

2012 IL App (1st) 111759-U

FIRST DIVISION
February 14, 2012

No. 1-11-1759

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

KAREN WALKER,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant and)	Cook County.
Cross-Appellee,)	
)	
v.)	No. 09 L 003285
)	
ROBERT D. WATSON, III. and KEVIN OLADIJI,)	
)	Honorable
Defendants-Appellees and)	Lee Preston and Raymond Mitchell,
Cross-Appellants,)	Judges Presiding.
)	
(Bob Watson Chevrolet, Inc.,)	
)	
Defendant).)	

JUSTICE HALL delivered the judgment of the court.

Justices Karnezis and Rochford concurred in the judgment.

ORDER

¶ 1 *Held:* Though a nonsignatory to the arbitration agreement, the defendant was entitled to compel arbitration based on the allegations of the plaintiff's complaint. The circuit court's denial of attorney fees and sanctions to the defendant was not an abuse of discretion.

¶ 2 This is the third appeal filed by plaintiff Karen Walker in her ongoing dispute with defendants, Bob Watson Chevrolet, Inc. (defendant dealership), Kevin Oladiji and Robert D. Watson, III. The dispute stems from plaintiff Walker's purchase of a 2008 Dodge Durango from defendant dealership. Plaintiff Walker filed a multicount complaint against the defendants alleging that misrepresentations were made to her as to the condition of the vehicle and as to the existence of a manufacturer's warranty.

¶ 3 On October 21, 2009, Circuit Court Judge Lee Preston rejected plaintiff Walker's argument that the arbitration agreement was not part of the sale contract. Judge Preston granted defendant dealership's motion to compel arbitration and dismissed the complaint as to it without prejudice. Plaintiff Walker filed an interlocutory appeal pursuant to Illinois Supreme Court Rule 307(a)(1) (Ill. S. Ct. R. 307(a)(1) (eff. Feb. 26, 2010)) challenging Judge Preston's order. While the appeal was pending, the case continued as to the individual defendants.

¶ 4 On June 25, 2010, defendant Oladiji filed a motion to compel arbitration, a motion to transfer to the First Municipal district, a motion pursuant to section 2-619 of the Code of Civil Procedure (the Code) to dismiss the counts against him with prejudice, and a motion for sanctions and attorney fees pursuant to Illinois Supreme Court Rule 137 and section 10a (c) of the Illinois Consumer Fraud & Deceptive Practices Act (CFA). See 735 ILCS 5/2-619 (West 2010); Ill. S. Ct. R. 137 (eff. Feb. 1, 1994); 815 ILCS 505/10a (c) (West 2010). On August 17, 2010, defendant Watson moved to dismiss with prejudice the counts against him pursuant to

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section 2-615 of the Code and a motion for sanctions and attorney fees pursuant to Rule 137 and section 10a (c) of the CFA.

¶ 5 On January 5, 2011, without addressing the merits of the motion to dismiss, Judge Preston granted defendant Oladiji's motion to compel arbitration and dismissed the complaint without prejudice as to him. Judge Preston also granted defendant Watson's 2-615 motion to dismiss in part and ordered plaintiff Walker to file amended counts against him.¹

¶ 6 On February 22, 2011, this court affirmed Judge Preston's order granting defendant Bob Watson Chevrolet, Inc.'s motion to compel arbitration. See *Walker v. Watson*, No. 1-09-3035 (2011) (unpublished order under Supreme Court Rule 23). On that same date, in a combined motion, defendant dealership and defendant Oladiji moved to dismiss the amended complaint pursuant to section 2-619 of the Code, and defendant Watson moved to dismiss the amended complaint pursuant to sections 2-615 and 2-619 of the Code. In the alternative, he moved to compel arbitration or for transfer to the First Municipal District. All three defendants moved for an award of costs pursuant to Rule 137 and section 10a (c) of the CFA.

¶ 7 On June 14, 2011, Circuit Court Judge Raymond W. Mitchell entered the following order:

"(1) Defendants Bob Watson Chevrolet, Inc. and Kevin Oladiji's motion to dismiss counts I-IV and VIII is GRANTED:

(2) Defendant Bob Watson Chevrolet, Inc.'s motion for costs is DENIED;

¹ In her second appeal, plaintiff Walker filed a notice of appeal from the January 5, 2011, order. Subsequently, this court dismissed the appeal based on plaintiff Walker's failure to file the record on appeal.

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(3) Defendant Robert [D.] Watson, III's motion to dismiss counts VI-VII is GRANTED;

(4) The stay of arbitration previously issued by this Court is dissolved;

(5) Defendant Robert [D.] Watson's motion to compel this matter to arbitration is GRANTED; and

(6) This is a final order disposing of this case in its entirety."

¶ 8 Plaintiff Walker filed a notice of appeal from the January 5, 2011 and June 14, 2011, orders of the circuit court. Defendants Watson and Oladiji filed a cross-appeal from the January 5, 2011 and June 14, 2011, orders denying their request for attorney fees pursuant to Rule 137 and section 10a (c) of the CFA.

