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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Butte)

RONALD POWELL,

Plaintiff and Respondent,

v.

REGINALD POWELL,

Defendant and Appellant;

JAMES POWELL et al.,

Defendants and Respondents.

C067561

(Super. Ct. No.
152083)

Brothers Ronald, Reginald and James Powell, and sister Anne Maretti, were involved in various legal disputes regarding the estate of their mother, Mary Powell.¹ Ronald, Reginald and James subsequently entered into a settlement agreement (agreement)

¹ We will refer to individuals by their first names for clarity.

providing, among other things, that (1) Ronald would pay \$225,000 to Reginald, James, Anne, and the law firm Armstrong & Associates (Armstrong law firm);² (2) certain estate items would be given to specified siblings; (3) Ronald would receive the remaining estate assets; (4) the various legal actions would be dismissed; and (5) any disputes regarding the agreement would be submitted to mediation and then to binding arbitration.

The agreement was drafted to include Anne as a party to a global settlement, but expressly provided that if Anne did not sign the agreement by a specified date, Reginald and James would indemnify Ronald against claims by Anne. Anne never signed the agreement and objected to the agreement's proposed distribution of estate assets. Ronald nonetheless attempted to pay \$225,000 to Anne and the other siblings pursuant to the agreement, but Anne refused to endorse the check. Other disagreements subsequently arose between the siblings regarding the agreement.

Ronald initiated an interpleader action to determine the appropriate payment under the agreement, depositing \$217,122.30 with the trial court based on Ronald's assertion that he had not received certain sums due him under the agreement. Reginald then filed a petition in the interpleader action to compel arbitration, arguing that the agreement required arbitration of the dispute between the parties.

² The Armstrong law firm represented Reginald and James. The parties refer to the law firm variously as A. Ann Armstrong & Associates, Inc., Armstrong & Associates, "L/O Ann Armstrong," and the Armstrong law firm.

The trial court denied the petition to compel arbitration, concluding the only issue that could be raised between an interpleader stakeholder and a claimant is whether the elements of an interpleader action are present. The trial court ruled that Reginald could not compel Ronald to arbitrate because Ronald had disclaimed his interest in the interpleaded funds, leaving nothing to arbitrate as to Ronald. In addition, the trial court concluded that Reginald could not compel Anne or the Armstrong law firm to arbitrate because they were not parties to the agreement and never consented to binding arbitration.

Reginald now contends on appeal that the trial court erred in denying his petition to compel arbitration because (1) the agreement provides that any unresolved dispute among the parties is to be determined by binding arbitration, and the fact that Anne and the Armstrong law firm are not parties to the agreement does not preclude arbitration between Ronald, Reginald and James; (2) Ronald did not deposit the full \$225,000 settlement amount in the interpleader action; and (3) Ronald is more than just a "stakeholder," he is "an integral part of the conflict" between the parties.

Given the context of this appeal, it is important to point out what is not presented for our consideration. There is no contention that the agreement is invalid, that the probate proceeding was prematurely or improperly closed, or that Ronald lacks authority to pay \$225,000 to his siblings or the Armstrong law firm. The only issue presented is whether binding arbitration should be compelled under the agreement.

We conclude the trial court did not err in denying the petition to compel arbitration. According to the pleadings in this interpleader action, Anne and the Armstrong law firm are named defendants. Although Anne defaulted, nothing in the record shows a final judgment against her, and we cannot say that she is completely foreclosed from asserting a claim to the interpleaded money. Reginald seeks binding arbitration to determine whether Anne can be excluded from the interpleaded funds,³ but Anne did not agree to binding arbitration and Reginald has not established a legal basis on this record to impose binding arbitration on nonsignatories. Moreover, Reginald's claims against Ronald do not prevent Ronald from being a disinterested stakeholder in this interpleader action, and Reginald's affirmative claims must be asserted in a separate action.

We will affirm the order denying Reginald's petition to compel arbitration.

BACKGROUND

In addition to the instant interpleader action, some of the siblings were involved in three other legal proceedings: *Conservatorship of Mary Powell*; *Estate of Mary Powell*; and *James Powell et al. v. Ronald Powell* (the civil action). In the civil action, Reginald and James alleged that Ronald engaged in

³ The parties do not address any interest by the Armstrong law firm to the interpleaded funds.

misconduct in the administration of Mary's estate. Anne is not a party to the civil action.

