142 Nev., Advance Opinion 70

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ELIZABETH A. BROWN
CLERK OF SUPREME COURT

IN THE SUPREME COURT OF THE STATE OF NEVADA

LEGACY FUNERAL HOLDINGS OF NEVADA, LLC, D/B/A DAVIS FUNERAL HOME & MEMORIAL PARK, A DOMESTIC LIMITED LIABILITY COMPANY,
Appellant,
vs.
ALICE M. OUZENIAN, INDIVIDUALLY AND AS CO-SPECIAL ADMINISTRATOR OF THE ESTATE OF AIDA OUZENIAN; ANGELA GABOURY, AS CO-SPECIAL ADMINISTRATOR OF THE ESTATE OF AIDA OUZENIAN; ALEK OUZENIAN, INDIVIDUALLY; AND ART OUZENIAN, INDIVIDUALLY,
Respondents.

No. 91044

Appeal from a district court order denying a motion to compel arbitration. Eighth Judicial District Court, Clark County; Erika Mendoza, Judge.

Affirmed in part, reversed in part, and remanded with instructions.

Schnitzer Johnson & Watson, Chtd., and Gina M. Mushmeche, Michael R. Esposito, and Jacob A. Suty, Las Vegas,
for Appellant.

Christian Morris Trial Attorneys and Christian M. Morris and Jamie N. McInelly, Henderson,
for Respondents.

BEFORE THE SUPREME COURT, STIGLICH, CADISH, and LEE, JJ.

OPINION

By the Court, CADISH, J.:

This appeal arises from a dispute over an agreement for cremation services, which appellant Legacy Funeral Holdings of Nevada and respondent Alice Ouzenian signed. After Legacy completed the cremation services, Alice and her siblings, respondents Alek and Art Ouzenian, sued Legacy for breach of contract and various torts, alleging that Legacy failed to provide promised notice and an opportunity to cancel the services before their completion. Legacy moved to compel arbitration pursuant to the agreement. The district court denied the motion, concluding that factual issues remained concerning the enforceability of the agreement and its arbitration provision. We address whether those threshold enforceability issues must be resolved by the arbitrator under NRS 38.219(3), despite Legacy's failure to invoke the agreement's delegation provision below, and whether nonsignatories are bound by the arbitration provision under the doctrine of equitable estoppel.

Because NRS 38.219(3) requires the arbitrator to consider the enforceability of a contract containing a valid arbitration clause, we conclude that the district court erred by denying Legacy's motion to compel arbitration and reserving that threshold enforceability question for itself. Although Legacy did not invoke the agreement's delegation provision when it moved to compel arbitration, NRS 38.219(3) independently requires the arbitrator to resolve whether a contract containing a valid agreement to arbitrate is enforceable. We also conclude that, under equitable estoppel, nonsignatories are bound by an arbitration agreement when they seek to derive a direct benefit from the contract containing the arbitration provision. Because

nonsignatories Art and Alek seek such a benefit, the arbitration provision applies to them. Accordingly, we reverse and remand for the district court to grant Legacy's motion to compel arbitration as to the Ouzenians and stay the district court proceedings under NRS 38.221(7). We also affirm the portion of the district court's order denying the motion to compel arbitration as to the decedent's estate.

FACTS AND PROCEDURAL HISTORY

Alice, Art, and Alek entered into an agreement with Legacy for the cremation of their mother Aida's remains on August 14, 2024. The agreement was comprised of both a Purchase Agreement and an Authorization for Cremation. The Purchase Agreement contained an arbitration clause and an integration clause. Only Alice signed the Purchase Agreement, while all three Ouzenians signed the Authorization for Cremation. Both forms were executed on the same day.

The Ouzenians allege that over the next two weeks, they made several attempts to contact Legacy to cancel the cremation but never received a return call. On August 26, Legacy's funeral director sent a text message to Art confirming that Legacy's technicians would contact him 30 minutes before the cremation to discuss any concerns. On September 2, Legacy cremated Aida's body without notification. The following day, Legacy's funeral director informed Art via text message that his mother's remains had been cremated.

The Ouzenians and Aida's estate sued Legacy for breach of contract; breach of the implied covenant of good faith and fair dealing; breach of fiduciary duty; negligence/negligence per se; negligent hiring, training, retention, and supervision; and negligent infliction of emotional distress based on Legacy's alleged failure to provide notice and an opportunity to cancel before performing the cremation. As relevant here, Legacy moved to dismiss the

proceedings to enforce the arbitration agreement under NRS 38.219.[1] The Ouzenians opposed, arguing Legacy failed to show that all of the plaintiffs agreed to arbitrate the claims, while acknowledging that "Alice might have agreed to arbitrate her individual claims if the [Purchase Agreement] is enforceable under Nevada law."