¶ 9

ANALYSIS

¶ 10

I. Plaintiff Walker's Appeal

¶ 11 Plaintiff Walker contends that Judge Mitchell erred when he determined that defendant Watson could compel arbitration even though he did not sign the arbitration agreement. She further contends that because Judge Mitchell granted the defendant Watson's motion to compel arbitration, it was error for him to rule on the defendants' motion to dismiss the complaint or, in the alternative, the motions to dismiss should have been denied.

¶ 12

A. Grant of Defendant Watson's Motion to Compel Arbitration

¶ 13

1. Standard of Review

¶ 14 In the absence of an evidentiary hearing and findings of fact, a trial court's decision to grant a motion to compel arbitration is reviewed *de novo*. *Peterson v. Residential Alternatives of Illinois, Inc.* 402 Ill. App. 3d 240, 244 (2010).

¶ 15

2. Discussion

¶ 16 Plaintiff Walker does not address Judge Mitchell's finding that the scope of the arbitration agreement included the claims raised in her amended complaint. Instead, she argues that defendant Watson could not compel arbitration because he did not sign the arbitration agreement.

"[T]he right to compel arbitration typically stems from contract and generally may not be invoked by a nonsignatory to the contract." *Equistar Chemicals, LP v. Hartford Steam Boiler Inspection & Insurance Co. of Connecticut*, 379 Ill. App. 3d 771, 779 (2008).

¶ 17 While defendant Watson did not sign the arbitration agreement, the agreement provided in pertinent part as follows:

"The parties further agree *** that this Agreement shall be binding upon the parties hereto and their respective heirs, executors, representatives, employees, affiliates, successors, and assigns, and is for the benefit of such parties and any third-parties involved in the transaction (such as co-signers or service contract providers)."

In addition, our courts have recognized several contract-based theories under which an individual may be bound to an arbitration agreement even though he did not sign the agreement. Such theories include: (1) incorporation by reference; (2) assumption; (3) agency; (4) veil-piercing or alter ego; (5) estoppel; and (6) third-party-beneficiary status. *Equistar Chemicals, LP*, 379 Ill. App. 3d at 779. These same theories may be invoked by a nonsignatory to an arbitration agreement to compel the signatories to the agreement to arbitrate. *Equistar Chemicals, LP*, 379 Ill. App. 3d at 779.

¶ 18 In her amended complaint, plaintiff Walker alleged, on information and belief, that

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defendant Watson was a major stockholder of defendant dealership, that he set policies and procedures that permitted his employees to sell previously wrecked cars without disclosing that fact to the prospective buyers. She further alleged that defendant Watson was personally involved in decisions regarding the level of inspection afforded the rebuilt cars and condoned inspections designed not to discover defects. She further alleged that defendant Watson was personally aware of and ratified the decision of his sales manager to sell the damaged vehicle to her.

¶ 19 As alleged by plaintiff Walker, in performing the actions described above, defendant Watson was acting as or on behalf of defendant dealership. Therefore, under theories of agency or as the alter ego of the dealership, defendant Watson was a party to the arbitration agreement and entitled to compel plaintiff Walker to arbitrate her claims. Therefore, Judge Mitchell did not err in granting defendant Watson's motion to compel arbitration.

¶ 20 Nonetheless, we agree with plaintiff Walker that the June 14, 2011, order requires clarification. In his June 14, 2011, order Judge Mitchell granted the defendants' motions to dismiss counts of the amended complaint and granted defendant Watson's motion to compel arbitration.

¶ 21 We interpret the orders of the circuit court from the entire context in which they were entered, with references to other parts of the record including the pleadings, motions and issues before the court. *Williams v. Ingalls Memorial Hospital*, 408 Ill. App. 3d 360, 372 (2011). We must construe the orders in a reasonable manner so as to give effect to the apparent intention of the trial court. *Williams*, 408 Ill. App. 3d at 372-73.

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¶ 22 The October 21, 2009, and January 5, 2011, orders granting the motions to compel arbitration filed by defendant dealership and defendant Oladiji also dismissed the complaint against them. Inasmuch as the order granting the involuntary dismissals also granted defendant Watson's motion to compel arbitration, a reasonable construction of the June 14, 2011, order is that Judge Mitchell intended to permit arbitration of the amended complaint.