Following mediation with retired Judge Cecily Bond, Ronald, Reginald and James agreed to settle their disputes. The agreement provided, among other things, that (1) Ronald would pay \$225,000 to Reginald, James, Anne and the Armstrong law firm; (2) the \$225,000 would be paid not later than seven days after the trial court released "the joint tenancy funds"; (3) Anne would receive a china cabinet, table and chairs owned by Mary; (4) James would receive a cross and sapphire pendent given to Mary by James and Carol Powell; (5) Ronald would receive all other assets owned by Mary at the time of her death; (6) the three pending actions would be dismissed with a full release of all claims;⁴ (7) James and Anne would sign documents waiving rights to fees and costs in *Conservatorship of Mary Powell*; (8) Reginald, James and Anne would sign documents withdrawing their objections to Ronald's accounting and his request for attorney's fees, and consenting to the distribution to Ronald of estate assets in *Estate of Mary Powell*; (9) Reginald and James would withdraw a lis pendens they recorded; (10) Reginald, James and Anne would defend and indemnify Ronald against any liens, subrogation claims and other rights that may be asserted against the amount paid in settlement of the civil action or against any

⁴ The agreement purports to require Anne to dismiss the civil action and waive all claims asserted in that action, even though Anne was never a plaintiff in that lawsuit.

recovery by plaintiffs in the civil action; (11) if Anne did not sign the agreement by October 15, 2009, James and Reginald would defend and indemnify Ronald from any claim by Anne relating to Mary's estate, conservatorship and non-probate transfers; (12) any dispute concerning the terms of the agreement would be submitted to Judge Bond for mediation and if mediation was unsuccessful, the matter would be determined by binding arbitration; and (13) notwithstanding Evidence Code sections 1115 through 1128, the agreement would be binding and could be enforced by motion pursuant to Code of Civil Procedure section 664.6 or any other procedure permitted by law.

Ronald, Reginald and James signed all documents required under the agreement. The pending legal proceedings were dismissed and Mary's probate estate was closed. However, Anne did not sign the agreement or any other document described in the agreement.

On November 3, 2009, Ronald sent a check for \$225,000 to the Armstrong law firm. As provided in paragraph 1 of the agreement, Anne was listed as one of the payees on the check. The Armstrong law firm returned the check to Ronald's attorney on January 8, 2010, advising him that Anne would not endorse the check.

According to Ronald, Anne insisted on receiving the CalPERS and Met Life benefits from Mary's estate which the agreement assigned to Ronald. Additionally, Ronald claimed he did not receive \$7,877.70 that he was entitled to receive under the agreement. That sum consisted of a \$545.48 payment from CalPERS

to Reginald; a \$545.48 payment from CalPERS to James; a \$545.48 payment from CalPERS to Anne; a \$5,408.70 distribution Anne received from the probate estate; a \$284.56 payment from Met Life to Anne; and \$539 in extra taxes that Ronald paid. Ronald alleges CalPERS refused to honor assignments by James and Reginald to Ronald, and James and Reginald received \$545.48 each from CalPERS with the understanding that such sums would be deducted from an eventual revised agreement.

Ronald, Reginald and James attempted to mediate their dispute over how the \$225,000 should be paid given Anne's refusal to sign the settlement documents, but mediation was unsuccessful.

On October 28, 2010, Ronald filed a complaint in interpleader against Reginald, James, Anne and the Armstrong law firm. The complaint alleged, among other things, that Ronald did not receive a total of \$7,877.70 to which he was entitled under the agreement; that Ronald proposed paying \$217,122.30 (\$225,000 minus \$7,877.70) to Reginald, James, Anne and the Armstrong law firm but Reginald and James refused to accept a settlement check with Anne named as a payee, and Reginald and James also rejected Ronald's proposal to pay Reginald, James and Anne each approximately one-third of the \$225,000. Ronald deposited \$217,122.30 with the clerk of the court, seeking to interplead the \$217,122.30 with the court and to be discharged from all liability to Reginald, James, Anne and the Armstrong law firm regarding the agreement. Ronald also seeks a court order restraining Reginald, James, Anne and the Armstrong law

firm from instituting any action against Ronald concerning the rights and obligations between the parties, and an order awarding costs and attorney's fees.

On November 29, 2010, Reginald filed a petition to compel arbitration in the interpleader action. He said an arbitrable controversy existed regarding payment of the settlement proceeds, mediation pursuant to the agreement was unsuccessful, and Ronald breached the agreement by initiating an interpleader action rather than submitting the matter to arbitration.

The trial court denied the petition to compel arbitration, concluding the only issue that could be raised between an interpleader stakeholder and a claimant is whether the elements of an interpleader action are present. The trial court further ruled that Ronald could not be compelled to arbitrate because he disclaimed his interest in the interpleaded funds, and Anne and the Armstrong law firm could not be compelled to arbitrate because they were not parties to the agreement.

