2017 IL App (1st) 170637-U

FOURTH DIVISION
December 28, 2017

No. 1-17-0637

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

JOSEPH GRIFFIN,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 16 CH 07269
	)	
VILLAGE OF HAZEL CREST, ILLINOIS,	)	Honorable
	)	Anna H. Demacopoulos,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE McBRIDE delivered the judgment of the court.
Presiding Justice Burke and Justice Gordon concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court properly granted plaintiff's motion to compel arbitration.

¶ 2 Plaintiff Joseph Griffin filed a complaint under the Illinois Arbitration Act (Arbitration Act) (710 ILCS 5/1 *et seq.* (West 2014)) to compel defendant, the Village of Hazel Crest, Illinois (the Village), to submit to arbitration relating to an independent contractor agreement entered into between plaintiff and the Village. The trial court granted plaintiff's motion to compel arbitration.

¶ 3 The Village appeals, arguing that: (1) no valid agreement for arbitration approved by the Village Board of Trustees (the Village Board) exists; and (2) plaintiff's demand for arbitration is barred by the doctrines of waiver and *laches*.

¶ 4 On February 24, 2015, plaintiff and the Village entered into an independent contractor agreement (the Agreement) for plaintiff to manage and maintain the Village's cable studio, maintain compliance of the Village's franchise agreements and community access regulations, manage and facilitate citizen access to production facilities to produce and broadcast original programming content, and develop original public interest programming at the direction of the Village Manager and the director of communications. The agreement provided that the "engagement shall commence upon execution of this Agreement and shall continue in full force and effect through January 21, 2017 or earlier upon completion of the Contractor's duties under this Agreement." Plaintiff was to be compensated $3500 per month.

¶ 5 The agreement included an arbitration provision as follows.

> "Any controversies arising out of the terms of this Agreement or its interpretation shall be settled in Illinois in accordance with the rules of the American Arbitration Association, and the judgment upon award may be entered in any court having jurisdiction thereof."

¶ 6 At the February 24, 2015 meeting, the Village Board voted to approve the Agreement. The Agreement was signed by plaintiff and the Village Manager. On March 10, 2015, the Village President vetoed the Village Board's approval of the Agreement.

¶ 7 On March 24, 2015, the Village Board met. The initial agenda, posted by the Village Manager, did not include the Board's reconsideration of the Agreement after the veto. An

amended agenda was prepared to include this item, but purportedly was not posted in a location accessible to the general public at least 48 hours in advance of the meeting. At the beginning of the meeting, the Village President acknowledged that the meeting was not posted in accordance with the Open Meetings Act (5 ILCS 120/1 *et seq.* (West 2014)), but the meeting would proceed. During the meeting, the Board purportedly overrode the veto and approved the Agreement.

¶ 8 In April 2015, the Village received two separate requests for review from the office of the Illinois Attorney General based on citizen complaints regarding the possible violation of the notice requirement in the Open Meetings Act for the March 24 meeting.

¶ 9 On May 1, 2015, the Village Board approved an ordinance to eliminate the Department of Communications and Community Relations, which was the department for which plaintiff provided services. That day was the last day plaintiff performed under the Agreement. According to plaintiff, he was locked out of the Village's cable studio and was not allowed to fulfill his job duties under the Agreement. The next day, the Village President informed plaintiff that plaintiff's position had been eliminated as a result of the department's elimination.

¶ 10 In July 2015, the Village entered into an agreement with another individual to perform the same services plaintiff had performed under the Agreement. This agreement was for a term of one year, but was renewed for a second year. The compensation under this agreement was $3000 per month.

¶ 11 In May 2016, plaintiff made a demand for arbitration under the Agreement, which the Village denied. Plaintiff subsequently filed the instant action to compel arbitration. The Village answered the complaint and raised several affirmative defenses, including that the Agreement was not valid because the Village Board failed to approve the Agreement in compliance with Open Meetings Act, the elimination of the department canceled and superseded the Agreement,

plaintiff waived his right to arbitration, and plaintiff was barred by *laches* because he failed to make a timely demand for arbitration.

¶ 12 In September 2016, plaintiff moved to compel arbitration. Following briefing, the trial court granted plaintiff's motion to compel arbitration.

¶ 13 This appeal followed.

¶ 14 On appeal, the Village argues that the trial court erred in granting plaintiff's motion to compel arbitration because the Agreement was void or canceled. Specifically, the Village asserts that (1) the Agreement was a void multi-year personnel services contract lacking prior appropriation to pay plaintiff, and (2) the Agreement was not approved by a valid final decision of the Village Board in compliance with Open Meetings Act. We review the trial court's order granting a motion to compel arbitration that was made without an evidentiary hearing and raises only a legal issue *de novo*. *Guarantee Trust Life Insurance Co. v. Platinum Supplemental Insurance, Inc.*, 2016 IL App (1st) 161612, ¶ 25.

