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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

CENTRAL BASIN MUNICIPAL WATER
DISTRICT ex rel. LETICIA VASQUEZ,

Plaintiffs and Respondents,

v.

BUCHALTER NEMER et al.,

Defendants and Appellants.

B259179

(Los Angeles County
Super. Ct. No. BC518653)

APPEAL from an order of the Superior Court of Los Angeles County, Susan Bryant-Deason, Judge. Affirmed.

Bird, Marella, Boxer, Wolpert, Nessim, Dooks, Lincenberg & Rhow, Paul S. Chan, Jeremy D. Matz, and Marc E. Masters for Defendants and Appellants.

Law Offices of Jimmie Johnson and Jimmie Johnson for Plaintiffs and Respondents.

Defendants Buchalter Nemer and Douglas E. Wance appeal from an order denying their motion to compel arbitration of this false claims action filed by qui tam plaintiff Leticia Vasquez. We affirm.

BACKGROUND

In August 2013, qui tam plaintiff Leticia Vasquez filed this action “in the name of the Central Basin Municipal Water District . . . , a California local Public Entity” (Central Basin). As alleged in her complaint, Vasquez began serving as an elected member of the Governing Board of the Central Basin in January 2013, and shortly thereafter learned that \$2,750,000 in Central Basin funds had been transferred “secretly, improperly, illegally and without authority” to bank accounts controlled by two law firms, defendants Sedgwick, Detert, Moran & Arnold, LLP (Sedgwick) and Buchalter Nemer (Buchalter). Vasquez alleged the transfer of funds provided no benefit to Central Basin, and one of her fellow board members referred to the transferred funds as “the ‘Slush Fund.’”

According to the allegations in Vasquez’s complaint, the defendant at the center of these illegal money transfers was appellant Douglas Wance, an attorney who served as General Counsel to Central Basin, first while working at Sedgwick and later while working at Buchalter. The first cause of action in the complaint concerns a money transfer from Central Basin to Sedgwick during Wance’s association with Sedgwick. The second cause of action concerns two money transfers from Central Basin to Buchalter during Wance’s association with Buchalter.

In the first cause of action, Vasquez asserted a claim for violations of the California False Claims Act (Gov. Code, § 12650 et seq.) against Sedgwick and attorneys Douglas Wance and Curtis Parvin. As alleged in this cause of action, “Sometime prior to June 2010 the Central Basin Governing Board retained Sedgwick to provide legal services to the Central Basin. As part of that retention of services, Wance was designated by Sedgwick and the Central Basin as the principal attorney and primary contact person and General Counsel from Sedgwick for the Central Basin. Parvin, in conjunction with Wance was also designated by Sedgwick to provide legal services and advice to Central Basin.”

According to the allegations in the first cause of action, Wance and Parvin created a false closed session agenda item for the June 28, 2010 Central Basin public meeting, indicating the item was a conference with legal counsel regarding anticipated litigation. In actuality, Wance, Parvin and Central Basin's General Manager, Art Aguilar, used the false closed session agenda item to discuss ground water storage without disclosing the matter to the public on the agenda, because they knew there was public opposition to the Central Basin's use of resources for ground water storage. Wance, Parvin and Aguilar "used this false closed session report as a pretext, ruse and justification to unlawfully transfer \$1 million of Central Basin monies as prepaid legal expenses to a Sedgwick bank account without authority or approval of the Central Basin Governing Board" and "without disclosure of the \$1 million transfer to the public as required by law." After the June 28, 2010 meeting, Wance, Parvin and Aguilar caused "false and erroneous minutes" to be prepared, stating "the Governing Board had instructed its General Manager to make resources available to Sedgwick for 'ongoing litigation.'" As alleged in the complaint, "The Governing Board members have denied that there was a vote to provide resources for ongoing litigation." On or about June 29, 2010, Wance and Parvin, with Sedgwick's knowledge and consent, caused \$1 million of Central Basin's funds to be wired to a Sedgwick bank account. After a four-month "'cooling off'" or "'no snitching' period," Wance, Parvin, Sedgwick and Aguilar began "illegally" paying the money to their "associates, friends, political allies and other persons related to or otherwise associated with" them. The funds were not used for "ongoing litigation" or for "any lawful purpose properly authorized and disclosed by the Governing Board of the Central Basin."

