2014 IL App (1st) 1131808-U
No. 1-13-1808

THIRD DIVISION
AUGUST 27, 2014

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

TANG CHUNG WAH aka ALAN CW TANG and LEE FUNG YING aka ALISON WONG,	)	
Plaintiffs-Appellants,	)	Appeal from the Circuit Court of Cook County.
v.	)	
GRANT THORNTON INTERNATIONAL LIMITED, GRANT THORNTON INTERNATIONAL, GRANT THORNTON LLP, STEPHEN CHIPMAN, DAVID McDONNELL, ALEX MACBEATH, LAURENCE KEHOE, GABRIEL AZEDO, YUEN KWOK KEUNG aka DESMOND YUEN, JONATHAN RUSSELL LEONG, EDWARD NUSBAUM, and FONG CHUNG aka MARK FONG,	)	No. 12 L 8578 The Honorable Margaret Ann Brennan, Judge Presiding.
Defendants- Appellees.	)	

JUSTICE PUCINSKI delivered the judgment of the court.
Justices Neville and Mason concurred in the judgment.

ORDER

¶ 1 *Held*: The circuit court properly granted defendants' motion to dismiss and compel arbitration, as the arbitration clause at issue is a "generic" clause compelling arbitration of all disputes "arising out of or in connection with" the agreement, which covers all

disputes. The tort claims alleged were in fact breach of contract claims based on the agreement, and there can be no claim for tortious interference with a business expectancy against a party to the contract which created that expectancy.

¶ 2 BACKGROUND

¶ 3 The factual background in this case involves many international business entities, and many business dealings and decisions leading up to the dispute between the parties. As the case was dismissed based on the pleadings and the applicable arbitration clauses, we summarize only the relevant facts necessary to a disposition of this appeal from that dismissal.

¶ 4 Plaintiffs, Tang Chung Wah and Lee Fung Ying, are both United Kingdom qualified chartered accountants living and working in Hong Kong. Before it dissolved in December 2010, plaintiff were equity partners of Grant Thornton Hong Kong (GTHK), a former member of an international network of Grant Thornton accounting firms overseen by defendant Grant Thornton International Limited (GTIL UK), which is an umbrella entity incorporated in England and Wales that oversees a network of independently-owned Grant Thornton member accounting firms. The GTHK partnership was established in the early 1940s, but it did not begin operating under the Grant Thornton name until 1996. GTIL UK is the non-practicing, international umbrella firm headquartered in the United Kingdom that oversees the independently owned accounting and consulting member firms within the Grant Thornton international network. GTIL UK was formed in 2007 to take over the assets and operations of GTIL US, although GTIL US remained in existence afterward.

¶ 5 While GTHK was a member firm in the Grant Thornton network, GTHK provided accounting services in Hong Kong and in the People's Republic of China (China). GTHK was expelled from the network in 2010, and plaintiffs allege in their claims that defendants violated two member firm agreements (MFA) in doing so. Each MFA contains two arbitration clauses.

One is governed by English law and the other, which applies only if the first arbitration clause does not apply, is governed by Illinois law. The circuit court ruled on the basis of the pleadings and the MFAs attached to plaintiffs' complaint that the plaintiffs' claims are subject to the arbitration clauses and must be arbitrated rather than litigated in circuit court and granted defendants' motion to dismiss the complaint.

¶ 6 Even before joining the Grant Thornton international network, the partners of what would become GTHK were developing business and establishing ties in China. These efforts led to the establishment of Grant Thornton "correspondent firms" in China, which were independent certified public accounting (CPA) firms managed and funded by GTHK.

¶ 7 On July 1, 2007, GTHK executed three agreements: (1) a GTIL United Kingdom (GTIL UK) Member Firms Agreement (MFA); (2) a GTI Member Firms Agreement; and (3) a Name Use Agreement (NUA) with Grant Thornton LLP or GT United States (GT US), GTIL UK, and Grant Thornton United Kingdom (GT UK). GTIL UK was preceded by Grant Thornton International (GTI), an entity located in Chicago that remains in existence. GT US is the United States member firm of the Grant Thornton network.