After the notice of appeal was filed, default was entered against Anne in the interpleader action.

STANDARD OF REVIEW

The party seeking to compel arbitration bears the burden of proving the existence of a valid arbitration agreement by a preponderance of the evidence. (*Engalla v. Permanente Medical Group, Inc.* (1997) 15 Cal.4th 951, 972.) In addition, where, as here, the language of the agreement is not in dispute, we review the trial court's ruling on a petition to compel arbitration de novo. (*Molecular Analytical Systems v. CIPHERGEN Biosystems,*

Inc. (2010) 186 Cal.App.4th 696, 708; *Brookwood v. Bank of America* (1996) 45 Cal.App.4th 1667, 1670 [principles of contract law govern the interpretation of an arbitration agreement and whether an arbitration agreement applies to a particular controversy is a question of law which is reviewed de novo].) We also independently review whether a nonsignatory is bound by an arbitration agreement. (*Suh v. Superior Court* (2010) 181 Cal.App.4th 1504, 1512.)

DISCUSSION

I

“Interpleader is an equitable proceeding by which an obligor who is a mere stakeholder may compel conflicting claimants to money or property to interplead and litigate the claims among themselves instead of separately against the obligor.” [Citation.]” (*Westamerica Bank v. City of Berkeley* (2011) 201 Cal.App.4th 598, 607; see Code Civ. Proc., § 386, subd. (b); *Hancock Oil Co. v. Hopkins* (1944) 24 Cal.2d 497, 503, 510 [interpleader protects a stakeholder threatened with multiple vexation with respect to one liability].) “In an interpleader action, the court initially determines the right of the plaintiff to interplead the funds; if that right is sustained, an interlocutory decree is entered which requires the defendants to interplead and litigate their claims to the funds.” (*Dial 800 v. Fesbinder* (2004) 118 Cal.App.4th 32, 42-43.) Interpleader may be maintained even when the claims are adverse to and independent of one another or the claims are

unliquidated and no liability on the part of the plaintiff has arisen. (Code Civ. Proc., § 386, subd. (b).)⁵

Interpleader allows the plaintiff to admit responsibility to disburse or relinquish the interpleaded money or property, deposit such money or property with the court, and be discharged from liability and dismissed from the interpleader action.

(§§ 386, 386.5; *Dial 800 v. Fesbinder, supra*, 118 Cal.App.4th at pp. 42-43.) The plaintiff may deposit any amount which he or she admits is payable by him or her with the clerk of the court at the time the interpleader complaint is filed, without first obtaining a court order. (§ 386, subd. (c).) Any interest on the money deposited and any right to damages for detention of the money or property delivered to the court ceases to accrue after the date of deposit or delivery. (§ 386, subd. (c).) The court retains custody of the interpleaded money or property until the rights of the potential claimants are adjudicated. (*Dial 800 v. Fesbinder, supra*, 118 Cal.App.4th at p. 43.) A defendant in the interpleader action may, in lieu of or in addition to any other pleading, file an answer to the complaint which must contain allegations of fact as to his or her ownership of or other interest in the money or property interpleaded and any affirmative defenses and the relief requested. (§ 386, subd. (d).) After an interpleader complaint is filed, the court may prevent the parties from initiating

⁵ Undesignated statutory references are to the Code of Civil Procedure.

other proceedings affecting the rights and obligations of the parties to the interpleader. (§ 386, subd. (f).)

Reginald contends the trial court erred in denying his petition to compel arbitration because the agreement provides that any unresolved dispute among the parties is to be determined by binding arbitration, and the fact that Anne and the Armstrong law firm are not parties to the agreement does not preclude arbitration between Ronald, Reginald and James.

The problem with Reginald's argument is that paragraph 1 of the agreement identifies Anne as a "plaintiff" and says that Ronald shall pay "the total sum of \$225,000.00" to the Armstrong law firm and Ronald's siblings, including Anne. It does not specify how the total sum of \$225,000 is to be divided, and it does not say that Ronald shall pay only Reginald and James if Anne does not sign the agreement or disputes her share of the payment. We cannot rewrite the agreement to insert terms which one of the parties now wishes were there. (*Ritzenthaler v. Fireside Thrift Co.* (2001) 93 Cal.App.4th 986, 991.) Paragraph 8, subparagraph (c) says that if Anne does not sign the agreement, James and Reginald will defend and indemnify Ronald from Anne's claims "relating to Mary Powell's estate and conservatorship and non-probate transfers." But the indemnity clause is not controlling here because, as Reginald concedes, there is no indication in the record that Anne has taken any legal action to assert a claim relating to the estate, conservatorship or non-probate transfers. And even though the \$225,000 payment appears to have been intended, at least in

part, to be a distribution of estate assets (as evidenced by Ronald's attempt to deduct from his payment the amount Anne received from the probate estate), the agreement does not clearly spell this out, and a portion of the payment could also have been intended to settle allegations in the civil action that Ronald committed misconduct.

