

Third Division  
December 21, 2011

No. 1-11-1361

**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).

---

IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

---

DAVID CLAUS, as Co-Trustee of the Guccione	)	Appeal from the
Insurance Trust Part II, Premium Finance Subtrust,	)	Circuit Court of
	)	Cook County.
Plaintiff-Appellee,	)	
	)	
v.	)	
	)	
LAKEVIEW INSURANCE AGENCY OF ILLINOIS,	)	
LTD., an Illinois corporation and ISRAEL PALUCH,	)	
individually,	)	09 CH 42746
	)	
Defendants-Appellants,	)	
	)	
and	)	
	)	
COVENTRY CAPITAL I, LLC., a Delaware limited	)	
liability company,	)	Honorable
	)	Stuart Palmer,
Defendant.	)	Judge Presiding.

---

JUSTICE NEVILLE delivered the judgment of the court.  
Presiding Justice Steele and Justice Salone concurred in the judgment.

**ORDER**

¶ 1 *HELD:* A contract that gives a party a right to arbitration may extend that right to the party's agents, even when the agents did not sign the agreement. Where a contract with a broad

arbitration clause leaves a debatable question of whether the clause applies to a particular dispute, the arbitrator, and not the court, should first resolve the issue of arbitrability.

¶ 2 In 2009, David Claus, as trustee of the Guccione Insurance Trust 2006 Part II (Trust Part II), sued Coventry Capital I, LLC (Coventry), Lakeview Insurance Agency of Illinois (Lakeview), and Israel Paluch, alleging that the three defendants worked together to induce the Trust Part II to purchase expensive life insurance policies, and then to deprive the Trust Part II of the proceeds of the policies. Coventry moved to compel arbitration of the case, based on a clause in a contract Coventry did not sign. The trial court granted the motion. Claus named Lakeview and Paluch as additional defendants for the arbitration. Lakeview and Paluch refused to participate because they had not signed the contract that included the arbitration clause. The Trust Part II moved to compel Lakeview and Paluch to arbitrate. On April 15, 2011, the trial court granted the motion. Lakeview and Paluch now appeal.

¶ 3 Because of the breadth of the arbitration clause, and because Lakeview and Paluch might have the right, as agents of Coventry, to invoke the clause against the Trust Part II, we affirm the decision to compel Lakeview and Paluch to have an arbitrator determine whether they must participate in the arbitration between Coventry and the Trust Part II.

¶ 4 BACKGROUND

¶ 5 Coventry, Lakeview and Paluch have not answered the complaint, so we derive the facts solely from the allegations of the complaint. According to the Trust Part II, Coventry created a program it called Premium Finance Plus to help its clients finance the purchase of expensive life insurance policies. Paluch, who sold life insurance for Lakeview, persuaded Marvin Guccione to

purchase several life insurance policies. The Trust Part II and a related trust, the Guccione Insurance Trust 2006 Part I, purchased the policies, which promised a total payment of \$30,000,000 on Guccione's death. To purchase the policies, Guccione needed to obtain a large loan. In 2006, Coventry, Lakeview and Paluch helped Guccione, through his Trusts, obtain a loan from LaSalle Bank to help him purchase the policies.

¶ 6 The Trusts and LaSalle signed a security agreement, which gave LaSalle a security interest in all of the Trusts' assets, including the right to payment of the proceeds from the insurance policies.

The agreement also provided:

"EITHER YOU OR WE MAY CHOOSE TO HAVE ANY  
DISPUTE BETWEEN US RELATING TO THIS AGREEMENT  
DECIDED BY AN ARBITRATION \*\*\*.

Any claim or dispute, whether in contract, tort, statute or otherwise (including the interpretation and scope of this clause, and the arbitrability of the claim or dispute), between you and us or our employees, agents, successors or assigns, which arises out of or relates to this Agreement or any related or resulting agreement, transaction or relationship (including any such relationship with third parties who do not sign this Agreement), shall, at your or our election, be resolved by neutral, binding arbitration and not by a court action."

The agreement named Coventry as LaSalle's servicing agent, and it directed the Trusts to send all

correspondence concerning the agreement to Coventry.

¶ 7 In May 2008, Coventry sent the Trusts notice that they had defaulted on the loan, and that Coventry, on LaSalle's behalf, had foreclosed its security interest in the life insurance policies. Coventry informed the Trusts that it intended to sell the policies to recover the outstanding balance on the loan, which then exceeded \$1,700,000.

¶ 8 Guccione immediately responded that he and his Trusts had received no prior notices of any amount due and no notice of foreclosure proceedings. In August 2008, Guccione offered to buy back the policies for about \$1,560,000. LaSalle, through Coventry, sold all the policies for a total of less than \$1,200,000 in September 2008. The Trust Part II, in the complaint, alleged that Coventry itself, or a related party, acquired the policies. When Guccione died in November 2008, the insurer paid \$30,000,000 to the owner of the policies, and the Trusts received nothing. The new owner, Coventry, Lakeview and Paluch all allegedly shared the profits from the transaction. In October 2009, Claus filed his complaint on behalf of the Trust Part II, accusing the defendants of fraud and breach of fiduciary duties.

