Pearson v. Adair Homes

128 Wash.App. 1045 (2005) | Cited 0 times | Court of Appeals of Washington | July 19, 2005

JUDGES Concurring: C. C. Bridgewater David H. Armstrong

UNPUBLISHED OPINION

Adair Homes, Inc. appeals from a trial court ruling denying its motion to compel arbitration under a construction contract entered with Daniel and Tammy Pearson. We affirm.

FACTS

The Pearsons executed an agreement with Adair to construct a home for them. The Pearsons obtained a construction warranty. The construction contract contained a dispute resolution clause, which provided: The Owner and Adair realize that disagreements may arise in the course of contracting for the construction of a structure which the Parties may be unable to settle between themselves. If this happens, the Parties agree to settle all disagreements in an efficient, timely and fair manner at minimal or no cost. To accomplish this, the parties agree to the following system of Dispute Resolution, which shall apply to all disagreements arising at any time and in any way relating to construction or to this Contract:

. . . {T}he Parties agree to meet with an unbiased Mediator, with a working knowledge of residential construction . . . If mediation fails to resolve the dispute, it will immediately proceed to final and binding arbitration with the Mediator serving as Arbitrator. . . .

Such arbitration shall be final and binding on the Parties on all matters involving, relating to or arising out of this Contract, or the construction of the structure, including Adair's common law and/or statutory lien rights. Resort to this system of mediation/arbitration is mandatory and time is of the essence. The Parties shall equally share the Mediator/Arbitrator's fees.

Clerk's Papers (CP) at 17. The arbitration agreement also specified that Construction Arbitration Services would resolve disputes.

After construction was completed, the Pearsons discovered that water penetrating through improperly sealed windows allowed mold growth that caused their infant son to develop respiratory problems. The Pearsons sought $6,239.78 under warranty for repairs and attorney fees from Adair. Adair denied the Pearsons' warranty claim, asserting that the Pearsons failed to properly seal their home or maintain the existing seal.[1]

The Pearsons sued Adair in superior court, claiming breach of contract, breach of implied warranty of habitability, and personal injury. Adair moved to compel arbitration. The Pearsons disputed that the arbitration clause covered their claims.

After a hearing, the trial court declined to compel arbitration stating:

No fair reading of the language subjects plaintiffs' claims of personal injury to arbitration. The agreement identifies that the arbitrator will have a working knowledge of residential construction. It is unreasonable to suggest that this person also have a 'working knowledge' of a personal injury claim. This type of claim is beyond the scope of a construction contract arbitration agreement.

CP at 69. Adair appeals.

ANALYSIS

Arbitration Clause

Adair first contends that the arbitration clause plainly and unambiguously covers all claims the Pearsons brought against Adair, including their personal injury claim. We disagree.

We review questions of arbitrability de novo. Mendez v. Palm Harbor Homes, Inc., 111 Wn. App. 446, 453, 45 P.3d 594 (2002). The Pearsons bear the burden of showing that the clause does not cover their claims. Mendez, 111 Wn. App. at 453; RCW 7.04.010.

We give the contract language its ordinary meaning. Fancher Cattle Co. v. Cascade Packing, Inc., 26 Wn. App. 407, 613 P.2d 178 (1980). We construe contracts to reflect the parties' intent, and we do not make another or different contract under the guise of construction or interpretation. Corbray v. Stevenson, 98 Wn.2d 410, 415, 656 P.2d 473 (1982).

We review the possible ambiguity of a written instrument as a question of law. McGary v. Westlake Investors, 99 Wn.2d 280, 285, 661 P.2d 971 (1983). An ambiguous contract provision contains uncertain terms or terms capable of being understood as having more than one meaning. Mayer v. Pierce County Med. Bureau, Inc., 80 Wn. App. 416, 421, 909 P.2d 1323 (1995). We follow three basic principles when reviewing contract terms for ambiguity. First, the parties' intent controls. Second, we ascertain that intent from reading the contract as a whole. Finally, we do not read an ambiguity into an otherwise clear and unambiguous contract. Mayer, 80 Wn. App. at 420.

Under general principles of contract interpretation, we construe agreement ambiguities against the drafter. Mendez, 111 Wn. App. at 459. But if any doubts or questions arise with respect to the scope of the arbitration agreement, we construe the agreement in favor of arbitration unless satisfied that the agreement cannot be interpreted to cover a particular dispute. Mendez, 111 Wn. App. at 456.

In determining whether the two parties agreed to arbitrate the particular dispute, we apply four guiding principles: 1) the duty to arbitrate arises from the contract; 2) a question of arbitrability is a judicial question unless the parties clearly provide otherwise; 3) a court should not reach the underlying merits of the controversy when determining arbitrability; and 4) as a matter of policy, courts favor arbitration of disputes.