¶ 8 The Member Firms Agreements (MFAs) provided that GTIL UK is "vested with the authority to both prohibit and/or authorize" the performance of professional services by a member firm in a specified geographical location: "GTIL [UK] is vested with the power to prohibit or authorize member firms *** in a certain territory or territories." The GTIL UK MFA gave GTIL UK the power to expel a member firm (a) immediately for breach of the GTIL MFA when the breach in the "reasonable opinion of the Board may be damaging to the goodwill or reputation of GTIL [UK] and the [other] Member Firms," or (b) with six months' notice if GTIL [UK] "considers (in its absolute discretion) such expulsion to be in the best interests of GTIL

[UK] and the remaining Member Firms." The GTI MFA provides that a member firm expelled from GTIL UK is automatically expelled from GTI as well. The NUA provides that it is no longer in force for a signatory firm when that firm ceases being a GTIL UK member firm.

¶ 9 The GTIL UK MFA and the GTI MFA both contain mandatory conciliation and arbitration provisions.

¶ 10 Section 14.4 of the GTIL UK MFA provides that if the conciliation process does not resolve a dispute, then the members are bound to mandatory arbitration in London:

¶ 11 "Any dispute arising out of or in connection with this contract, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration under the rules of the London Court of International Arbitration ***."

¶ 12 The GTIL UK MFA further provides: "This Agreement and the rights and liabilities of the parties hereunder shall be governed by and construed in accordance with English law, excluding its conflicts of law rules." The GTIL UK MFA explains the rationale behind the mandatory arbitration provision:

¶ 13 "The relationships among the parties are in the nature of a long-term arrangement among professional firms. The resolution of any dispute or difference arising out of or in connection with this Agreement *** or the breach thereof requires special treatment. It is the desire of the parties that any such dispute or difference should be settled quickly and privately in a binding fashion."

¶ 14 Section 10.4 of the GTI MFA also has a mandatory conciliation and arbitration provision, but is governed by Illinois law. The arbitration clause provides that "any dispute or difference arising out of or in connection with this Agreement or the breach thereof shall be submitted to arbitration" in proceedings governed by specified rules of the American Arbitration Association

and specifies that arbitration is to be held in Chicago. The GTI MFA contains the same explanatory provision for mandatory arbitration as the GTIL UK MFA.

¶ 15 The arbitration clause in the GTI MFA further provides that if a dispute is subject to arbitration under both the GTI MFA and the GTIL UK MFA, the GTIL UK MFA controls. The arbitration then "shall *** be governed by English law, excluding its conflicts of law rules."

¶ 16 Both the GTIL UK MFA and the GTA MFA require each member firm to "ensure that its current and former partners *** act in accordance with the obligations, restrictions and limitations intended to be imposed upon them pursuant to this Agreement, and that such persons otherwise act in a manner consistent with the obligations, restrictions and limitations by which the Member Firm is bound under this Agreement."

¶ 17 The GTIL UK MFA and the GTA MFA each provide that when it is signed by a member firm's authorized signatory, the agreement "shall be binding on such Member Firm" and constitutes the member firm's "agree[ment] to be bound by the terms of [the] Agreement." It is undisputed that GTHK is bound by both the GTIL UK MFA and the GTI MFA, as both agreements were signed by GTHK's managing partner on behalf of GTHK.

¶ 18 The individual defendants were involved with Grant Thornton's development of business in China either as officers or directors of the GTI entities or as partners of GTHK or both.

¶ 19 Stephen Chipman currently serves as Chief Executive Officer (CEO) of GT US and is a member of the GTIL UK Board of Directors. Before becoming CEO of GT US, Chipman was "seconded" to GTHK, where he was instrumental in developing Grant Thornton China.

¶ 20 David McConnell was the CEO of both GTI US and GTIL UK and a key member in GTIL UK's Global Leadership Board.

¶ 21 Alex MacBeath is also a member of the GTIL UK Global Leadership Board.

¶ 22 Gabriel Azedo was a member of the GTIL UK Global Leadership Board and managing partner of GTHK until 2008. At the time the complaint in this case was filed, Azedo was incarcerated in Spain awaiting extradition to Hong Kong where he faced criminal charges for the mismanagement of funds of his family and business associates.

¶ 23 Desmond Yuen was a GTHK partner and head of GTHK's China practice until 2010, when he was removed after having been convicted by the High Court of Hong Kong of duplicating expenses submitted to GTHK for his work in China. Yuen was also a member of the GTIL UK board of governors in 2008-2009.

¶ 24 Jonathan Leong succeeded Azedo as GTHK managing partner beginning in March 2008.

¶ 25 Edward Nusbaum became CEO of GTIL UK in 2010. Before that, Nusbaum was CEO of GT US and chairman of the GTIL UK board of governors.

