SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3481-21

MICHAEL LUTZ and
MEDALLION CARE
TRENTON LLC,

Plaintiffs-Appellants,

v.

WILLIAM DEUTSCH and
MEDALLION CARE
HAMILTON, LLC,

Defendants-Respondents.

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Submitted January 24, 2023 – Decided March 7, 2023

Before Judges Geiger and Fisher.

On appeal from the Superior Court of New Jersey, Law Division, Ocean County, Docket No. L-0119-22.

Levin Shea Pfeffer & Goldman, PA, attorneys for appellants (Ian M. Goldman, of counsel and on the briefs).

Offit Kurman, attorneys for respondents (Gary Snitow and Alan V. Klein, on the brief).

PER CURIAM

Plaintiff Michael Lutz is the father-in-law of defendant William Deutsch, who was brought into Lutz's health-care-facility business when Deutsch married Lutz's daughter. When, in 2019, the marriage ended, so did Lutz and Deutsch's relationship. They entered into an agreement to arbitrate all their disputes and were in the process of arbitrating claims when Lutz filed the complaint in this action. The judge granted Deutsch's motion to compel arbitration, and Lutz appeals, posing the question whether the parties' agreement to arbitrate "all controversies" encompasses after-acquired or newly-discovered claims. Because the claims asserted in this suit arise from the parties' business relationship and are akin to those the parties had agreed to arbitrate, we affirm.

To put the issues into context, as noted above, the demise of Deutsch's marriage to Lutz's daughter triggered Lutz's desire to bring Deutsch's relationship to the business to an end. The parties agreed to mediate their disputes with a rabbinical tribunal in Lakewood where Deutsch was also mediating his matrimonial disputes with his wife. Finding no likelihood of a mediated settlement, the mediator suggested that the parties agree to arbitrate. They agreed and executed an agreement that called for "binding arbitration [of]

all controversies [claims and counter claims]"[1] between them "including but not limited to the following controversy." This one-page agreement does not expressly reveal what was meant by the phrase "following controversy" because no particular controversy was thereafter identified.

When the arbitrator entered a preliminary decision that Lutz should be enjoined from excluding Deutsch from the business, Deutsch filed a complaint in the Chancery Division in September 2019, and sought and obtained an order that temporarily enjoined Lutz in some of the respects directed by the arbitrator. The parties' submissions do not reveal to us what, if anything, the judge ordered on the return date of the order to show cause. By order entered on January 22, 2021, the chancery judge denied Lutz's application to stay the arbitration and granted Deutsch's cross-motion to compel Lutz to return to arbitration.

Nearly a year later, on January 18, 2022, Lutz and Medallion Care Trenton LLC commenced this action against Deutsch and Medallion Care Hamilton LLC, asserting claims of unfair competition, breach of fiduciary duty, breach of the implied covenant of good faith and fair dealing, and unjust enrichment. Lutz

[1] The use of brackets normally connote that the bracketed phrase is something that we have included to make the quoted material more understandable. But, here, we have faithfully quoted the agreement, which includes the bracketed material.

alleged that in 2016 Deutsch formed a new company while still working with Lutz and that he utilized the "Medallion Care" name that Lutz had already been using in connection with his business. Deutsch responded to the complaint with a motion to compel arbitration. The trial judge granted the motion, referred the matter to arbitration, and dismissed the complaint. The judge later filed an amplification of his decision pursuant to Rule 2:5-1(d). In that amplification, the judge explained that he viewed the allegations in this suit to be "the same" as the claims previously asserted and pending before the arbitrators.

In this appeal, Lutz argues the judge erred because the arbitration agreement "was entered into prior to the occurrence of events which were the subject of [his] claim," and because the judge relied on the chancery judge's ruling in the earlier suit. We find no merit in any of these arguments.