Thus, based on paragraph 1 of the agreement, Ronald filed the instant interpleader action, named his siblings and the Armstrong law firm as defendants, and deposited \$217,122.30 with the court. There is no indication in the record that judgment is final as to any of the defendants. On this record, we cannot say that Anne or the Armstrong law firm are completely foreclosed from asserting a claim to the interpleaded funds.

Reginald and James contend that Ronald's payment should exclude Anne. This is the issue Reginald seeks to resolve by binding arbitration. Resolution of this issue would necessarily implicate Anne's possible interest in the pending interpleader action.

But Anne cannot be compelled to arbitrate under these circumstances, and an arbitrator cannot arbitrate her interest. Although public policy favors arbitration as an expedient and economical method of resolving disputes, arbitration assumes that the parties have elected to use it as an alternative to the judicial process. (*County of Contra Costa v. Kaiser Foundation Health Plan, Inc.* (1996) 47 Cal.App.4th 237, 244 (*Contra Costa*)). "Even the strong public policy in favor of arbitration does not extend to those who are not parties to an arbitration

agreement or who have not authorized anyone to act for them in executing such an agreement." (*Id.* at p. 245.) Because arbitration is consensual in nature, an arbitrator generally has no power to determine the rights and obligations of a person who has not agreed to arbitrate. (*American Builder's Assn. v. Au-Yang* (1990) 226 Cal.App.3d 170, 179.)

Reginald correctly points out, however, that there are limited exceptions to this general rule requiring consent to arbitrate. As relevant here, courts have required nonsignatories to arbitrate their claims where the nonsignatory is a third party beneficiary of the contract containing the arbitration agreement, or where "a preexisting relationship existed between the nonsignatory and one of the parties to the arbitration agreement, making it equitable to compel the nonsignatory to also be bound to arbitrate his or her claim." (*Contra Costa, supra*, 47 Cal.App.4th at p. 242; *Suh v. Superior Court, supra*, 181 Cal.App.4th at p. 1513 [also identifying other circumstances where a nonsignatory may be bound to arbitrate].)

Reginald asserts that Anne was a beneficiary of the agreement, but the "mere fact that a contract results in benefits to a third party does not render that party a 'third party beneficiary.'" (*Matthau v. Superior Court* (2007) 151 Cal.App.4th 593, 602.) A third party beneficiary is someone who can enforce a contract because the contract was made expressly for her benefit. (*Ibid.*; Civ. Code, § 1559.) On this record, we cannot conclude that Ronald, Reginald and James entered into the agreement for the express benefit of Anne, or that Anne is

in a position to enforce the agreement. Although the agreement provides that Anne would receive some payment and other estate items, the interpleader complaint alleges that Anne seeks her intestate share of the estate along with CalPERS benefits and Met Life insurance benefits, assets that the agreement gave to Ronald. Reginald concedes that Anne was not involved in the civil action or any settlement negotiations, that the brothers had "no control" over her, and that all parties knew she had a deep hatred for her brother Ronald. Reginald and James now contend that Anne should be excluded from payment altogether. These facts do not support a determination that the brothers entered into the agreement for Anne's express benefit.

There is also no evidence of the type of preexisting relationship that would justify compelling Anne to arbitrate. The preexisting relationship exception is grounded in the authority of a signatory to bind a nonsignatory, such as in a spousal relationship, a parent-child relationship, or the relationship of a general partner to a limited partnership. (*Contra Costa, supra*, 47 Cal.App.4th at pp. 242-243.) Here, however, there is no evidence that any signatory to the agreement had authority to commit Anne to binding arbitration without her consent.

Under the circumstances, Reginald has not established a basis to compel arbitration in this interpleader action.

II

Reginald further asserts that Ronald did not deposit the full \$225,000 settlement amount in the interpleader action.

Reginald argues that Ronald has not complied with the terms of the agreement and in fact has breached the agreement.

Reginald's point appears to be that Ronald is improperly "picking and choosing" which portions of the agreement are enforceable and which are not. But even if that is true, it does not justify imposing binding arbitration on nonsignatories, and Reginald does not establish otherwise. (*Badie v. Bank of America* (1998) 67 Cal.App.4th 779, 784-785 [when an appellant fails to support a point with reasoned argument and citations to authority, it is forfeited].)