¶ 26 The complaint also initially named as defendants Laurence Kehoe and Fong Chung a/k/ Mark Fong, but in December 2012 plaintiffs voluntarily dismissed Kehoe and Fong and do not seek to pursue any claims against them.

¶ 27 Around 2005 GT US became interested in doing more business in China to meet its clients' evolving needs. Recognizing that it would need assistance with the language, laws, and culture in China, and that the partners of GTHK had already invested significant resources in developing business in China, GT US and GTI US approached GT Hong Kong about forming a joint venture to invest in and develop business in China. Plaintiffs state they were active and eager supporters of the efforts of GT US and GTI US in further developing business for Grant Thornton in China.

¶ 28 By February 2006, a five-year plan for the joint venture had been developed with the ultimate goal of creating an independent member firm in China that would merge with GTHK to

form one large member firm covering China and Hong Kong. To further the joint venture's goals, Grant Thornton China Management Company Limited (GT China), a British Virgin Islands company, was formed in 2007 and Chipman was named CEO. A memorandum of understanding was executed by GT US, GTIL UK, and GTHK. The memorandum was termed "non-binding" but, according to plaintiffs, its terms were implemented as the terms of the joint venture as early as 2006.

¶ 29 Plaintiffs allege that Chipman ran GT China at the expense of GTHK and the partners in GTHK, including plaintiffs. A number of GT US partners and staff were seconded to China at GTHK's expense. The GTHK partnership also paid for expensive new leases for offices in China and salaries for highly-paid partners and staff recruited to work in the new offices. GTHK was also responsible for translating GTIL UK's policies, procedures, manuals, and software into Chinese. In November 2007, a CPA firm from Shanghai called Jiahua merged with the existing Shanghai CPA firm to form a new GT China entity. The transaction was presented to the GTHK partners as a *fait accompli* even though the GTHK partners bore the expense and obligation of guaranteeing the Jiahua partners' and managers' salaries.

¶ 30 Defendants Azedo, Leong, and Yuen were involved in making decisions for their own personal benefit at the expense and without the knowledge of the GTHK partners, including plaintiffs. While GTHK and its partners were taking on an increasingly large financial burden in the development of GT China, only a select few GTHK partners were being kept apprised of the joint venture's activities. Plaintiffs allege that, in their quest to grow GT China quickly, GT US and GTIL UK implemented strategies that were risky and expensive to the GTHK partnership, the largest investor in the joint venture. At the time, plaintiffs continued to believe that a merger

between GT China and GTHK was forthcoming so they did their best to support the new member firm in China as it worked to merge with the existing Grant Thornton China entities.

¶ 31 In 2006 and 2007, Azedo (then managing partner of GTHK) negotiated bringing in six partners to GTHK from the firm of Moores Rowland. But Azedo made promises to these partners that he could not keep without the consent of plaintiffs and the other partners of GTHK. As a result, the relations between the Moores Rowland partners and the majority of partners at GTHK began to deteriorate.

¶ 32 At some point, GT US and GTIL UK changed their strategy in China from seeking organic growth to acquiring large accounting firms already in existence. This revised strategy also contemplated de-linking GTHK from Grant Thornton's business in China. Even though plaintiffs had heavily invested in the previous strategy, their consent was not obtained to the new strategic direction.

¶ 33 Eventually, the GTHK partners holding 60% of the partnership equity, including plaintiffs, asked GTHK's then-managing partner, Leong, to step down so plaintiff Tang could take his place. In response, Leong and several of the 40% equity holders threatened to leave the partnership. Plaintiffs allege that although GTIL UK was contractually prohibited from interfering with the management of a member firm, some of the GTHK individual defendants sought to involve GTIL UK in an attempt to break apart the GTHK partnership. Plaintiffs allege that defendants targeted plaintiffs for expulsion from the Grant Thornton network because plaintiffs questioned the joint venture's strategy in China. In February 2009, the entire GTHK partnership sent a position paper to GTIL UK setting forth concerns about GTIL UK's strategy in China. In response, MacBeath was sent to Hong Kong where he threatened to revoke GTHK's

firm membership if GTHK did not follow GTIL UK's new plan in China and resolve GTHK's management impasse.

¶ 34 In early 2009, McDonnell and MacBeath demanded that plaintiff Tang resign or be removed from the GTHK partnership as a condition for maintaining GTHK's status as a member firm. GTIL UK also demanded that GTHK put Leong and Yuen in charge of GTHK against the majority equity holders' disapproval. Around the same time Leong had drafted a status report for GTIL UK suggesting that he, Yuen, and two other GTHK partners join the six former Moores Rowland partners to form a new partnership that would join the GT network to replace GTHK.

