2022 IL App (1st) 211619-U

No. 1-21-1619

Order filed June 23, 2022

Fourth Division

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

JOHN M. DALEY, Independent Administrator of the Estate of John P. Daley, Deceased, Plaintiff-Appellee, v. ALDEN-TOWN MANOR REHABILITATION AND HEALTH CARE CENTER, INC., ALDEN MANAGEMENT SERVICES, INC., and THE ALDEN GROUP, LTD., Defendants-Appellants.	)	Appeal from the Circuit Court of Cook County. No. 20 L 5893 Honorable John H. Ehrlich, Judge, presiding.

JUSTICE LAMPKIN delivered the judgment of the court.
Presiding Justice Reyes and Justice Martin concurred in the judgment.

ORDER

¶ 1 *Held*: In a wrongful death and negligence lawsuit against a nursing home and its management companies, where defendants moved to dismiss the lawsuit and compel arbitration pursuant to the parties' arbitration agreement, the trial court properly denied defendants' motion because they failed to meet their burden to prove the validity of the arbitration agreement by failing to produce the power of attorney that allegedly authorized the decedent's son to sign the arbitration agreement on behalf of the decedent.

¶ 2 Plaintiff John M. Daley, as the independent administrator of the estate of his deceased father, John P. Daley, sued defendants Alden-Town Manor Rehabilitation and Health Care Center, Inc. (Alden-Town), Alden Management Services, Inc., and The Alden Group, Ltd., for wrongful death and nursing home negligence. Defendants moved the court to dismiss the complaint with prejudice and compel mediation and arbitration pursuant to the terms of the parties' arbitration agreement. The trial court denied defendants' motion.

¶ 3 On appeal, defendants argue the trial court failed to follow the established standards to decide defendants' motion to dismiss the complaint and compel arbitration and erroneously denied that motion.

¶ 4 For the reasons that follow, we affirm the judgment of the circuit court.[1]

¶ 5 I. BACKGROUND

¶ 6 This is an interlocutory appeal from the trial court's order denying defendants' motion to dismiss, under section 2-619(a)(9) of the Code of Civil Procedure (Code) (735 ILCS 5/2-619(a)(9) (West 2020)), plaintiff's wrongful death and nursing home negligence lawsuit and compel arbitration pursuant to the parties' arbitration agreement. Illinois Supreme Court Rule 307(a)(1) provides that an appeal may be taken from an interlocutory order of the trial court granting, modifying, refusing, dissolving, or refusing to dissolve or modify an injunction. Ill. S. Ct. R. 307(a)(1) (eff. Nov. 1, 2017); *Salsitz v. Kreiss*, 198 Ill. 2d 1, 11 (2001) (an order granting or denying a motion to compel arbitration is injunctive in nature and an appealable interlocutory order under Rule 307(a)(1)).

[1] In adherence with the requirements of Illinois Supreme Court Rule 352(a) (eff. July 1, 2018), this appeal has been resolved without oral argument upon the entry of a separate written order.

¶ 7 On May 5, 2016, Alden-Town admitted John P. Daley as a resident. He had previously suffered a stroke that hindered his cognitive functioning and precluded his capacity to contract for himself. His son, plaintiff John M. Daley allegedly took over his father's affairs through a financial power of attorney (POA) and a medical POA. Plaintiff signed Alden-Town's admission forms on John P.'s behalf as either the fiduciary party or with a checked box indicting that plaintiff was the agent or attorney-in-fact under a validly executed POA. Plaintiff also signed a separate arbitration agreement, which contained the following pertinent language.

> "The parties to this Agreement wish to work together to resolve any disputes that may arise in a timely fashion and in a manner that minimizes both of their legal costs. The parties to this agreement further acknowledge that Resident cannot be required to sign this agreement in order to receive treatment. Therefore, in consideration of the mutual promises contained in the Agreement, the parties hereby agree as follows:
>
> I. Disputes to Be Arbitrated
>
> Any legal controversy, dispute, disagreement or claim of any kind now existing or occurring in the future between the parties arising out of or in any way relating to this Agreement or any occurrence related to the Resident Agreement or the Resident's stay at the Facility shall be settled by binding arbitration, including but not limited to, all claims based on breach of contract, negligence, medical malpractice, tort, breach of statutory duty, resident's rights, any departures from accepted standards of care, and all disputes regarding the scope, enforceability and/or interpretation of this Agreement, allegations of fraud in the inducement or requests for rescission

