2017 IL App (3d) 160740-U

Order filed June 15, 2017

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2017

MERTON MESSMORE, as personal representative of the Estate of MARY MESSMORE,	)	Appeal from the Circuit Court of the 14th Judicial Circuit, Rock Island County, Illinois.
Plaintiff-Appellant,	)	
v.	)	Appeal No. 3-16-0740
	)	Circuit No. 15-L-150
SILVIS OPERATIONS, LLC, a foreign limited liability company d/b/a LIGHTHOUSE AT SILVIS, d/b/a LIGHTHOUSE OF SILVIS ILLINOIS, and CYNTHIA McCOY, individually,	)	Honorable Joseph F. Fackel, Judge, presiding.
Defendants-Appellees.	)	

JUSTICE CARTER delivered the judgment of the court.
Justice Schmidt concurred in the judgment.
Justice Wright dissented.

ORDER

¶ 1 *Held*: Trial court did not err in granting defendants' motion to dismiss to compel compliance with the parties' arbitration agreement.

¶ 2 This appeal arises from the trial court's granting of defendant's motion to dismiss the first two counts of a complaint filed by plaintiff, Merton Messmore, as personal representative of the

estate of his wife, Mary Messmore, against defendants, Silvis Operations, LLC (Silvis) and Cynthia McCoy (a nurse employed at an assisted living facility owned by Silvis where Mary and Merton had resided). The trial court found that Merton and Mary had agreed to arbitrate their claims against Silvis and granted defendants' motion to dismiss and compel enforcement of the arbitration agreement. Plaintiff appealed, arguing (1) defendants waived enforcement of the arbitration agreement, (2) the trial court erred in finding there was a valid, enforceable arbitration agreement between the parties, (3) there were genuine issues of material fact regarding the formation and validity of the arbitration agreement that required discovery or an evidentiary hearing, (4) the arbitration agreement was unenforceable for lack of consideration, (5) the trial court erred by failing to render a substantive disposition on all issues raised by plaintiff in opposition to defendants' motion to dismiss, (6) the trial court erred by failing to make any findings regarding plaintiff's contract defense arguments, and (7) public policy and judicial economy required that plaintiff's negligence claims remain in the circuit court. We affirm the trial court's judgment.

¶ 3 FACTS

¶ 4 On November 30, 2015, Merton, as personal representative of his wife Mary's estate, filed a two-count complaint against the defendants—Silvis, who did business as (d/b/a) Lighthouse of Silvis Illinois or, alternatively, Lighthouse at Silvis (the Lighthouse), which was an assisted living facility, and Cynthia McCoy, who was a nurse working at the Lighthouse. In the complaint, plaintiff alleged defendants were negligent in several respects regarding the care of Mary when she was a resident of the Lighthouse—Count I was for negligence against Silvis d/b/a the Lighthouse and Count II was for negligence against McCoy, individually.

¶ 5 On March 11, 2016, defendants filed an answer to the complaint. Defendants did not raise any affirmative defenses or plead that plaintiff's claims were subject to an arbitration agreement.

¶ 6 On March 17, 2016, at the initial case management conference, the parties entered into a discovery schedule. Defendant did not object to the trial court's jurisdiction. On March 30, 2016, defendant served written discovery requests upon plaintiff. Eight days later, on April 7, 2016, defendants' counsel sent plaintiff's counsel a letter indicating that defendants' discovery requests were issued erroneously and were being withdrawn by defendants.

¶ 7 On May 5, 2016, defendants' attorney sent plaintiff's counsel a letter with a copy of a residency agreement that had been executed by the parties prior to Merton and Mary becoming residents of the Lighthouse. Defendants' attorney indicated that defendants were making a demand for mediation and arbitration of plaintiff's claim pursuant to the Alternative Dispute Resolution (ADR) addendum to the residency agreement.

¶ 8 On May 19, 2016, defendants filed a motion to dismiss plaintiff's complaint and compel mediation pursuant to section 2-619 of the Illinois Code of Civil Procedure (Code) (735 ILCS 5/2-619 (West 2014)), section 2(a) of the Illinois Uniform Arbitration Act (710 ILCS 5/2(a) (West 2014)), and the residency agreement. Defendants alleged that on October 28, 2014, both Mary and Merton had signed a "residency agreement" with Silvas Operations d/b/a Lighthouse of Silvis, which contained an ADR addendum that had also been signed by Mary and Merton on the same day, October 28, 2014. Defendants attached the residency agreement and the ADR addendum to their motion.