¶ 35 In mid-2009, GT US and GTIL UK identified Jingdu Tianhua (Jingdu) in Beijing as another existing CPA firm it wanted to join Grant Thornton as a member firm in China. The required consent of GTHK was not obtained, but Jingdu was still admitted as a firm.

¶ 36 Between May 31, 2009 and June 2, 2009, plaintiff Tang met with McDonnell, MacBeath, and Kehoe to address GTIL UK's attempts to expel him from GTHK. As a result of those meetings, plaintiff Tang signed a confidential agreement in which he agreed not to interfere with the management of GTHK or GT China, in exchange for GTHK being permitted to remain a Grant Thornton member firm.

¶ 37 Despite the agreement, the GTIL UK Board of Directors immediately voted to expel GTHK effective July 31, 2009, unless McDonnell determined that GTHK had satisfactorily resolved the management dispute and had adopted the GT China plan. In the summer of 2010, GTIL UK advised GTHK that many issues remained and had to be resolved in order for GTHK to remain a member firm of the Grant Thornton network.

¶ 38 On September 20, 2010, defendant Nusbaum sent a letter on behalf of GTIL UK giving GTHK six month's written notice that it would be expelled from the network. Discussions took

place between GTIL UK and GTHK on October 5 and 6, 2010 in London. At this meeting, another GTHK partner (other than plaintiffs) was "forced" to sign a promissory note obligating GTHK to pay $2.5 million to GT US in "secondee"[1] costs and to assign GTHK's rights in a certain trust (GT Fairfax Trust) to GT US.

¶ 39 After a subsequent breakdown in those discussions concerning the ongoing disputes, GTIL UK advised GTHK on November 22, 2010 that GTHK was being expelled immediately. This expulsion constituted an automatic simultaneous expulsion from Grant Thornton International. On December 10, 2010, GTHK changed the name of its partnership to JBPB & Co. (JBPB). Another firm run by another group of accountants became the new Grant Thornton member firm in Hong Kong.

¶ 40 After GTHK's expulsion, GTIL UK initiated arbitration proceedings against JBPB in the London Court of International Arbitration in April 2011 under section 15.5 of the MFA and the NUA.[2] JBPB and a majority of its partners executed a Settlement Deed with GTIL UK on September 28, 2011.

¶ 41 Plaintiffs and one other JBPB partner, however, filed a separate "Statement of Defence and Counterclaim" against GTIL UK on September 7, 2011, and plaintiffs alone then filed an

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[1] Plaintiffs do not explain the term "secondee."

[2] On May 9, 2011, GT US also filed an action against plaintiffs and the other JBPB partners in the circuit court of Cook County alleging breach of the $2.5 million promissory note that GTHK signed at the London meeting. In January 2012, a group of JBPB partners executed a settlement agreement with GT US settling the GT US lawsuit. Discussion of this lawsuit is irrelevant to our disposition of this appeal.

additional Statement in January 2012 asserting that the Settlement Deed did not preclude them from pursuing claims against GTIL UK. Plaintiffs disputed the London Court's jurisdiction. Plaintiffs' counterclaim was based on nearly identical allegations as in the present case, alleging that GTIL UK breached the MFA and NUA by its admission of other member firms into China and Hong Kong and then expelling GTHK.

¶ 42 A majority of JBPB partners decided to settle with GTIL UK and executed a settlement deed dated September 28, 2011. Plaintiffs, along with JBPB partner Paul Chow, objected and continued defending the arbitration action.

¶ 43 In March 2012, the London Court of International Arbitration tribunal issued its award and found that it had jurisdiction to hear GTIL UK's claims and plaintiffs' counterclaims and that the counterclaims asserted by plaintiffs concerning the alleged breaches of the GTIL UK MFA and the expulsion of GTHK were assets of the partnership and that GTIL and JBPB had validly settled their disputes, and that GTIL UK "completely prevailed" in arbitration and awarded GTIL its fees and costs from plaintiffs. Plaintiffs appealed the London court's decision and the London High Court, Chancery Division, affirmed the arbitration award. Plaintiff sought leave to appeal, but the request was denied on the ground that plaintiffs had no realistic prospect of success on appeal.

