

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
March 8, 2023 Session

FILED
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Clerk of the
Appellate Courts

LINDA GAIL COMPTON v. KATHY A. LESLIE, ET AL.

Appeal from the Circuit Court for Davidson County
No. 18C-3180 James G. Martin, III, Judge

No. M2022-00463-COA-R3-CV

This appeal involves an issue of arbitration. The trial court entered an order declining to approve for entry the defendants’ proposed notice of intent to arbitrate and order to compel arbitration. The defendants appeal. We dismiss the appeal.

Tenn. R. App. P. 3 Appeal as of Right; Appeal Dismissed

CARMA DENNIS MCGEE, J., delivered the opinion of the court, in which ANDY D. BENNETT and JEFFREY USMAN, JJ., joined.

James B. Johnson, Nashville, Tennessee, for the appellants, Kathy A. Leslie and Penthouse Hospitality Group, LLC.

J. Timothy Street, Franklin, Tennessee, for the appellee, Linda Gail Compton.

OPINION

I. FACTS & PROCEDURAL HISTORY

In November 2016, Ms. Kathy A. Leslie contacted an acquaintance, Ms. Linda Gail Compton, for the purpose of inducing her to loan Ms. Leslie money for the purchase of property located in Nashville (“the Property”). Ms. Leslie represented to Ms. Compton that she was in the process of putting together an investment package for the purpose of purchasing the Property. On November 22, 2016, the parties entered into a written agreement (“Agreement 1”), in which Ms. Compton agreed to loan \$100,000 to Ms. Leslie. Agreement 1 included an arbitration clause. Agreement 1 also provided that Ms. Leslie would repay Ms. Compton \$130,000, which included 30% interest, on the maturity date of January 31, 2018. Ms. Compton made the loan and alleges that Ms. Leslie’s obligation

matured and remains unpaid. The purpose of this loan was not set forth in Agreement 1, but Ms. Compton maintains that it was for the purchase of the Property based on the representations made to her by Ms. Leslie.

On January 19, 2017, Mr. Brad Crawford, who is Ms. Compton's now-deceased son, also entered into a written agreement ("Agreement 2") with Ms. Leslie, in which Mr. Crawford agreed to loan \$100,000 to Ms. Leslie in two installments. Agreement 2 also included an arbitration clause. After Mr. Crawford advanced the first installment, he assigned Agreement 2 to Ms. Compton. Ms. Compton then advanced the second installment. Agreement 2 provided that Ms. Leslie would pay 30% interest on the principal and would make four principal payments with the final one due on June 1, 2021. However, Ms. Compton alleges that those periodic payments were not paid and that the obligation remains unpaid. Like Agreement 1, the purpose of this loan was not set forth in Agreement 2, but Ms. Compton maintains that it was for the purchase of the Property based on the representations made to her by Ms. Leslie.

On May 4, 2017, the parties entered into another written agreement ("Agreement 3"), in which Ms. Compton agreed to loan \$50,000 to Ms. Leslie. Like the first two agreements, Agreement 3 included an arbitration clause. Agreement 3 provided that Ms. Leslie would pay 33% interest on the principal and would make periodic payments on the obligation. Ms. Compton made the loan and alleges that Ms. Leslie's obligation remains unpaid. Again, the purpose of this loan was not set forth in Agreement 3.

Ms. Leslie continued to represent to Ms. Compton that she needed more funds to purchase the Property. As such, Ms. Compton made four additional loans to Ms. Leslie by writing checks to her: \$15,000 on August 9, 2017; \$15,000 on September 17, 2017; \$10,000 on October 15, 2017; and \$10,000 on April 10, 2018. Ms. Compton maintains that these four loans were made for the purchase of the Property based on Ms. Leslie's representations. She alleges that these obligations remain unpaid despite her demands. Upon default of these obligations, Ms. Compton inquired into whether the Property had ever been purchased. She discovered that the Property had been purchased by Penthouse Hospitality Group, Inc. ("Penthouse"), of which Ms. Leslie was the sole shareholder. The Property was conveyed to Penthouse via warranty deed dated January 30, 2017 and recorded on February 1, 2017. She also discovered that the funds she had loaned to Ms. Leslie were not used as represented and that the Property was encumbered by a Deed of Trust in the amount of \$250,000. The initial filing date with the Tennessee Secretary of State for Penthouse was November 30, 2016, which was just days after the parties entered into Agreement 1.

