

Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2004-172

NOVEMBER TERM, 2004

GreenPoint Credit f/k/a	}	APPEALED FROM:
BankAmerica Housing Services, Inc.	}	
	}	
v.	}	Washington Superior Court
	}	
Ran-Mar, Inc.	}	DOCKET NO. 493-9-03 Wncv
	}	

Trial Judge: Alan W. Cook

In the above-entitled cause, the Clerk will enter:

Ran-Mar appeals from the trial court’s order denying its motion to dismiss a breach-of-contract complaint filed by GreenPoint Credit. Ran-Mar argues that the court erred in finding that the complaint was not subject to arbitration. We affirm.

Ran-Mar owns and operates several mobile home parks in Vermont. GreenPoint provides financing to consumers to purchase mobile homes. On or about October 1, 1998, Ran-Mar entered into two agreements with GreenPoint. The first agreement (“Direct Loan Referral Agreement”) set forth terms and conditions upon which GreenPoint would fund direct loans evidencing obligations (called “accounts”) that arose from the financing or refinancing of manufactured homes for Ran-Mar’s customers. By its terms, this agreement and any rate and fee addendums constituted the entire agreement between the parties pertaining to GreenPoint’s funding of accounts from Ran-Mar. The Direct Loan Referral Agreement contained an arbitration clause, which provided that “[a]ny controversy or claim between or among the parties, including but not limited to those arising out of or relating to this Agreement or any agreements or instruments relating hereto or delivered in connection herewith . . . shall at the request of either party be determined by arbitration.” The second agreement entered into by the parties (“Manufactured Home Time Sales Agreement”) established the terms under which GreenPoint would purchase retail installment contracts and related obligations from Ran-Mar that arose from the sale or lease and delivery of manufactured housing units to Ran-Mar’s customers. The Manufactured Home Time Sales Agreement did not contain a mandatory arbitration clause; it provided that “[i]n the event of litigation between the parties, in connection with this Agreement or any Account purchased pursuant to this Agreement, both parties waive their right to trial by jury and agree that trial shall be to the court.”

In September 2003, GreenPoint filed a complaint against Ran-Mar, alleging that it had breached several provisions of the Manufactured Home Time Sales Agreement. According to the complaint, Ran-Mar sold several mobile homes, which were financed by GreenPoint, and the purchasers had then defaulted under the terms of their retail installment contract and security agreement with GreenPoint. GreenPoint alleged that Ran-Mar had violated section 4(e) of the agreement by claiming a security interest in the mobile homes that was superior to the security interest filed on behalf of GreenPoint. GreenPoint also alleged that Ran-Mar violated section 6 of the agreement by refusing to buy back the purchasers' accounts. GreenPoint sought a judgment in its favor for the amounts due on the accounts pursuant to the terms of the Manufactured Home Time Sales Agreement.

Ran-Mar filed a motion to dismiss GreenPoint's complaint pursuant to V.R.C.P. 12(b)(3), asserting that the allegations in Greenpoint Credit's complaint fell within the arbitration clause of the Direct Loan Referral Agreement. Ran-Mar argued that the Manufactured Home Time Sales Agreement both "related to" and was "delivered in connection with" the Direct Loan Referral Agreement. According to Ran-Mar, both agreements related to the origination by Ran-Mar of retail installment sales on behalf of GreenPoint. Ran-Mar asserted that the agreement to arbitrate constituted an enforceable and binding contract between the parties, and consequently, arbitration was the exclusive venue in which GreenPoint could bring its action. In response, GreenPoint asserted that the two agreements were separate and distinct, and they governed different transactions and conduct. GreenPoint explained that its suit was based on the Manufactured Home Time Sales Agreement, which did not contain an arbitration agreement.

After a hearing^{*}, the court denied Ran-Mar's motion to dismiss in an entry order without written explanation. Ran-Mar requested permission to take an interlocutory appeal, which was granted by this Court.

On appeal, Ran-Mar contends that the trial court erred in determining that the arbitration clause in the Direct Loan Referral Agreement did not apply to disputes that arose under the Manufactured Home Time Sales Agreement. According to Ran-Mar, the fact that GreenPoint's complaint alleges a breach of a separate agreement is irrelevant because, by its express and unambiguous terms, the parties' arbitration agreement extends to any claim between them, regardless of the contract under which the dispute arises.

