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**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-1749**

Writing Assistance, Inc.,
Respondent,

vs.

Axiom Solutions, LLP, et al.,
Appellants.

**Filed June 25, 2012
Reversed and remanded
Cleary, Judge**

Hennepin County District Court
File No. 27-CV-11-3133

Kevin D. Hofman, Natalie Wyatt-Brown, Halleland Habicht PA, Minneapolis, Minnesota
(for respondent)

Charles J. Schoenwetter, Roshan N. Rajkumar, Bowman and Brooke LLP, Minneapolis,
Minnesota (for appellants)

Considered and decided by Cleary, Presiding Judge; Stauber, Judge; and Collins,
Judge.*

UNPUBLISHED OPINION

CLEARY, Judge

Appellants Axiom Solutions, Frank Saya, and Larry Nealy challenge a district
court order granting summary judgment against them. Appellants argue that the breach-

* Retired judge of the district court, serving as judge of the Minnesota Court of Appeals
by appointment pursuant to Minn. Const. art. VI, § 10.

of-contract claim of respondent Writing Assistance against Axiom should have been submitted to mediation and arbitration and that respondent's breach-of-contract claim against Saya and Nealy should have been stayed pending that mediation and arbitration. Appellants also argue that the granting of summary judgment was unfair and violated due process by denying them an opportunity to raise defenses or counterclaims. Respondent has filed a notice of related appeal and challenges the district court's award of costs, disbursements, and attorney fees. We reverse and remand.

FACTS

Axiom is a limited liability partnership that provides tax-credit-consulting services. Saya and Nealy are partners of Axiom. Respondent is a corporation that provides writers to organizations as independent contractors to work on writing projects.

Effective April 5, 2010, respondent and Axiom entered into a consulting services agreement wherein respondent agreed to furnish writers to Axiom for tax-credit projects. This agreement provides that the writers would work on an "[o]ngoing as needed" basis and that Axiom would pay respondent for the writing services pursuant to specified compensation rates. The agreement contains an arbitration clause which states:

If a dispute arises from or relates to this Agreement or the breach thereof, and if the dispute cannot be settled through direct discussions, the parties agree to endeavor first to settle the disputes by mediation administered by the American Arbitration Association under its Commercial Mediation Procedures before resorting to arbitration. Any unresolved controversy or claim arising from or relating to this Agreement or breach thereof shall be resolved before a single arbitrator in accordance with binding arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules, and

judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. If all parties to the dispute agree, a mediator involved in the parties' mediation may be asked to serve as the arbitrator.

Axiom fell behind on its payments to respondent, and on July 1, 2010, Saya and Nealy signed a personal guaranty that states:

In consideration of the performance of services or the extension of credit by [respondent], to or for the benefit of [Axiom] in which the undersigned have a material financial interest, the undersigned, jointly and severally [sic], do hereby personally, unconditionally and irrevocably guarantee to [respondent], its successors or assigns, the prompt payment and performance of all of the obligations of Axiom to [respondent].

The term "obligations" includes "any and all sums now or hereafter due and owing [respondent] whether on open account or evidenced by a writing or other instrument."

The personal guaranty is to be a "continuing guaranty which will not be discharged unless and until payment in full of all sums due and owing [respondent]." The personal guaranty provides that respondent "can proceed directly against the undersigned without first proceeding against Axiom." The personal guaranty also states that Saya and Nealy "agreed to pay to [respondent] all cost of collection and enforcement, including, without limitation, reasonable attorney's fees, incurred by [respondent] in enforcing any of the rights against Axiom or the undersigned." Lastly, the personal guaranty declares that "[t]he undersigned consent to the jurisdiction of the state and federal courts located in Hennepin County, State of Minnesota and agree that any dispute or proceedings shall be venued in such Minnesota Courts. The undersigned expressly waive any right to a trial by jury."

Axiom fell behind on its payments to respondent again, and on September 13, 2010, the parties entered into an agreement (payment terms agreement), which states that it “is for the final settlement of payment terms for writing services provided to Axiom by [respondent].” This agreement sets up a payment plan for the outstanding amount Axiom owed to respondent. All of these agreements were drafted by respondent.

Thereafter, respondent filed a complaint against appellants for breach of the payment terms agreement, breach of the personal guaranty, and quantum meruit. Respondent sought a monetary judgment and interest, plus the costs, disbursements, and attorney fees incurred in litigation. Appellants filed a motion to dismiss or, in the alternative, to stay proceedings and compel mediation and/or arbitration. Appellants argued that the parties’ entire relationship arose out of the consulting services agreement and, pursuant to that agreement, respondent’s claims were required to be mediated and arbitrated, so the district court lacked subject-matter jurisdiction to consider them.