¶ 15 The Arbitration Act " 'must be deemed part of a contract containing an arbitration clause.' " *Advocate Financial Group v. Poulos*, 2014 IL App (2d) 130670, ¶ 48 (quoting *Johnson v. Baumgardt*, 216 Ill. App. 3d 550, 560 (1991)). "[A]rbitration is favored by the state, federal, and common law, and an arbitration agreement will be given as broad an interpretation as its language will allow." *Zimmerman v. Illinois Farmers Insurance Co.*, 317 Ill. App. 3d 360, 366 (2000). "Where there is a valid arbitration agreement and the parties' dispute falls within the scope of that agreement, arbitration is mandatory and the trial court must compel it." *Travis v. American Manufacturers Mutual Insurance Co.*, 335 Ill. App. 3d 1171, 1175 (2002).

¶ 16 Section 2(a) of the Arbitration Act provides:

> "On application of a party showing an agreement described in Section 1, and the opposing party's refusal to arbitrate, the court shall order the parties to proceed with arbitration, but if the opposing party denies the existence of the agreement to arbitrate, the court shall proceed summarily to the determination of the issue so raised and shall order arbitration if found for the moving party, otherwise, the application shall be denied." 710 ILCS 5/2(a) (West 2014).

Additionally, "[a]n order for arbitration shall not be refused on the ground that the claim in issue lacks merit or bona fides or because any fault or grounds for the claim sought to be arbitrated have not been shown." 710 ILCS 5/2(e) (West 2014).

¶ 17 In determining whether there is an agreement to arbitrate,

> "a three-pronged approach is used: (1) if it is clear that the dispute falls within the scope of the arbitration clause or agreement, the court must compel arbitration; (2) if it is clear that the dispute does not fall within the arbitration clause or agreement, the court must deny the motion to compel; and (3) if it is unclear or ambiguous whether the dispute falls within the scope of the arbitration clause, the matter should be referred to the arbitrator to decide arbitrability." *Guarantee Trust*, 2016 IL App (1st) 161612, ¶ 26 (citing *Donaldson, Lufkin & Jenrette Futures, Inc. v. Barr*, 124 Ill. 2d 435, 443-50 (1988)).

¶ 18 Here, the arbitration clause in the Agreement states:

> "Any controversies arising out of the terms of this Agreement or its interpretation shall be settled in Illinois in accordance with the rules of the American Arbitration Association [AAA Rules], and the judgment upon award may be entered in any court having jurisdiction thereof."

¶ 19 Rule 6(b) of the AAA Rules for employment agreements, which includes independent contractor agreements, provides:

> "The arbitrator shall have the power to determine the existence or validity of a contract of which an arbitration clause forms a part. Such an arbitration clause shall be treated as an agreement independent of the other terms of the contract. A decision by the arbitrator that the contract is null and void shall not for that reason alone render invalid the arbitration clause." AAA, Employment Rules, Rule 6(b) (eff. Nov. 1, 2009).

¶ 20 Despite this authority, the Village argues that arbitration should not be compelled for several reasons: (1) the purported violation of the Open Meetings Act at the March 24, 2015 meeting of the Village Board, (2) the Village lacked the ability to enter into a two-year agreement, (3) the Agreement was canceled by the elimination of the Department of Communications on May 1, 2015, and (4) plaintiff's demand for arbitration is barred by waiver and *laches*. We point out that the Village has not challenged the existence of an arbitration clause or that plaintiff's claim fall outside of the clause, but rather, the Village has challenged the validity of the entire Agreement and plaintiff's ability to demand arbitration based on it. For the

reasons that follow, we find that these issues regarding the validity of the contract should be decided by the arbitrator and the trial court properly granted plaintiff's motion to compel arbitration.

¶ 21 First, the Village contends that the March 24, 2015 meeting of the Village Board was conducted in violation of the Open Meetings Act. However, the record before this court is insufficient to determine whether such a violation occurred. The Village, as the appellant, bears the burden of providing a sufficiently complete record to support his claim or claims of error, and in the absence of such a record on appeal, it will be presumed that the order entered by the trial court was in conformity with law and had a sufficient factual basis. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984). Moreover, any doubt arising from the incompleteness of the record will be resolved against the appellants. *Foutch*, 99 Ill. 2d at 392. The purported violation occurred when an amended agenda was not posted at least 48 hours in advance of the meeting in a public location. In support of this claim, the Village included in the record (1) an incomplete copy of the minutes from that meeting in which the Village President stated that the meeting was in violation of the Open Meetings Act and would proceed, but the Village Manager believed that no violation occurred, and (2) copies of two letters from the Attorney General's office stating that a review of the meeting was necessary based on two citizen complaints. No finding by the Attorney General's office was provided. The Village claims the later elimination of the Department of Communications remedied the violation, but offers no evidence of support. The record lacks the original agenda, the amended agenda, and a complete copy of the minutes. The incomplete set of minutes shows business occurred at the meeting beyond the approval of the Agreement. We note that these minutes do not show an approval of the Agreement, though the parties agree that the approval occurred at the meeting. We cannot ascertain from the record what

business was conducted in violation or if the entire meeting was in violation. Based upon the record before us, we reject the Village's argument that the Agreement was never approved due to a violation of the Open Meetings Act.

