2015 IL App (2d) 140870-U
No. 2-14-0870
Order filed January 27, 2015



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IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

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| MUMTAZ SIDDIQUI, M.D., | ) | Appeal from the Circuit Court |
| | ) | of Du Page County. |
| Plaintiff-Appellant, | ) | |
| | ) | |
| v. | ) | No. 14-CH-4 |
| | ) | |
| METROPOLITAN CARDIOVASCULAR | ) | |
| ASSOCIATES, LLC, | ) | Honorable |
| | ) | Terence M. Sheen, |
| Defendant-Appellee. | ) | Judge, Presiding. |

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JUSTICE BURKE delivered the judgment of the court.
Justices Hudson and Spence concurred in the judgment.

**ORDER**

¶ 1 *Held*: The disputes raised by plaintiff are governed by the parties' employment agreement and therefore fall within the purview of the agreement's mediation clause which requires mediation of any disputes arising out of or relating to the agreement; affirmed.

¶ 2 Plaintiff, Mumtaz Siddiqui, M.D., brought this interlocutory appeal, pursuant to Illinois Supreme Court Rule 307(a) (eff. Feb. 6, 2013), from the order of the circuit court of Du Page County granting the motion of defendant, Metropolitan Cardiovascular Associates, LLC (MCA), to compel mediation pursuant to the mediation/arbitration clause (hereinafter referred to as the mediation clause) of the parties' Physician Agreement (the Agreement). On appeal, plaintiff

contends that the trial court erred: (1) by failing to hold that sections 35-60 and 35-65 of the Illinois Limited Liability Company Act (LLC Act) (805 ILCS 180/35-60, 35-65 (West 2012)), require that the trial court have exclusive and plenary power to adjudicate plaintiff's claim for the purchase of his distributional interest as a member of MCA; (2) by failing to conduct "a summary evidentiary hearing to determine if the mediation clause in question was in existence or had been revoked when the parties by their conduct had voluntarily terminated or rescinded the employment agreement containing the mediation clause"; and (3) by granting the motion to compel mediation when "the common law factors established by the unrefuted affidavit and allegations of the plaintiff demonstrated that plaintiff was not an employee of [MCA] after May 31, 2011, so that no mediation agreement could have been in effect." We affirm.

¶ 3 I. BACKGROUND

¶ 4 MCA, through its employees, provides cardiology and electrophysiology services at various locations. Plaintiff is a licensed physician and is board certified in cardiology and electrophysiology. On May 1, 2010, plaintiff and MCA executed the Agreement in which plaintiff agreed to be an employee of MCA.

¶ 5 Plaintiff brought this declaratory judgment action on January 2, 2014. MCA filed a section 2-619(a)(9) motion (735 ILCS 5/2-619(a)(9) (West 2012)) to compel mediation and to dismiss the complaint pursuant to the terms set forth in the Agreement. Plaintiff filed a motion for leave to take discovery from MCA's principal, Dr. Aziz Ahmed, as well as the company's accountant, before filing his response to the motion to compel and dismiss. The court denied the motion but granted plaintiff leave to amend his complaint. Plaintiff subsequently filed his first-amended complaint.

¶ 6 Plaintiff's complaint sought, in part, (1) a declaratory judgment that, as of June 1, 2011, he became a member of MCA and remained a member until July 24, 2013; (2) a determination of the fair value of plaintiff's interest in MCA in accordance with the provisions of the LLC Act; (3) an order specifying the terms of purchase of plaintiff's membership interest in MCA; and (4) an order requiring MCA to pay interest to plaintiff, as authorized by section 35-65 of the LLC Act (805 ILCS 180/35-65 (West 2012)).

¶ 7 Plaintiff alleged the following in his first-amended complaint. Plaintiff worked as an employee of MCA from May 17, 2010, through May 31, 2011. The Agreement terminated on May 31, 2011, and did not thereafter renew. Beginning on June 1, 2011, plaintiff continued to provide services for MCA, not as an employee, but as a "non-employee member" of MCA. Prior to June 1, 2011, plaintiff and MCA discussed executing a written amendment to the Agreement, which would have extended it. Plaintiff tendered a signed draft to MCA, but MCA never signed it. Plaintiff engaged in an independent profession and, using his own marketing efforts, found patients and other locations where he could provide cardiological and electrophysiological services. MCA did not compensate plaintiff as an employee but paid plaintiff a guaranteed payment as a non-employee member and paid him a share of the profits. MCA filed a federal tax return for 2011, which stated that plaintiff was a "general partner or LLC member-manager" of MCA, entitled to 33.11% of the profits and losses, and a capital account of $64,024. MCA did not include plaintiff in MCA's employee health insurance and dental plans after May 31, 2011. Plaintiff remained a member of MCA until July 24, 2013. On or about that time, plaintiff dissociated himself from MCA, which did not violate the terms and conditions of any operating agreement. During the 30-day period following his dissociation from MCA, MCA was obligated to submit to plaintiff a written offer to purchase his distributional interest as required by section

35-60(b) of the LLC Act (805 ILCS 180/35-60(b) (West 2012)). MCA failed to submit an offer at any time after July 24, 2013. Plaintiff claimed interest, plus additional costs and fees pursuant to section 35-65 of the LLC Act (805 ILCS 1880/35-65(e) (West 2012)).

