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District Court of Appeal of Florida, Second District.

HOLDINGS JJJ, LLC, Appellant,

v.

Jamie RAND and Julie Rand, trustees of the JLR Family Trust dated July 23, 2007; and Robert James and Lucilene James, Appellees.

No. 2D2025-0529
|
September 18, 2026

Appeal pursuant to Fla. R. App. P. 9.130 from the Circuit Court for Hillsborough County; Jennifer X. Gabbard, Judge.

Attorneys and Law Firms

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Opinion

ROTHSTEIN-YOUAKIM, Judge.

***1** Holdings JJJ, LLC, appeals from a nonfinal order denying its motion to compel arbitration of claims brought against it by Robert and Lucilene James in a third-party complaint. Because the claims at issue fall within the scope of the parties' arbitration agreement, we reverse.

In 2019, the Jameses purchased real property from Holdings JJJ. The transaction was governed by an As-Is Residential Contract for Sale and Purchase along with various riders and addenda, including an Indemnification Agreement and Seller's Disclosure Limitation (collectively, the Contract). The Contract included the following arbitration clause:

> WITHOUT LIMITING THE FOREGOING, BUYER AND SELLER AGREE THAT ANY DISPUTE ARISING OUT OF THE TRANSACTION, SALE, CONTRACT, OR CLOSING ASSOCIATED WITH THIS PROPERTY SHALL BE SETTLED BY MANDATORY BINDING ARBITRATION IN ACCORDANCE WITH THE ARBITRATION RULES OF THE AMERICAN ARBITRATION ASSOCIATION AND THAT THE ARBITRATION SHALL BE CONDUCTED IN THE COUNTY OF HILLSBOROUGH, STATE OF FLORIDA.

The Contract does not attach, link to, or reference the American Arbitration Association (AAA) practice area rules that would govern arbitration.

The deed that Holdings JJJ transferred to the Jameses included an easement that allowed the Jameses to enter neighboring land owned by the JLR Family Trust (the Trust).[1] The deed, however, incorrectly described the easement—a mistake that Holdings JJJ allegedly discovered immediately before the sale and then attempted to remedy by recording a corrective deed.

In 2023, the Trust sued the Jameses for trespass and nuisance. Among other things, the Trust alleged that it had attempted to clarify the scope of the easement with the Jameses but that the Jameses were nonetheless using the easement beyond its intended purpose of providing ingress and egress and were encroaching on the Trust's property. The Trust also alleged that the Jameses' sewage drain field was located on Trust property.

In response, the Jameses filed a counterclaim and third-party complaint against Holdings JJJ. Pertinent to this appeal are Counts One and Six of that pleading (as amended). In Count One, the Jameses sought a declaratory judgment that the corrective deed was void, alleging that it "does not correct scriveners or typographical errors, but instead attempts to create an entirely new legal description for the Easement." In Count Six, the Jameses claimed that Holdings JJJ had fraudulently concealed that the Jameses' drain field was located on the Trust's property. The Jameses alleged that had

they known the location of the drain field, they would never have gone through with the purchase.

Holdings JJJ moved to compel arbitration of both counts, arguing they were subject to arbitration pursuant to the arbitration clause in the Contract. It also argued that the arbitrator, rather than the trial court, had the authority to determine arbitrability in light of the clause's invocation of the AAA Rules.

***2** In its motion, Holdings JJJ expressly relied on the AAA's Consumer Arbitration Rules (the Consumer Rules) and attached a copy of those rules to its motion. At the hearing on the motion, however, the Jameses pointed out that the Contract did not "specify which rules, be it the [C]onsumer [R]ules, the real estate rules,[2] the commercial rules,[3] the construction industry rules,[4] or whether any supplementary procedures apply." They pointed out that the Contract did not indicate which "[edition] of the procedures would apply" and did not "incorporate those rules either as an addenda or an exhibit to the [C]ontract" or hyperlink them. In a supplemental response to Holdings JJJ's motion, the Jameses further pointed out that the Consumer Rules themselves state that they do not apply to real estate purchase and sale agreements. Holdings JJJ never suggested that any rules other than the Consumer Rules might apply; never mentioned the Real Estate Rules, which do *not* delegate arbitrability to the arbitrator, or argued that they are now defunct; and never argued that in any event, any other potentially applicable practice area rule set that is currently in use delegates to the arbitrator the authority to decide arbitrability.

After the hearing, the trial court denied Holdings JJJ's motion to compel arbitration, first concluding that the parties had not delegated the determination of arbitrability to the arbitrator and then that the claims did not fall within the scope of the arbitration clause. The court did not indicate reliance on any particular practice area rule set. This appeal followed.

