NUMBER 13-18-00363-CV

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI – EDINBURG

UETA OF CALIFORNIA, INC., UETA, INC., DUTY FREE AMERICAS, INC., AND SYG VENTURES GENERAL PARTNERSHIP, **Appellants,**

v.

GLORIA BRADY, INDIVIDUALLY, AND AS INDEPENDENT EXECUTRIX OF THE ESTATE OF HAROLD J. BRADY (DECEASED), **Appellee.**

On appeal from the 139th District Court of Hidalgo County, Texas.

MEMORANDUM OPINION

Before Justices Benavides, Perkes, and Tijerina
Memorandum Opinion by Justice Tijerina

Appellants UETA of California, Inc., UETA, Inc., Duty Free Americas, Inc., and SYG Ventures General Partnership (collectively UETA) appeal the trial court's order denying their motion to compel arbitration. By two issues, which we address together, UETA argues that the trial court erred by granting a motion to stay arbitration in favor of appellee, Gloria Brady, Individually and as Independent Executrix of the Estate of Harold J. Brady (Gloria), pursuant to a mandatory arbitration clause in the parties' agreement. We affirm.

I. BACKGROUND

In November 1996, the Bradys[1] and UETA formed SYG Venture General Partnership (the Partnership) pursuant to a general partnership agreement (Partnership Agreement) to manage two acres of property in San Diego, California (parcel four). Gloria owns 17.3% of the Partnership while UETA owns 82.7%. The Partnership later acquired parcels one through three in 1999 for a total of four parcels of property. Parcels one, two, and three were parking lots that generated revenue from parking fees. The Bradys and World Duty Free-Americas, Inc. (WDFA), a subsidiary of UETA, executed the First Amendment to the Partnership Agreement and the Partners' Agreement to account for the additional property. The Partnership executed a ground lease as landlord with WDFA as tenant to lease parcel four for the construction and operation of a duty-free store.[2]

Thereafter, the government filed a condemnation proceeding seeking to acquire three parcels of property from the Partnership. The Partners' Agreement explicitly addressed condemnation and contained various formulas for calculating the amounts to

[1] Harold Brady died and did not participate in litigation proceedings.

[2] The Bradys signed the Ground Lease on behalf of the Partnership, but they were not "parties" to the Ground Lease, as the Partnership was the landlord.

be distributed to the partners, depending on which parcels were condemned. The Partnership sold parcel four and two other parcels to the United States for $42 million.

According to Gloria, UETA failed to properly distribute the Bradys' share of the sale proceeds. In September 2017, Gloria sued the Partnership and UETA alleging breach of contract, tortious misconduct, breach of fiduciary duty, fraud, and civil conspiracy among other things. Gloria claims the Partnership miscalculated the Bradys' share at $5,837,219.91 and then only distributed $3,000,000 to her. UETA filed a motion to dismiss Gloria's suit, arguing that the Partnership contained a forum selection clause requiring the suit to be litigated in San Diego, California. After a hearing on the matter, the trial court denied UETA's motion in March 2018.

Thereafter, UETA filed a motion to stay the litigation proceedings and compel arbitration pursuant to an arbitration provision in the Ground Lease. Gloria filed a motion to stay arbitration, arguing that she did not agree to arbitrate any claims against UETA and that UETA had failed to show an enforceable arbitration agreement. Following a hearing, the trial court granted Gloria's motion to stay arbitration and denied UETA's motion to compel arbitration. This appeal followed.

II. MOTION TO ARBITRATE[3]

UETA argues that the trial court improperly denied their motion to arbitrate because Gloria's claims "fall squarely within the scope of the arbitration agreement" in the Ground Lease. We disagree.

A. Standard of Review

[3] The parties agree that all agreements are governed by California law, and the trial court took judicial notice of this fact; thus, we apply California law in conducting our analysis.

Under California law, "[t]here is no uniform standard of review for evaluating an order denying a motion to compel arbitration . . . . If the court's order is based on a decision of fact, then we adopt a substantial evidence standard . . . . Alternatively, if the court's denial rests solely on a decision of law, then a de novo standard of review is employed." *Avery v. Integrated Healthcare Holdings, Inc.*, 218 Cal. App. 4th 50, 159 Cal. Rptr. 3d 444, 452 (2013).

> [W]hen considering a motion to compel arbitration, the court must initially determine whether the parties agreed to arbitrate the dispute in question, which involves two considerations: (1) whether there is a valid agreement to arbitrate between the parties; and (2) whether the dispute in question falls within the scope of that arbitration agreement.