> of this Agreement. This includes claims against Facility, its employees, agents, officers, directors, any parent, subsidiary or affiliate of Facility. ***
>
> In the event of any such claim, the parties shall first use their best efforts to resolve the dispute through a mediation process. For the purpose of the Agreement, 'mediation' means a non-binding process during which the parties meet in person to attempt to resolve a dispute with the assistance of a mutually selected, neutral third party. If the parties are unable to resolve the dispute informally, BOTH PARTIES AGREE TO WAIVE THEIR RIGHT TO A JURY TRIAL AND AGREE TO HAVE THE MATTER RESOLVED BY BINDING ARBITRATION BEFORE AN ARIBTRATOR AS DESCRIBED IN THIS AGREEMENT AND SET FORTH HEREIN."

¶ 8 Finally, a section entitled "III. Resident's Acknowledgments" provided, *inter alia*, that the resident, by signing this arbitration agreement, acknowledged that he read the agreement, received a copy of it, and signed it without any influence. Further, he signed this agreement not as a condition of admission and acknowledged that care and treatment would be provided whether or not he signed this agreement.

¶ 9 The signature block of the agreement shows that plaintiff signed the arbitration agreement on behalf of his father and wrote "P.O.A." next to his signature. Under the signature block, the agreement stated:

> "* If Resident is unable to sign this Agreement, then his/her legal representative may sign on his/her behalf, and such representation hereby certifies that he/she holds the legal

authority to enter into this Agreement on Resident's behalf with the Facility either through a valid Power of Attorney, guardianship appointment or other legal authority."

¶ 10 On October 19, 2018, John P. allegedly was left unsupervised in Alden-Town's lobby. He then left the building in his wheelchair, fell, and sustained injuries that ultimately led to his death. In June 2020, plaintiff sued defendants, alleging (1) violations of the Nursing Home Care Act (210 ILCS 45/1-101, *et seq*. (West 2020)), (2) survival action claims under section 27-6 of the Probate Act of 1975 (755 ILCS 5/27-6 (West 2020)), and (3) claims under the Wrongful Death Act (740 ILCS 180/0.01, *et seq*. (West 2020)).

¶ 11 Defendants moved the court under section 2-619(a)(9) of the Code to dismiss the complaint and compel enforcement of the parties' arbitration agreement. Defendants argued that the agreement bound plaintiff because he had signed it by virtue of an apparent POA. Defendants attached a sole document to their motion, *i.e.*, the arbitration agreement. Defendants had not requested or performed any discovery to support their motion.

¶ 12 Plaintiff requested limited written discovery to respond to the motion to dismiss. Specifically, he asked defendants to produce the documents incorporated into the arbitration agreement, including the resident agreement and the POA. After defendants objected, the trial court ordered them to produce the requested documents. Defendants produced the resident agreement and various bank statements but did not produce a POA, stating they did not have it.

¶ 13 In his response to and motion to strike defendants' motion to dismiss, plaintiff argued that (1) defendants failed to meet their *prima facie* burden to show that the arbitration agreement was valid on its face because defendants failed to produce a copy of the POA referenced in the arbitration agreement or show that plaintiff had the specific authority to sign the arbitration

agreement, (2) even if a healthcare POA existed, plaintiff lacked the authority to sign the arbitration agreement on his father's behalf because that agreement was not "part and parcel" of the healthcare decision to admit his father to the nursing home, (3) the arbitration agreement was unenforceable because it was procedurally and substantively unconscionable, (4) there was no mutual assent between either plaintiff or John P. and Alden-Town because the arbitration agreement plaintiff signed on May 5, 2016, included references to terms in the resident agreement, which plaintiff did not receive and sign until May 9, 2016, and (5) plaintiff could not be compelled to arbitrate his wrongful death claim because he was not a party to the arbitration agreement.

¶ 14 Defendants requested discovery, and the depositions of plaintiff and defendant's admissions director, Jessica Tovar-Almeralla, were taken.

