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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

BROADCAST MUSIC, INC.,

Plaintiff,

v.

STRUCTURED ASSET SALES, INC.,

Defendant and Appellant;

CURRENCY CORPORATION,

Defendant and Respondent.

B227311

(Los Angeles County
Super. Ct. No. BC379432)

APPEAL from an order of the Superior Court of Los Angeles County.

Theresa Gordon-Sanchez, Judge. Affirmed.

Law Office of Anthony Kornarens, Anthony Kornarens; Law Offices of Robert S. Besser and Robert S. Besser for Defendant and Appellant.

Smith Law Firm and Craig R. Smith for Defendant and Respondent.

Structured Asset Sales, Inc. (Structured) appeals from the denial of its motion to compel respondent Currency Corporation (Currency) to arbitrate. We affirm.

FACTS

In the 1970's, Adeniyi Jacob Paris (Paris) wrote various musical compositions (works). Broadcast Music, Inc. (BMI) licenses the works and distributes any royalties they generate.

Paris obtained a line of credit from Currency and gave it a security interest in the works. Eventually they entered into a document entitled "Waiver" in which Currency agreed to forgive two loans made to Paris respectively in September and October 2005. The Waiver contained an arbitration clause. In January 2006, Paris signed multiple documents in connection with an anticipated sale of his royalty rights to Structured.¹ One document was an assignment of Paris's royalty rights. A second document contained an assignment of his claims against Currency.

On October 19, 2007, BMI interpleaded \$771.94 in royalties for the works. BMI claimed that Structured and Currency were asserting conflicting claims to the \$771.94 and asked the trial court to decide who should be paid. In addition, BMI requested declaratory relief regarding who it should pay in the future after the accrual of additional royalties.

Structured claimed that it was an assignee of the Waiver and moved to compel Currency to arbitrate their claims to the royalties. The motion was denied and this timely appeal followed.²

¹ These documents involved multiple entities affiliated with Structured and with their principal, David Pullman. For ease of reference, we refer only to Structured because it is the appellant.

² Structured requested that we take judicial notice of the reporter's transcript for the hearing held on August 19, 2010, in *Wertheim, LLC v. Omidvar*, Los Angeles County Superior Court case No. BC389374 (*Wertheim*); a motion for reconsideration filed by Currency in *Wertheim*; the reporter's transcript of hearing on Currency's motion for reconsideration in *Wertheim*; the civil docket in *Wertheim* as of March 24, 2011; the amended judgment on special verdict dated February 18, 2010, in *Cleveland v. Currency*

DISCUSSION

When an appellate court reviews an order denying a motion to compel arbitration, it reviews the trial court's factual determinations under the substantial evidence standard, and it reviews legal issues de novo. (*Duick v. Toyota Motor Sales, U.S.A., Inc.* (2011) 198 Cal.App.4th 1316, 1320.) Moreover, as a general proposition, an appellate court does not "review the trial court's reasoning, but rather its ruling. A trial court's order is affirmed if correct on any theory, even if the trial court's reasoning was not correct. [Citations.]" (*J.B. Aguerre, Inc. v. American Guarantee & Liability Ins. Co.* (1997) 59 Cal.App.4th 6, 15–16.)

In our view, the pivotal issue in this appeal is whether Structured has standing to enforce the arbitration clause. According to Structured, it has standing either as an assignee of Paris's contractual rights under the Waiver or under the doctrine of equitable estoppel. We disagree.

For the sake of argument, we assume without deciding that Structured obtained an assignment of Paris's claims against Currency. Currency contends that the assignment of claims was not an assignment of the Waiver. Structured dismisses the argument and states that it "obtained Paris'[s] rights under the 'Waiver' agreement when it acquired Paris'[s] royalty rights and his other rights from him." Under what theory?³ The problem is that Structured did not provide any analysis. "It is not our responsibility to develop an appellant's argument." (*Alvarez v. Jacmar Pacific Pizza Corp.* (2002) 100 Cal.App.4th 1190, 1206, fn. 11.)

Corp., Los Angeles County Superior Court case No. BC328263; and an arbitration award in *Page v. Currency Corporation*, case No. 72 143 00590 09 dated August 27, 2009. We granted the request. Because the trial court did not take judicial notice of these documents and was not asked to, they do not factor into our analysis. (*Brosterhous v. State Bar* (1995) 12 Cal.4th 315, 325.)

³ At oral argument, Structured's attorney represented that Paris assigned all of his contract rights. But his contracts rights are not referenced in the assignment to which Structured adverts. The assignment only pertains to contract claims. Contract claims and contract rights are not equivalent.