In the second cause of action, Vasquez asserted a claim for violations of the California False Claims Act against Buchalter, Wance and Aguilar. At some point, Wance left Sedgwick and joined Buchalter. As alleged in the second cause of action, "Sometime on or about February 2012 the General Basin Governing Board retained Buchalter Nemer to provide legal services to the Central Basin. As part of that retention of services, Wance was designated by Buchalter Nemer and the Central Basin as the

principal attorney and primary contact person and General Counsel from Buchalter Nemer for the Central Basin.”

The second cause of action includes the allegations regarding the June 28, 2010 closed session agenda item and further alleges Wance “knowingly used the same false closed session entry as a pretext and ruse to obtain \$1.75 million from Central Basin for Buchalter Nemer’s and Wance’s personal use and benefit without proper authorization from the Central Basin Governing Board and without disclosure to the public as required by law.” According to the allegations in the second cause of action, Wance falsely claimed the Governing Board of Central Basin voted to approve the \$1.75 million in transfers to Buchalter. On or about February 12, 2012, Wance, with Buchalter’s knowledge and consent, caused \$1 million of Central Basin’s funds to be wired to a Buchalter bank account. On or about March 26, 2012, Wance, with Buchalter’s knowledge and consent, caused \$750,000 of Central Basin’s funds to be wired to a Buchalter bank account. Starting in February 2012, Wance, Buchalter and Aguilar began “illegally” paying the money to their “associates, friends, political allies and other persons related to or otherwise associated with” them. The funds were not used for “ongoing litigation” or for “any lawful purpose properly authorized by or disclosed to the Governing Board of the Central Basin.”

In the complaint, Vasquez sought \$1 million in damages from Sedgwick, Wance and Aguilar, and \$1.75 million in damages from Buchalter, Wance and Aguilar. She also sought treble damages, civil penalties, and other relief under the California False Claims Act. She did not seek any relief against defendant Parvin.

After Vasquez filed her complaint, Central Basin filed notice of its election to decline intervention in this action. Sedgwick, Parvin, Buchalter and Wance demurred to the complaint.¹

In May 2014, Buchalter and Wance filed a motion to compel arbitration and for an order staying this action. They attached a redacted December 5, 2011 retainer agreement

¹ The ruling on the demurrers is not at issue on appeal.

between Buchalter and Central Basin, signed by Wance on behalf of Buchalter and Aguilar on behalf of Central Basin. The agreement lists Wance as Central Basin's General Counsel. The agreement also includes an arbitration clause stating, in pertinent part:

“By signing this Agreement, You [Central Basin] agree that, if any dispute arises out of or relating in any way to this Agreement, our relationship, or the services performed (including but not limited to disputes regarding attorneys' fees or costs and claims of negligence, breach of contract or fiduciary duty, fraud or any claim based upon a tort or statute), such dispute shall be resolved by submission to binding arbitration in Los Angeles, California, before a retired judge or justice. . . .” The arbitration clause states California law applies.

In the motion, Wance argued the arbitration clause applies to false claims causes of action brought by a qui tam plaintiff on behalf of the entity that signed the arbitration agreement, Central Basin. He also argued both causes of action are subject to arbitration even though the first cause of action concerns events occurring during his association with Sedgwick and there is no arbitration agreement between Sedgwick and Central Basin. According to Wance, “Equitable estoppel empowers Wance to arbitrate the First Cause of Action given that it is inherently inseparable from the Second Cause of Action that is subject to the Agreement's arbitration provision.”