Respondent then filed a motion for summary judgment, claiming that undisputed facts showed that appellants had not paid the amount due to respondent and had therefore breached the payment terms agreement and personal guaranty. Respondent argued that the payment terms agreement and personal guaranty were unambiguous and fully integrated contracts, and that the arbitration clause in the consulting services agreement did not apply to claims arising out of the two later contracts. Respondent also moved for an award of attorney fees and costs. Appellants filed a memorandum in opposition to summary judgment, maintaining that the district court lacked subject-matter jurisdiction

over the matter and that the motion for summary judgment was premature because appellants had not yet filed an answer and their motion had not yet been ruled on.

Following a hearing, the district court issued an order that denied appellants' motion to dismiss or stay proceedings and granted respondent's motion for summary judgment. The court determined that the payment terms agreement and personal guaranty "are unambiguous contracts in and of themselves" that altered the arrangements made in the consulting services agreement. Because neither of the later contracts includes an arbitration clause, references arbitration, or incorporates the arbitration clause or any other terms of the consulting services agreement, the court concluded that respondent's claims could be raised in court. The court then determined that appellants had not raised any genuine issue as to their liability under the payment terms agreement and personal guaranty, and awarded respondent judgment against appellants. The court also awarded respondent an amount for costs, disbursements, and attorney fees. This appeal and cross-appeal follow.

D E C I S I O N

Appellants argue that the district court erred by denying their motion to dismiss or stay proceedings because respondent's claim against Axiom was required to be mediated and arbitrated pursuant to the consulting services agreement, and respondent's claim against Saya and Nealy should have been stayed pending mediation and arbitration. Respondent argues that the court properly determined that this dispute was not subject to mediation or arbitration.

The interpretation of a contract is a question of law subject to de novo review. *Valspar Refinish, Inc. v. Gaylord's, Inc.*, 764 N.W.2d 359, 364 (Minn. 2009). “Determining whether a party has agreed to arbitrate a particular dispute is a matter of contract interpretation.” *Johnson v. Piper Jaffray, Inc.*, 530 N.W.2d 790, 795 (Minn. 1995). A district court’s determination that the parties did not agree to submit a dispute to arbitration is reviewed de novo. *Id.*

“When considering a motion to compel arbitration, the court’s inquiry is limited to (1) whether a valid arbitration agreement exists, and (2) whether the dispute falls within the scope of the arbitration agreement.” *Amdahl v. Green Giant Co.*, 497 N.W.2d 319, 322 (Minn. App. 1993). When evaluating whether parties agreed to arbitrate a particular dispute, any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration. *Johnson*, 530 N.W.2d at 795. “Generally, the law favors arbitration because it is recognized as a speedy, informal, and relatively inexpensive procedure for resolving controversies.” *Amdahl*, 497 N.W.2d at 322 (quotation omitted).

However, “arbitration is a matter of contract and a party cannot be required to submit to arbitration any dispute which he has not agreed so to submit.” *Johnson*, 530 N.W.2d at 795 (quotation omitted). “[A]rbitrators derive their authority to resolve disputes only because the parties have agreed in advance to submit such grievances to arbitration.” *Id.* at 795–96. “The party opposing arbitration bears the burden of proving that the dispute is outside the scope of the agreement.” *Onvoy, Inc. v. SHAL, LLC*, 669 N.W.2d 344, 349 (Minn. 2003).

I. Respondent's claim against Axiom for breach of the payment terms agreement should have been submitted to mediation and, if necessary, arbitration.

The district court determined that respondent's claim against Axiom for breach of the payment terms agreement did not require mediation or arbitration.

Where several instruments are made as part of one transaction, they will be read together, and each will be construed with reference to the other. This is true, although the instruments do not in terms refer to each other. So if two or more agreements are executed at different times as parts of the same transaction they will be taken and construed together.

Fleisher Eng'g & Constr. Co. v. Winston Bros. Co., 230 Minn. 554, 557, 42 N.W.2d 396, 398 (1950) (quotation omitted); *see also Am. Nat'l Bank of Minn. v. Hous. & Redevelopment Auth. for Brainerd*, 773 N.W.2d 333, 337 (Minn. App. 2009) ("A contract and several writings relating to the same transaction must be construed with reference to each other."); *Anda Constr. Co. v. First Fed. Sav. & Loan Ass'n, Duluth*, 349 N.W.2d 275, 278 (Minn. App. 1984) ("It is well settled that where several instruments are executed as part of one transaction, and they are all consistent with each other, they will be read and construed together even if their terms do not refer to each other."), *review denied* (Minn. Sept. 5, 1984).