Bruni v. Didion, 160 Cal. App. 4th 1272, 73 Cal. Rptr. 3d 395, 405 (2008). Here, the de novo standard applies because the issue turns on whether the parties' agreement set forth an enforceable arbitration provision. *See Avery*, 159 Cal. Rptr. at 452.

B. Discussion

1. Is there a valid agreement to arbitrate?

First, we determine whether an agreement to arbitrate exists. The Partnership Agreement and the Partners' Agreement do not contain arbitration provisions. Conversely, both agreements contain a forum selection clause for disputes to be litigated in San Diego, California. Only the Ground Lease contains an arbitration provision, which states:

> Any controversy or claim between the parties arising out of or relating *to this lease*, any provision of it, or any breach or alleged breach of it, except controversies involving less than $1,000, will be settled by arbitration according to the rules of the American Arbitration Association, and judgment on the award rendered by the arbitrators may be entered in any court having jurisdiction of the award.

(Emphasis Added.) Thus, the evidence demonstrates that there is an agreement to arbitrate a set of claims. *SeeBruni*, 73 Cal. Rptr. at 405.

2. Does the dispute fall within the scope?

UETA asserts that the Ground Lease's arbitration provision encompasses claims relating to the Partners' Agreement and the Partnership Agreement because all documents were executed contemporaneously. UETA relies on *Pers. Sec. & Safety Sys. Inc. v. Motorola Inc*. to argue that "separate agreements executed contemporaneously by the same parties, for the same purposes, and as part of the same transaction, are to be construed together."[4] 297 F.3d 388, 393 (5th Circ. 2002). However, the Ground Lease and the Partners' Agreement were not executed by the same parties. The Bradys are a party to the Partnership Agreement and Partners' Agreement while the Partnership is a party to the Ground Lease.[5] Moreover, the agreements were not executed for the same purposes because only the Ground Lease was executed for the construction and development of a duty-free store on parcel four. Furthermore, *Motorola* holds that "in the absence of a contrary expression of intent," "where the parties include a *broad* arbitration provision in an agreement that is 'essential' to the overall transaction, we will presume that they intended the clause to reach all aspects of the transaction—including those aspects governed by other contemporaneously executed agreements that are part of the

[4] We note that this is a Fifth Circuit Court of Appeals case, but California is governed by the Ninth Circuit Court of Appeals.

[5] The parties agreed that the Partnership's role in the Ground Lease is merely as landlord:

> [UETA], the Bradys and the Partnership agree that [UETA's] roles as Lessee [in the Ground Lease] and as a partner in the Partnership are to be separate and distinct. The Partnership shall not have any involvement in the retail operations conducted on the Property or liability therefor, except as a landlord. [UETA] acknowledges the existence of its differing roles and agrees that it shall use its best efforts to keep such roles separate and distinct.

same transaction." *Id.* at 394–95 (emphasis added). Here, the arbitration provision in the Ground Lease is limited to disputes within the lease, and there is a contrary expression of intent because the parties agreed to "irrevocably submit to the jurisdiction of any state or federal court sitting in San Diego, California" in the Partnership Agreement and the Partners' Agreement. Thus, we reject UETA's argument.

Next, we determine whether Gloria's claims fall within the scope of the arbitration provision. *See Bruni*, 73 Cal. Rptr. at 405. The arbitration provision requires the dispute to "arise out of" or "relate to" the Ground Lease. "General contract law principles include that the basic goal of contract interpretation is to give effect to the parties' mutual intent at the time of contracting. The words of a contract are to be understood in their ordinary and popular sense." *Mitri v. Arnel Mgmt. Co*., 157 Cal. App. 4th 1164, 69 Cal. Rptr. 3d 223, 227 (2007). While the phrase "any controversy or claim between the parties" is very broad, it is necessarily qualified by what follows: "relating to this lease." If the parties intended to arbitrate all claims rather than just claims related to the Ground Lease, they could have included an arbitration provision in the Partners' Agreement and the Partnership Agreement. *See Rice v. Downs*, 248 Cal. App. 4th 175, 203 Cal. Rptr. 3d. 555, 563 (2016) ("The Court should attempt to give effect to the parties' intentions, in light of the usual and ordinary meaning of the contractual language . . . ."). Giving the words of the contract their plain meaning, we conclude that the arbitration clause requires the parties to arbitrate any dispute or controversy arising out of or relating to the lease. *See Ramos v. Superior Court*, 28 Cal. App. 5th 1042, 239 Cal. Rptr. 3d 679, 689 (2018).