¶ 9 The attached residency agreement indicated that the Lighthouse of Silvis was an assisted living establishment that offered housing to qualified individuals age 55 and over. The residency agreement indicated:

> "This residency agreement ('Agreement'), entered into as of this 28th day of Oct[ober], 2014, by and between Silvis Operations, LLC, d/b/a The Lighthouse of Silvis ('Owner' or 'Community' or 'Silvis') *** and Merton and Mary Messmore ('Resident' or 'You'). If two persons occupy this Apartment, both will be considered a 'Resident' as used in the Agreement."

¶ 10 Within the agreement, there was no designation of a "responsible party" in the area for the responsible party's name, address, and phone number. Under the agreement, a responsible party was defined as someone who would act on the resident's behalf or would be responsible for assisting the resident. The agreement indicated: (1) "If the Resident does not designate a Responsible Party, he or she shall initial here: __," with the line left blank; (2) "If the Resident does not have Power of Attorney for Property, he or she shall initial here: __," with the line left blank; (3) "If the Resident does not have Health Care Power of Attorney, he or she shall initial here: __," with the line left blank; and (4) "If the Resident does not have Do Not Resuscitate in place, he or she shall initial here: MM," with the initials "MM" inserted.

¶ 11 The agreement indicated that beginning on October 29, 2014, "Owner shall permit the Resident to occupy Apartment 156…for as long as the Resident meets all conditions of continued occupancy set forth in this Agreement or until this Agreement otherwise terminates." The agreement indicated that the resident shall receive the base services that were included in the fee—three meals per day plus snacks, weekly laundry and linen services, weekly housekeeping, staff monitored entrance and locked entrances for security 24-hours per day, access and use of

the emergency call system, access to on-site staff 24-hours per day, wellness and care assessments by a registered nurse, assistance with scheduling health care appointments, an individualized service plan, including assistance with activities of daily living, i.e., eating, dressing, bathing, toileting, and transferring or personal hygiene, access to scheduled transportation, and social activities and programs. Under the "Base Service Fee" section, the agreement indicated, "Your initial daily fee payable is ~~$229~~ $250 HD dollars ($____), representing a fee of _____ dollars ($_____) for the first Resident and a fee of _____ dollars ($____) for the second Resident, if any (the 'Daily Fee')."

¶ 12 Under the "Entire Agreement" section (section J), the residency agreement indicated that the agreement, exhibits, "addenda hereto" and related application forms constituted the entire understanding of the terms and conditions "governing the Resident's residency at The Lighthouse of Silvis." Section J also specified, "[t]he undersigned having read the Agreement, along with all exhibits and attachments thereto, states he/she/they understand and agree to the terms and conditions set forth herein." The next section (section K) entitled "Incorporation of Addendums, Exhibits, Schedules and other Documents to this Agreement" specified the seven addendums incorporated into "this Agreement," and specifically listed the "Alternative Dispute Resolution (ADR) Addendum." It also indicated that certain other documents were incorporated by reference into the agreement, including "Insurance, Living Will, POA [power of attorney] and DNR [do not resuscitate] Forms."

¶ 13 Just above the signature lines, in all capital letters, the agreement provided:

> "AFTER READING THE ENTIRE AGREEMENT ABOVE AND THE AMMENDMENTS [*sic*], EXHIBITS, SCHEDULES, AND DOCUMENTS ATTACHED BY REFERENCE AND HAVING THE OPPORTUNITY TO

SEEK LEGAL COUNSEL FOR ADVICE, THE PARTIES BELOW HEREIN SIGN THAT THEY AGREE AND WILL ABIDE TO ALL OF THE TERMS OF THIS AGREEMENT AS STATED THEREIN."

¶ 14 The signature lines appeared as follows:

"Resident: [signature of 'Merton D. Messmore'] Date: 10/28/14

Spouse (if applicable): [signature of 'Mary Ruth'] Date: 10/28/14

Legal Representative: _____ Date: _____

Executive Director or Designee: [signature of 'Heather DeVore'] Date: 10·28·14"

¶ 15 Just below the signature lines, in all capital letters, was the following notice: "ADDENDUMS, EXHBITS, AND SCHEDULES ARE LISTED BELOW AND FOUND ON THE FOLLOWING PAGES. OTHER DOCUMENTS ARE ATTACHED BY REFERENCE." The list of addendums, exhibits, and schedules included the "Alternative Dispute Resolution (ADR) Addendum" in the list.

¶ 16 The attached three-page ADR addendum indicated:

"any and all legal claims or civil action arising out of or relating to care or services provided to you at this Community, including but not limited to claims for negligence, loss of consortium, wrongful death, elder or dependent adult abuse/neglect, unfair business practices, refund breach of contract, property damage or loss, intentional tort or relating to the validity or enforceability of the [residency agreement], will be determined by good faith mediation and, if necessary, binding arbitration."