In December 2018, Ms. Compton filed a complaint against Ms. Leslie and Penthouse (collectively, "Defendants").¹ She alleged that Ms. Leslie breached the

¹ We note here that Ms. Leslie is a licensed attorney in Tennessee. For much of the proceedings in

agreements between them and was in default for failure to pay. She also alleged that Ms. Leslie committed legal malpractice and an intentional misrepresentation or a negligent misrepresentation in the alternative. Additionally, she alleged that Penthouse was the alter ego of Ms. Leslie and was formed for the sole purpose of perpetrating the intentional misrepresentation. Defendants responded by filing a joint motion to dismiss the complaint. They argued that Ms. Compton's sole and exclusive remedy by virtue of the agreements and related financial obligations was through binding arbitration. Therefore, they argued that the trial court was without subject matter jurisdiction. Penthouse also filed a separate motion to dismiss the complaint. It argued that it was not a party to any of the agreements at issue.

In September 2019, the trial court entered orders denying both motions. In its first order, the court denied Defendants' joint motion to dismiss finding that the complaint alleged fraud and the matter should first proceed to discovery on the allegation of fraud. The court explained that agreements would be abrogated and arbitration would not be appropriate if the allegation of fraud was proven. The court noted, however, that the motion to dismiss could be refiled at a later date if appropriate. In its second order, the court denied Penthouse's motion to dismiss finding that the complaint alleged every element of fraud that could be associated with this matter. The court explained that Ms. Compton sufficiently alleged that Penthouse was the alter ego of Ms. Leslie and that Ms. Leslie perpetrated a fraud on Ms. Compton and used Penthouse as an instrumentality of that fraud.

In April 2021, Defendants filed a notice of intent and application to proceed under the arbitration clauses of the agreements. The trial court entered an order noting that it was in receipt of Defendants' notice of intent and application to proceed under the arbitration clauses of the agreements. The court directed Ms. Compton to file a response. Ms. Compton filed a response giving notice that she was not amenable to submitting all of the issues to arbitration. She requested that the trial court not order the parties to arbitration or, in the alternative, the court order the parties to arbitration only as to the question of Ms. Leslie's liability under the agreements. In January 2022, the trial court entered an order requiring Ms. Leslie to disclose the name of the bank(s) or any financial institution in which she deposited the funds received from either Ms. Compton and/or Mr. Crawford, execute a release in favor of Ms. Compton authorizing her to obtain bank records, and execute the necessary documents to release her tax returns to Ms. Compton. The court also required Ms. Leslie to execute the necessary documents on behalf of Penthouse to release its bank records. Additionally, the court's order provided in pertinent part as follows:

8. If the parties agree to have all the issues in the pleadings submitted to arbitration, they shall enter into an Agreed Order submitting all issues to arbitration. If the parties do not enter into an Agreed Order submitting

the trial court, she represented herself pro se and represented Penthouse as its attorney.

all issues to arbitration, then this Court will enter an Order as to which issues will be submitted to arbitration.

9. The arbitration clauses contained in the documents are in full force.
10. Any money that was advanced pursuant to a written document that has the word arbitration in it is subject to arbitration.

Defendants subsequently filed a motion to amend the order or for clarification. They sought to amend the trial court's order by limiting the time period of the bank records from November 22, 2016, to December 31, 2018.

