurance. The agreement provided:

> "As a condition precedent to any right of action hereunder, in the event of any dispute or difference of opinion hereunder arising with respect to this contract, it is hereby mutually agreed that such dispute or difference of opinion shall be submitted to arbitration. DEMAND FOR ARBITRATION MUST BE MADE IN WRITING BY ANY PARTY HERETO TO THE OTHER PARTY WITHIN ONE YEAR FROM THE DATE THAT SAID DISPUTE AROSE ***. FAILURE TO MAKE SAID DEMAND IN WRITING WITHIN THE SPECIFIED TIME NOTED HEREIN SHALL CONSTITUTE A BAR AND/OR WAIVER TO ANY CLAIM OR DISPUTE BEING MADE."

¶ 5 In 2008, Crandall sold Trustgard automobile insurance coverage to Richard Lombardi, insuring Lombardi's 1995 Dodge. The application listed Lombardi's address at a home in Woodstock, Illinois. The policy showed a limit of $100,000 in coverage for each accident.

¶ 6 On September 13, 2008, Lombardi was involved in a car accident in Florida while driving the Dodge. He reported the accident to Crandall, who reported the accident to Trustgard. Trustgard offered to pay Lombardi $100,000.

¶ 7 In February 2009, Lombardi's attorney demanded $200,000 from Trustgard, because Lombardi "would have been entitled to stacking coverage under Florida law." Lombardi told Trustgard that the Dodge "was garaged at all times in Florida." On May 4, 2009, Trustgard issued a check payable to Lombardi for $200,000.

¶ 8 A lawyer Trustgard retained contacted Crandall in November 2009, seeking information related to the sale of the policy to Lombardi. On September 2, 2010, Trustgard's attorney wrote to Crandall:

> "Trustgard Insurance Company does not write policies in Florida ***. [I]t is evident that you should not have included the 1995 Dodge *** as part of any Trustgard Insurance policy. ***
>
> Unfortunately, Trustgard was required to pay $200,000 under the policy because of the actions of your agency. We are seeking recovery for the payments made in relation to the 1995 Dodge ***. We suggest that you notify your professional liability carrier of this issue."

¶ 9 Trustgard filed a complaint against Crandall on October 22, 2010, alleging that Crandall negligently, and in breach of the agreement, "[p]lac[ed] coverage with Trustgard to cover a vehicle owned by Richard Lombardi, which was at all times located in Florida." Crandall answered the complaint on December 20, 2010.

¶ 10 On July 8, 2011, Trustgard's lawyer wrote to Crandall's lawyer,

> "It could be argued that as of December 29, 2010, a dispute arose in relation to the agent agreement by virtue of your denials of the allegations against your client. *** Accordingly, Trustgard wishes to request arbitration on a standby basis to the extent that the issues between Trustgard and Crandall are not fully resolved through this lawsuit."

¶ 11 Neither party filed a motion in court to delay proceedings pending arbitration. Instead, both parties moved for summary judgment. In support of its motion, Crandall presented the transcript of its deposition of Susan Janis. Trustgard indicated that Janis had authority to speak on Trustgard's behalf about the transactions with Crandall and Lombardi. Janis said that as of November 2009, Trustgard knew Crandall was not cooperating with Trustgard's investigation of the sale of its policy to Lombardi. Janis said that as of December 16, 2009, "The decision was that, yes, Trustgard did have a claim against Crandall." Crandall argued that because Trustgard failed to make a timely demand for arbitration, it waived its claims against Crandall.

¶ 12 The circuit court granted Crandall's motion for summary judgment and dismissed the complaint with prejudice. Trustgard now appeals.

¶ 13 ANALYSIS

¶ 14 We review *de novo* the order granting Crandall's motion for summary judgment. *Bartlow v. Costigan*, 2014 IL 115152, ¶ 17.

¶ 15 Trustgard argues (1) its contingent request for arbitration, mailed to Crandall on July 8, 2011, sufficiently preserved its right to sue Crandall, and (2) the trial court should not have dismissed the negligence claim.

¶ 16 Timeliness

¶ 17 Trustgard and Crandall included in their contract a clause requiring arbitration of "any dispute or difference of opinion hereunder arising with respect to this contract." Courts confronting similar language in arbitration clauses have emphasized the breadth of the language, and the correspondingly broad duty to arbitrate. See *J & K Cement Construction, Inc. v. Montalbano Builders, Inc.*, 119 Ill. App. 3d 663, 670-71 (1983), and cases cited therein. Thus, Trustgard and Crandall bargained for an arbitrator's interpretation of their contractual rights and duties in any dispute arising under the contract. See *Bess v. DirecTV, Inc.*, 351 Ill. App. 3d 1148, 1153-54 (2004). Trustgard argues that its dispute with Crandall did not arise until Crandall answered Trustgard's complaint with denials of some of the assertions Trustgard made in the complaint. Trustgard's argument raises an issue of the interpretation of the parties' rights and duties under the contract. The parties contractually agreed to have an arbitrator decide issues of the kind Trustgard raises in its argument about whether it met the timing requirements of the contract. See *Village of Carpentersville v. Mayfair Construction Co.*, 100 Ill. App. 3d 128, 133 (1981). Therefore, if Trustgard had filed in court a demand for arbitration or a motion to stay proceedings pending arbitration, at any time prior to the entry of the judgment dismissing Trustgard's complaint, the trial court should have granted the motion and allowed the arbitrator to decide the issue of timeliness. See *Mayfair Construction*, 100 Ill. App. 3d at 133.