Discussion

"Florida public policy favors arbitration and all doubts as to the scope of an arbitration agreement should be resolved in favor of arbitration." *SCG Harbourwood, LLC v. Hanyan*, 93 So. 3d 1197, 1199 (Fla. 2d DCA 2012). We review de novo the interpretation and application of an arbitration clause. *See Venn Therapeutics, LLC v. CAC Pharma Invs., LLC*, 382 So. 3d 6, 11 (Fla. 2d DCA 2024) ("The standard of review we use when examining a trial court's construction of an arbitration agreement as well as its application of the law to the facts is de novo." (citing *Addit, LLC v. Hengesbach*, 341 So. 3d 362, 366 (Fla. 2d DCA 2022))).

1. Delegation of Arbitrability

"[D]ecisions regarding arbitrability are to be made by the trial court, unless the parties have entered an agreement stating otherwise." *Morton v. Polivchak*, 931 So. 2d 935, 938 (Fla. 2d DCA 2006) (alteration in original) (quoting *Romano v. Goodlette Off. Park, Ltd.*, 700 So. 2d 62, 64 (Fla. 2d DCA 1997)). "[P]arties may delegate threshold arbitrability questions to the arbitrator, so long as the parties' agreement does so by 'clear and unmistakable' evidence." *Henry Schein, Inc. v. Archer & White Sales, Inc.*, 586 U.S. 63, 69, 139 S.Ct. 524, 202 L.Ed.2d 480 (2019) (quoting *First Options of Chi., Inc. v. Kaplan*, 514 U.S. 938, 944, 115 S.Ct. 1920, 131 L.Ed.2d 985 (1995)). "Contractual silence or ambiguity regarding who determines the questions of arbitrability is insufficient to give that authority to the arbitrators." *Morton*, 931 So. 2d at 939 (quoting *Romano*, 700 So. 2d at 64).

In *Airbnb, Inc. v. Doe*, 336 So. 3d 698, 704 (Fla. 2022), the supreme court held that "incorporation by reference of the AAA Rules that expressly delegate arbitrability determinations to an arbitrator clearly and unmistakably evidences the parties' intent to empower an arbitrator to resolve questions of arbitrability." The arbitration clause in *Airbnb* incorporated by reference the "Commercial Arbitration Rules and the Supplementary Procedures for Consumer Related Disputes." *Id.* at 701. Rule 7 of those Commercial Arbitration Rules, specifically, included an express delegation to the arbitrator to decide the "arbitrability of any claim or counterclaim." *Id.* at 701.

The arbitration clause here, in contrast, does not incorporate a particular set of AAA practice area rules but instead incorporates generally "the arbitration rules of the American Arbitration Association." Accordingly, it is more akin to the clause in *Fallang Family Limited Partnership v. Privcap Companies,* 316 So. 3d 344 (Fla. 4th DCA 2021). In that case, the Fourth District considered "whether contract language incorporating a set of arbitration rules by general reference, rather than by reference to a specific rule granting authority to decide what is arbitrable, 'clearly and unmistakably' supplants a court's statutory power to decide what is arbitrable." *Id.* at 349. As is the case here, the contract in *Fallang* "did not attach any portions of the AAA rules or explain where those rules could be found. Nor did the

arbitration paragraph identify which subject-area version of the AAA rules apply." *Id.* The Fourth District concluded "that the general reference to the 'AAA rules' in this case left ambiguity as to whether the arbitrator has authority to decide arbitrability to the exclusion of the trial court." *Id.* at 351.

***3** Holdings JJJ argues that *Airbnb* implicitly overturned *Fallang*, but for our purposes, the two cases are readily distinguishable. The primary issue in *Airbnb* was whether incorporating AAA rules into an arbitration clause by reference through a "clickwrap agreement" is sufficient to make them part of the parties' agreement. *See generally* 336 So. 3d at 699–706. Although *Airbnb* explicitly overturned our decision in *Doe v. Natt*, 299 So. 3d 599, 610 (Fla. 2d DCA 2020), on which *Fallang* relied in part, the arbitration clause in *Natt* referred specifically to the AAA's Commercial Arbitration Rules and the Supplementary Procedures for Consumer Related Disputes, 299 So. 3d at 601. In addition, the two Florida decisions that *Airbnb* approved, 336 So. 3d at 702, 706—*Reunion West Development Partners, LLLP v. Guimaraes*, 221 So. 3d 1278 (Fla. 5th DCA 2017), and *Glasswall, LLC v. Monadnock Construction, Inc.*, 187 So. 3d 248 (Fla. 3d DCA 2016)—also involved arbitration provisions that specified which AAA practice area rules would apply to any arbitration, and those rule sets delegate the issue of arbitrability to the arbitrator. *See Reunion West*, 221 So. 3d at 1280 ("[T]he trial court erred in denying Reunion's Motion to Compel Arbitration because the parties' contract expressly incorporates the Construction Industry Arbitration Rules, and those rules provide that the arbitrator is authorized to rule on the arbitrability of the instant contract."); *Glasswall*, 187 So. 3d at 251 ("[B]y incorporating the Construction Industry Rules of the AAA which make the issue of arbitrability subject to arbitration, there [was] 'clear and unmistakable' evidence of [the parties'] intent to submit the issue of arbitrability to an arbitrator.").