¶ 15 In his deposition, plaintiff testified that he was a college graduate and retired fire department captain. At the time at issue, plaintiff's father could not care for himself or manage his own affairs since his stroke had caused paralysis to his left side and some brain damage. As a lay person, plaintiff thought that he had possessed a durable financial POA and a healthcare POA to handle his father's affairs from about 2011 until the time of his father's death, but plaintiff did not know the contents of those documents or have copies of them. Plaintiff did not know if the documents were in his father's former home in Arkansas. A Chicagoland area attorney had prepared the POAs, but plaintiff did not contact her to request copies of any POAs she might have in her possession. Plaintiff remembered signing a series of documents for his father to be admitted at Alden-Town. A female Alden-Town employee showed plaintiff the sections of the documents to sign and said that he needed to sign all the documents to get his father admitted there. Plaintiff did not remember if he skimmed through the documents before signing them because he was more

worried about getting his father admitted into the facility and thought the forms were just standard protocol. Plaintiff had no memory of giving Alden-Town any copy of a POA to view and verify.

¶ 16 In her deposition, Tovar-Almeralla testified that Alden-Town's admissions packet for new residents contained a resident's agreement, an arbitration agreement, an explanation of charges, Alden-Town's policies and procedures, and general information about the facility and the services Alden-Town offered. When family members who were signing the forms on behalf of residents told Tovar-Almeralla that they had a POA, she told them they needed to submit a copy of the POA to the social services department as soon as they finished their meeting with her. She remembered sitting down with plaintiff and doing the paperwork but did not have any independent recollection about whether he had a POA concerning his father.

¶ 17 In their reply in support of their motion to dismiss, defendants argued that (1) plaintiff's deposition indicated that he held both a durable financial POA and healthcare POA when he signed the arbitration agreement, (2) the arbitration agreement was not unconscionable and was supported by consideration, (3) the arbitration agreement was the subject of mutual assent, and (4) plaintiff's alleged wrongful death claim did not render the arbitration agreement unenforceable.

¶ 18 Plaintiff objected to the new material defendants had incorporated into their reply, and the trial court amended the briefing schedule to allow a surresponse from plaintiff and a surreply from defendants.

¶ 19 In his surresponse, plaintiff argued that the arbitration agreement was unconscionable, lacked mutual assent, and violated federal regulations and state law because the testimony of Tovar-Almeralla indicated that the arbitration agreement was between defendants and the decedent, who did not have the legal capacity to enter into any contract. Plaintiff also argued that

defendants' motion was not supported by any POA, guardianship order, affidavit or other material that would establish the elements required by their burden of proof. Plaintiff stated that the specific powers granted or withheld by the POA he had signed were unknown. Consequently, defendants' failure to produce a copy of the POA meant that they failed to meet their burden to show the specific powers the POA granted plaintiff and, thus, failed to show that he had the authority to enter into any arbitration agreement on behalf of his father or his father's estate.

¶ 20 In their surreply, defendants argued that plaintiff's admission in his deposition that he signed durable financial and healthcare POAs prior to his father's admission to Alden-Town bound plaintiff to the arbitration agreement even if defendants never produced the underlying POA forms. Defendants also argued that nothing in Tovar-Almeralla's deposition suggested that the arbitration agreement was unconscionable, lacked mutual assent, or was invalid under federal or state law.

¶ 21 On November 19, 2021, the trial court denied defendants' section 2-619 motion to dismiss, ruling they failed to attach as an exhibit to their motion the POA signed by plaintiff. Accordingly, the court concluded that it could not accept the arbitration agreement as valid on its face because the predicate for its validity was not in the record.

¶ 22 Defendants timely appealed.

¶ 23 II. ANALYSIS

¶ 24 On appeal, defendants argue that there is an insufficient showing to sustain the trial court's order denying their motion to dismiss the complaint and compel arbitration because the trial court failed to (1) issue a substantive disposition of the multitude of issues raised in connection with their motion, and (2) articulate specific reasons and legal reasoning for denying their motion. Defendants urge this court to vacate the November 19, 2021 order and remand this case with

instructions to the trial court to proceed summarily, resolve those issues that can properly be decided by the court under the Federal Arbitration Act (9 U.S.C. § 1 *et seq*. (2018)), and render a disposition with some explanation or substantiation of the facts or rules of law that allow for the order entered.