¶ 17 The ADR addendum specified that eviction due to nonpayment of amounts due under the residency agreement was not subject to the parties' arbitration agreement. On the last page of

the three-page ADR addendum, just above the signature lines, the following notice was stated in all capital letters: "NOTICE: BY SIGNING THIS CONTRACT YOU ARE AGREEING TO HAVE ANY LEGAL CLAIM OR CIVIL ACTION ARISING OUT OF OR RELATING TO YOUR RESIDENCE OR ANY SERVICES RENDERED UNDER THE RSA DECIDED IN NEUTRAL MEDIATION AND BINDING ARBITRATION. YOU ARE GIVING UP YOUR RIGHT TO A COURT TRIAL OR JURY." Just below that notice were the following signatures:

"Resident: [signature of 'Merton D. Messmore'] Date: 10/28/14

Spouse (if applicable): [signature of 'Mary Ruth'] Date: 10/28/14

Legal Representative: _____ Date: _____"

¶ 18 On July 6, 2016, plaintiff responded to defendants' motion to dismiss, arguing (1) defendants waived enforcement of any alleged arbitration agreement by taking actions inconsistent with arbitration and defendants' delay in demanding arbitration caused prejudice to plaintiff, (2) defendants failed to meet their burden of proving that the ADR addendum was executed by or enforceable against Mary, (3) the ADR addendum lacked consideration, and (4) public policy and judicial economy considerations required that plaintiff's negligence claims remain in the trial court where plaintiff would be pursuing a wrongful death claim, which was not subject to arbitration as a matter of law.

¶ 19 In the response, plaintiff indicated that Mary was an 87-year-old resident of defendants' assisted living facility, before which time she had suffered a stroke resulting in paralysis that led her to require assistance with daily living activities leading to her family arranging for her and Merton to reside at the Lighthouse. Plaintiff further indicated that on November 5, 2014, Mary and Merton were admitted as residents of the Lighthouse and, during their residency, Mary

received inadequate supervision, suffered falls and injuries, and died on January 8, 2015. Plaintiff argued defendants' motion to dismiss should be denied because defendants failed to meet their burden of proving that there was not a genuine issue of material fact regarding the enforceability of the residency agreement where "there [wa]s no evidence the arbitration addendum was validly executed or enforceable." Plaintiff argued that defendants' 2-619 motion should be denied because there was a genuine question of material fact and plaintiff had made a jury demand so that a jury should have resolved any such question of fact. Plaintiff argued defendant's motion was based on the "unsubstantiated" residency agreement and ADR addendum where defendants failed to include affidavits or other evidence to show the documents were "genuine and enforceable." Plaintiff argued defendant failed to prove that Mary signed the arbitration agreement or that Mary had the capacity to sign the agreement. Plaintiff argued that defendant could not "enforce an unsubstantiated arbitration agreement without evidence providing that it was validly executed and enforceable" and that if the trial court "f[ound] merit in Defendants' position, Plaintiff, at minimum, requests leave to conduct discovery regarding the formation, execution, and enforcement of the alleged arbitration provision."

¶ 20 Without a hearing, the trial court entered a written order, granting defendants' motion to dismiss plaintiff's complaint and compel mediation. The trial court found that both Mary and Merton had signed the residency agreement on October 28, 2014, which allowed both Mary and Merton to live in their apartment at the Lighthouse of Silvis. The trial court further found that "Section K" of the residency agreement incorporated a number of addendums into the residency agreement, one of which was the "Alternative Dispute Resolution (ADR) Addendum." The trial court found that the three-page ADR Addendum mandated that plaintiff's claims be submitted to mandatory mediation and then to binding arbitration. The trial court noted that the ADR

addendum stated, in relevant part, that "any and all legal claims or civil actions arising out of or relating to care or services provided to you at this Community, including but not limited to claims for negligence…will be determined by good faith mediation and, if necessary, binding arbitration."

¶ 21 The trial court additionally found that the notice was in all caps "just above the signature lines" of the ADR Addendum and specifically indicated that by signing the contract the person signing the contract was agreeing to have "any legal claim or civil action arising out of relating to [their] residence or any service rendered under the [residency agreement] decided in a neutral mediation and binding arbitration" and were "giving up [their] right to a court trial or jury." The trial court found, "[t]he Messmores signed the signature line of the ADR Addendum" and found the arbitration agreement to be valid.