¶ 8 MCA filed a second motion to compel mediation and to dismiss the first-amended complaint. MCA argued that plaintiff's claims concerned whether he became a member of MCA and whether the Agreement remained valid after plaintiff allegedly became a member of MCA. MCA contended that these disputes arose out of or related directly to the Agreement, and therefore it should be resolved by mediation as mandated by the mediation clause in the Agreement. Even assuming that plaintiff became a member of MCA, MCA argued that it did not vitiate the Agreement or its terms and plaintiff remained bound by the mandatory mediation clause.

¶ 9 Plaintiff responded, arguing that the Agreement terminated more than two years prior to the filing of the declaratory judgment action and was not in effect at the time of the suit. He further argued: (1) MCA's motion was not supported by affidavit as to matters outside the complaint; (2) the applicable common law factors for determining whether plaintiff was an employee supported the conclusion that plaintiff was not an employee of MCA after May 31, 2010; and (3) the allegations of the complaint established that plaintiff ceased performing the terms of the Agreement. Plaintiff verified by affidavit that he became a member of MCA on June 1, 2011, and "with mutual understanding" MCA stopped following the terms of the Agreement. Plaintiff cited to facts that he previously alleged in his first-amended complaint to demonstrate how MCA, by its actions, voluntarily terminated or rescinded the Agreement. Plaintiff further argued that, regardless, the court could not grant the motion to compel and

dismiss because, under sections 35-60 and 35-65 of the LLC Act, the court has plenary and exclusive jurisdiction to hear plaintiff's case.

¶ 10 MCA filed a response, essentially reiterating its motion to compel mediation and dismiss the complaint. MCA attached Dr. Ahmed's affidavit, in which he averred in part, that neither plaintiff nor MCA ever gave notice of intent to terminate or to not renew the employment agreement pursuant to the termination and non-renewal provision of the Agreement.[1]

¶ 11 The trial court granted MCA's motion to compel mediation. The court found that the Agreement required the parties to mediate any disputes that arose out of the subject matter of the Agreement, and the dispute between the parties centered on plaintiff's relationship with MCA and whether the Agreement was terminated or superseded, which clearly fell within the mediation clause. However, the court did not dismiss the complaint and stayed the action pending the completion of arbitration.

¶ 12 Plaintiff filed the instant interlocutory appeal from the trial court's ruling granting MCA the motion to compel mediation.

¶ 13 II. ANALYSIS

¶ 14 Plaintiff contends the trial court erred in finding that his disputes required mediation pursuant to the mediation clause of the Agreement because, when he became a member, the Agreement terminated. He further argues that, under the LLC Act, the trial court has exclusive and plenary power to decide his claim for the purchase of his LLC member's interest.

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¶ 1 [1] In his appellate brief, plaintiff points out that Ahmed's affidavit did not refute the factual allegations set forth in plaintiff's complaint or in plaintiff's affidavit which supported his claim that MCA failed to follow the terms of the Agreement after May 31, 2011.

¶ 15 MCA responds that plaintiff's dispute as to whether he became a member of MCA and whether the Agreement terminated is governed by the Agreement and thus, falls within the purview of the mediation clause requiring mediation of any dispute arising out of or relating to the Agreement, or the breach, termination, or validity thereof.

¶ 16 While plaintiff may have a point regarding the trial court ruling on the fair market value of his interest in MCA, there are some preliminary issues that must be resolved before we address this argument. Where the parties initially dispute whether their claims fall within the scope of the parties' mediation agreement, the court must first consider whether the parties intended by their Agreement to mediate the particular subject matter of the disputes. Accordingly, we must interpret the parties' Agreement, which is a contract, to give effect to their intent, as shown by the language of the contract. See *Palm v. 2800 Lake Shore Drive Condominium Association*, 2014 IL App (1st) 111290, ¶ 75.

¶ 17 In determining the intent of the parties, a court must consider the document as a whole and not focus on isolated portions of the document. *Palm*, 2014 IL App (1st) 111290, ¶ 75. If the language of the contract is clear and unambiguous, the intent of the parties must be determined solely from the language itself. *Id*. In addition, we must give unambiguous contractual language its plain and ordinary meaning and the contract is enforced as written. *Id*. The interpretation of an agreement involves a question of law and is subject t*o de novo* review. *Carr v. Gateway, Inc.*, 241 Ill. 2d 15, 20 (2011).

¶ 18 Sections 2 and 4 of the Agreement set out how plaintiff and MCA may terminate the agreement and how plaintiff may become a member of MCA.

