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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

In re the Marriage of JOSEPH R. and  
ANNA M. REYES.

JOSEPH RAYMOND REYES,

Appellant,

v.

ANNA MARIA REYES,

Respondent.

E061315

(Super.Ct.No. FAMRS1103676)

OPINION

APPEAL from the Superior Court of San Bernardino County. Michael A. Knish,  
Judge. Affirmed.

K&L Gates, Timothy L. Pierce and Eric A. Bevan; Law Offices of Thomas C.  
Brayton and Thomas C. Brayton for Appellant.

Holstrom, Sissung & Block, James R. Parke; Palmieri, Tyler, Wiener, Wilhelm &  
Waldron, Don Fisher and Erin K. Oyama for Respondent.

Appellant Joseph Raymond Reyes (husband) initiated this dissolution action against respondent Anna Maria Reyes (wife) to end their 24-year marriage. Since 1987, husband and wife have owned Reyes Construction, Inc., a California corporation (RCI). In 2011, the year husband filed for divorce, the shareholders of RCI executed a Buy-Sell Agreement (Agreement) to provide a mechanism for purchasing a shareholder's stock upon the occurrence of certain events, including dissolution of marriage. The Agreement set forth the stock price and provided for arbitration in the event of a dispute. Husband and wife disagreed on how to value their stock and husband requested arbitration. Wife moved, and the family law court granted her motion to stay the arbitration. Husband raises three issues:

1. "Whether the trial court erred by deciding for itself the threshold question of arbitrability rather than allowing that question to be decided by the arbitrator, when the [Agreement] incorporated the American Arbitration Association's Commercial Rules' express provision delegating questions of arbitrability to the arbitrator and there has been no challenge to the validity of the arbitration clause."

2. "Whether the trial court erred by ruling that there was no present controversy to arbitrate, despite [husband] and [wife's] disagreement over the applicability of the valuation method set forth in the [Agreement]."

3. "Whether the trial court erred by ordering the arbitration to be stayed."

Rejecting husband's contentions, we affirm.

## I. PROCEDURAL BACKGROUND AND FACTS

Husband and wife were married on October 17, 1987, and separated on October 31, 2011. Husband filed the petition for dissolution of marriage on November 7, 2011. The couple owns a 95 percent interest in RCI, which they have jointly owned since its incorporation in 1987. On October 1, 2011, husband, wife and minority shareholders of RCI executed an Agreement to provide “a mechanism for purchasing the shares of a Shareholder . . . upon . . . the occurrence of any of the events discussed in this Agreement.”

Article III of the Agreement provides for the mandatory purchase of a shareholder’s shares upon “death, disability, retirement, cessation of employment, bankruptcy, insolvency, or appointment of a receiver.” (Capitalization omitted.) Article IV, entitled “OPTION TO PURCHASE IN EVENT OF DIVORCE OR ANNULMENT” provides, in relevant part: “*If, in connection with the . . . divorce or dissolution of the marriage of a Shareholder, any court issues a decree or order that transfers, confirms, or awards any stock in Reyes Construction to that Shareholder’s spouse or former spouse (an Award), then, notwithstanding that such transfer would constitute an unpermitted Transfer under this Agreement, that Shareholder shall have the right to purchase from his spouse (or former spouse) the shares, or any portion thereof, that were so transferred or ordered to be transferred, and such spouse (or former spouse) shall sell the shares or portion thereof to that Shareholder at the price and upon the terms set forth in Articles VI and VII of this Agreement.*” (Italics added.) Article VI of the Agreement sets the purchase price of the spouse’s (or former spouse’s) shares at 80 percent of the book value

per share.<sup>1</sup> Article IX, section J., subsection C., provides that in the event of a dispute between shareholders, “the dispute(s) shall be settled by binding arbitration in accordance with the then existing Commercial Arbitration Rules of the American Arbitration Association . . . .”

In the dissolution action, wife retained a certified public accountant to value RCI. In contrast, husband opined that the proper method of valuing the stock was set forth in the Agreement, i.e., 80 percent of book value. Given the couple’s dispute over how to value RCI’s stock, on April 3, 2014, husband filed a demand for arbitration with the American Arbitration Association pursuant to Article IX, section J., subsection B of the Agreement. While the family law court had not issued any order transferring or awarding any stock to either husband or wife, husband claimed that an arbitration should be commenced to order wife to follow the valuation procedures set forth in the Agreement. In response, wife moved to stay the arbitration proceeding “to protect the family court’s jurisdiction to characterize, value, and divide the community estate and to prevent a multiplicity of actions.” On May 22, 2014, the court granted wife’s request. It found

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<sup>1</sup> The shareholders of RCI were identified as husband, wife, Ricardo Jimenez, Clint Larison, and Eduardo E. Gallardo. Wife, Jessica Larison, Beatriz H. Jimenez, and Patricia Gallardo, each signed a “CONSENT OF SPOUSE,” which states they had read the Agreement, understood its terms, were given the opportunity to talk to an attorney regarding their community property interest, and agreed to be bound by terms of the Agreement to sell their community interest in RCI’s stock as set forth in the Agreement.

that, among other things, submission of the case to arbitration was premature because none of the specified triggering events had occurred.<sup>2</sup>