Lutz's first argument – that there is some relevance to the sequence of the disputed events and the formation of the arbitration agreement – has no real relevance. Many is the arbitration agreement that is created before a dispute arises; indeed, that would seem more common than not. Quite often parties with no relationship enter into a contract with an arbitration agreement and only, later, does a dispute or controversy arise. For example, it is not uncommon for an individual to approach a dealer with the intent to buy a car and, in making a

purchase, signs a contract prepared by the dealer that extracts from the buyer an agreement to arbitrate any disputes arising from the contract. See, e.g., Goffe v. Foulke Management Corp., 238 N.J. 191 (2019). Or, on being employed, an individual may be required to sign an employment agreement that contains an agreement to arbitrate any disputes arising from the agreement or the employment relationship. See, e.g., Leodori v. Cigna Corp., 175 N.J. 293 (2003). In circumstances like these arbitrable claims inevitably arise after the formation of the agreement to arbitrate. The sequencing of events doesn't preclude arbitration. The question here does not concern whether the claim arose before or after the arbitration agreement but whether the parties intended to arbitrate disputes like those contained in Lutz's 2022 complaint when they entered into their arbitration agreement in 2019.

In ascertaining the parties' intent we look to how the parties' expressed their intentions about arbitration as illuminated by basic concepts of contractual interpretation, see Atalese v. U.S. Legal Serv. Grp., 219 N.J. 430, 441-43 (2014), and the public policy that favor arbitration as a means of resolving disputes, see Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp., 460 U.S. 1, 24 (1983);

Hojnowski v. Vans Skate Park, 187 N.J. 323, 342 (2006).[2] We chiefly look to see whether the agreement suggests a meeting of the minds about the scope of arbitration. See Atalese, 219 N.J. at 442; Morton v. 4 Orchard Land Trust, 180 N.J. 118, 120 (2004). Stated another way, parties can't be required to arbitrate "when they have not agreed to do so." Volt Info. Scis. v. Bd. of Trs. of Leland Stanford Jr. Univ., 489 U.S. 468, 478 (1989); see also In re Arbitration Between Grover & Universal Underwriters Ins. Co., 80 N.J. 221, 228 (1979) (holding that "only those issues may be arbitrated which the parties have agreed shall be").

The answer to whether these parties agreed to arbitrate after-acquired or newly-discovered claims can be found in the only sentence in their agreement relevant to the argument: "WE the undersigned hereby agree to submit to binding arbitration all controversies [claims and counter claims] between the

[2] Neither party has expressed a view about whether the enforceability of the arbitration agreement is governed by the Federal Arbitration Act, 9 U.S.C.A. §§ 1-16, or the New Jersey Arbitration Act, N.J.S.A. 2A:23B-1 to -32. Because of the slim record on appeal, we can form no understanding about which of these enactments applies here. But, for present purposes, we need not answer that question because the FAA invites the application of state law in disputes concerning the formation of the arbitration agreement, First Options of Chi., Inc. v. Kaplan, 514 U.S. 938, 944 (1995); Hojnowski, 187 N.J. at 342, and because both federal and state enactments favor arbitration.

undersigned parties including but not limited to the following controversy[.]"[3] That they agreed to arbitrate "all controversies" alone would seem conclusive as to whether the parties had agreed to submit to arbitration all their disputes without limitation. The fact that the agreement goes on to refer to a "following controversy" that is not described is of no particular moment even if we assume that the parties to insert something more specific. That's because the inclusion of something specific after the phrase "following controversy" would only have focused the arbitrator on the immediate problem to be solved. Had they – as Lutz asserted in his counterclaim in the chancery action – intended to arbitrate only Deutsch's severance package, then a description of that specific dispute after the phrase "following controversy" would make no difference. Such additional language could only be sensibly interpreted as providing an example of the disputes to be arbitrated; that description, however, would not limit the agreement to arbitrate "all controversies" because such a specific description would still be qualified by the preceding phrase in the agreement that the agreement to arbitrate "all controversies" "include[ed] but [was] not limited to"

[3] This sentence ends with a semicolon rather than a period. The next thing that appears in the agreement is a paragraph that identifies the arbitrators, sets forth the manner of sharing the cost of the arbitration, and describes certain mechanical aspects of the arbitration, among other things, not bearing on the scope of arbitration.

the more specifically described claim. In short, any attempt to describe the scope of the claims there would have been merely an illustration of the parties' intent rather than a limitation.