¶ 19 Section 2 provides:

"This Agreement shall be for a term of two (2) years (the "initial Term") commencing on the 1st of May, 2010 (the "Commencement Date"), subject to earlier termination as provided in this Agreement. Following the initial term and provided that both parties are performing and fulfilling their respective obligations under this Agreement, this Agreement shall automatically renew for additional one (1) year periods (the "Renewal Term") unless either party provides written notice to the other party at least sixty (60) days prior to the conclusion of the then-current term. As defined below, for the purposes of this agreement, "Term" shall be deemed to include the initial Term and the Renewal term."

¶ 20 Section 4 of the Agreement, entitled "MCA partnership opportunity," states, in relevant part:

"Physician shall have the opportunity of becoming a full partner in MCA at the conclusion of year 1 of the agreement based upon the mutual agreement of both parties. Should physician agree to become a partner and should MCA agree to [accept] physician as a partner then physician shall no longer receive any guaranteed base compensation but will continue to receive EP Medical Director Compensation. In lieu of base compensation Physician's compensation shall be based upon a formula whereby each partner shall be compensated under [the attached] formula."

¶ 21 Section 8 of the Agreement is a mandatory mediation/arbitration provision, which provides, in part:

"A. Mediation. In lieu of any lawsuit, action or proceeding that may be filed or commenced regarding any dispute, controversy or claim arises [*sic*] out of or relates [*sic*] to the operations of the program or to this agreement, or the breach, termination, or

validity thereof, parties expressly agree that all disputes shall be submitted to non-binding mediation, and to try in good faith to settle the dispute by non-binding mediation *** .

B. Arbitration. In the event that mediation does not resolve the dispute, the parties agree to bind [*sic*] arbitration. Each party shall select one arbitrator and those two arbitrators shall select a third arbitrator to complete a three (3) arbitrator panel. * * * The decision rendered by the arbitrators shall be binding."

¶ 22 Courts generally construe "generic" mediation clauses broadly, and conclude that the parties are obligated to mediate any dispute that arguably arises under an agreement containing a "generic" provision. See, *e.g.*, *Bass v. SMG, Inc.*, 328 Ill. App. 3d 492, 498 (2002). Language that courts have labeled "generic" includes mediation of "disputes arising out of" or "disputes arising out of or related to" the agreement at issue. See *Nagle v. Nadelhoffer, Nagle, Kuhn, Mitchell, Moss and Saloga, P.C.*, 244 Ill. App. 3d 920, 925 (1993). MCA is correct that the mediation clause in this case, which provides that all claims "arising out of, or relating to" the Agreement shall be settled by mediation, is considered a "generic" mediation clause.

¶ 23 Here, the question of how the Agreement is terminated and how plaintiff becomes a member of MCA is governed by sections 2 and 4, and thus falls within the plain, unambiguous language of the clause requiring mediation of any "dispute, controversy, or claim [arising] out of or [relating] to *** this agreement, or the breach, termination, or validity thereof." See *Beider v. Eugene Matanky & Associates, Inc.*, 55 Ill. App. 3d 354, 359 (1977) (argument that brokerage agreement terminated because plaintiff properly sent written notice to terminate and thus did not owe brokerage commission fees rejected, as question of sufficient notice of termination is governed by agreement and thus, fell within scope of clause requiring arbitration of "[a]ny controversy or claim arising out of or relating to the contract or breach thereof").

¶ 24 Plaintiff maintains that the Agreement as a whole and its mediation clause are no longer valid because "the parties by their conduct terminated, rescinded and, in effect revoked the contract by not following its terms, and treating [plaintiff] as a non-employee member." Plaintiff asserts that the trial court should have held a hearing to determine if the mediation clause had been revoked "when the parties by their conduct had voluntarily terminated or rescinded the employment agreement containing the [arbitration] clause." We fail to follow plaintiff's logic.

¶ 25 As stated, whether the Agreement is no longer valid, pursuant to the requirements of section 2, or whether plaintiff became a member, pursuant to the requirements of section 4, clearly falls within the purview of the mediation clause as they are disputes, claims, or controversies arising out the Agreement, or the breach, termination, or validity thereof. Moreover, while the trial court is to decide in the first instance whether there is an arbitration agreement, and may even decide the scope of the agreement where the terms are clear, where the parties are in conflict as to the scope of an agreement and the questions presented are reasonably debatable, as plaintiff suggests, such questions are to be left to the mediator in the first instance. See *Comdisco, Inc. v. Dun & Bradstreet Corp.*, 306 Ill. App. 3d 197, 203-04 (1999).

¶ 26 Accordingly, we hold that the arguments raised by plaintiff are governed by the Agreement and therefore fall within the scope of the mediation clause requiring mediation. Consequently, because the mediator must determine first whether plaintiff became a member of MCA, we need not consider whether the trial court erred by not determining plaintiff's distribution interest in MCA. For the same reason, we need not consider whether the trial court has plenary and exclusive jurisdiction to determine the amount of the buyout plaintiff claims he is entitled to because the mediator initially must determine whether plaintiff is a member of MCA and entitled to any buyout at all.

¶ 27 III. CONCLUSION

¶ 28 For the reasons stated, we affirm the order of the circuit court of Du Page County granting MCA's motion to compel mediation.

¶ 29 Affirmed.