¶ 22 Plaintiff filed a motion to reconsider, arguing (1) the trial court failed to address whether defendants had waived arbitration, (2) the trial court made findings of material fact, namely that Mary had signed the arbitration addendum, without allowing for discovery or an evidentiary hearing, (3) the trial court made no ruling on plaintiff's contract defense arguments that defendant failed to prove the ADR addendum was validly executed or that the ADR addendum was unenforceable due to lack of consideration. The trial court denied plaintiff's motion to reconsider.

¶ 23 Prior to the denial of plaintiff's motion to reconsider, plaintiff was granted leave to amend the complaint to add a count III, a wrongful death claim, which remains pending in the trial court. Plaintiff filed an interlocutory appeal of the trial court's dismissal of count I and count II.

¶ 24 ANALYSIS

¶ 25 On appeal, plaintiff argues: (1) defendants waived enforcement of the arbitration agreement; (2) the trial court erred in finding there was a valid, enforceable arbitration agreement; (3) the trial court erred in failing to allow for discovery or an evidentiary hearing or allow discovery regarding the facts and circumstances surrounding the formation and validity of the arbitration addendum; (4) the arbitration addendum was unenforceable due to a lack of consideration; (5) the trial court erred by failing to dispose of all the issues that plaintiff raised in opposition to the enforcement of the alleged arbitration agreement; (6) the trial court erred by failing to make any findings regarding plaintiff's contract defense arguments; and (7) public policy and judicial economy required that plaintiff's negligence claims remain in the circuit court. Defendants argue that the trial court's granting of their motion to dismiss and to compel the enforcement of the parties' arbitration agreement should be affirmed because, *inter alia*, defendants did not waive enforcement of the arbitration agreement and they met their burden of proof in establishing that an enforceable arbitration agreement existed between the parties.

¶ 26 An order granting or denying a motion to compel arbitration is injunctive in nature and is appealable under Illinois Supreme Court Rule 307(a)(1) (eff. Nov. 1, 2016) (an appeal may be taken from an interlocutory order of a court granting, modifying, refusing, dissolving, or refusing to dissolve or modify an injunction). *Sturgill v. Santander Consumer USA, Inc.*, 2016 IL App (5th) 140380, ¶ 20. In an appeal pursuant to Rule 307(a)(1), the only issue is whether there was a sufficient showing to uphold the trial court's order granting or denying the relief sought. *Id.*

¶ 27 I. Waiver

¶ 28 Plaintiff argues that defendants waived the right to enforcement of the arbitration agreement by acting inconsistently with their alleged right to arbitrate and waiting six months to bring the demand for arbitration. The question of whether a party's right to arbitration has been

waived is a legal question subject to a *de novo* review. *Watkins v. Mellen*, 2016 IL App (3d) 140570, ¶ 12.

¶ 29 A contractual right to compel arbitration may be waived like any other contractual right. *LaHood v. Central Illinois Construction, Inc.*, 335 Ill. App. 3d 363, 364 (2002). Waiver occurs when a party acts in manner inconsistent with the arbitration clause in an agreement and indicates an abandonment of that right. *Id.* at 364-65. Waiver can also occur when a party submits an arbitrable issue to a court for a decision. *Id.* at 365.

¶ 30 Illinois courts have held a party waives its contractual right to arbitrate under the following circumstances: (1) by filing a motion for summary judgment (*Applicolor, Inc. v. Surface Combustion Corp.*, 77 Ill. App. 2d 260, 267 (1966)); (2) by answering a complaint, participating in discovery for two years, and asserting arbitration in response to a motion for summary judgment (*Epstein v. Yoder*, 72 Ill. App. 3d 966, 972 (1979)); (3) by answering a complaint with claims of setoffs against the plaintiff, participating in discovery, and waiting 13 months and 22 months from when plaintiff filed complaints against the two separate defendants before asserting a right to arbitration (*Gateway Drywall & Decorating, Inc. v. Village Construction Co.*, 76 Ill. App. 3d 812, 817 (1979)); (4) by filing an answer claiming additional credits, filing a bill of particulars listing the additional credits, and waiting 9.5 months before asserting the arbitration right (*Cencula v. Keller*, 152 Ill. App. 3d 754, 758 (1987)); (5) by engaging in discovery, opposing an earlier attempt to compel arbitration, and failing to file for arbitration when given the opportunity (*Schroeder Murchie Laya Associates, Ltd. v. 1000 West Lofts, LLC*, 319 Ill. App. 3d 1089, 1098 (2001)); and (6) by filing a complaint seeking complete relief without mentioning arbitration and requesting arbitration only after the trial court and appellate court denied its request for a temporary restraining order and the other party had filed a