In *Anda Constr. Co.*, a construction company had entered into a mortgage and loan agreement with a bank for the construction of an apartment building. 349 N.W.2d at 276. When the bank later initiated a foreclosure action, the parties entered into a stipulation and the bank provided an additional loan to the construction company. *Id.* The stipulation stated that the loan proceeds were to be used to pay the costs and expenses of

completing the construction of the apartment building. *Id.* Six months later, the parties entered into a second mortgage agreement and the bank provided a third loan to the construction company. *Id.* at 277. When the construction company later breached the terms of the second mortgage agreement and the bank initiated another foreclosure action, the construction company argued that it had not authorized money to be disbursed from the third loan. *Id.* at 277–78. This court upheld the trial court’s determination that, through the stipulation, the construction company had authorized disbursement of all loan proceeds for the construction of the apartment building. *Id.* at 277–78. Although the construction company claimed that the second mortgage agreement was an integrated contract that superseded the earlier stipulation and stripped it of force or effect, this court stated that the construction company’s “integration theory is incorrect,” and determined that all of the contracts were part of the same transaction, were consistent with one another, and were to be considered together. *Id.* at 278.

As in *Anda Constr. Co.*, the consulting services agreement and payment terms agreement here relate to the same transaction, that is, respondent providing writing services to Axiom and Axiom incurring financial responsibility for those services. These two contracts can be read consistently and should be construed together. The arbitration clause in the consulting services agreement states that “[i]f a dispute *arises from or relates to this Agreement* or the breach thereof, and if the dispute cannot be settled through direct discussions,” then it will be submitted to mediation, and to binding arbitration if necessary. (Emphasis added.) Axiom’s alleged breach of the payment terms agreement by failing to make payments for the writing services is a dispute that

relates to the consulting services agreement, which provided for the writing services from the beginning. Respondent's breach-of-contract claim against Axiom should have been submitted to mediation and, if necessary, binding arbitration. This result comports with the principle stated above that any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration, as well as the principle that, where the intent of the parties is doubtful, a contract should be construed against the drafting party. *See Turner v. Alpha Phi Sorority House*, 276 N.W.2d 63, 66 (Minn. 1979). The district court erred by holding that mediation and arbitration were not required. The judgment awarded against Axiom is therefore reversed and respondent's claim against Axiom should be referred to mediation and, if necessary, arbitration.

II. Respondent's claim against Saya and Nealy for breach of the personal guaranty may be pursued in court.

The district court determined that respondent's claim against Saya and Nealy for breach of the personal guaranty need not be mediated and arbitrated or stayed pending mediation and arbitration. "A contract must be interpreted in a way that gives all of its provisions meaning." *Current Tech. Concepts, Inc. v. Irie Enters., Inc.*, 530 N.W.2d 539, 543 (Minn. 1995). "[A]ny interpretation which would render a provision meaningless should be avoided on the assumption that the parties intended the language used by them to have some effect." *Indep. Sch. Dist. No. 877 v. Loberg Plumbing & Heating Co.*, 266 Minn. 426, 436, 123 N.W.2d 793, 799–800 (1963). The personal guaranty contains a provision stating that, "The undersigned consent to the jurisdiction of the state and federal courts located in Hennepin County, State of Minnesota and agree that any dispute

or proceedings shall be venued in such Minnesota Courts. The undersigned expressly waive any right to a trial by jury.” Therefore, respondent’s claim against Saya and Nealy under the personal guaranty may be litigated in court, rather than being mediated and arbitrated.

Appellants argue that, pursuant to Minn. R. Civ. P. 12.02, they could not file a pleading until their motion to dismiss for lack of subject matter jurisdiction was heard. Consequently, they assert that they were denied fundamental fairness and due process when the district court granted summary judgment against them before they had the opportunity to serve an answer, raise affirmative defenses, or file counterclaims. Minn. R. Civ. P. 12.01 provides time periods during which an answer must be served and states:

The service of a motion permitted under this rule alters [the time period during which an answer must be served] as follows unless a different time is fixed by order of the court: (1) If the court denies the motion . . . the responsive pleading shall be served within 10 days after service of notice of the court’s action”

Appellants were unable to serve their answer within ten days after the district court’s action on their motion, pursuant to rule 12.01, due to the fact that the district court simultaneously denied appellants’ motion to dismiss or stay proceedings and issued summary judgment against them. By doing so, the court denied appellants a fair opportunity to file an answer, raise any defenses or counterclaims, and meaningfully oppose respondent’s motion for summary judgment. The judgment awarded against Saya and Nealy is therefore reversed due to this procedural error. Respondent may pursue its claim against Saya and Nealy in court, independently of its claim against Axiom, once

appellants are allowed to timely file their answer, affirmative defenses, and any counterclaims.¹

Because we reverse and remand, we need not reach the cross-appeal challenging the award of costs, disbursements, and attorney fees.

Reversed and remanded.

¹ The personal guaranty states that respondent “can proceed directly against [Saya and Nealy] without first proceeding against Axiom.” As appellants argue, staying the claim against Saya and Nealy pending mediation and arbitration of the claim against Axiom would be efficient and prevent inconsistent results. However, given the language of the personal guaranty, we decline to stay the claim against Saya and Nealy.