In The
Court of Appeals
Seventh District of Texas at Amarillo

No. 07-20-00126-CV

JETALL COMPANIES, INC., APPELLANT

V.

JPG WACO HERITAGE, LLC, APPELLEE

On Appeal from the 74th District Court
McClennan County, Texas
Trial Court No. 2019-4557-3, Honorable Gary Coley, Presiding

June 30, 2020

MEMORANDUM OPINION

Before QUINN, C.J., and PARKER and DOSS, JJ.

Jetall Companies, Inc. appeals from orders denying a motion to compel arbitration and issuing a temporary injunction. Jetall had sued JPG Waco Heritage, LLC, for breach of contract and fraud. The dispute arose from a purported agreement under which JPG allegedly contracted to sell realty to Jetall. As part of the suit, Jetall also filed a lis pendens to thwart the sale of the realty to a third-party. So too did Jetall move to compel arbitration. The latter motion was denied. The trial court also expunged the lis pendens and entered a temporary injunction barring the filing of others by Jetall, Ali Choudhri and those entities

they own and control.[1] Jetall complains of the decision to deny arbitration and issue an injunction. We modify the temporary injunction and affirm it and the order denying arbitration.[2]

Motion to Compel Arbitration

Jetall initially argues that the trial court erred in denying its motion to compel arbitration because 1) the agreement to arbitrate was valid and enforceable and 2) the dispute in question fell within the agreement's terms. We overrule the issue.

One seeking reversal has the burden to illustrate its entitlement to same. Thus, if the order or judgment under attack is founded upon multiple grounds, the appellant has the burden to establish why none of those grounds support the decision. *See In re Estate of Roach*, No. 07-16-00315-CV, 2017 Tex. App. LEXIS 4028, at *4 (Tex. App.—Amarillo May 3, 2017, no pet.) (mem. op.) (holding that an appellant must challenge all independent grounds or bases that fully support a complained of ruling or judgment); *accord Watson v. Schrader,* No. 11-18-00064-CV, 2020 Tex. App. LEXIS 1757, at *4 (Tex. App.—Eastland Feb. 28, 2020, no pet.) (mem. op.) (quoting *Matlock v. Fitzgerald,* No. 11-15-00211-CV, 2017 Tex. App. LEXIS 10049, 2017 WL 4844439, at *3 (Tex. App.—Eastland Oct. 26, 2017, no pet.)) (mem. op.) (holding the same with regards to judgments)). If such an independent ground goes unquestioned by appellant, we accept its validity. *Watson v. Schrader*, 2020 Tex. App. LEXIS 1757, at *4.

[1] Choudhri, the president of Jetall, had filed a lis pendens against the same property as part of an earlier, separate action he initiated. The trial court in that suit voided the lis pendens and "suggest[ed]" he not file another. Several days later, the company which Choudhri concedes in his brief "is owned and controlled by" him did what the trial court suggested he forego.

[2] Because this appeal was transferred from the Tenth Court of Appeals, we are obligated to apply its precedent when available in the event of a conflict between the precedents of that court and this Court. *See* TEX. R. APP. P. 41.3.

Among other things, JPG sought to avoid arbitration on the grounds of waiver. That is, it asserted within its response to Jetall's motion to arbitrate that "Jetall and its owner and president, Choudhri, have waived their right to compel arbitration by filing two lawsuits and four separate lis pendens over claims Jetall argues fall under the scope of the alleged arbitration agreement." *See Perry Homes v. Cull*, 258 S.W.3d 580, 590 (Tex. 2008) (explaining that one may waive the right to arbitrate by substantially invoking the judicial process to the other party's detriment or prejudice). Furthermore, in denying Jetall's motion, the trial court entered a general order without specifying any particular ground upon which it relied. Given this and the foregoing authority describing an appellant's burden on appeal, it was encumbent upon Jetall to explain why the claim of waiver did not support the trial court's decision. Yet, it did not mention waiver in its initial appellant's brief or otherwise attempt to illustrate its applicability. Moreover, the omission was noted by JPG in its appellee's brief. In conjunction therewith, it suggested the circumstance warranted affirmance of the order and cited authority supporting its contention. Having failed to address waiver means Choudhri did not carry his appellate burden to address all grounds upon which the trial court's decision could be based.