Accordingly, the question of whether a general reference to the entire body of the AAA rules constitutes "clear and unmistakable" evidence of an intent to delegate arbitrability to the arbitrator was not before the court. Moreover, in limiting its holding to references to "the AAA Rules *that expressly delegate arbitrability determinations to an arbitrator*," 336 So. 3d at 704 (emphasis added), *Airbnb* at the least leaves open the possibility that in some situations a general reference may not be sufficient.

We think this case presents one of those situations. In the trial court, Holdings JJJ insisted that the Consumer Rules governed its dispute with the Jameses. But those Rules expressly exclude "[r]eal estate purchase and sale agreements" as they "typically do not meet the criteria for application of these Rules," i.e., they are not considered "consumer agreements," unless the parties "have specified that [those rules] shall apply." Am. Arb. Ass'n Cons. Arb. R.R-1(a) (2014). Apparently realizing this later, Holdings JJJ switched gears on appeal, arguing for the first time that "[t]he underlying agreement in this case dealt with the sale of residential property which is not directly addressed by the arbitral rules for commercial, consumer, and construction disputes."

Even on appeal, therefore, Holdings JJJ itself is not sure which practice area rules apply to the arbitration of this dispute involving a piece of real estate. But that does not matter, it argues, because *whatever* rules apply it is certainly *not* the Real Estate Rules, because those were defunct at the time that its demand for arbitration was made.

Holdings JJJ, however, never made this argument in the trial court. There was no evidence concerning whether the Real Estate Rules are still in use or any mention of the Real Estate Rules at all. The Jameses conceded at oral argument that those rules have been "archived" but argued that the AAA does not explain what that means. They appear to be correct. *See Miller v. DMB Mesa Proving Grounds LLC*, No. CV-23-01402-PHX-DJH, 2024 WL 6972317, *6, n.8 (D. Ariz. July 23, 2024) (stating that "the AAA does not provide clear notice on which rules apply or how a court should evaluate archived rules" and relying on an affidavit that included an email from an AAA representative explaining that "when a case is filed, and the arbitration clause specifies an archived-discontinued-set of rules the AAA will assign an active set of rules to the case—typically the Commercial Arbitration Rules").[5]

***4** The trial court, in short, was presented with Holdings JJJ's unequivocal contention that the Consumer Rules apply to this real estate dispute—a contention disputed by the Jameses and foreclosed by the Consumer Rules themselves. That's it. Consequently, to the extent that the court may have erred by incorrectly relying instead on the now-archived Real Estate Rules or by otherwise concluding that the parties' agreement had failed to "clear[ly] and unmistakabl[ly]" evidence an intent to delegate question of arbitrability to the arbitrator, Holdings JJJ invited that result, and we decline to relieve them of it on appeal. *See Gupton v. Village Key & Saw Shop, Inc.*, 656 So. 2d 475, 478 (Fla. 1995) (explaining that under the rule of invited error, "a party cannot successfully complain about

an error for which he or she is responsible or of rulings that he or she has invited the trial court to make").

2. Arbitrability of the Claims

That said, however, we agree with Holdings JJJ that the trial court erred in concluding that neither Count One nor Count Six presented an arbitrable issue under the Contract's arbitration clause. *See Seifert v. U.S. Home Corp.*, 750 So. 2d 633, 636 (Fla. 1999) ("[T]here are three elements for courts to consider in ruling on a motion to compel arbitration of a given dispute: (1) whether a valid written agreement to arbitrate exists; (2) whether an arbitrable issue exists; and (3) whether the right to arbitration was waived."). "When two contracting parties disagree as to whether a particular dispute must be submitted to arbitration, our courts first look at whether the language of the arbitration clause is 'narrow' or 'broad.' " *Mid-Am. Apartment Cmtys., Inc. v. Gonzalez*, 406 So. 3d 362, 364 (Fla. 2d DCA 2025); *see also Bailey v. Women's Pelvic Health, LLC*, 309 So. 3d 698, 701 (Fla. 1st DCA 2020) ("Determining whether an arbitrable issue exists requires the court to examine the plain language of the parties' arbitration agreement."). When, for example, an arbitration clause applies to a dispute "arising out of or related to" the parties' agreement, we consider this language to be broad and ask "whether a 'significant relationship' exists between the claim and the agreement containing the arbitration clause, regardless of the legal label attached to the dispute (i.e., tort or breach of contract)." *Seifert*, 750 So. 2d at 638; *see also Kennedy v. Slockett*, 414 So. 3d 318, 321 (Fla. 2d DCA 2025) ("A 'significant relationship' requires a 'contractual nexus' between the contract and the dispute." (citing *Seifert*, 750 So. 2d at 638)).