motion to dismiss the complaint (*Glazer's Distributors of Illinois, Inc. v. NWS-Illinois, LLC,* 376 Ill. App. 3d 441, 426 (2007)). *TSP-Hope, Inc. v. Home Innovators of Illinois, LLC,* 382 Ill. App. 3d 1171, 1174-75 (2008). Waiver of an arbitration agreement has not been found where a defendant did not file pleadings or filings in the trial court other than in response to plaintiff's claims. In *LaHood,* the Third District Appellate Court found there was no waiver of arbitration where the contractor first sought arbitration and then filed a mechanics lien action entirely in response to the owner's statutory 30-day demand but avoided submitting any substantive issue to the court by requesting an immediate stay of the proceedings. *LaHood*, 335 Ill. App. 3d 363. In *TSP-Hope,* the Fourth District Appellate Court found there was no waiver of an arbitration agreement where the parties did not conduct any discovery and defendant did not file pleadings other than pleadings that were responsive to plaintiff's claims. *TSP-Hope,* 382 Ill. App. 3d 1171.

¶ 31 Here, by defendants filing their answer in response to plaintiff's complaint, issuing written discovery but withdrawing it within eight days without plaintiff having answered the discovery requests, and having not submitted any issues covered by the arbitration clause to the trial court for resolution, defendants have not demonstrated an intent to waive or abandon arbitration. See *id.* at 1174 (a party acts inconsistently with its right to arbitrate when it submits issues that could have been arbitrated to a court for decision); *Watkins*, 2016 IL App (3d) 140570, ¶ 15 (the operative distinction between filings or actions that constitute a waiver of the right to compel arbitration and those that do not is whether, prior to seeking to compel arbitration, the party had placed any substantive issues before the court). Also, under the circumstances of this case, the six months passage of time from the date plaintiff filed the complaint to the time defendants filed the motion to dismiss to compel enforcement of the

arbitration agreement did not prejudice plaintiff. Thus, defendants did not waive their right to arbitration.

¶ 32 II. Validity of the Arbitration Agreement

¶ 33 Plaintiff argues that defendants did not meet their burden of proving an enforceable arbitration agreement existed between defendants and Mary. Plaintiff contends that the "resident" signature line on both the residency agreement and the ADR Addendum were signed by Merton but not Mary and Mary's name only appeared under Merton's "resident" signature as "the spouse." Thus, plaintiff argues, Merton's signature was not binding on Mary unless he had the authority to enter into the arbitration agreement on her behalf. See *Curto v. Illini Manors, Inc.*, 405 Ill. App. 3d 888, 892 (2010) (holding that a nursing home's arbitration agreement was unenforceable where there was no evidence of the resident wife's authority to sign the arbitration agreement on her husband's behalf).

¶ 34 As mentioned above, reviewing a circuit court's decision on a motion to compel arbitration requires us to determine whether there was a sufficient showing to sustain the circuit court's order. *Sturgill*, 2016 IL App (5th) 140380, ¶ 20. Where the question on appeal from an order granting or denying a motion to compel arbitration concerns a legal question, such as the trial court's construction of an arbitration agreement, the question is one of law that we review *de novo*. *Brown v. Delfre*, 2012 IL App (2d) 111086, ¶ 10 (citing *Carr v. Gateway, Inc.*, 241 Ill. 2d 15, 20 (2011) (an arbitration agreement is a contract and the interpretation thereof is a question of law reviewed *de novo*). However, an abuse of discretion standard is applied when the nature of the issue on appeal pertains to factual findings requiring deference. *Id.*

¶ 35 Here, a review of the residency agreement and ADR Addendum provides a sufficient showing that Mary's signature was that of a resident bound by the terms of the residency

agreement and ADR Addendum and for the trial court's dismissal of plaintiff's claims in order to enforce arbitration. The first page of the residency agreement indicated that the agreement was between Silvis Operations and "Merton & Mary Messmore (Resident or You)" and that if two persons occupied the apartment both people would be considered a "resident" as used in the agreement. Thus, both Merton and Mary were considered residents under the agreement and were bound by the ADR addendum. Additionally, just above Merton and Mary's signatures, in all capital letter, the residency agreement specified that after having read the entirety of the agreement, amendments, exhibits, schedules, and attached documents "the parties below herein sign that they agree and will abide to all of the terms of [the residency] agreement," further demonstrating that both Merton and Mary were parties to the agreement despite Merton signing as "resident" and Mary signing as "spouse."

¶ 36 III. Formation of the ADR Addendum

¶ 37 Plaintiff argues that defendants failed to prove that Mary signed the ADR addendum or had the capacity to sign it. Plaintiff further argues that the trial court erred in granting the motion to dismiss without holding an evidentiary hearing or allowing discovery regarding the alleged execution of the ADR Addendum. Defendants argue there are no genuine issues of material fact regarding the formation and validity of the ADR addendum.