Nevertheless, after this court began its disposition of the appeal, Choudhri filed a reply brief. It contained, among other things, a brief discussion as to why the trial court purportedly could not find he waived arbitration. The effort came too late. An appellant may not raise additional or new grounds attacking the order or judgment in question via a reply brief. *Suite 900, LLC v. Vega*, No. 02-19-00271-CV, 2020 Tex. App. LEXIS 4008, at *32 n. 19 (Tex. App.—Fort Worth May 21, 2020, no pet.) (mem. op.); *Cebcor Serv.*

Corp. v. Landscape Design & Constr., Inc., 270 S.W.3d 328, 334 (Tex. App.—Dallas 2008, no pet.); *Howell v. Tex. Workers' Comp. Comm'n*, 143 S.W.3d 416, 439 (Tex. App.—Austin 2004, pet. denied). This is true even if they are in response to argument within an appellee's brief. *Gadekar v. Zankar*, No. 12-16-00209-CV, 2018 Tex. App. LEXIS 3934, at *44 (Tex. App.—Tyler May 31, 2018, no pet.) (mem. op.) (stating that the rules of appellate procedure do not permit an appellant to raise a new issue that was not discussed in his original brief, even if the new issue is raised in response to a matter in the appellee's brief); *Barrios v. State*, 27 S.W.3d 313, 322 (Tex. App.—Houston [1st Dist.] 2000, pet. ref'd) (stating that "[p]ointing out the *absence* of an appellant's argument does not raise the argument or entitle appellant to assert that argument for the first time in his reply brief" and "[i]f the rule were construed otherwise, an appellee could never point out matters not raised by an appellant for fear of reopening the door"). Thus, Choudhri's failure to address the topic of waiver in his appellant's brief requires us to affirm the trial court's decision.

Temporary Injunction

Next, Jetall contends the trial court erred in granting the injunction because a necessary party was not joined in the suit and the injunction was overly broad. Each contention implicated Choudhri. He is the supposed necessary party because he too was encompassed within the injunction, according to Jetall. Alternatively, if he is not a necessary party, then enjoining him and entities he controls from filing a lis pendens allegedly rendered the injunction overbroad. We overrule this issue in part and modify the injunction in part.

Both issues may be addressed in one argument. First, we begin by observing that it matters not whether Choudhri was joined as a party. Even if he were not joined, Texas Rule of Civil Procedure 683 specifies that an injunction or restraining order binds the parties to the action, and their officers, agents, servants, employees, and attorneys. TEX. R. CIV. P. 683. So too does it bind those persons in active concert or participation with them if those additional entities or persons receive actual notice of the order by personal service or otherwise. *Id.* As indicated earlier, Choudhri is the president of Jetall. As such, he was bound by the injunction per Rule 683. In expressly naming him within the edict, the trial court simply did that which the rule of procedure already allowed. So, it mattered not whether he was joined in the underlying suit as a necessary party.

As for that portion of the edict barring Jetall and Choudhri from filing a lis pendens "either in their individual capacity or ***in the capacity of any entity which they own[s] or control[s]***," that too is permissible under Rule 683, with one caveat. (Emphasis added). If the italicized category of entities are not parties, agents, officers, servants, or the like of either Jetall or Choudhri then they must be in active concert or participation with Jetall or Choudhri and receive actual notice of the order. Thus, we reform the temporary injunction to reflect that.[3] *See Wright v. Limining*, No. 01-19-00060-CV, 2019 Tex. App. LEXIS 6497, at *14–15 (Tex. App.—Houston [1st Dist.] July 30, 2019, no pet.) (mem. op.) (recognizing that an appellate court may reform an overly broad temporary order and reforming the temporary injunction to conform to Rule 683).

[3] A supplemental record indicates that the trial court executed an amended temporary injunction order, dated May 29, 2020. It too purports to enjoin Choudhri and Jetall "either in their individual capacity or in the capacity of any entity which they own[s] or control[s]". Thus, we reform it in like manner.

We affirm the order denying the motion to compel arbitration. We modify the original and amended temporary injunction to prohibit and enjoin Jetall and Choudhri and those persons and entities in active concert or participation with them who receive actual notice of the order from filing any additional, amended, or original lis pendens on the property located at 215 Washington Avenue, Waco, Texas 76701. As modified, the original and amended temporary injunction and order granting same are affirmed.

Per Curiam