* The motion attached the Direct Loan Referral Agreement to be considered with the Manufactured Home Time Sales Agreement, which was attached to GreenPoint's complaint. Neither party requested the opportunity to submit evidence pursuant to V.R.C.P. 78(b)(2) and there is no indication that additional evidence was submitted. Appellant has not ordered a transcript of the motion hearing and has not indicated that the trial court rendered an oral decision. Thus, although GreenPoint alleges that the trial court found as fact that the arbitration clause does not relate to the transaction before the court, we have to conclude from the limited record that the trial court ruled as a matter of law.

As previously noted, the Direct Loan Referral Agreement contains the arbitration clause in dispute. The construction of this unambiguous provision presents a question of law, which we review de novo. See Ianelli v. Standish, 156 Vt. 386, 389 (1991) (“It is hornbook law that construction of contract terms is a matter of law and not a factual determination. If a court rules that a provision is ambiguous, [however,] the trier of fact . . . must determine the meaning intended by the parties.” (internal quotations and citation omitted)). Ran-Mar argues that, in interpreting the arbitration clause, we should reach the same conclusion as did the federal district court in Vermont Pure Holdings, Ltd. v. Descartes Sys. Group, Inc., 140 F. Supp. 2d 331 (D. Vt. 2001). We disagree.

Vermont Pure involved a dispute over a faulty computer system. The two contracts at issue in that case were a software license agreement (SLA), which contained an arbitration clause, and a professional services agreement (PSA), which did not. The arbitration clause in the SLA required that “any dispute or controversy between the parties arising out of or relating to this Agreement” would be determined by arbitration. 140 F. Supp. 2d at 332. The court found the terms “arising out of” and “related to” unambiguous. Id. at 334-35. It explained that the phrase “arising out of” was usually interpreted as indicating a causal connection, while the term “related to” was typically defined more broadly to mean “connected by reason of an established or discoverable relation,” synonymous with “connected to,” “associated with,” and “brought with reference to.” Id. (internal quotations and citations omitted). The court found that, although plaintiff had attempted to cast the claims in its complaint under the PSA rather than the SLA, its claims were necessarily connected to the SLA such that they were covered by that contract’s arbitration clause. As the court explained, the problems of which plaintiff complained stemmed from the allegedly inadequate performance of a computer system, which was made up, at least in part, of the software and hardware covered by the SLA. Thus, even if defendants’ inadequate installation was in fact one of the causes of plaintiff’s problems with the system, there was little doubt that the performances of the system bore some connection to the software and hardware, and was thereby “related to” the SLA as well. Id. at 335-36. The court also found it significant that at least one of the counts in plaintiff’s complaint explicitly related to the SLA. Id. at 336. The court therefore found that the arbitration clause extended to the claims raised by plaintiff, and dismissed plaintiff’s complaint.

Unlike Vermont Pure, the claims raised in GreenPoint’s underlying complaint neither “arise out of,” nor “relate to” the Direct Loan Referral Agreement between the parties. More on point is Fit Tech, Inc. v. Bally Total Fitness Holding Corp., 374 F.3d 1, 9-10 (1st Cir. 2004), where the court refused to apply a general arbitration clause in an employment contract to claims made under an asset purchase agreement between same parties. In that case, the arbitration clause in the employment contract provided that “[a]ny controversy or claim arising out of or relating to the [employment agreement], or the breach thereof, shall be settled by arbitration.” Id. at 9. Bally argued that this clause extended to claims made under the asset purchase agreement because the employment agreements were referenced in, and required by, the purchase agreement; certain provisions in the purchase agreement were related to the plaintiff’s continued employment; and the integration clause in the purchase agreement referred “to the purchase agreement and documents referred to in it as comprising the complete and exclusive agreement between the parties.” Id. at 10. The court recognized that there were inter-relationships between the agreements. Indeed, it found that the

agreements comprised understandings related to the same business sale and in interpreting the documents, one provided context for the other. Significantly, however, the court found that the two documents dealt with different aspects of the sale, one addressed asset purchase and the other addressed subsequent employment. As the court explained, “[n]o one can seriously argue that clauses can be plucked at random from one agreement and inserted into the other.” *Id.* The court found that the general arbitration clause appeared only in the employment agreements, and referred to disputes arising under or related to that agreement. Further, the court explained, not only was an arbitration clause omitted from the purchase agreement (although it could have been easily included), but the purchase agreement contained a different, and narrower, dispute resolution process, which would be redundant—indeed, inconsistent—if the same matter were covered by the general arbitration clause in the agreement. *Id.* The court thus rejected Bally’s argument that the arbitration clause in the employment contract covered claims brought under the asset purchase agreement. *Id.* at 10-11.