¶ 25 Defendants, however, misstate the standard of review. Generally, the issue this court considers in an interlocutory appeal from an order granting or denying a motion to compel arbitration is whether there was a showing sufficient to sustain the order of the trial court granting or denying the motion. *Onni v. Apartment Investment & Management Co.*, 344 Ill. App. 3d 1099, 1101 (2003). " 'Thus, the standard of review in an interlocutory appeal generally is whether the trial court abused its discretion in granting or denying the requested relief.' " *Schroeder Murchie Laya Associates, Ltd. v. 1000 West Lofts, LLC*, 319 Ill. App. 3d 1089, 1092 (2001) (quoting *Bishop v. We Care Hair Development Corp.*, 316 Ill. App. 3d 1182, 1189 (2000)). However, where the trial court does not make any factual findings, or the underlying facts are not in dispute and the court's decision is based on a purely legal analysis, we review *de novo* the trial court's denial of a motion to stay the proceedings and compel arbitration. *La Hood v. Central Illinois Construction, Inc.*, 335 Ill. App. 3d 363, 364 (2002). Here, the trial court based its decision on the undisputed facts in the record and a purely legal analysis. Thus, our review of the issue is *de novo*. See *id.*; see also *Thomas v. Weatherguard Construction Company, Inc.*, 2015 IL App (1st) 142785, ¶ 63 (under *de novo* review, the reviewing court performs the same analysis the trial court would perform).

¶ 26 The purpose of a section 2-619 motion to dismiss is to obtain a summary disposition to dispose of issues of law and easily proved issues of fact at the outset of litigation. *Van Meter v. Darien Park District*, 207 Ill. 2d 359, 367 (2003); *Sturgill v. Santander Consumer USA, Inc.*,

2016 IL App (5th) 140380, ¶ 21. The moving party admits the legal sufficiency of the complaint, all well-pleaded facts and all reasonable inferences therefrom, but asserts an affirmative defense or other matter, like the exclusive remedy of arbitration, to defeat the plaintiff's claim. *Id*. The court views the pleadings and any supporting documentary evidence in the light most favorable to the nonmoving party. *Van Meter*, 207 Ill. 2d at 367-68. "In addition, the court must draw all reasonable inferences from the record in favor of the nonmoving party. [Citation.]" (Internal quotation marks omitted.) *Garlick v. Naperville Township*, 2017 IL App (2d) 170025, ¶ 44. Dismissal of a complaint under section 2-619 is appropriate only if the plaintiff can prove no set of facts that would support a cause of action. *In re Estate of Boyar*, 2013 IL 113655, ¶ 27.

¶ 27 Here, defendants brought their motion to dismiss under subsection (a)(9) of section 2-619, which provides for dismissal on the ground that a claim asserted is "barred by other affirmative matter avoiding the legal effect of or defeating the claim." 735 ILCS 5/2-619(a)(9) (West 2020); *Holubek v. City of Chicago*, 146 Ill. App. 3d 815, 817 (1986). An affirmative matter is "something in the nature of a defense that negates the alleged cause of action completely or refutes a crucial conclusion of material fact unsupported by allegations of specific fact contained in or inferred from the complaint." *Id*. The affirmative matter must be either apparent on the face of the complaint or supported by affidavits or certain other evidentiary materials. *Epstein v. Chicago Board of Education*, 178 Ill. 2d 370, 383 (1997). If the affirmative matter is merely evidence upon which a defendant expects to contest an ultimate fact stated in the complaint, a section 2-619 motion to dismiss should not be used. *Hayna v. Arby's, Inc.*, 99 Ill. App. 3d 700, 710 (1981). A motion pursuant to section 2-619(a)(9) should only be granted where there are no material facts in dispute. *Gelinas v. Barry Quadrangle Condominium Ass'n*, 2017 IL App (1st) 160826, ¶ 14. The motion

is similar to a summary judgment motion because it requires the court to determine whether the existence of a genuine issue of material fact precludes granting the relief sought—an order compelling arbitration—or, absent a question of fact, whether the moving party is entitled to relief as a matter of law. See *Andrews v. Marriott International, Inc.*, 2016 IL App (1st) 122731, ¶ 17.