Vasquez filed an opposition to the motion to compel arbitration, arguing the trial court should exercise its discretion to deny arbitration because not all defendants are parties to an arbitration agreement and “multiple proceedings might result in conflicting rulings involving the same transaction.” She further argued Wance cannot enforce the arbitration agreement as to the first cause of action under the doctrine of equitable estoppel because the doctrine only applies where the cause of action is “‘dependent upon, or founded in, and . . . inextricably intertwined with’ the contract containing the arbitration agreement.” Vasquez asserted the first cause of action concerning events occurring when Wance was associated with Sedgwick is unrelated to Buchalter's retainer agreement with Central Basin, the contract containing the arbitration clause. Vasquez

also argued, as a qui tam plaintiff, she “is not a party to the arbitration agreement and cannot be compelled to arbitrate.”

Buchalter and Wance filed a reply brief in support of their motion to compel arbitration and for an order staying the action. Vasquez filed a supplemental opposition.

On July 23, 2014, the trial court held a hearing on the motion to compel arbitration and the demurrers to the complaint. The trial court denied the motion to compel arbitration, stating in its July 23, 2014 minute order: “First, the motion fails to demonstrate that moving defendants first demanded arbitration and it was refused by Plaintiff. Second, the motion fails to include competent evidence of an arbitration agreement because the declaration of moving parties’ counsel is not competent to authenticate the arbitration agreement because he lacks personal knowledge and there is no foundation or authentication of the agreement. Third, even if the court accepted the inadmissible agreement, the court finds that there exists a great risk of inconsistent rulings with respect to the outcome of arbitration on the 2nd cause of action and the court litigation of the 1st cause of action such that denying arbitration altogether is warranted under CCP section 1281[.2](c).”

The trial court sustained the demurrers with 30 days leave to amend. On or about August 22, 2014, Vasquez filed a first amended complaint which is included in the record on appeal. In their appellate briefs, the parties cite to the allegations in the first amended complaint, although the first amended complaint was not before the trial court at the time it decided the motion to compel arbitration. The first amended complaint includes the allegations we summarized above from the original complaint, which was before the court when it decided the motion.

Before filing the notice of appeal on September 19, 2014, Buchalter and Wance filed additional documents in an effort to cure the procedural defects the trial court found in denying the motion to compel arbitration. They filed (1) a declaration from their counsel, attaching a demand for arbitration sent to Vasquez’s counsel and stating Vasquez has refused to arbitrate, and (2) a declaration from Wance authenticating the

December 5, 2011 retainer agreement between Buchalter and Central Basin that Wance signed on behalf of Buchalter.

On or about December 26, 2014, Vasquez dismissed Aguilar as a defendant in this action with prejudice.

DISCUSSION

Code of Civil Procedure section 1281.2, subdivision (c),² provides:

“On petition of a party to an arbitration agreement alleging the existence of a written agreement to arbitrate a controversy and that a party thereto refuses to arbitrate such controversy, the court shall order the petitioner and the respondent to arbitrate the controversy if it determines that an agreement to arbitrate the controversy exists, unless it determines that:

“[¶] . . . [¶]

“(c) A party to the arbitration agreement is also a party to a pending court action or special proceeding with a third party, arising out of the same transaction or series of related transactions and there is a possibility of conflicting rulings on a common issue of law or fact. . . .

“[¶] . . . [¶]

“If the court determines that a party to the arbitration is also a party to litigation in a pending court action or special proceeding with a third party as set forth under subdivision (c) herein, the court (1) may refuse to enforce the arbitration agreement and may order intervention or joinder of all parties in a single action or special proceeding; (2) may order intervention or joinder as to all or only certain issues; (3) may order arbitration among the parties who have agreed to arbitration and stay the pending court action or special proceeding pending the outcome of the arbitration proceeding; or (4) may stay arbitration pending the outcome of the court action or special proceeding.”

Buchalter and Wance contend the trial court erred in denying their motion to compel arbitration and for an order staying this action based on the court’s application of

² Further statutory references are to the Code of Civil Procedure.

section 1281.2, subdivision (c). In reviewing the trial court’s decision, we apply two standards of review. The issue of “whether a defendant is in fact a third party for purposes of . . . section 1281.2, subdivision (c), is a matter of law subject to de novo review. [Citations.] If the third party exception applies, the trial court’s discretionary decision as to whether to stay or deny arbitration is subject to review for abuse.” (*Laswell v. AG Seal Beach, LLC* (2010) 189 Cal.App.4th 1399, 1406.)