¶ 44 Plaintiffs filed this action in August 2012. Plaintiffs' complaint alleges that GTIL UK unlawfully expelled GTHK from the GTI network and brought in a new Grant Thornton member firm in Hong Kong, in violation of the GTIL UK MFA, GTI MFA, and the NUA. Plaintiffs allege that defendants violated the understanding that GTHK had the exclusive right to operate under the Grant Thornton name in Hong Kong and China, which was "codified" in the GTIL UK MFA, GTI MFA, and the NUA. Plaintiffs further allege that defendants interfered with

plaintiffs' "expectation that GTHK would continue to function as the GTIL member firm in Hong Kong and the People's Republic of China." Plaintiffs allege that defendants' acts caused the plaintiffs to lose their equity interests in GTHK, their future earning streams as equity partners from GTHK and money they invested in the business as GTHK equity partners.

¶ 45 The complaint alleges three breach of contract claims. All three claims were alleged against GTIL UK, two were also against GT US, and one was also against GTI. The complaint also alleges claims for fraud, interference with business relations and prospective economic advantage, and conspiracy.

¶ 46 After the London appeals court ruled that the London arbitration panel had jurisdiction to make its decision, plaintiffs moved to voluntarily dismiss their three breach of contract claims in circuit court without prejudice, but the court never ruled on that motion. On appeal, plaintiffs do not argue that the court erred in not ruling on this motion.

¶ 47 Defendants moved to dismiss the remaining claims and compel arbitration, as well as to dismiss on other grounds pursuant to section 2-615 (735 ILCS 5/2-615 (West 2012)) and section 2-619 (735 ILCS 5/2-619 (West 2012)). On April 29, 2013, the circuit court granted defendants' motion to dismiss and compel arbitration and dismissed the complaint without reaching the grounds for dismissal asserted under sections 2-615 and 2-619. Because the circuit court found that the arbitration provisions in the MFAs applied to plaintiffs' claims, it did not reach the issue of whether the claims belong to the partnership, plaintiffs' lack standing and the issue of whether the claims are covered by prior release and settlement.

¶ 48 ANALYSIS

¶ 49 Plaintiffs argue the trial court erred in dismissing their complaint and compelling arbitration because: (1) the arbitration clause invoked "does not cover the breadth of the claims

alleged in the complaint;" (2) the complaint "was brought on behalf of individuals who were not signatories to the" MFAs, and (3) some of the defendants had already filed an action in Illinois state court against the same plaintiffs based on the same events.

¶ 50 Defendants argue that the tort claims are subject to arbitration because they are based on allegations that defendants breached the MFA's, and there are no exclusions from the arbitration clauses. Defendants also raise the alternative argument that plaintiffs' claims are barred by *res judicata* and collateral estoppel due to rulings in a separate arbitration proceeding before the London Court of International Arbitration.

¶ 51 Regarding the proper standard of review, plaintiffs argue that because this case was dismissed, the *de novo* standard of review for dismissals applies. We agree. "[T]he decision whether to compel arbitration is not discretionary. 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." *Travis v. American Manufacturers Mutual Ins. Co*., 335 Ill. App. 3d 1171, 1175 (2002). As the court in *Travis* explained, "[a]motion to compel arbitration and dismiss the lawsuit is essentially a motion pursuant to section 2-619(a)(9) to dismiss based on the exclusive remedy of arbitration." *Travis*, 335 Ill. App. 3d at 1174. "Such a motion admits the legal sufficiency of the plaintiff's complaint but interposes some affirmative matter that prevents the lawsuit from going forward" and "[o]n appeal from a ruling on a section 2619(a)(9) motion, the standard of review is *de novo*." *Travis*, 335 Ill. App. 3d at 1174 (citing *Kedzie & 103rd Currency Exchange, Inc. v. Hodge,* 156 Ill.2d 112, 115, 116-17 (1993)). See also *Peterson v. Residential Alternatives of Illinois, Inc*., 402 Ill. App. 3d 240, 244 (2010) ("When a trial court does not hold an evidentiary hearing and enters an order in the absence of any factual findings, a trial court's decision to grant a motion to compel arbitration is reviewed *de novo*.").

¶ 52 I. Applicability of the Arbitration Clause

¶ 53 The Illinois Uniform Arbitration Act provides the following:

¶ 54 "§ 1. Validity of arbitration agreement. A written agreement to submit any existing controversy to arbitration or a provision in a written contract to submit to arbitration any controversy thereafter arising between the parties is valid, enforceable and irrevocable save upon such grounds as exist for the revocation of any contract." 710 ILCS 5/1 (West 2012).