¶ 28 "If a defendant satisfies its initial burden of presenting affirmative matter defeating a plaintiff's complaint, the burden then shifts to the plaintiff to show that the asserted defense is unfounded or leaves unresolved issues of material fact as to an essential element." *Badette v. Rodriguez*, 2014 IL App (1st) 133004, ¶ 16. If the plaintiff fails to carry the shifted burden of going forward, the complaint will be dismissed. *Epstein*, 178 Ill. 2d at 383.

¶ 29 The right to arbitration is treated as "affirmative matter" that defeats the claim. *Griffith v. Wilmette Harbor Ass'n*, 378 Ill. App. 3d 173, 180 (2007). If the principal did not sign the arbitration agreement, the party seeking to enforce it must present evidence that the representative signing on the principal's behalf had authority to do so. *Curto v. Illinois Manors, Inc.*, 405 Ill. App. 3d 888, 894 (2010) (wife's decision to place her husband in the nursing home and her signature on nursing home documents, including an arbitration agreement, as her husband's representative did not constitute either actual or apparent authority to enter into the arbitration agreement).

¶ 30 Defendants argue that the circuit court erred by denying their section 2-619(a)(9) motion to dismiss and compel arbitration without conducting a hearing or otherwise making specific findings and conclusions of law on the issues raised about the arbitration agreement's validity or scope. Defendants assert that their motion should be granted because the material facts underlying the motion are undisputed, including the facts of the arbitration agreement's existence and scope.

Defendants contend plaintiff never argued that the POAs were nonexistent because he indicated in his deposition that he might have copies of the POAs or be able to obtain copies from a former attorney. Defendants also contend it is disingenuous for plaintiff to fail to provide copies of the POAs and then argue that defendants' inability to produce the POAs is a basis to defeat their motion to dismiss his complaint and compel arbitration. According to defendants, plaintiff abandoned his initial argument that the record was devoid of evidence that he had authority to enter into an arbitration agreement when he indicated in his deposition that he was authorized by the POAs to sign the arbitration agreement on behalf of his father.

¶ 31 Plaintiff argues the trial court correctly denied defendants' motion to dismiss and compel arbitration because they failed to meet their initial burden of proof about the validity of the arbitration agreement. Specifically, defendants failed to prove, as an initial matter, that the arbitration agreement was valid on its face and that plaintiff had the specific authority to bind his father to that agreement because defendants failed to prove the contents of the POAs. Plaintiff states that he complied with any and all discovery requests and was under no obligation to retain the POAs after his father died.

¶ 32 We agree with plaintiff's argument and affirm the judgment of the trial court. Section 2-619(a)(9) motions to dismiss, including motions to compel arbitration, are granted only when the movant meets its initial burden and the opponent fails to submit admissible evidence to refute that evidence. *Hollingshead v. A.G. Edwards & Sons, Inc.*, 396 Ill. App. 3d 1095, 1100 (2009). The party seeking to compel arbitration has the burden to establish that the parties have a valid agreement to arbitrate and the controversy falls within the scope of the arbitration provision. *Hubbert v. Dell Corp.*, 359 Ill. App. 3d 976, 983 (2005). We hold that defendants did not meet

their burden to show that the parties entered into an arbitration agreement and therefore do not reach the issue of the purported agreement's scope.

¶ 33 The record establishes that John P. did not himself sign either the arbitration agreement or the residential agreement. Rather, his son, plaintiff, signed those documents. Whether a non-signatory party is bound to an arbitration agreement is determined by the ordinary principles of contract and agency. *Curto*, 405 Ill. App. 3d at 891. Defendants argue that John P. and his estate are bound by the arbitration agreement because it was signed by plaintiff, who was John P.'s agent pursuant to a POA executed by John P.

¶ 34 An agent's authority to act for the principal can be either actual or apparent,[2] and actual authority can be either express or implied. *Patrick Engineering Inc.*, 2012 IL 113148, ¶ 34. "Express authority is actual authority granted explicitly by the principal to the agent; implied authority is actual authority proved circumstantially by evidence of the agent's position." *Id*. Implied authority "arises when the conduct of the principal, reasonably interpreted, causes the agent to believe that the principal desires him to act on the principal's behalf." *Curto*, 405 Ill. App. 3d at 892. The party alleging an agency relationship must prove it by a preponderance of the evidence. *Granite Properties Ltd. Partnership v. Granite Investment Co.*, 220 Ill. App. 3d 711, 714 (1991).