Ronald counters that Reginald is really asserting an affirmative claim for the additional \$7,877.70, but such a claim must be brought in a separate action. Ronald is correct that the issues that may be litigated in an interpleader action are limited. (*Conner v. Bank of Bakersfield* (1920) 183 Cal. 199, 203-204 (*Conner*); 40 Cal.Jur.3d (2006) Interpleader, § 18, pp. 107-108.) "As against the stakeholder, claimants may raise only matters which go to whether the suit is properly one for interpleader, i.e., whether the elements of an interpleader action are present. [Citations.]" (*State Farm Fire & Casualty Co. v. Pietak* (2001) 90 Cal.App.4th 600, 612-613 (*State Farm*)). The defendants in an interpleader cannot obtain affirmative relief against the plaintiff. (*Conner, supra*, 183 Cal. at p. 203.) Any claims by the defendant against the plaintiff arising out of the subject matter of the interpleader must be raised in another and different action. (*Id.* at pp. 203-204.)

In *Conner, supra*, 183 Cal. 199, the California Supreme Court held that an interpleader action by a bank did not estop an executrix from bringing a separate action for damages because the only question that could be litigated between the executrix and the bank in the interpleader action was the bank's right to compel an interpleader. (*Id.* at pp. 203-205.) The executrix could not obtain affirmative relief, such as a claim for breach of contract damages, against the bank in the interpleader suit. (*Ibid.*)

In this case, Reginald cannot seek affirmative relief against Ronald in the interpleader action for alleged breach of the agreement or for failure to interplead \$225,000.00 instead of \$217,122.30. (*Conner, supra*, 183 Cal. at p. 203.) Any claims by Reginald against Ronald for breach of contract must be raised in another action. (*Id.* at pp. 203-204.) Conversely, the interpleader action will not decide claims relating to the \$7,877.70 that Ronald withheld or claims for damages against Ronald.

Reginald quotes a portion of this court's decision in *State Farm, supra*, 90 Cal.App.4th 600, in which this court reiterated that an interpleader action is traditionally viewed as two suits, one between the stakeholder and the claimants concerning the stakeholder's right to interplead, and the other among the claimants to determine who shall receive the funds interpleaded. (*Id.* at p. 612.) Reginald contends this case is different because it only involves one lawsuit. But the quoted sentence merely refers to the two phases of an interpleader action. This

court did not say that an interpleader action requires two separate and pending lawsuits.

Because we affirm the trial court order, it is not necessary to address Ronald's contention that the petition to compel arbitration must be denied for lack of proper notice.

III

Reginald also takes issue with the trial court's description of Ronald as a "stakeholder." Reginald argues that Ronald is more than a mere stakeholder, he is "an integral part of the conflict" between the parties.

Reginald argues Ronald is not a mere stakeholder because Ronald breached the agreement by failing to pay Reginald and James the settlement funds and by refusing to arbitrate. This argument is directed at the trial court's ruling that Ronald cannot be compelled to arbitrate because he disclaimed all interest in the interpleaded money. We find no error by the trial court because Reginald's breach of contract claims against Ronald do not prevent Ronald from being a disinterested stakeholder as to the \$217,122.30 interpleaded with the court.

"It is the stakeholder's avowed disinterest in the interpleaded proceeds which gives him the right to interplead." (*Pacific Loan Management Corp. v. Superior Court* (1987) 196 Cal.App.3d 1485, 1489 (*Pacific Loan Management Corp.*)). "An interest of the plaintiff in interpleader, in order to defeat the relief therein prayed for, must be in the very thing or fund itself which is the subject matter of the controversy." (*Conner, supra*, 183 Cal. at pp. 204-205.) The interpleader

plaintiff's potential liability on the defendant's claims for affirmative relief against the plaintiff does not prevent the plaintiff from being a disinterested stakeholder. (*Id.* at p. 204; *Pacific Loan Management Corp., supra*, 196 Cal.App.3d at p. 1489.) In other words, interpleader is not defeated by Reginald's assertion that Ronald breached a duty to deliver the interpleaded money to Reginald or that Ronald breached some other obligation to Reginald. (*Pacific Loan Management Corp., supra*, 196 Cal.App.3d at p. 1489.) As we stated, any claim for damages or other relief against Ronald must be brought in a separate action.

DISPOSITION

The order denying Reginald's petition to compel arbitration is affirmed.

MAURO, J.

We concur:

NICHOLSON, Acting P. J.

BUTZ, J.