¶ 55 "The Act does not control which issues are subject to arbitration; this is governed by the arbitration agreement between the parties." *Shultz v. Atlantic Mutual Ins. Co*., 367 Ill. App. 3d 1, 10 (2006) (quoting *Flood v. Country Mutual Insurance Co*., 41 Ill. 2d 91, 93 (1968)). "Illinois law favors the enforcement of agreements to arbitrate disputes" and "[p]arties who execute a contract containing a valid arbitration clause are irrevocably committed to arbitrate all disputes clearly arising under the agreement." *Timmerman v. Grain Exchange, LLC*, 394 Ill. App. 3d 189, 195 (2009) (quoting *TDE Ltd. v. Israel*, 185 Ill. App. 3d 1059, 1063 (1989)).

¶ 56 Plaintiffs first argue that their tort-styled claims, including interference with a business expectancy, are not subject to this arbitration provision.

¶ 57 "Where there is some question regarding the arbitrability of a given dispute, the question should be decided initially by an arbitrator." *Kinkel v. Cingular Wireless, LLC*, 357 Ill. App. 3d 556, 561 (2005). But " '[w]here the language of the arbitration agreement is clear, and it is apparent that the dispute * * * falls within the scope of the arbitration agreement, the court should decide the arbitrability issue and compel arbitration.' " *Equistar Chemicals, LP v. Hartford Steam Boiler Inspection and Ins. Co. of Connecticut*, 379 Ill. App. 3d 771, 775 (2008) (quoting *Donaldson, Lufkin & Jenrette Futures, Inc. v. Barr*, 124 Ill. 2d 435, 445 (1988)).

"Under Illinois law, the venue that decides the arbitrability of a dispute depends on the complexity of the issue." *Amalgamated Transit Union, Local 241 v. Chicago Transit Authority*, 2014 IL App (1st) 122526, ¶ 20 (citing *Carey v. Richards Building Supply Co*., 367 Ill. App. 3d 724, 726 (2006)). " 'If the arbitration agreement is clear as to whether a dispute should be arbitrated, the trial court makes the initial determination. [Citation.] If, on the other hand, the language of the agreement is broad and it is unclear whether the dispute falls within the agreement's scope, the determination should be made by an arbitrator.' " *Amalgamated Transit Union, Local 241*, 2014 IL App (1st) 122526 at ¶ 20 (quoting *Carey*, 367 Ill. App. 3d at 726).

¶ 58 An exception to the "clear language" general requirement for arbitrability of disputes under arbitration agreements exists when an arbitration clause is deemed to be "generic." *Keeley & Sons, Inc. v. Zurich American Ins. Co*., 409 Ill. App. 3d 515, 520 (2011). "To determine the scope of a generic arbitration clause, a court should examine the wording of the clause along with the terms of the contract in which the clause is found." *Keeley & Sons, Inc*., 409 Ill. App. 3d at 520-21 (citing *Ozdeger v. Altay*, 66 Ill.App.3d 629, 632 (1978)). When the language of a particular arbitration clause is generic and contains the phrase "arising out of this agreement," or a variation thereof, but fails to also contain the phrase "or relating to" the agreement, or a variation thereof, then arbitration is limited to the specific terms of the contract or agreement containing the arbitration clause. *Keeley & Sons, Inc*., 409 Ill. App. 3d at 521-23. An arbitration clause that provides that all claims "arising out of, or relating to," an agreement shall be settled in arbitration also "covers a dispute arising under a subsequent agreement between the same parties as long as the original agreement and the subsequent one concern the same subject matter." *Nagle v. Nadelhoffer, Nagle, Kuhn, Mitchell, Moss and Saloga, P.C.*, 244 Ill. App. 3d 920, 928 (1993). Such an arbitration clause is broader and is, in a sense, even more "generic."

¶ 59 In this case, we have a very clear and broad generic arbitration clause of the type discussed in *Nagle*. Since the GTIL UK MFA provides that if both the GTIL UK MFA and the GTI MFA are applicable the GTIL UK MJA prevails, we look to the GTIL UK MFA arbitration provision. That provision, section 14.4 of the GTIL UK MFA, provides as follows:

> "Any dispute *arising out of or in connection with this contract*, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration under the rules of the London Court of International Arbitration ***." (Emphasis added).

¶ 60 The arbitration is the type of generic arbitration clause discussed in *Nagle* and covers *any* dispute related to the GTIL MFA.

