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NO. 5-12-0028

APPELLATE COURT OF ILLINOIS

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).

Honorable
Stephen P. McGlynn,
Judge, presiding.

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entered an injunction requiring Enservio to produce its records for Replacement to review. Enservio appeals the circuit court's decision, arguing that the court's orders should be vacated and the arbitration clause should be enforced. We affirm.

¶ 3 Replacement is an Illinois limited liability company having its principal place of business in St. Clair County, Illinois. Enservio is a Delaware corporation doing business in Illinois. Both businesses service insurance companies with Replacement specializing in content claims related primarily to fine jewelry and Enservio to other consumer and commercial goods.

¶ 4 In February of 2007, Replacement and Enservio entered into a two-year agreement titled "Cooperation and Marketing Agreement" to refer to each other its respective customers in order to provide more services. Each company was to pay commissions based upon the revenue derived from referred customers for a period of five years from the point of initial customer engagement by the party to whom customers were referred. Replacement paid Enservio commissions over the years covering business generated through the year 2010. Enservio paid nothing to Replacement despite the fact that its chief executive officer had stated that the relationship between the parties would generate millions of dollars in business for Enservio and substantial commissions for Replacement. One of the referrals Replacement made to Enservio was Farmers Insurance Company (Farmers). After facilitating marketing contacts between Enservio and Farmers, Farmers and Enservio entered into a relationship whereby Farmers allowed Enservio to perform content claims services for it. Replacement received no money from Enservio as a result of Enservio's relationship with Farmers. Replacement requested to view Enservio's records on several occasions but Enservio refused access. Enservio chose instead to file a demand for arbitration seeking a declaration that Replacement was owed nothing under the agreement. Replacement responded by filing an application for preliminary injunction seeking an accounting from

Enservio and a stay of arbitration proceedings until such time as that accounting could be had. Replacement sought access to Enservio's records and books covering the period from February 15, 2007, to January 13, 2012, in order to determine commissions which may be due and payable under the agreement. The court ordered Enservio to provide access to its records in accordance with the agreement but denied the request to stay arbitration. Enservio filed a motion for partial reconsideration. The court entered a more extensive order restating and supplementing the original order, again denying Enservio's motion. Enservio then filed a notice of interlocutory appeal, and Replacement filed a cross-appeal pertaining to the denial of its requests to stay the arbitration proceedings until such time as Enservio complied with the trial court's orders to allow Replacement to examine Enservio's books and records.

¶ 5 While the ultimate issue in this controversy is whether Replacement is entitled to commissions allegedly earned under terms of agreement, the issue before us is whether the circuit court erred in failing to dismiss Replacement's complaint for injunctive relief and in denying Enservio's motion to compel arbitration.

¶ 6 The parties' agreement contained an arbitration clause which read in part:

"Any controversy, dispute, or claim arising out of the formation, interpretation, performance, or breach of this Agreement, shall be resolved by binding arbitration at the request of either party, in accordance with the rules of the American Arbitration Association. *** Nothing in this section shall limit the right of either party to obtain from a court provisional or ancillary remedies such as, but not limited to, injunctive relief, before, during or after the pendency of any arbitration proceeding brought pursuant to this Agreement."

Illinois has a legislative policy favoring enforcement of agreements to arbitrate future disputes. *American Family Mutual Insurance Co. v. Stagg*, 393 Ill. App. 3d 619, 622, 912 N.E.2d 1283, 1286 (2009). Consistent with this policy, we generally will compel arbitration

when the agreement is valid and covers the parties' dispute. See *Donaldson, Lufkin & Jenrette Futures, Inc. v. Barr*, 124 Ill. 2d 435, 445, 530 N.E.2d 439, 443 (1988). If the parties elect to embrace the arbitration process as the route to resolve disputes, we are to respect that choice. Consequently, we agree that the parties' dispute over commissions must be resolved in arbitration. That does not mean, however, that the order of injunction is in error. When the parties entered into the agreement, they also specifically contemplated injunctive relief through the court system being an "ancillary remedy" available "*before, during or after the pendency of any arbitration proceeding*" (emphasis added). Replacement did nothing more than exercise that right in order to have access to records necessary to continue with the arbitration process. Given that prehearing discovery is permissive under the governing American Arbitration Association rules, there is indeed a substantial risk that Replacement will not have the information it needs either to defend against Enservio's claim or to prosecute a counterclaim. One section of the agreement specifically affords each party rights to inspect the records and books of the other, in the way of an audit, to assess compliance with the agreement. Enservio has refused to honor that part of the agreement while, at the same time, insisting that the sections it finds favorable to its position must be enforced. For these reasons, the trial court found that Enservio refused to honor the terms of the parties' agreement and its denial frustrated the rights of Replacement so as to constitute a material breach of the agreement. The court further found that, because of the nature of the agreement, such breach caused Replacement irreparable injury which could not be rectified without injunctive relief of court-ordered specific performance. While we may not necessarily agree with the reasoning, the conclusion is correct. A contract must be interpreted to give effect to all of its provisions. See *Martindell v. Lake Shore National Bank*, 15 Ill. 2d 272, 282-83, 154 N.E.2d 683, 689 (1958). The parties' agreement specifically contemplated the use of injunctive relief in addition to arbitration. We therefore

agree that the court did not err in ordering injunctive relief under the circumstances presented.

¶ 7 Turning to Replacement's counterclaim, Replacement argues that the trial court abused its discretion in refusing to stay the arbitration proceedings. According to Replacement, Enservio has repeatedly misrepresented to the court its willingness to comply with the provisions of the agreement allowing access to its books and records. Replacement points out that the arbitration is proceeding and Enservio still has not turned over any records. The decision whether to stay arbitration proceedings falls within the court's discretion. See *American Federation of State, County & Municipal Employees v. Schwartz*, 343 Ill. App. 3d 553, 559, 797 N.E.2d 1087, 1091 (2003). The trial court denied Replacement's motion to stay arbitration proceedings because Enservio represented to the court it would voluntarily turn over the documents within 30 days. As Replacement points out, Enservio still has refused to do so and does not appear willing to do so anytime soon. While we find no abuse of the court's discretion in initially denying the motion to stay arbitration, we now must remand the matter to the trial court to enter a stay of arbitration until such time as Enservio turns over the records the court determines are necessary for the arbitration to proceed.

¶ 8 For the reasons stated above, we affirm the judgment of the circuit court of St. Clair County.

¶ 9 Affirmed.