The U.S. Court of Appeals for the Seventh Circuit reached a similar conclusion in Rosenblum v. Travelbyus.com Ltd., 299 F.3d 657 (7th Cir. 2002). In that case, the court held that an arbitration clause in an employment agreement between the parties did not apply to issues arising under a separate acquisition contract, nor did the acquisition agreement incorporate the employment agreement by reference. 299 F.3d at 663-64. The underlying complaint alleged that Travelbyus breached the acquisition agreement. *Id.* at 660. In moving to dismiss, Travelbyus argued that the “contract” under review should properly be viewed as a combination of the acquisition agreement and the employment agreement, and thus, arbitration was required. *Id.* at 661. The court rejected this argument. It explained that while the contracts were related, they were not two sections of the same agreement; instead, they were separate free-standing contracts. *Id.* at 663. As the court found, each contract delineated rights and duties independent of the other, and each pertained to a particular subject matter; there were no terms missing from either contract that needed to be filled in with borrowed terms from the other; both were supported by consideration and met all of the conditions of a valid contract; and one contract could be fully performed while the other was breached. The court found that the plain language of the arbitration clause in the employment contract, which covered “any matter in dispute under or relating to this Agreement,” simply did not purport to cover the acquisition issues that formed the basis of Mr. Rosenblum’s complaint. *Id.* at 664. To include these claims within the scope of the arbitration agreement, the court explained, “would expand the operation of that clause beyond its express terms and beyond the intent of the parties.” *Id.*

Like the cases discussed above, the contracts at issue here are separate and distinct. They govern separate types of transactions, and do not in any way refer to one another. Under the terms of the Direct Loan Referral Agreement, Ran-Mar receives a fee for referring prospective customers directly to GreenPoint for a loan. In contrast, under the terms of the Manufactured Home Time Sales Agreement, Ran-Mar sells a mobile home to a third-party purchaser, and extends financing to that purchaser. Ran-Mar then assigns the promissory note and security interests to GreenPoint. While the Direct Loan Referral Agreement contemplates arbitration for resolution of disputes arising under that agreement, the Manufactured Home Time Sales Agreement specifically provides that in the

event of litigation, the parties “agree that trial shall be to the court.” Under these circumstances, we cannot conclude as a matter of law that these two contracts must be read together, nor can we conclude, notwithstanding the use of the words “any dispute,” that by signing the Direct Loan Referral Agreement, GreenPoint clearly manifested its intent to be bound by the terms of that contract for claims arising under the Manufactured Home Time Sales Agreement—a separate unrelated document. See Nat’l Union Fire Ins. v. Clairmont, 662 N.Y.S.2d 110, 112 (N.Y. App. Div. 1997) (“[I]n the absence of some clear indication that the parties had a contrary intention, contracts manifesting separate assents to be bound are generally presumed to be separable.”); Nat’l Union Fire Ins. v. Williams, 637 N.Y.S.2d 36, 37-38 (N.Y. App. Div. 1996) (mem.) (“As a general rule, contracts remain separate unless the history and subject matter shows them to be unified.” (internal quotations omitted)). This is particularly true given the specific reference to a “trial by court” in the Manufactured Home Time Sales Agreement. See Dartmouth Savings Bank v. F.O.S. Assocs., 145 Vt. 62, 68 (1984) (“The law will presume that the parties meant, and intended to be bound by, the plain and express language of their undertakings.” (internal quotations omitted)).

As previously discussed, the complaint at issue in this case alleges a violation of two specific provisions of the Manufactured Home Time Sales Agreement, namely Ran-Mar’s alleged claim to a security interest that was superior to the security interest filed on behalf of GreenPoint, and Ran-Mar’s alleged refusal to buy back certain purchasers’ accounts. These claims could not arise under the Direct Loan Referral Agreement, which contemplates a different type of transaction. The arbitration clause in the Direct Loan Referral Agreement does not reach the claims raised in GreenPoint’s complaint, and because the Manufactured Home Time Sales Agreement does not contain a mandatory arbitration provision, we conclude that the trial court properly denied Ran-Mar’s motion to dismiss.

Affirmed.

BY THE COURT:

John A. Dooley, Associate Justice

Marilyn S. Skoglund, Associate Justice

Frederic W. Allen, Chief Justice (Ret.),
Specially Assigned