IN THE SUPREME COURT OF THE STATE OF NEVADA

LEWIS HELFSTEIN; MADALYN HELFSTEIN; SUMMIT LASER PRODUCTS, INC.; AND SUMMIT TECHNOLOGIES, LLC,
Appellants,
vs.
UI SUPPLIES; UNINET IMAGING, INC.; AND NESTOR SAPORITI,
Respondents.

No. 56383

FILED

APR 07 2011

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

This is an appeal from a district court order denying a motion to compel arbitration and for a stay or dismissal. Eighth Judicial District Court, Clark County; Elizabeth Goff Gonzalez, Judge.

Facts

In 2004, appellants Lewis and Madalyn Helfstein and plaintiffs in the action below (who are not parties to this appeal) entered into agreements to form and operate appellant Summit Technologies, Inc., and for plaintiffs to provide consulting services for the corporation until December 31, 2014. In 2007, the Helfsteins, acting on behalf of Summit Technologies, entered into an agreement with respondents, under which respondents purchased certain Summit Technologies assets. The asset purchase and sale agreement (PSA) provided that any controversy or claim arising out of or relating to the agreement shall be settled by binding arbitration in Nassau County, New York.

In the district court, plaintiffs filed a complaint against appellants and respondents, asserting contract- and tort-based causes of action, based in part on allegations that respondents represented to plaintiffs that respondents had obtained the rights to the consulting agreement between plaintiffs and Summit Technologies, but respondents refused to compensate plaintiffs for performing the consulting services.

After plaintiffs voluntarily dismissed the action against appellants, respondents filed an amended answer to the complaint, a counterclaim against plaintiffs, and a cross-claim against appellants. The cross-claim alleged that appellants, in executing the PSA, represented and warranted that the consulting agreement between plaintiffs and Summit Technologies was "not being assumed" and that appellants misrepresented the nonassignment of the consulting agreement, damaging respondents and exposing them to liability on plaintiffs' claims. Respondents sought monetary damages on the cross-claim and indemnity for any damages that plaintiffs might recover on their claims against respondents.

Based on provisions in the PSA, appellants moved to stay or dismiss the cross-claim, to compel arbitration, and to enforce the agreement's forum selection clause. Respondents opposed the motion, and the district court denied it, finding that the PSA was not the basis for plaintiffs' complaint, so the arbitration and forum provisions did not apply. This appeal followed.

Discussion

On appeal, appellants argue that respondents' allegations against appellants arise out of or are related to the PSA, and thus the arbitration and forum selection clauses in that agreement should have been enforced. Respondents assert that because the plaintiffs brought their action against respondents in Nevada based on alleged breaches of the consulting agreement, respondents were properly allowed to bring a cross-claim against appellants under NRCP 13(h), and under NRCP 14(a), they were properly allowed to join appellants in order to seek indemnity for any damages that they might have to pay plaintiffs. Respondents point out that they were not parties to the consulting agreement, and only appellants were parties to both the consulting agreement and the PSA. Thus, respondents assert that appellants are indispensable to the

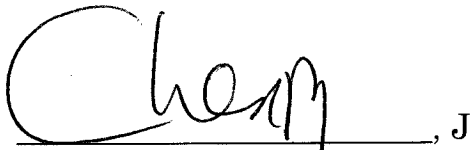
consulting agreement dispute and to respondents' defense against plaintiffs' claims.

Whether a dispute is subject to arbitration is a contract interpretation question, subject to de novo review on appeal. Clark Co. Public Employees v. Pearson, 106 Nev. 587, 590, 798 P.2d 136, 137 (1990). Nevada recognizes that strong public policy favors arbitration, and any doubts as to whether claims fall within the scope of the arbitration agreement must be resolved in favor of arbitration. Id. at 591, 798 P.2d at 138.

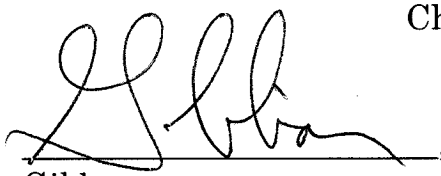
Having considered the parties' arguments and the record, we conclude that the arbitration and forum selection clauses apply to respondents' breach of contract- and fraud-based claims and request for indemnity against appellants. The arbitration and forum selection clauses state that they cover "any controversy or claim arising out of or relating to" the PSA. Respondents, in bringing third-party claims against appellants, specifically alleged that appellants made fraudulent representations under the PSA, breached the terms of the PSA, and failed to comply with their duties and representations under the PSA. See Nat. City Golf v. Higher Ground Country Club, 641 F. Supp. 2d 196, 209 (S.D.N.Y. 2009) (recognizing that "'arising out of or relating to'" language in an arbitration clause has been held to be the "'paradigm of a broad clause'" (quoting Collins & Aikman Products Co. v. Bldg. Systems, 58 F.3d 16, 20 (2d Cir. 1995)), and that "if the allegations underlying the claims so much as touch matters covered by the parties' agreements, then those claims must be arbitrated") (internal quotations omitted). And the only agreement governing the relationship between appellants and respondents is the PSA, containing the arbitration clause. See Nat. City Golf, 641 F. Supp. 2d at 210 (concluding that the third-party plaintiff's claims against the third-party defendant for breach of warranty, indemnification, and

contribution fell under parties' service agreement and were therefore subject to arbitration, since the allegations could not be evaluated without considering representations made in the service agreement itself). Respondents' claims are based on appellants' actions in allegedly inducing respondents to purchase Summit Technologies, and those claims cannot be resolved without reference to the PSA. Thus, because the PSA's arbitration and forum selection clauses apply to respondents' claims against appellants, the district court incorrectly denied appellants' motion, and we reverse. We remand this matter to the district court for it to enter an order compelling arbitration and dismissing the district court action as it pertains to respondents' cross-claim against appellants, without prejudice to either respondents' or appellants' rights to litigate their disputes through arbitration in Nassau County, New York.

It is so ORDERED.[1]



_____, J.
Cherry



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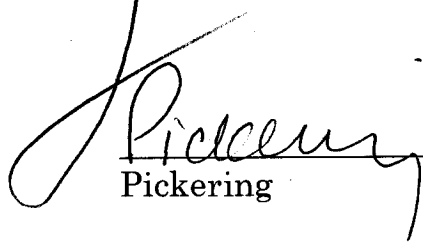
Gibbons



_____, J.
Pickering

cc: Hon. Elizabeth Goff Gonzalez, District Judge
Nathaniel J. Reed, Settlement Judge
Foley & Oakes, PC
Kravitz, Schnitzer, Sloane, Johnson & Eberhardy, Chtd.
Eighth District Court Clerk

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[1]We are not persuaded by respondents' indispensable party argument. See, e.g., General Refractories Co. v. First State Ins. Co., 500 F.3d 306 (3d Cir. 2007) (holding that simply because a party has a right to seek contribution or indemnity from a nonparty does not render the latter indispensable under FRCP 19).