¶ 35 In *Curto*, 405 Ill. App. 3d at 890-91, a wife sued a nursing home after her husband died while in its care. The nursing home moved to dismiss and compel arbitration based on the

[2] Apparent authority, which is imposed by equity, is not relevant here. It is the authority the principal knowingly permits the agent to assume, or the authority the principal holds the agent out as possessing. It is the authority a reasonably prudent person, exercising diligence and discretion, in view of the principal's conduct, would naturally suppose the agent to possess. *Patrick Engineering Inc. v. City of Naperville*, 2012 IL 113148, ¶ 34.

admissions documents and arbitration agreement the wife had signed under the designations on the forms that she was her husband's guardian/responsible party, legal representative, or representative. *Id*. The trial court denied the motion, concluding that the nursing home failed to meet its initial burden to show that the arbitration agreement was valid and enforceable. *Id*. at 897. Specifically, the court found that the nursing home failed to show that the wife had either actual or apparent authority to bind her husband to the mandatory terms of the arbitration agreement. *Id*. Regarding express and implied actual authority, the nursing home produced no evidence that the husband had either executed a POA appointing his wife as his agent to make legal decisions on his behalf or been present and directed his wife to sign the arbitration agreement. *Id*. at 892-93. Regarding apparent authority, the nursing home produced no evidence that the husband had acted or conducted himself in a way that would have indicated to the nursing home that his wife was his apparent agent for purposes of the arbitration agreement. *Id*. at 895-96.

¶ 36 Here, defendants, by filing their motion to dismiss and compel arbitration, assumed the initial burden to prove through admissible evidence that the arbitration agreement was valid on its face and that plaintiff had authority to sign it. Defendants, however, did not meet that burden because they did not show the contents of the POAs. The terms of the resident agreement and the arbitration agreement did not give plaintiff authority to act as his father's agent. Although plaintiff testified that, at one time, he had some type of durable financial and healthcare POAs, his testimony did not provide information about the actual language of the POAs and the specific powers the POAs granted to or withheld from him. The fact that plaintiff identified himself as having POAs for his father's financial and medical decisions does not establish that he had actual authority to make the legal decision to consent to arbitration on his father's behalf. See *id*. at 893-

95 (discussing with approval decisions from other jurisdictions that ruled family members did not have authority to sign arbitration agreements on behalf of nursing home residents and, even when a healthcare POA was present, spouses lacked authority to sign the arbitration agreements). Accordingly, plaintiff's testimony was not sufficient to meet defendants' burden to show that he had the authority to make legal decisions on his father's behalf and bind him to the terms of the arbitration agreement.

¶ 37 Finally, we reject defendants' contention that the trial court failed to issue a substantive disposition and articulate its reasoning for denying their motion. Our review of the record establishes that the trial court's order clearly articulated the specific reason for its ruling. Furthermore, we conclude that the trial court appropriately did not reach the issues of the scope of the arbitration agreement and the arbitrability of the dispute because defendants failed to satisfy their initial burden to show that the parties had a valid arbitration agreement. *Compare Onni*, 344 Ill. App. 3d at 1104 (*after* the defendants have met their initial burden under a motion to dismiss and compel arbitration, the record must reflect that the trial court complied with the mandate of the Uniform Arbitration Act (710 ILCS 5/1 *et seq*. (West 2000)) to render a substantive disposition by articulating the specific reasons for the court's substantive rulings on the issues raised by the parties regarding the validity and enforceability of the arbitration agreement) *with Curto*, 405 Ill. App. 3d at 897 (based on the appellate court's conclusion that the arbitration agreement was invalid because the wife lacked authority to enter into that agreement on behalf of her husband, it was not necessary for the court to address the remaining issues raised on appeal of the motion to compel arbitration).

¶ 38 III. CONCLUSION

¶ 39 For the foregoing reasons, we affirm the judgment of the circuit court. The cause is remanded to the circuit court for further proceedings.

¶ 40 Affirmed and remanded.