¶ 9 In January 2010, Coventry moved to compel arbitration of the case. In its motion, Coventry argued that, although it did not sign the security agreement that included the arbitration clause, it acted as LaSalle's agent, and therefore it had the right to invoke the arbitration agreement. Coventry also emphasized that the security agreement made its arbitration clause applicable to "any related \*\*\* agreement, transaction or relationship (including any such relationship with third parties who do not sign this Agreement)." Because the Trusts had the right to seek arbitration against such third parties, including Coventry, Coventry had the right to compel arbitration of the Trust Part II's claims

arising from the secured loan transaction and any related transactions.

¶ 10 The Trust Part II opposed the motion on grounds that Coventry did not sign the security agreement, and it did not qualify as an agent of LaSalle or as a third-party beneficiary of the security agreement. Lakeview and Paluch neither opposed nor joined Coventry's motion to compel arbitration.

¶ 11 The trial court observed that LaSalle and the Trust Part II expressly agreed that the arbitrator should decide any dispute about the scope of the arbitration clause and the arbitrability of any claim or dispute. Based on that provision, the court ordered the parties to resolve through arbitration the question of whether the arbitration clause applied to the claims that the Trust Part II made. The court expressly "refer[red] the matter to arbitration on the issue of arbitrability."

¶ 12 In June 2010, the Trust Part II amended the arbitration demand to add the Trust Part I as a complainant and to add Lakeview and Paluch as respondents. When Lakeview and Paluch refused to participate, the Trusts moved to compel them to arbitrate the Trusts' claims. Lakeview and Paluch argued that they did not act as agents of either LaSalle or Coventry, they did not count as third-party beneficiaries of the security agreement, and they did not sign the security agreement.

¶ 13 The trial court, in an order dated April 15, 2011, held that Lakeview and Paluch acted as agents of Coventry, but not LaSalle. The court found that Lakeview and Paluch waived their opposition to arbitration when they failed to oppose Coventry's motion to compel arbitration of the case, and they failed to seek a clarification of the initial order for arbitration. The court added that Lakeview and Paluch count as third-party beneficiaries of the security agreement, because the agreement secured the loan to the Trusts that the Trusts used, in turn, to purchase the insurance

Lakeview and Paluch sold them and to pay commissions to Lakeview and Paluch. The court compelled Lakeview and Paluch to join the arbitration of the Trusts' claims against Coventry. Lakeview and Paluch filed a timely notice of appeal.

¶ 14

#### ANALYSIS

¶ 15 Supreme Court Rule 307(a) gives this court jurisdiction to consider this appeal. Ill. S. Ct. R. 307(a) (eff. Feb. 26, 2010); *Bass v. SMG, Inc.*, 328 Ill. App. 3d 492, 496 (2002). For this appeal we must decide only whether the record sufficiently sustains the trial court's order. *Bass*, 328 Ill. App. 3d at 496. If an arbitration clause leaves a debatable question of whether it applies to a particular dispute, the arbitrator, and not the court, should first resolve the issue of arbitrability. *Donaldson, Lufkin & Jenrette Futures, Inc. v. Barr*, 124 Ill. 2d 435, 448-49 (1988).

¶ 16 A contract that gives a party a right to arbitration may extend that right to the party's agents, even when the agents did not sign the agreement. *Howells v. Hoffman*, 209 Ill. App. 3d 1004, 1008-09 (1991); *Goldberg v. Focus Affiliates, Inc.*, 152 F. Supp. 2d 978, 982 (N.D. Ill. 2001); *Messing v. Rosenkrantz*, 872 F. Supp. 539, 541 (N.D. Ill. 1995). The trial court found that Lakeview and Paluch acted as agents for Coventry, and on appeal they have not contested that finding. Because Coventry, as LaSalle's servicing agent, had the right to invoke the arbitration clause, Coventry's agents may similarly benefit from the protection of the arbitration clause.

¶ 17 The broad language of the arbitration clause also presents an arguable basis for finding that it applies to the claims against Lakeview and Paluch. The clause expressly embraces claims involving transactions or relationships with third parties who did not sign the agreement, as long as the claim "arises out of or relates to [the security] Agreement or any related \*\*\* agreement," like

the agreement to purchase the life insurance policies from Lakeview. Under the circumstances of this case, the arbitrator should decide, in the first instance, whether the arbitration clause applies to the claims against Lakeview and Paluch. Because the record adequately supports the trial court's order referring to the arbitrator the issue of whether the Trusts may compel arbitration of their claims against Lakeview and Paluch, we affirm the court's order.

¶ 18

#### CONCLUSION

¶ 19 Because Coventry could compel arbitration of the claims against it and the allegations support the inference that Lakeview and Paluch acted as agents for Coventry, and because the arbitration clause appears to permit the parties to compel arbitration of claims involving third parties who did not sign the arbitration agreement, the record sufficiently supports the trial court's decision to compel Lakeview and Paluch to arbitrate the issue of whether the arbitration clause pertains to the Trusts' claims against them. Accordingly, we affirm the trial court's decision.

¶ 20 Affirmed.