¶ 22 Next, the Village contends for the first time on appeal that the Agreement was a prohibited multiyear personnel services contract lacking prior appropriation. This argument was not raised as an affirmative defense, nor was it argued in the Village's memorandum in opposition to the motion to compel arbitration. An appellant may not raise a new argument for the first time on appeal; arguments not raised in the trial court are considered forfeited. *Robinson v. Toyota Motor Credit Corp.*, 201 Ill. 2d 403, 413 (2002).

¶ 23 The Village also argues that the Village Board's action in eliminating the Department of Communications and Community Relations, which was plaintiff's department, canceled or superseded the Agreement. The Village relies on the decision in *City of Peru v. Illinois Power Co.*, 258 Ill. App. 3d 309 (1994), for support.

¶ 24 There, the City of Peru (Peru), a provider of electric power, filed a complaint for injunctive relief against the Illinois Power Company (Illinois Power) related to Illinois Power supplying electric power to one of Peru's customers. Peru attached an agreement between Illinois Power and Illinois Municipal Electric Agency (IMEA), which Peru alleged that Illinois Power had violated. Illinois Power sought to compel arbitration under that agreement. The trial court denied the motion because Peru was not a party to the agreement, which the reviewing court agreed. As an alternative, Illinois Power argued that Peru should be compelled to arbitrate under a prior agreement to which Peru was a party. However, the reviewing court rejected Illinois Power's assertion, noting that the present agreement specifically stated that the prior agreement was canceled and superseded. *Id.* at 309-13.

¶ 25 We find the present case clearly distinguishable from *City of Peru*. First, unlike in *City of Peru*, nothing in the record specifically stated that the Agreement was "canceled and superseded." Second, the record on appeal is insufficient to determine the impact of the elimination of the Department. The only support in the record is the minutes from the May 1, 2015 meeting, which stated that the Village Board "APPROVED ELIMINATION OF DEPARTMENT: DIVISION 2.- DEPARTMENT OF COMMUNICATIONS AND COMMUNITY RELATIONS, SECTIONS 2-241-2-244," and the affidavit from the Village President stating that plaintiff's position was eliminated as a result of the Village Board's action. Thus, we cannot determine whether the Agreement was canceled by the Village Board's action.

¶ 26 Finally, the Village asserts that plaintiff's demand for arbitration was barred by waiver and *laches*. The Village has cited general case law regarding waiver, but fails to advance a distinct argument explaining how plaintiff waived his right to arbitration. Rather, the Village combines its argument on the applicability of waiver and *laches* to the instant case.

¶ 27 The Village contends that plaintiff's demand for arbitration under the Agreement is barred because a general rule exists that a delay greater than six months is *per se* unreasonable to bar various claims against public entities. See *Hofrichter v. City of Chicago Heights*, 2016 IL App (1st) 153106, *Monson v. County of Grundy*, 394 Ill. App. 3d 1091 (2009), *Bill v. Board of Education of Cicero School District 99*, 351 Ill. App. 3d 47 (2004), *PACE v. Regional Transportation Authority*, 346 Ill. App. 3d 125 (2003), and *DiSanto v. City of Warrenville*, 59 Ill. App. 3d 931 (1978). However, none of these cases involved a demand for arbitration.The Village argues that plaintiff's delay in demanding arbitration caused it prejudice because it has already paid a different contractor for the services rendered and the fiscal budgets from the years involved have closed, but does not show that this is a question the trial court must resolve over

the arbitrator. As we have observed, the parties agreed to be bound by the AAA Rules, which place the power "to determine the existence or validity of a contract of which an arbitration clause forms a part" on the arbitrator. AAA, Employment Rules, Rule 6(b) (eff. Nov. 1, 2009). Thus, we conclude that the arbitration is the proper venue to decide these claims.

¶ 28 Our findings on the Village's arguments do not preclude the Village from fully raising such arguments before the arbitrator. Under the Arbitration Act, "[t]he parties are entitled to be heard, to present evidence material to the controversy and to cross-examine witnesses appearing at the hearing." 710 ILCS 5/5(b) (West 2014). Further, we offer no opinion as to how the arbitrator should rule on the Village's defenses to plaintiff's claim.

¶ 29 Based on the foregoing reasons, we affirm the decision of the circuit court of Cook County.

¶ 30 Affirmed.