¶ 38 A motion to compel arbitration and dismiss pending judicial proceedings is similar to a motion to dismiss pursuant to section 2-619(a)(9) of the Code of Civil Procedure (Code) (735 ILCS 5/2-619(a)(9) (West 2014)). *Sturgill*, 2016 IL App (5th) 140380, ¶ 21. Section 2-619(a)(9) of the Code allows for the involuntary dismissal of a claim that is barred by "other affirmative matter avoiding the legal effect of or defeating the claim" (735 ILCS 5/2-619(a)(9)

(West 2014)). The other affirmative matter in a motion to compel arbitration is the exclusive remedy of arbitration. *Sturgill*, 2016 IL App (5th) 140380, ¶ 21.

¶ 39 The "affirmative matter" asserted by a defendant must be apparent on the face of the complaint or be supported by affidavits or other evidentiary materials. *Kedzie & 103rd Currency Exchange, Inc. v. Hodge*, 156 Ill. 2d 112, 116 (1993). Section 2-619(c) of the Code provides:

> "If, upon the hearing of the motion, the opposing party presents affidavits or other proof denying the facts alleged or establishing facts obviating the grounds of defect, the court may hear and determine the same and may grant or deny the motion. If a material and genuine disputed question of fact is raised the court may decide the motion upon the affidavits and evidence offered by the parties, or may deny the motion without prejudice to the right to raise the subject matter of the motion by answer and shall so deny it if the action is one in which a party is entitled to a trial by jury and a jury demand has been filed by the opposite party in apt time." 735 ILCS 5/2-619(c) (West 2014).

¶ 40 Thus, the party seeking to compel arbitration has the burden of establishing the parties had a valid agreement to arbitrate the controversy at issue. *Sturgill*, 2016 IL App (5th) 140380, ¶ 22. Once a defendant satisfies this initial burden of going forward on the motion to dismiss, the burden then shifts to the plaintiff, who must establish that the affirmative matter asserted is unfounded or requires the resolution of an essential element of material fact before it is proven. *Kedzie & 103rd Currency Exchange, Inc.*, 156 Ill. 2d at 116. The plaintiff may do so by affidavit or other proof. *Id.* If, after considering the pleadings and affidavits, the trial court finds the plaintiff has failed to carry the shifted burden of going forward, the motion may be granted and the cause of action dismissed. *Id.* An appeal from such a dismissal is reviewed *de novo*,

with the reviewing court to consider whether the existence of a genuine issue of material fact should have precluded the dismissal or, absent such an issue of fact, whether the dismissal was proper as a matter of law. *Id*. at 116-17.

¶ 41 In this case, in their motion to dismiss, defendants argued that, pursuant to the Illinois Uniform Arbitration Act (710 ILCS 5/1 *et seq.* (West 2014)), plaintiff was barred from bringing the negligence claims against them because the parties had agreed to arbitrate those claims. Defendants attached the residency agreement and the ADR addendum to the motion to dismiss, which showed that Merton and Mary had executed the documents. See *Wanandi v. Black*, 2014 IL (2d) 130948, ¶ 30 (while section 2-619(a) of the Code requires affidavits in support of any ground for dismissal that do not appear on the face of the pleading attacked, affidavits are not necessary when other evidence is more conclusive and relevant). Thus, defendants satisfied their initial burden of going forward on their motion. See *Epstein v. Chicago Board of Education*, 178 Ill. 2d 370, 384 (1997) (finding defendant, the Chicago Board of Education, satisfied its initial burden of going forward on its section 2-619(a)(9) motion to dismiss where defendant attached a project manual in support of its argument that it was statutorily immune from liability for failure to supervise plaintiff's construction work on its premises and its actions did not go beyond that of supervision). Consequently, the burden then shifted to plaintiff to establish that the affirmative matter asserted by defendant—the agreement to arbitrate—"[wa]s unfounded or require[d] the resolution of an essential element of material fact before it [wa]s proven." See *id.* (quoting *Kedzie & 103rd Currency Exchange, Inc.*, 156 Ill. 2d at 116). While plaintiff argued in the trial court that the alleged ADR Addendum contained the "resident signature" for Merton only, plaintiff did not establish that a material fact required resolution before the trial could find the parties had agreed to arbitrate plaintiff's claims. The trial court reviewed the contract and

determined that the language of the contract and Mary's signature bound her to the residency agreement and ADR addendum. There was no indication by way of affidavits or other proof that the parties' agreement to arbitrate was invalid or that Mary's signature was inauthentic. Plaintiff merely suggesting that Mary did not sign the documents or that Mary did not have the capacity to sign the documents was insufficient to create a genuine issue of material fact. Thus, the trial court did not err in dismissing count I and count II of plaintiff's complaint where plaintiff failed to meet the shifted burden of establishing defendants' assertion of an arbitration agreement was unfounded or required the resolution of an essential element of material fact before it was proven.