## II. DISCUSSION

Regardless of how husband chooses to phrase his contentions on appeal, the threshold issue to be decided is whether the trial court erred in staying arbitration. The standard of review for an order staying or denying arbitration is abuse of discretion. (*Henry v. Alcove Investment, Inc.* (1991) 233 Cal.App.3d 94, 101; Code Civ. Proc.,

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<sup>2</sup> The court “acknowledge[d] [husband’s] position that the [Agreement], by its plain terms, requires arbitration [following attempts at mediation] for any disputes arising out of the Agreement, including disputes in interpretation. [Husband’s] cases indicate that, when there is an arbitration clause, the trial court’s duty is limited to determining whether a controversy is covered by the clause; if it is, then the court must order arbitration. [¶] Although the trial court should interpret the scope of arbitration clauses broadly, [wife] provides reasons for the court to exercise caution in a family court setting. The [*Marriage of Nichols* (1994) 27 Cal.App.4th 661 (*Nichols*)] case demonstrates problems which a family law court involved in characterizing and valuing business interests might find significant in the context of a Buy-Sell Agreement like the one involved here. [Husband’s] cases . . . do not state that an arbitrator may decide the very validity of the agreement itself when that validi[t]y is challenged. [¶] The [Agreement] itself contemplates that courts may decide controversies arising under the agreement. For example, Article IV envisions a scenario in which a divorce court makes an award of stock in [RCI]. Article IX (J) (B) requires mediation before a party submits a dispute to arbitration or court action [if permitted]. [¶] The term ‘arbitration OR court action’ presupposes that a party could, in some cases, submit items to the court instead of or before going to arbitration. If court action could only follow arbitration, then the terms ‘or court action [if permitted]’ would be surplusage. [¶] Most importantly, the court believes that submission of this case to arbitration is premature. By its specific language, the [A]greement provides for sale and valuation only in the case of certain triggering events. None of those triggering events have occurred in this case. There has been no court order awarding stock to anyone. There has been no dissolution or annulment of marriage granted. There has been no actual or attempted inter vivos transfer of stock to anyone other than an actual shareholder. There has been no termination of employment of a shareholder, or bankruptcy proceeding, or appointment of receiver. Thus, there is no controversy to submit to arbitration at this time.”

§ 1281.2, subd. (c).) A court's order staying an arbitration will not be disturbed unless it exceeds the bounds of reason. (*Best Interiors, Inc. v. Millie & Severson, Inc.* (2008) 161 Cal.App.4th 1320, 1329.) However, to the extent the trial court's decision required it to interpret the language in an agreement between the parties to determine whether it is an enforceable arbitration agreement is a question of law subject to de novo review. (*24 Hour Fitness, Inc. v. Superior Court* (1998) 66 Cal.App.4th 1199, 1212.)

Husband contends that arbitration is required pursuant to the terms of the Agreement. Thus, we begin by evaluating the provisions of the Agreement. The opening paragraphs provide: “*The purpose of this Agreement is to protect the Shareholders and the Corporation against involvement in the management and control of the Corporation by others and against intrusion by persons not active in the business of the Corporation or not acceptable to the other Shareholders or to certain Shareholders* (as applicable), as well as to provide continuity for [RCI's] business and a mechanism for purchasing the shares of a Shareholder . . . upon the event of the occurrence of any of the events discussed in this Agreement[,],” namely, the transfer of RCI stock to nonshareholders. (Italics added.) There are five shareholders: husband, wife, Ricardo Jimenez, Clint Larison, and Eduardo E. Gallardo. Because both husband and wife are shareholders, regardless of who is awarded RCI stock in their divorce, there is no threat of management and control of RCI falling into the hands of persons not active in the company's business nor acceptable to the other shareholders.

Next, we consider how the Agreement addresses RCI's shares when awarded to a non-shareholder spouse through a dissolution action. Article IV discusses the optional

purchase of stock in the event of divorce or annulment “[i]f . . . any court *issues a decree or order that transfers, confirms, or awards any stock in [RCI] to that Shareholder’s spouse or former spouse . . .*” (Italics added.) This article further provides that purchase of the stock shall be “at the price and upon the terms set forth in Articles VI and VII . . . .” Article VI sets the purchase price of the shares at 80 percent of the book value. In the event of a dispute concerning the Agreement, Article IX provides for mediation and arbitration of such dispute. It is undisputed that to date, the family court has not issued any order transferring or awarding any stock in RCI to either husband or wife. As such, neither the optional purchase clause nor the arbitration clause has been triggered. The mere commencement of a divorce action is not sufficient to trigger the optional purchase procedure set forth in the Agreement. Because no triggering event has happened, there is no need for arbitration. Thus, the trial court did not abuse its discretion in granting wife’s motion to stay arbitration.<sup>3</sup>

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<sup>3</sup> Because no event has occurred to trigger the optional purchase procedure set forth in the Agreement, the issue of resolving the couple’s disagreement over the valuation method is not ripe. Nonetheless, we remind both sides that Family Code section 721 creates a broad fiduciary relationship between spouses in their transactions with each other. This relationship “imposes a duty of the highest good faith and fair dealing on each spouse, and neither shall take any unfair advantage of the other.” (Fam. Code, § 721, subd. (b).)

III. DISPOSITION

The order is affirmed. Respondent Anna Maria Reyes is awarded costs on appeal.

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HOLLENHORST

Acting P. J.

We concur:

KING

J.

CODRINGTON

J.