In March 2022, the trial court entered an order modifying the time period of the bank records from January 2016 to present. The court noted that Ms. Leslie should inform the court of her decision regarding whether she wanted to transfer this matter to arbitration in its entirety or whether she wanted to litigate parts of it in court. Defendants then filed a proposed "Notice of Intent to Arbitrate and Order to Compel Arbitration." They proposed to have the entire matter transferred to arbitration for final adjudication of all the issues in dispute. The trial court held a conference call with counsel for both parties and explained that it would not enter the order to compel arbitration unless the order was approved for entry by both parties. The court suggested that it would enter the order requested by Ms. Leslie as long as the order provided that the outstanding discovery orders would remain in full force and effect. However, Ms. Leslie did not agree to add the suggested language. She requested that the court enter the proposed "Notice of Intent to Arbitrate and Order to Compel Arbitration." In the alternative, she requested that the court prepare and enter an order in accordance with the court's order from January 2022. The trial court ultimately entered an order declining to approve for entry the proposed "Notice of Intent to Arbitrate and Order to Compel Arbitration." Thereafter, Defendants timely filed an appeal.

II. ISSUES PRESENTED

Defendants present the following issue for review on appeal, which we have slightly restated:

1. Whether the trial court erred when it declined to compel arbitration even though the parties' contract states that in the event of any disagreement or breach of the agreement, both parties agree to arbitrate and agree that they are giving up their right to a court, jury trial, or appeal.

For the following reasons, we dismiss the appeal.

III. DISCUSSION

Ms. Compton argues that this Court lacks subject matter jurisdiction because the trial court's order is not a final order subject to appeal. "Subject matter jurisdiction

involves the court’s lawful authority to adjudicate a controversy before it.” *Johnson v. Hopkins*, 432 S.W.3d 840, 843 (Tenn. 2013) (citing *Chapman v. DaVita, Inc.*, 380 S.W.3d 710, 712 (Tenn. 2012); *Meighan v. U.S. Sprint Commc ’ns Co.*, 924 S.W.2d 632, 639 (Tenn. 1996)). This Court must “consider whether the trial and appellate court have jurisdiction over the subject matter, whether or not presented for review” Tenn. R. App P. 13(b). “Whether a court has subject matter jurisdiction over a case is a question of law that we review de novo with no presumption of correctness.” *Morgan Keegan & Co., Inc. v. Smythe*, 401 S.W.3d 595, 602 (Tenn. 2013) (citing *Word v. Metro Air Servs., Inc.*, 377 S.W.3d 671, 674 (Tenn. 2012)).

We observe that this appeal is not “interlocutory in nature, i.e., a non-final order appealed pursuant to Tennessee Rules of Appellate Procedure 9 or 10.” *Regions Bank v. Crants*, No. M2020-01703-COA-R3-CV, 2021 WL 3910696, at *2 (Tenn. Ct. App. Sept. 1, 2021). Rather, Defendants bring this appeal under Tennessee Rule of Appellate Procedure 3(a), which provides:

In civil actions every final judgment entered by a trial court from which an appeal lies to the Supreme Court or Court of Appeals is appealable as of right. Except as otherwise permitted in rule 9 and in Rule 54.02 Tennessee Rules of Civil Procedure, if multiple parties or multiple claims for relief are involved in an action, any order that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties is not enforceable or appealable and is subject to revision at any time before entry of a final judgment adjudicating all the claims, rights, and liabilities of all parties.

Therefore, pursuant to Rule 3(a), an appeal as of right is only available from a final judgment. “A final judgment is one that resolves all of the issues in the case, ‘leaving nothing else for the trial court to do.’” *Regions Bank*, 2021 WL 3910696, at *3 (quoting *State ex rel. McAllister v. Goode*, 968 S.W.2d 834, 840 (Tenn. Ct. App. 1997)). “This Court does not have subject matter jurisdiction to adjudicate an appeal if there is no final judgment.” *In re Estate of Schorn*, 359 S.W.3d 192, 196 (Tenn. Ct. App. 2011). However, the Tennessee Uniform Arbitration Act (“the TUAA”), which is codified at Tennessee Code Annotated section 29-5-301 *et seq.*, “creates limited exceptions to this rule.” *T.R. Mills Contractors, Inc. v. WRH Enters., LLC*, 93 S.W.3d 861, 865 (Tenn. Ct. App. 2002).