¶ 61 In granting the motion to compel arbitration and dismissing the action, the circuit court found that "Plaintiffs' claims are premised on the assertion that they were unlawfully expelled from the Grant Thornton network." The court ruled that the MFA arbitration provisions were binding and covered plaintiff's claims. In so ruling the court explained that "[t]he dispute between the parties arises out of the termination of the MFA and the parties' business relationship, a condition specifically provided for in the agreements as being subject to arbitration." Further, "[p]laintiffs' allegations specifically reference the MFAs at issue." The court stated that it "strains logic" for plaintiffs to "suggest that the tort claims are the primary basis for Plaintiffs' claims and that they are in no way related to the MFAs." The court further explained that "[w]hile Plaintiffs have raised tort claims, these allegations stem from the MFA and the parties' business relationship, governed by contract." We agree with the circuit court's analysis underlying its ruling.

¶ 62 Illinois courts follow the widely held "agreement among state and federal courts that the label assigned to a claim, whether it be 'tort' or 'contract,' is not dispositive on the question of arbitrability." *Bass v. SMG, Inc*., 328 Ill. App. 3d 492, 498 (2002). "[C]ourts are vigilant that plaintiffs not be permitted to bring actions either solely in tort or with appended tort claims which are, in essence, substitutes for or repetitious of their contract claims for the clear purpose of circumventing arbitration clauses." *Bass*, 328 Ill. App. 3d at 503.

¶ 63 We find *Bass* on point, where the court held that a tort claim for tortious interference with business expectancy was arbitrable, based on facts very similar to this case, where the allegation was the wrongful termination of a business relationship in order to pursue business relationships with other parties. The rationale is clear and well-explained, and so we quote it at length:

¶ 64 "The underlying factual predicate in this count is IC's allegation that SMG wrongfully ended their relationship in order to pursue a direct deal with Fujita and this allegation and the injuries it is said to have caused are significantly related to the agreement. As an initial matter we note that the first component of this count is so intertwined with a contract action that it cannot be sustained regardless of any arbitrability question. We note however, that as a plain matter of logic and law, just as a party cannot tortiously interfere with its own contract, likewise a party cannot tortiously interfere with the business expectancy that it created by that contract. *Douglas Theater Corp. v. Chicago Title & Trust Co*., 288 Ill. App. 3d 880, 884 *** (1997). Such an action is not a tort but a breach of contract. The tortfeasor must be a third party to the contractual or expectancy relationship. *Quist v. Board of Trustees of Community College District No. 525*, 258 Ill. App. 3d 814, 821 (1994). To allow such claims to be litigated would invite tort law to absorb contract law. In situations such as that presented here, such litigation would

render arbitration agreements a virtual nullity because plaintiffs could forgo asserting breach of contract claims and merely substitute a claim that the defendant tortiously interfered with their own contract, routinely avoiding the bargained-for arbitration agreement." *Bass*, 328 Ill. App. 3d at 503-04.

¶ 65 We find the holding in *Bass* controlling in this case, and similarly hold that plaintiffs' claims cannot be excised from the broad scope of the generic GTIL UK MFA provision simply by attempting to recast the claims based on the GTIL UK MFA as tort claims.

¶ 66 Although the parties discuss the application of English law to determine whether the claims are arbitrable, we need not even reach the issue of English law because any question regarding either arbitrability or the scope of the claims subject to arbitration must be submitted to the London Court of International Arbitration. It would be wholly inappropriate for us to decide any disputable question and apply English law when the GTIL UK MFA specifically provides that any dispute "shall be referred to and finally resolved" by the London Court of International Arbitration.

¶ 67 Since the arbitration clause language is generic and clear and there is no question regarding applicability of the arbitration clause we may rule solely on the initial threshold issue of arbitrability and refer the matter to the London Court of International Arbitration, where that court may properly apply English law.

¶ 68 In a case before the Ninth Circuit involving a similar arbitration clause requiring resolution by arbitration in London, England, the Ninth Circuit provided that "[a]ny dispute arising under this Agreement shall be settled by arbitration in London, England, in accordance with the English Arbitration Act 1996 and any amendments thereto, English law and practice to apply." *Cape Flattery Ltd. v. Titan Maritime, LLC*, 647 F. 3d 914, 918 (9th Cir. 2011), *cert.*

denied, 132 S. Ct. 1862, 182 L. Ed. 2d 658 (2012). The Ninth Circuit held that federal law, rather than English law, applied in determining whether parties had agreed to arbitrate dispute, and based this holding on the fact that the United States Supreme Court has made it clear that "[c]ourts should not assume that the parties agreed to arbitrate arbitrability unless there is clear and unmistakable evidence that they did so." *Cape Flattery Ltd*. 647 F. 3d at 920 (citing *First Options of Chicago, Inc. v. Kaplan*, 514 U.S. 938, 944 (1995)). As the Ninth Circuit noted, "In *Kaplan*, the Supreme Court held that courts should be cautious in determining whether the parties have agreed to arbitrate arbitrability." *Cape Flattery Ltd*. 647 F. 3d at 920.