¶ 18 But neither party filed a motion to stay proceedings pending arbitration. We must decide whether the letter Trustgard's attorneys sent in July 2011 met the timing requirements of the contract's arbitration clause.

¶ 19 The contract provides that as a "condition precedent to any right of action" under the contract, the parties would submit their disputes to arbitration. The demand for arbitration "MUST BE MADE IN WRITING *** WITHIN ONE YEAR FROM THE DATE THAT SAID DISPUTE AROSE."

¶ 20 After the accident in 2008, Trustgard discovered, by March 2009, that Crandall sold a Trustgard automobile insurance policy to provide coverage for a car garaged exclusively in Florida. In May 2009, Trustgard paid Crandall's client twice the policy's per accident limit. By October 2009, Trustgard had contacted Crandall, seeking information about the sale of the policy to Lombardi, and Crandall had failed to respond. In November 2009, Trustgard hired a lawyer to represent it in its dealings with Crandall. Trustgard's representative admitted in a deposition that at least by December 16, 2009, Trustgard knew it had a claim against Crandall.

¶ 21 We agree with the circuit court that a dispute had arisen under the contract by December 16, 2009, at the very latest. Trustgard did not send a request for arbitration until July 8, 2011, more than 18 months after the dispute arose. Thus, Trustgard failed to meet the condition precedent to any action under the contract. We hold that Trustgard forfeited its claims under the contract, including the claim for breach of contract. See *DeValk Lincoln Mercury, Inc. v. Ford Motor Co.*, 811 F.2d 326, 336 (7th Cir. 1987); *ACE Capital Re Overseas Ltd. v. Central United Life Insurance Co.*, 307 F.3d 24, 26 (2d Cir. 2002); *Pettus v. Olga Coal Co.*, 72 S.E.2d 881, 885-86 (W. Va. 1952).

¶ 22 Negligence

¶ 23 Next, Trustgard argues that the circuit court should not have dismissed its claim that Crandall acted negligently when it sold Trustgard insurance to cover a car garaged exclusively in Florida. A party "cannot avoid the broad language of [an] arbitration clause by casting its complaint in tort." *Altshul Stern & Co. v. Mitsui Bussan Kaisha, Ltd.*, 385 F.2d 158, 159 (2nd Cir. 1967). The parties' contract includes a clause that requires arbitration of "any dispute *** arising with respect to this contract." In the complaint, Trustgard alleged that Crandall negligently breached its duties to Trustgard, but all of the alleged duties arose out of the relationship between Trustgard as an insurer and Crandall as an agent selling Trustgard's insurance. The arbitration clause required arbitration of the dispute here, despite Trustgard's attempt to reframe the contractual dispute as a tort. See *Altshul Stern*, 385 F.2d at 159. Because Trustgard did not send a timely written demand for arbitration, we affirm the dismissal of the negligence count.

¶ 24 Petition for Rehearing

¶ 25 In a petition for rehearing, Trustgard cites *Skaperdas v. Country Casualty Insurance Co.*, 2015 IL 117021, as authority requiring reversal of the judgment entered on the negligence claim. In *Skaperdas*, Skaperdas asked Lessaris, an agent for Country Casualty, to obtain for him automobile insurance that would cover him and an additional driver named Day. Lessaris sold Skaperdas a policy that named only Skaperdas as an insured. After an accident which did not involve Skaperdas, Country Casualty denied Day's request for coverage on grounds that the insurance policy did not name Day as an additional insured. Skaperdas sued Lessaris and Country Casualty, arguing that "Lessaris breached his duty to exercise ordinary

care and skill in renewing, procuring, binding, and placing the requested insurance coverage as required by section 2–2201 of the Code [of Civil Procedure] (735 ILCS 5/2–2201 (West 2010)). *Skaperdas v. Country Casualty Insurance Co.*, 2015 IL 117021, ¶ 6. The *Skaperdas* court held that section 2-2201 of the Code imposes on insurance producers a duty to "exercise ordinary care and skill in renewing, procuring, binding, or placing the coverage requested by the insured." 735 ILCS 5/2-2201(a) (West 2010). The court added that Skaperdas adequately alleged a breach of that duty.

¶ 26 Crandall procured for the insured, Lombardi, the coverage Lombardi requested. Thus, this case does not involve a breach of the duty breached in *Skaperdas*. Moreover, *Skaperdas* does not involve an arbitration clause, and the *Skaperdas* court did not say that a party who drafted a contract with a broad arbitration clause could avoid its duty to arbitrate by recasting a contract claim, or a claim for a breach of promise or a commercial duty, as a negligence claim. We find that *Skaperdas* does not require reversal here.

¶ 27 CONCLUSION

¶ 28 Trustgard did not request arbitration within one year after its dispute with Crandall arose. Thus, it forfeited its right to sue Crandall for any cause of action arising under the contract. Trustgard's claim for negligence, in which it attempted to reframe its breach of contract claim as a tort, counted as a claim arising under the contract, which Trustgard forfeited by failing to request arbitration within one year after the dispute arose. Accordingly, we affirm the dismissal of Trustgard's complaint.

¶ 29 Affirmed.