¶ 23 Plaintiff Walker argues that by filing and receiving rulings on his motion to dismiss, defendant Watson waived his right to arbitration. In determining whether a party has waived his right to arbitrate, the court considers whether the party has acted inconsistently with its right to arbitrate. *TSP-Hope, Inc. v. Home Innovators of Illinois, LLC*, 382 Ill. App. 3d 1171, 1174 (2008). "A party acts inconsistently with its right to arbitrate when it submits arbitrable issues to a court for decision." *TSP-Hope, Inc.* 382 Ill. App. 3d at 1174. In this case, defendant Watson's motions to dismiss concerned the pleadings and did not require the court to decide an arbitrable issue on the merits. Even if his section 2-619 motion could be deemed similar to the filing of a motion for summary judgment, a motion that has been held to waive arbitration, defendant Watson's motion requested, in the alternative, that the court grant his motion to compel arbitration. Therefore, defendant Watson did not waive his right to arbitration.

¶ 24 We conclude that Judge Mitchell did not err in granting defendant Watson's motion to compel arbitration. We further conclude that the June 14, 2011, order dismissing counts of the amended complaint did not address the merits of the motions to dismiss.

¶ 25 II. Defendant Watson's Cross-Appeal ²

¶ 26 The sole issue raised in the cross-appeal is whether the circuit court erred in denying defendant Watson sanctions and attorney fees for having to defend against the complaint and the amended complaint in this case.

¶ 27 A. *Standard of Review*

¶ 28 The applicable standard of review is whether the denial of sanctions or attorney fees was an abuse of discretion. See *Krautsack v. Anderson*, 223 Ill. 2d 541, 554 (2006) (attorney fees and costs under the CFA); *Peterson v. Randhava*, 313 Ill. App. 3d 1, 14 (2000) (Rule 137 sanctions). We will find an abuse of discretion only if the circuit court acted arbitrarily, exceeded the bounds of reason, ignored recognized principles of law, or if no reasonable person would take the position adopted by the court. *Schmitz v. Binette*, 368 Ill. App. 3d 447, 452 (2006).

¶ 29 B. *Discussion*

¶ 30 1. Section 10a (c) of the CFA

¶ 31 In order to qualify for an award of attorney fees pursuant to section 10a (c) of the CFA, a defendant must be "the prevailing party." 815 ILCS 505/10a (c) (West 2010). Defendant Watson failed to cite any authority supporting his position that he is a "prevailing" party under section 10a (c) of the CFA. Therefore, the issue is waived. Illinois Supreme Court Rule 341(h)(7) (Ill. S. Ct. R 341(h)(7) (eff. July 1, 2008)). In any event, section 10a (c) does not

²While the notice of cross-appeal references both defendant Watson and defendant Oladiji, only defendant Watson filed briefs in this case.

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require the circuit court to award fees even to a prevailing party. See 815 ILCS 505/10a (c) (West 2010) (the court may award reasonable attorney fees and costs to the prevailing party).

¶ 32 2. Rule 137 Sanctions

¶ 33 "Under Rule 137, a court may impose sanctions against a party or an attorney who files a motion or pleading that fails to have a well-grounded factual basis, that is not supported by existing law or lacks a good-faith basis for modification, reversal or extension in the law, or that is imposed for any improper purpose." *Peterson*, 313 Ill. App. 3d at 6-7. The purpose of Rule 137 is to prevent the filing of frivolous and false lawsuits and is not intended to penalize litigants and their attorneys merely because they were zealous, if unsuccessful. *Peterson*, 313 Ill. App. 3d at 7. Because the rule is penal in nature, it must be strictly construed. *Peterson*, 313 Ill. App. 3d at 7.

¶ 34 The defendant Watson claims he is entitled to Rule 137 sanctions because plaintiff Walker had no factual basis for her fraud claims against him and continued to oppose arbitration despite the applicability of the arbitration agreement to her claims. As we determined above, his motion to dismiss the fraud counts was granted without a determination on the merits, and the merits of those claims will be determined by the arbitrator. Plaintiff Walker's opposition to arbitrating her claims against defendant Watson was based on the fact that he was not a signatory to the arbitration agreement, an argument for which there was some authority though we did not find the argument persuasive.

¶ 35 "A party seeking to recover under Rule 137 has the burden of showing that his opponent violated the rule." *Miner v. Fashion Enterprises, Inc.*, 342 Ill. App. 3d 405, 423 (2003). The

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movant must demonstrate that the nonmovant pleaded statements which he or she knew or should have known were not true. *Miner*, 342 Ill. App. 3d at 422. The fraud allegations against defendant Watson in the amended complaint were made on information and belief. At this stage of the proceedings, there is no basis for imposing Rule 137 sanctions on plaintiff Walker. Therefore, the denial of attorney fees and sanctions was not an abuse of discretion.

¶ 36

III. Conclusion

¶ 37 We affirm that portion of the circuit court's June 14, 2011, order granting defendant Watson's motion to compel arbitration and denying his request for attorney fees and sanctions pursuant to section 10a (c) of the CFA and Rule 137. Pursuant to our authority under Illinois Supreme Court Rule 366 (Ill. S. Ct. R. 366 (eff. Feb. 1, 1994)), we modify the June 14, 2011, order to reflect that the dismissal of the counts of the amended complaint was not on the merits.

¶ 38 Affirmed as modified.