¶ 69 Similarly here, the arbitration clause provides that any dispute "arising out of or in connection with" the GTIL UK MFA must be submitted to arbitration in London before the London Court of International Arbitration, but the GTIL UK MFA did not also unmistakably make it clear that arbitrability itself would also be subject to arbitration. There is room for disagreement regarding whether the GTIL UK MFA can be interpreted so as to require arbitration of arbitrability itself. That being the case, it is appropriate for us to apply Illinois law solely to determine the threshold issue of arbitrability so that the matter may be properly referred to arbitration.

¶ 70 Even were we to rule that arbitrability is unclear and must be determined under English law, under the terms of the GTIL UK MFA we would be bound to compel arbitration by the London Court of International Arbitration. See *Equistar Chemicals, LP*3, 379 Ill. App. 3d at 782 (holding that where it is unclear whether the issue falls under the scope of the arbitration agreement, or where the arbitration agreement expressly provides that the arbitrator should decide the arbitrability of the claims, the arbitrator should make the decision).

¶ 71 II. Standing

¶ 72 Regarding plaintiffs' second argument, the MFAs provide that when they are signed by a member firm's authorized signatory, the agreements "shall be binding on such Member Firm" and constitutes the member firm's "agree[ment] to be bound by the terms of [the] Agreement." Both agreements were signed by GTHK's managing partner on behalf of GTHK. Plaintiffs argue they are not also bound by the agreements. Defendants argue that plaintiffs waived this argument. In their reply brief, plaintiffs again argue that the only parties to the MFAs are the member firms themselves, and not the individual plaintiffs, and that "it would be putting the cart before the horse" to decide the scope of the arbitration clause before determining whether plaintiffs are even subject to the arbitration clauses.

¶ 73 We note that plaintiffs' complaint is based on the MFAs, although their position regarding arbitration is that they are not parties to the MFAs. It seems plaintiffs want to have their cake and eat it too. It also seems apparent that plaintiffs' right to income from the former firm of GTHK is based entirely on GTHK's rights to income through membership in the Grant Thornton network under the MFAs, and thus any claim by plaintiffs for lost income is derivative on behalf of the former GTHK.

¶ 74 But we need not address either the merits of this argument or waiver. Section 14.4 of the GTIL UK MFA states that "[*a]ny dispute* arising out of or in connection with this contract, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration under the rules of the London Court of International Arbitration." (Emphasis added.) Any dispute concerning the MFAs, including whether individual partners are bound by agreements entered into by a partnership, or whether plaintiffs' claims in this case are entirely derivative, must be determined by arbitration in the London Court of International Arbitration.

¶ 75 III. Other Litigation

¶ 76 Likewise, plaintiffs' argument concerning the effect of other lawsuits concerning the subject matter must be determined in arbitration before the London Court of International Arbitration. The arbitration provision in the GTIL UK MFA controls and this case was properly dismissed in favor of compelling arbitration before that court.

¶ 77 IV. Defendants' Alternative Argument

¶ 78 Defendants also argue in the alternative that plaintiffs' claims are barred by *res judicata* and collateral estoppel due to the ruling in the arbitration proceeding before the London Court of International Arbitration that it had jurisdiction of the case, which was affirmed by the London High Court, Chancery Division. Because we have determined that the arbitration provision controls and that this case was properly dismissed we need not reach this issue, although we do take judicial notice that the case was heard in the London Court of International Arbitration. By the terms of the GTIL UK MFA, any *res judicata* or collateral estoppel effect of that court's ruling regarding jurisdiction is governed by UK law in arbitration.

¶ 79 CONCLUSION

¶ 80 We hold that the circuit court properly granted defendants' motion to dismiss and compel arbitration, as the arbitration clause at issue is a generic clause compelling arbitration of all disputes "arising out of or in connection with" the GTIL UK MFA.

¶ 81 Affirmed.