The district court denied Legacy's motion based on the possibility that the contract itself was unenforceable, finding that the Purchase Agreement and Authorization were "silent as to cancellation of the cremation" and that "the inability [to] cancel the cremation would lead to serious doubts as to if there was ever a valid and enforceable contract for cremation services." The court further found that because the estate, Alek, and Art did not sign the Purchase Agreement, they could not be bound by the arbitration clause. The court determined that equitable estoppel did not overcome that shortcoming because the Ouzenians and the estate alleged that the agreement "extended beyond the document with the arbitration clause." The court acknowledged that Alice signed the Purchase Agreement "and normally would be bound to it, but based on the specific facts alleged in the Complaint, there [were] outstanding questions of fact to resolve before determining whether the purchase agreement and/or arbitration clause contained therein is enforceable." Last, the court stated that it would reconsider the arbitration clause as to Alice pending further factual development. Legacy appeals under NRS 38.247(1)(a).

[1]While Legacy moved to dismiss under NRS 38.219, the proper procedure when a motion to compel arbitration is granted is to stay the proceedings under NRS 38.221(7).

DISCUSSION

The district court erred in reserving the issue of the enforceability of the agreement for cremation services to itself because, under NRS 38.219(3), that issue should have been determined by the arbitrator

Legacy first argues that the Purchase Agreement incorporates the American Arbitration Association (AAA) rules and thus delegates issues of enforceability and arbitrability of the arbitration provision to the arbitrator. *See Uber Techs., Inc. v. Royz*, 138 Nev. 690, 695, 517 P.3d 905, 910 (2022) (recognizing that "incorporating the AAA's rules, even without more, constitutes clear and unmistakable evidence of intent to submit the question of arbitrability to the arbitrator"). The Ouzenians contend that Legacy waived this argument by failing to raise it in the district court. We agree that Legacy waived its contractual delegation argument. "A point not urged in the trial court, unless it goes to the jurisdiction of that court, is deemed to have been waived and will not be considered on appeal." *Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981). That waiver principle applies where a party advocating for arbitration fails to raise a delegation-clause argument in district court. *See Express Scripts, Inc. v. Aegon Direct Mktg. Servs., Inc.*, 516 F.3d 695, 701-02 (8th Cir. 2008) (holding that respondent waived its argument that the parties incorporated the AAA rules into their agreement by failing to raise the issue in district court); *In re Checking Acct. Overdraft Litig.*, 754 F.3d 1290, 1298 (11th Cir. 2014) (holding that a party waived its argument that an arbitrator must determine arbitrability pursuant to a delegation clause by not raising it below).

But Legacy's failure to invoke the contractual delegation provision does not resolve who must decide the enforceability of the Purchase Agreement, apart from the enforceability of the arbitration provision contained

therein. Legacy separately argues that NRS 38.219(3) requires the arbitrator to decide that issue. We agree.

We review orders denying motions to compel arbitration de novo. *Uber Techs.*, 138 Nev. at 692, 517 P.3d at 908. Absent a delegation clause, "[u]nder Nevada law, district courts typically decide the threshold question of whether a dispute is subject to an arbitration agreement." *Id.* at 690, 517 P.3d at 907; *see* NRS 38.219(2). But NRS 38.219(3) creates a separate rule for determining the enforceability of an agreement containing an arbitration clause: "[a]n arbitrator shall decide whether a condition precedent to arbitrability has been fulfilled and whether a contract containing a valid agreement to arbitrate is enforceable." Thus, although Legacy waived its argument that the parties themselves delegated the question of the arbitration clause's enforceability to the arbitrator, the legislature has independently assigned the question of the contract's enforceability to the arbitrator.

The Ouzenians' arguments against arbitration focus not on the validity of the arbitration provision but rather on the substantive enforceability of the entire agreement. Specifically, the Ouzenians contend that the agreement is unenforceable because the "contract at issue lacked any terms as to how to cancel the agreement or cremation," which is also the basis for their breach of contract and breach of the implied covenant of good faith and fair dealing claims below. Thus, although the Ouzenians' claims depend on the existence of an agreement for cremation services, they dispute whether the agreement is enforceable based on the circumstances surrounding the alleged right to cancel.

The district court pointed to this dispute in denying the motion to compel arbitration, finding "there is information to suggest that possibly recission would be appropriate or that it would be unenforceable for various

reasons that depend on a factual analysis of what actually happened here." But whether those facts render the Purchase Agreement unenforceable is precisely the question NRS 38.219(3) assigns to the arbitrator. The statute does not condition the arbitrator's authority on the absence of factual disputes concerning enforceability; rather, it requires the arbitrator to decide whether a contract containing a valid agreement to arbitrate is enforceable. Accordingly, we conclude that the district court erred by reserving the issue of the contract's enforceability for itself and denying Legacy's motion to compel arbitration on that basis.