¶ 42 IV. Lack of Consideration

¶ 43 Plaintiff argues the arbitration agreement was invalid because there was no consideration given in exchange for plaintiff's obligation to submit all disputes to arbitration. Plaintiff contends the eviction exception to the arbitration agreement allowing defendants to avoid arbitration for its own claims renders the arbitration agreement meaningless because the arbitration agreement was unilateral. See *Carter v. SSC Odin Operating Co., LLC*, 2012 IL 113204, ¶ 20 (an illusory promise appears to be a promise but on closer examination reveals that the promisor had not promised to do anything). Consideration is the "bargained-for exchange of promises or performances, and may consist of a promise, an act or a forbearance." *McInerney v. Charter Golf, Inc.*, 176 Ill. 2d 482, 487 (1997).

¶ 44 Here, the one exception to defendant's obligation to arbitrate its claims under the arbitration agreement was for eviction claims. That single exception does not invalidate the entirety of the agreement. See *id.* ¶¶ 24-27 (the consideration that the parties exchange is not

required to be equivalent). Defendant was still obligated to arbitrate their other claims under the arbitration agreement.

¶ 45 Furthermore, the residency agreement consisted of the agreement, exhibits, addenda, and any related forms and represented the entire contract between the parties governing the Messmore's residency at the facility. Part of the consideration provided to the Messmores was their right to occupy their apartment and receive all the benefits and services provided to residents. Thus, the arbitration agreement was not invalid for lack of consideration.

¶ 46 V. Substantive Disposition of all Issues

¶ 47 Plaintiff argues that the trial court's granting of the motion to dismiss should be reversed because the trial court failed to substantively dispose of all issues raised by plaintiff in opposition to the motion. Specifically, plaintiff argues the trial court erred by failing to make findings as to his arguments regarding defendants' waiver of arbitration, the formation and validity of the ADR Addendum, and a lack of consideration to support the contract. Plaintiff contends that, pursuant to Fifth District Appellate Court's decision in *Sturgill*, when the validity of an arbitration provision is disputed, a trial court must address each issue raised in opposition to the arbitration provision and articulate specific reasons for its ruling on a motion to compel arbitration, with the trial court's failure to do so warranting a reversal. *Sturgill*, 2016 IL App (5th) 140380. Plaintiff further contends that he filed a motion to reconsider, in which he requested the trial court provide a substantive disposition on each outstanding issue raised in opposition to defendants' motion, but the trial court "simply denied [his] motion to reconsider." Defendants argue that it was unnecessary for the trial court to address every issue raised by plaintiff where the trial court did, in fact, render a substantive determination that Mary and Merton were bound by the arbitration agreement and the other issues were implicitly resolved in favor of defendants.

¶ 48 In Illinois, the court proceedings for deciding the initial question of arbitrability is governed in accordance with the Illinois procedural rules, including those procedures set forth in section 2(a) of the Illinois Uniform Arbitration Act (710 ILCS 5/2(a) (West 2014)). *Sturgill*, 2016 IL App (5th) 140380, ¶ 23. Section 2(a) of the Illinois Uniform Arbitration Act, in pertinent part, provides that on the application of a party showing an arbitration agreement and the opposing parties' refusal to arbitrate, "the court shall order the parties to proceed with arbitration, but if the opposing party denies the existence of the agreement to arbitrate, the court shall proceed summarily to the determination of the issue so raised and shall order arbitration if found for the moving party, otherwise, the application shall be denied." 710 ILCS 5/2(a) (West 2014).

¶ 49 In *Sturgill*, the Fifth District Appellate Court stated:

> "Where a trial court has failed to articulate any specific reasons for ruling on the motion to compel arbitration, the court has not issued a substantive disposition. [Citations.] *** Because there was no substantive disposition of the multitude of issues raised by [the] motion to compel arbitration, we cannot say that there was a sufficient showing to sustain the trial court's order denying the motion to compel arbitration. [Citations.] Accordingly, we must reverse the order and remand the case to the trial court with instructions to proceed summarily, to resolve those issues that can properly be decided *** and to render a disposition with some explanation or substantiation of the facts or rules of law that allow for the order entered." *Sturgill*, 2016 IL App (5th) 140380, ¶ 27.