Mendez, 111 Wn. App. at 455-56 (quoting Stein v. Geonerco, Inc., 105 Wn. App. 41, 45-46, 17 P.3d 1266 (2001)).

Here, Adair drafted the contract. The arbitration agreement provides in relevant part that:

The Owner and Adair realize that disagreements may arise in the course of contracting for the construction of a structure which the Parties may be unable to settle between themselves. . . . {T}he parties agree to the following system of Dispute Resolution, which shall apply to all disagreements arising at any time and in any way relating to construction or to this Contract . . . .

CP at 17 (emphasis added).

The first sentence limits the dispute resolution clause to construction disputes only, whereas the second sentence broadens the application of this clause to every conceivable dispute arising out of this agreement. These inconsistencies render the arbitration agreement, read as a whole, ambiguous.

Moreover, we note that the Pearsons alleged personal injury claims. Reading the arbitration clause as a whole, we conclude that the parties did not, and could not have contemplated covering personal injury claims under the arbitration clause where they agreed that someone with construction experience would be selected as an arbitrator. Because the agreement cannot be interpreted to cover injury disputes, as alleged by the Pearsons, we do not construe in favor of arbitration. Therefore, we hold that the trial court did not err in refusing to compel arbitration.

Trial on Arbitration Clause Applicability

Adair next contends that the trial court failed to hold a trial to determine the applicability of the arbitration clause to the Pearsons' claim. It asserts that the trial court erred under RCW 7.04.040.

RCW 7.04.040 sets forth a mechanism for courts to address motions to compel arbitration. RCW 7.04.040(1) provides that the trial court shall order the parties to arbitrate if it finds no substantial issue as to the validity of the arbitration agreement. If there is a substantial issue, then subsection (2) directs the trial court to proceed to the trial of that issue, and a party has a right to a jury trial if the trial court finds a substantial issue as to the validity or existence of the arbitration agreement.

Adair moved to compel arbitration. The Pearsons contested the motion. Neither party requested a

jury trial. After a hearing, the trial court denied Adair's motion to compel arbitration. The trial court did not err.

Equitable Factors

Finally, Adair contends that the trial court erroneously concluded that equitable factors justified denying Adair's motion to compel arbitration.

RCW 7.04.010 provides that the arbitration agreements are enforceable 'save upon such grounds as exist in law or equity for the revocation of any agreement.' 'Equity includes the power to prevent the enforcement of a legal right when to do so would be inequitable under the circumstances.' Mendez, 111 Wn. App. at 460 (citing Thisius v. Sealander, 26 Wn.2d 810, 818, 175 P.2d 619 (1946)). 'Under the proper 'conditions and circumstances' warranting equity, 'equity will assume jurisdiction for all purposes, and give such relief as may be required.'' Mendez, 111 Wn. App. at 460 (quoting Income Prop. Inv. Co. v. Trefethen, 155 Wash. 493, 506, 284 P. 782 (1930)). Equity's goal is substantial justice for the contracting parties. Mendez, 111 Wn. App. at 460.

We review the application of equity for an abuse of discretion. Mendez, 111 Wn. App. at 460. A court abuses its discretion when it bases its decision on untenable grounds. Reid v. Dalton, 124 Wn. App. 113, 125, 100 P.3d 349 (2004). 'We may affirm a trial court on any theory the record and the legal authorities supports even if the trial court did not consider such grounds.' Mendez, 111 Wn. App. at 460-61 (quoting LaMon v. Butler, 112 Wn.2d 193, 200-01, 770 P.2d 1027 (1989)).

As discussed, the arbitration clause does not apply to the Pearsons' personal injury claims. Thus, the trial court did not abuse its discretion in ruling that it would be inequitable to force them to resolve differing claims in different venues and in deciding that an arbitrator with construction experience would not be qualified to resolve a personal injury claim.[2]

Affirmed.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record pursuant to RCW 2.06.040, it is so ordered.

Houghton, P.J.

We concur:

Bridgewater, J.

Armstrong, J.

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1. According to the agreement, Adair assumed responsibility for a majority of the construction, but the Pearsons assumed responsibility for the following: During the course of construction and prior to occupancy, the Owner is responsible to complete and fund the backfilling and final grading, the interior and exterior painting, the installation of any stairs, patio, steps, walkways, aprons, drains, or other items which are necessary to conform to Government and Lender requirements. CP at 17. Nothing in this contract requires that the Pearsons seal the windows.

2. Finally, according to the Pearsons' undisputed affidavit, Adair's sales representative told them that the arbitration clause applied only to the disputes arising during construction. The record also contains affidavits of two other Adair's customers, not parties to this appeal. Gregory Peel averred: 'Before I signed the contract, I was told by my salesperson that the mediation/arbitration paragraph was for disagreements that might come up during the construction process. . . . He said I still retained my rights to sue . . . for problems arising after my home was completed.' CP at 40 (emphasis added). Mary Massey, another Adair customer, averred similarly.