The district court erred in finding that Alek and Art are not bound by the Purchase Agreement's arbitration clause

Legacy challenges the district court's finding that the Purchase Agreement and Authorization for Cremation were separate contracts and, consequently, that Alek and Art were not bound by the Purchase Agreement's arbitration clause. Legacy argues that although Alek and Art did not sign the Purchase Agreement, equitable estoppel binds them to its arbitration provision because they seek a direct benefit from the agreement. Legacy further contends that where nonsignatories assert claims derived from a contract, the arbitration clause within that contract binds them. We agree.

"Equitable estoppel precludes a party from claiming the benefits of a contract while simultaneously attempting to avoid the burdens that contract imposes." *RUAG Ammotec GmbH v. Archon Firearms, Inc.*, 139 Nev. 465, 472, 538 P.3d 428, 435 (2023) (internal quotation marks omitted). Thus, "a nonsignatory is estopped from refusing to comply with an arbitration clause when it receives a direct benefit from a contract containing an arbitration clause." *Id.* (internal quotation marks omitted). A nonsignatory, however, is not bound merely because its claim relates to an agreement containing the arbitration provision; the nonsignatory must seek, through its claims, to derive

a direct benefit from that agreement, such as by asserting a claim for breach of that very agreement. *El Jen Med. Hosp., Inc. v. Tyler*, 139 Nev. 322, 333, 535 P.3d 660, 670 (2023).

Here, Alice, the signatory to the Purchase Agreement, is bound by its arbitration provision. Alek and Art, although they did not sign the Purchase Agreement, are likewise bound under principles of equitable estoppel. The complaint asserts claims for breach of contract and breach of the implied covenant of good faith and fair dealing on behalf of the three Ouzenians and the estate, alleging that Legacy agreed to provide cremation services, assured the Ouzenians they could change their decision before the cremation, and then proceeded with the cremation without providing the promised notice or opportunity to cancel. The Ouzenians seek damages based on Legacy's alleged failure to honor those obligations. Thus, Alek and Art seek to enforce rights they allege arose from the parties' cremation-services transaction while avoiding the arbitration provision contained in the written agreement governing that transaction.

The fact that the Ouzenians assert tort and negligence theories in addition to breach-of-contract theories does not alter this conclusion. Their claims rest on the same alleged failure to honor the promised opportunity to withhold consent or cancel the cremation before it occurred. Because Alek and Art seek to recover from breach of the contractual relationship while attempting to avoid the arbitration provision in the contract that governs that relationship, we conclude that equitable estoppel applies.

Legacy claims that the estate is also bound to the arbitration clause but does not present any argument connecting the heirs' obligations under the contract to the decedent's estate. *Cf. id.* at 329, 535 P.3d at 667-68 (recognizing that under NRS 41.085, a decedent cannot bind a statutory heir's

wrongful death claim to arbitration because an heir's claim is distinct from the decedent's and estate's claims). Because Legacy fails to cogently argue why the estate should be bound to the arbitration provision, we affirm the portion of the district court's order denying the motion to compel arbitration as to the decedent's estate. *Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (explaining that this court will not consider claims unsupported by cogent argument and relevant authority).

We do not decide whether the Ouzenians in fact had a right to cancel, whether Legacy agreed to provide such a right, or whether any alleged cancellation or notification term is part of the Purchase Agreement. Those issues concern the merits and enforceability of the parties' agreement and are thus for the arbitrator to decide. At this stage, the relevant question is whether Alek and Art seek a direct benefit from the contract containing the arbitration provision. Because they do, they are equitably estopped from avoiding that provision.

CONCLUSION

Although Legacy did not invoke the Purchase Agreement's delegation provision in litigating the motion to compel arbitration in the district court and therefore waived the issue of whether that provision applies to delegate to the arbitrator any question as to the validity of the arbitration clause, NRS 38.219(3) independently requires the arbitrator to determine whether the Purchase Agreement is enforceable. The district court therefore erred by reserving that issue for itself to resolve and denying Legacy's motion to compel arbitration. Alice, as a signatory to the Purchase Agreement, is bound by its arbitration provision, and Alek and Art are likewise bound under equitable estoppel because they seek to derive a direct benefit from the contractual relationship containing the arbitration provision by suing for breach thereof. Accordingly, we affirm in part the portion of the district court's

order denying the motion to compel arbitration as to the decedent's estate, but we reverse in part and remand for the district court to enter an order granting the motion to compel arbitration as to Alice, Art, and Alek and staying the proceedings per NRS 38.221(7).



Cadish, J.

We concur:



Stiglich, J.



Lee, J.