According to the terms of agreements at issue, the agreements are governed by the laws of the State of Tennessee, which would be the TUAA in this case. Even if the agreements were governed by the Federal Arbitration Act (“the FAA”), 9 U.S.C. § 1 *et seq.*, we have explained that the question of whether this Court has subject matter jurisdiction over this appeal must be determined under the TUAA.² Regarding appeals, the

² Even where the substantive provisions of the FAA may preempt the TUAA, “it does not preempt the procedural provisions of the TUAA for appeals of arbitration orders entered by Tennessee state courts

TUAA provides in pertinent as follows:

(a) An appeal may be taken from:

(1) An order denying an application to compel arbitration made under § 29-5-303;

...

(b) The appeal shall be taken in the manner and to the same extent as from orders or judgments in a civil action.

Id. § 29-5-319. “This Court has interpreted section 29-5-319 to mean that an immediate appeal to this Court may be taken as soon as a motion to compel arbitration is denied, notwithstanding whether other issues remain.” *Nandigam Neurology, PLC v. Beavers*, 639 S.W.3d 651, 661 (Tenn. Ct. App. 2021).

When determining whether an appeal lies under section 29-5-319, “we look to the substance of the trial court’s orders . . .” *Regions Bank*, 2021 WL 3910696, at *4. Here, the trial court did not enter “[a]n order *denying an application to compel arbitration* made under § 29-5-303.” Tenn. Code Ann. § 29-5-319(a)(1) (emphasis added). Instead, Defendants filed a proposed “Notice of Intent to Arbitrate and Order to Compel Arbitration” in accordance with the court’s order. *See SJR Ltd. P’ship v. Christie’s Inc.*, No. W2013-01606-COA-R3-CV, 2014 WL 869743, at *5 (Tenn. Ct. App. Mar. 5, 2014) (finding that the defendant did not make an “application” to compel arbitration pursuant to Tennessee Code Annotated section 29-5-303). The court then declined to approve it for entry because the parties could not agree on the issues to be submitted to arbitration.³ The court’s reasoning for doing so was clearly stated in its previous order entered in January 2022: “If the parties do not enter into an Agreed Order submitting all issues to arbitration, then this Court will enter an Order as to which issues will be submitted to arbitration.” As previously discussed, if the court declined to enter the proposed “Notice of Intent to Arbitrate and Order to Compel Arbitration,” Ms. Leslie requested that the court prepare and enter an order in accordance with the court’s order from January 2022. However, Defendants filed this appeal before the court had the opportunity to do so.

(Tenn. Code Ann. § 29-5-319).” *Regions Bank*, 2021 WL 3910696, at *3 (citing *Morgan Keegan & Co.*, 401 S.W.3d at 607). Thus, the Tennessee Supreme Court has held that “if Tennessee’s appellate courts have subject matter jurisdiction to hear” an appeal from an order, “the grant of jurisdiction must be found in the [TUAA], not the [FAA].” *Id.* (quoting *Morgan Keegan & Co.*, 401 S.W.3d at 607).

³ As stated earlier, Defendants proposed to have the entire matter transferred to arbitration for final adjudication of all the issues in dispute. However, Ms. Compton was not amenable to submitting all of the issues to arbitration. She did not believe that this matter was appropriate for any of the issues to be submitted to arbitration due to the allegations of fraud.

In light of the foregoing, we conclude that the trial court's order is not appealable under Tennessee Code Annotated section 29-5-319. Accordingly, we dismiss this appeal because this Court is without subject matter jurisdiction.

IV. CONCLUSION

For the aforementioned reasons, this appeal is dismissed. Costs of this appeal are taxed to the appellants, Kathy A. Leslie and Penthouse Hospitality Group, LLC, for which execution may issue if necessary.

CARMA DENNIS MCGEE, JUDGE