Moving on, Structured argues that it can enforce the arbitration clause based on equitable estoppel. This argument was not raised below and was therefore waived. (*Ochoa v. Pacific Gas & Electric Co.* (1998) 61 Cal.App.4th 1480, 1488.) To be complete, we consider the issue.

“Generally speaking, one must be a party to an arbitration agreement to be bound by it or invoke it.’ [Citations.] ‘There are exceptions to the general rule that a nonsignatory to an agreement cannot be compelled to arbitrate and cannot invoke an agreement to arbitrate, without being a party to the arbitration agreement.’ [Citation.] [¶] One pertinent exception is based on the doctrine of equitable estoppel. [Citations.] Under that doctrine, as applied in ‘both federal and California decisional authority, a nonsignatory defendant may invoke an arbitration clause to compel a signatory plaintiff to arbitrate its claims when the causes of action against the nonsignatory are “intimately founded in and intertwined” with the underlying contract obligations.’ [Citations.] ‘By relying on contract terms in a claim against a nonsignatory defendant, even if not exclusively, a plaintiff may be equitably estopped from repudiating the arbitration clause contained in that agreement.’ [Citation.]” (*Molecular Analytical Systems v. CIPHERGEN Biosystems, Inc.* (2010) 186 Cal.App.4th 696, 706.)

The foregoing rule is inapposite because Currency is a defendant rather than a plaintiff. Also, there is no evidence that Currency’s claim to the royalties for the works represents a cause of action that is intimately founded in and intertwined with the Waiver because there is no evidence that its claim to the royalties is based on the two loans that the Waiver forgave.

Currency argues that it is entitled to attorney fees on appeal based on *Otay River Constructors v. San Diego Expressway* (2008) 158 Cal.App.4th 796 (*Otay River*). *Otay River* held: “Where an action is brought solely to compel arbitration of contractual disputes between the parties, we conclude that (1) a party who succeeds in obtaining an order denying the petition to compel arbitration is a prevailing party in the action on the contract even though the merits of the parties’ underlying contractual disputes have not yet been resolved and (2) an order denying a request for costs and attorney fees under

such circumstances is appealable as a ‘special order after final judgment’ under Code of Civil Procedure section 1294, subdivision (e).” (*Otay River, supra*, at p. 799.) *Otay River* is inapposite. Currency did not request attorney fees below, and it is not appealing from a denial of attorney fees. Moreover, this case is not final because the interpleader action has not been resolved.

When Structured’s attorney appeared at oral argument, we focused on the standing issue. Counsel stated standing must be decided by the arbitrator and cited *Condee v. Longwood Management Corp.* (2001) 88 Cal.App.4th 215, 218 (*Condee*). *Condee* held that when a party petitions to compel arbitration, it must “allege the existence of an agreement to arbitrate the controversy [citation]; facts necessary for a determination of its enforceability are proven by affidavits or declarations. [Citation.]” (*Id.* at p. 218.) It also held that Code of Civil Procedure section 1281.2⁴ “does not require the petitioner to introduce the agreement into evidence. A plain reading of the statute indicates that as a preliminary matter the [trial court] is only required to make a finding of the agreement’s existence, not an evidentiary determination of its validity.” (*Condee, supra*, at p. 219.) We note, additionally, that “[t]he petitioner bears the burden of proving the existence of a valid arbitration agreement by the preponderance of the evidence, and a party opposing the petition bears the burden of proving by a preponderance of the evidence any fact necessary to its defense. [Citation.] In these summary proceedings, the trial court sits as a trier of fact, weighing all the affidavits, declarations, and other documentary evidence, as well as oral testimony received at the court’s discretion, to reach a final determination. [Citation.]” (*Engalla v. Permanente Medical Group, Inc.* (1997) 15 Cal.4th 951, 972 (*Engalla*).

⁴ Code of Civil Procedure section 1281.2 provides in part that when a party files a petition to compel arbitration, the trial court “shall order the petitioner and the respondent to arbitrate the controversy if it determines that an agreement to arbitrate the controversy exists.”

Under *Condee* and *Engalla*, the trial court was required to determine whether there was an arbitration agreement between Structured and Currency. In the context of this case, that also means that the trial court was required to decide whether the Waiver had been assigned. Thus, the issue of standing was for the trial court rather than the arbitrator to decide. We therefore conclude that lack of standing is a proper ground for affirming the trial court's order.

DISPOSITION

The order denying Structured's motion to compel arbitration is affirmed. Currency is entitled to its costs on appeal.

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_____, J.
ASHMANN-GERST

We concur:

_____, P. J.
BOREN

_____, J.
DOI TODD