Nonetheless, UETA argues that Gloria's claims are inseparable from the Ground Lease. However, Gloria did not allege a violation of the Ground Lease in her petition. In her petition, Gloria asserted the following:

> UETA Defendants comingled partners' funds with those of the partnership, failed to accurately report all partnership transactions, and failed to accurately adjust the partners' capital accounts . . .
>
> [T]he Partners Agreement requires that all amounts realized from the sale of the Parcels be distributed to the partners upon receipt. The Partners Agreement contained various formulas for calculating the amounts to be distributed to the partners, depending upon whether the sale involved all or only part of the Parcels . . .
>
> The alleged formula utilized by [UETA] and [the Partnership] in calculating the $5,837,219.91 was improper and not authorized by the Partners Agreement . . .
>
> The formula utilized by [the Partnership] and [UETA] violates the terms of the Partners Agreement and improperly shifts a substantial part of the sale proceeds from the Brady Partners to [UETA].
>
> [The Partnership] and [UETA] failed to disclose to the Brady Partners . . . that the calculation of the partners' respective shares of the sale proceeds and the actual distribution of proceeds would occur in a manner other than as required by the Partners Agreement.
>
> [UETA] breached the Partners Agreement and the Partnership Agreement
>
> . . .
>
> The only methodology regarding distribution of sale proceeds ever disclosed to the Brady Partners prior to the sale to the United States are the formulas set forth in the Partners Agreement . . . [UETA] failed to disclose their methodology for calculating the sales proceeds to be distributed to the Brady Partners.

Thus, Gloria's claims relate only to the Partnership and condemnation matters; Gloria does not make any claims arising from or relating to the Ground Lease.[6] Moreover, after

[6] We note that in their motion to dismiss for improper forum and venue, UETA asserted that "the basis of each of [Gloria's] causes of action against [UETA] is enforcement of a General Partnership

reviewing the Ground Lease, we find that it does not relate to any Partnership matters or provide any formulas for the distribution of condemnation proceedings—the bases of Gloria's suit. The primary purpose of the Ground Lease was merely to provide for the development and construction of a duty-free retail store on parcel four.[7] The Ground Lease does not account for the obligations of the Partnership. All Partnership matters, including accounting and administration of the partnership, profits and transactions, the partners' capital accounts, fiduciary obligations to the partners, partnership property, and calculations of sale proceeds are terms of the Partners' Agreement. Landlord and tenant disputes have no bearing on Gloria's specific claims. Therefore, the interpretation and application of the Ground Lease is not necessary to resolve Gloria's disputes.

UETA relies on this clause in the Partners' Agreement to assert that Gloria's suit "has a significant relationship to the Ground Lease because the factual allegations are so intertwined that the dispute cannot be decided without interpretation and reference to the Ground Lease":

> In the future should any or all of Parcels 1,2 or 3 be taken by condemnation . . . each partner shall receive its proportionate part of any condemnation award when received in accordance with each Partner's percentage ownership of the property, it being agreed that [UETA] shall be entitled to any award based on its leasehold interest in the Property.

However, UETA's "leasehold interest in the Property" is in reference to the future condemnation of parcels 1, 2, or 3, and the Ground Lease only relates to the duty-free store on parcel four. Thus, the "leasehold interest" is not contingent on the Ground Lease

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Agreement." Moreover, UETA argued to the trial court that "[a]ll of the Causes of Action arise out of the Agreement and obligations of the parties thereunder."

[7]UETA concedes that the "Partners[']Agreement does include plans for the distribution of proceeds from a sale or condemnation."

for purposes of our analysis. Even if the "leasehold interest" in the Partners' Agreement is defined in the Ground Lease, Gloria's claims of breach of contract, tortious misconduct, breach of fiduciary duty, fraud, and civil conspiracy are unrelated to the terms and conditions of landlord and tenant in the Ground Lease. Therefore, we reject UETA's "leasehold interest" argument. *See Molecular Analytical Sys. v. Ciphergen Biosystems, Inc.*, 186 Cal. App. 4th 696, 111 Cal. Rptr. 3d 876, 885 (2010) ("A party can be compelled to arbitrate only those issues it has agreed to arbitrate.").

Based on the foregoing, we conclude the parties agreed to arbitrate only lease-related conflicts as provided for in the Ground Lease. *See Avery*, 159 Cal. Rptr. 3d at 451 (holding that arbitration is a contractual matter, and a party that has not agreed to arbitrate cannot be compelled to do so). Accordingly, the trial court did not err when it denied UETA's motion to compel arbitration. *See id.* at 452.

III. CONCLUSION

We affirm the judgment of the trial court.

JAIME TIJERINA,
Justice

Delivered and filed the
21st day of May, 2020.