¶ 50 In this case, we do not agree with plaintiff's contention that the trial court did not "substantiate the existence or truth of any fact that would allow for the denial of the motion" and

there was not a sufficient showing to sustain the trial court's order. In *Sturgill*, the trial court denied the defendant's motion to compel arbitration without providing a substantive disposition on any of the many issues raised in the motion so that there was not a sufficient showing for the appellate court to affirm the trial court's denial of that motion to compel. However, in this case, the trial court granted the motion to compel after finding that Merton and Mary signed the residency agreement and ADR Addendum, which contained an enforceable arbitration agreement. Thus, the trial court issued an adequate substantive disposition when ruling on the motion to compel.

¶ 51 VI. Contract Defenses

¶ 52 Plaintiff contends that the trial court was required to make a substantive disposition as to the two contract defenses plaintiff raised—the contract was not validly executed and the contract was unenforceable for lack of consideration. In the trial court's written order, the trial court specifically indicated that it found Mary had signed the residency agreement and ADR addendum and that the agreement to arbitrate was valid. There was no finding of a lack of consideration when the trial court found the arbitration agreement to be valid. As we indicated earlier, the entire contract between the parties governing the Messmore's residency at the facility, which included the agreement, exhibits, addenda, and any related forms, was supported by adequate consideration.

¶ 53 VII. Public Policy

¶ 54 Finally, plaintiff contends that defendants' motion to dismiss and compel arbitration should have been denied based upon public policy considerations and judicial economy. Specifically, plaintiff argues that the splitting of the dismissed counts from the remaining

wrongful death claim that is pending in the circuit court would result in a waste of judicial resources and could possibly result in inconsistent verdicts.

¶ 55 Arbitration is a favored alternative to litigation for resolving controversies arising out of commercial transactions because it is a speedy, informal, and a relatively inexpensive procedure. *Board of Managers of the Courtyards at the Woodlands Condominium Ass'n v. IKO Chicago, Inc.*, 183 Ill. 2d 66, 71 (1998). Once a contract containing a valid arbitration clause has been executed, the parties are bound to arbitrate all disputes arising under the agreement. *Id.* at 74. In enacting the Illinois Uniform Arbitration Act, the legislature intended to place arbitration agreements on the same footing as other contracts. *Id.* at 75. Judicial economy is not an appropriate basis for denying arbitration. *Id.* at 76. Also, public policy concerns that favor arbitration outweigh concerns of judicial economy, duplication of effort, or inconsistent results. *LaHood,* 355 Ill. App. 3d at 365. Thus, the trial court did not err in granting defendants' motion to dismiss and compel arbitration.

¶ 56 CONCLUSION

¶ 57 Accordingly, we affirm the judgment of the circuit court of Rock Island County.

¶ 58 Affirmed.

¶ 59 JUSTICE WRIGHT, dissenting.

¶ 60 As the majority recognizes, the party seeking to compel arbitration has the burden of establishing a valid agreement exists between the parties to require arbitration of a controversy. In this case, I respectfully disagree two people signed the Residency Agreement for the reasons set forth below.

¶ 61 For example, turning to the signature page of the Residency Agreement, I note that one signature appears on the line to be signed by "Resident" and one name appears as that particular

resident's spouse, namely, "Mary Ruth." It does not take an expert in handwriting to determine the penmanship on Merton's purported signature matches the same unsteady strokes of penmanship identifying "Mary Ruth" as the signatory's spouse. I respectfully assert Silvis has acted in a self-serving fashion by inaccurately characterizing the handwritten name "Mary Ruth" as a signature written by Mary Messmore herself.

¶ 62 In addition, it is undisputed that someone other than Merton or Mary inserted "Merton and Mary Messmore" in the first paragraph. Below this information, only one set of initials appears concerning the Do Not Resuscitate information. Respectfully, Silvis's argument that both residents signed the agreement is difficult to accept because I question how the facility would determine whether Merton or Mary should be resuscitated in a medical emergency since the facility obtained only one set of initials in this section. Logically, I conclude that Merton (MM) did not have a Do Not Resuscitate directive in place on October 28, 2014, because Merton alone signed the agreement. Even though Mary and Merton Messmore shared the same first and last initials (MM), one set of initials supports my view that Silvis presented this agreement to one person, Merton, on October 28, 2014.

¶ 63 In conclusion, based on the facts of record, I conclude there is nothing on the face of this document to support Silvis's assertion that Mary Messmore signed the agreement and was aware of the contents of the contract. On this basis, I respectfully dissent and would reverse the trial court's ruling.