A “third party,” within the meaning of section 1281.2, subdivision (c), is a party not bound by the arbitration agreement. (*Laswell v. AG Seal Beach, LLC, supra*, 189 Cal.App.4th at p. 1407.) Defendants Sedgwick and Parvin³ did not sign an arbitration agreement and are not affiliated with any party who did. At the time the trial court heard the motion to compel arbitration, this action included an additional third party defendant, Aguilar. As noted above, he has since been dismissed from the action.

Buchalter and Wance contend Sedgwick and Parvin “are entitled to enforce the arbitration provision as to the first cause of action on the basis of equitable estoppel.” Neither Sedgwick nor Parvin has sought to enforce the arbitration clause, and they may not be compelled to do so under the doctrine of equitable estoppel.

“[U]nder federal law, a signatory to an arbitration clause may be compelled to arbitrate against a nonsignatory when the relevant causes of action rely on and presume the existence of the contract containing the arbitration provision. [Citation.] In other words, a plaintiff who relies on the contractual terms in a claim against a nonsignatory may be precluded from repudiating the arbitration clause in the contract. . . . [¶] Other California courts, applying federal law, have embraced the estoppel theory, holding that a signatory plaintiff who sues on a written contract containing an arbitration clause may be

³ Buchalter and Wance point out neither the complaint nor the first amended complaint seeks any relief against defendant Parvin in the prayer for relief. That is immaterial to our analysis. Parvin is a named defendant, and both the complaint and first amended complaint include allegations about his alleged wrongful conduct in connection with the closed session agenda item and \$1 million transfer of Central Basin funds to Sedgwick in June 2010. Parvin has appeared in the action and has been mounting a defense to the allegations.

estopped from denying arbitration if he sues nonsignatories as related or affiliated persons with the signatory entity.” (*Rowe v. Exline* (2007) 153 Cal.App.4th 1276, 1286-1287.) The doctrine of equitable estoppel is not applicable here (assuming it is applicable to arbitration clauses applying California and not federal law) because Vasquez has not sued the nonsignatory defendants (Sedgwick and Parvin) under the contract containing the arbitration clause (the retainer agreement between Buchalter and Central Basin).

Having determined Sedgwick and Parvin are third parties within the meaning of section 1281.2, subdivision (c), we must decide whether the trial court abused its discretion in denying the motion to compel arbitration and for an order staying this action. For the reasons set forth below, we find the court properly exercised its discretion.

In order to avoid conflicting rulings on whether the June 28, 2010 closed session agenda item was executed lawfully, it was prudent to join all parties in one action. The trial court could not compel Sedgwick and Parvin to arbitrate this dispute. Therefore, it exercised its discretion and denied Buchalter and Wance’s motion to compel arbitration. We note that the closed session agenda item—the alleged vehicle for all of the money transfers identified in both causes of action—was executed more than one and one-half years before Wance signed the arbitration agreement on behalf of Buchalter.

We recognize “California has a strong public policy favoring contractual arbitration and thus requiring enforcement of valid arbitration agreements.” (*Laswell v. AG Seal Beach, LLC, supra*, 189 Cal.App.4th at p. 1404.) Notwithstanding that, section 1281.2 sets forth exceptions to the enforcement of contractual arbitration provisions and, in this case, an exception applies and the trial court properly exercised its discretion to deny arbitration.

Because we affirm the trial court’s order on these grounds, we need not decide whether Vasquez, as a qui tam plaintiff, is bound by the arbitration agreement Aguilar signed on behalf of Central Basin.

DISPOSITION

The order is affirmed. Respondents are entitled to recover costs on appeal.

NOT TO BE PUBLISHED.

CHANEY, Acting P. J.

We concur:

JOHNSON, J.

LUI, J.