But we would also acknowledge that merely because the parties expressed an agreement to arbitrate "all" controversies does not necessarily mean they are bound to arbitrate "all" disputes that arise in perpetuity. Perhaps this is what Lutz meant to persuade us to when he argued that the arbitration agreement cannot apply to claims that arose after the agreement's formation. Nevertheless, while it may be that the parties cannot be understood to have agreed to arbitrate any disputes that may arise between them into the unforeseeable future, it doesn't necessarily follow that any claim that arose or became known after the arbitration agreement was formed may not fall within the agreement's scope. Context is everything; in determining whether an after-acquired or newly-discovered claim falls within a previously-formed arbitration agreement, a court must ascertain the parties' intent through a comparison between the claims they were arbitrating with the claims newly asserted.[4]

[4] There may be other ways to show what the parties may have intended about the scope of the arbitration agreement, but Lutz provides in support of his position only the arbitration agreement and his legal argument that the parties' could not have logically contemplated that the agreement could encompass

So, after all we have said, the disposition of this appeal comes down to whether the claims asserted in the complaint are akin to or of a similar nature to those that the parties specifically agreed to arbitrate. Lutz contended in the chancery matter that the arbitration was intended to deal with Deutsch's claim about the severance to which he was entitled. When he argued that the arbitration had been expanded to cover Deutsch's claim of an ownership interest in the business, the chancery judge disagreed and directed that the parties continue to arbitrate those business-related disputes. We likewise agree that Lutz's complaint, which contains claims that Lutz argues were not known or discovered until well after the arbitration agreement, asserts claims that fall well within the scope of the arbitration agreement.

The complaint asserts six counts. The first three counts (statutory trademark infringement, common law trademark infringement, and unfair competition) are based on the allegation that Deutsch has wrongfully used the phrase "Medallion Care," which Lutz claims is a trademark utilized by his business, to form a competing business. The fourth, fifth, and sixth counts (breach of fiduciary duty, breach of the implied covenant of good faith and fair

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newly-acquired or unknown claims to support his theory. To appreciate whether there is merit to this argument, we have asked the parties to provide copies of their chancery action pleadings, which were not included in their appendices.

dealing, and unjust enrichment) incorporate that allegation as well and more broadly contend that Deutsch has diverted corporate assets and business opportunities to his competing business.

Having considered the nature of these claims, we are satisfied that while they may not be entirely the "same" – as the judge held – as those falling within the scope of the arbitration agreement that are still being arbitrated, but they are sufficiently similar to require arbitration of the claims asserted in the complaint. If, as has been either acknowledged or held in the prior action, claims about Deutsch's severance compensation or a determination of whether he possessed an ownership interest in the business were arbitrable, then certainly any allegations that Deutsch violated any duties he owed the business or that he was a disloyal partner or employee who unfairly competed with the business would also be encompassed by the arbitration agreement.

Overarching all questions about the scope of arbitration agreements is the well-established public policy in favor of the arbitration of disputes. See, e.g., Bor. of Carteret v. Firefighters Mut. Benevolent Ass'n, Local 67, 247 N.J. 202, 211 (2021); Flanzman v. Jenny Craig, Inc., 244 N.J. 119, 132 (2020). We thus conclude that by entering into an agreement that called for the arbitration of "all controversies" between them, that the parties intended to arbitrate after-acquired

or newly-discovered controversies that are akin to the same claims that initially prompted their desire to arbitrate disputes.

Affirmed.

I hereby certify that the foregoing is a true copy of the original on file in my office.

CLERK OF THE APPELLATE DIVISION