Here, the arbitration clause provides, "Buyer and Seller agree that any dispute *arising out of* the transaction, sale, contract, or closing associated with this property shall be settled by mandatory binding arbitration." (Emphasis added.) "Arising out of" is narrower than "arising out of or related to," *Seifert*, 750 So. 2d at 636-37; *see also Jackson v. Shakespeare Found., Inc.*, 108 So. 3d 587, 593 (Fla. 2013), and when an arbitration clause requires that the dispute "arise out of" the contract between the parties, arbitration is limited "to those claims having some direct relation to the terms and provisions of the contract," *Seifert*, 750 So. 2d at 636.

In denying Holdings JJJ's motion to compel arbitration, the trial court reasoned:

> The language in this arbitration clause does not contain language that makes it broad such as "or relating to." Rather, the arbitration clause has the narrow language of "arising out of the transaction, sale contract [sic], or closing associated with this property ...." Counts I and VI of the Third-Party Complaint do not have a direct relationship to the contract terms and provisions as required by the narrow language of the arbitration clause. Therefore, these counts are outside of the narrow arbitration clause and are not arbitrable.

***5** The court's reasoning, however, seems to have been guided more by the "narrowness" of "arising out of" than by an analysis of the nature of the relationship between the counts and the "transaction, sale, contract, or closing."

Admittedly, Florida law offers scant guidance as to what constitutes a "direct relationship." *See BREA 3-2 LLC v. Hagshama Fla. 8 Sarasota, LLC*, 327 So. 3d 926, 934 (Fla. 3d DCA 2021) ("[T]here is relatively little case law in Florida expounding on the more rigorous 'direct relationship' test for narrow arbitration provisions as compared to the abundance of case law on the more arbitration-friendly and more easily satisfied 'significant relationship' test applied to broad arbitration provisions."). But presumably it must be something more than a "significant relationship," which requires "a 'contractual nexus' between the claim and the contract"—that is, that "the claim presents circumstances in which the resolution of the disputed issue requires either reference to, or construction of, a portion of the contract." *Jackson*, 108 So. 3d at 593. And *Seifert* provides, "If the contract places the parties in a unique relationship that creates new duties not otherwise imposed by law, then a dispute regarding a breach of a contractually-imposed duty is one that arises from the contract." 750 So. 2d at 640 (quoting *Dusold v. Porta-John Corp.*, 167 Ariz. 358, 807 P.2d 526, 531 (Az. Ct. App. 1990)).

Here, we have an arbitration clause that applies not only to disputes that arise out of the contract but to those that arise out of the "transaction, sale, ... or closing" as well. Given the breadth of *that* language, and with *Seifert* and *Jackson* clearly in mind, we conclude that the claims asserted in both Count One and Count Six fall comfortably within the parameters of the requisite "direct relationship," regardless of where its peripheries may lie.

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a. Count One—Declaratory Relief

In Count One, the Jameses seek a declaration that the corrective deed is null and void. "[C]orrective deeds do not convey title, rather, they merely reform the original instrument conveying title in order to rectify a mistake, and relate back to the date of the original instrument." *In re Ramsurat*, 361 B.R. 246, 256 (Bankr. M.D. Fla. 2006) (applying Florida law).

As pleaded, Count One does not reference the Contract but rests solely on the deed. But Holdings JJJ's duty to convey the property and easement arose solely from the Contract, and the legal description of the easement is included within the deed. Thus, we conclude that the parties' dispute over whether the original deed or the corrective deed correctly describes the easement that the parties intended be conveyed has a direct relationship with the Contract. *See Seifert*, 750 So. 2d at 640 (quoting *Dusold*, 807 P.2d at 531). Moreover, because the dispute involves what the parties intended be conveyed, which goes to the very heart of the transaction, we conclude that Count One "arises out of" the transaction if not out of the Contract. Accordingly, it is subject to arbitration based on the parties' arbitration clause.

b. Count Six—Fraudulent Inducement

In Count Six, the Jameses allege that Holdings JJJ knew that the drain field was on the Trust's property, materially affecting the value of the Jameses' property, and that as the seller, Holdings JJJ had the duty to disclose its location. The Jameses allege further that if they had known the location of the drain field, they would not have purchased the property.

***6** In *Jackson*, 108 So. 3d at 590, the supreme court addressed a similar claim under similar circumstances, albeit in the context of a broad arbitration clause. In that case, the Jacksons publicly advertised for sale real property suitable for a thirty-unit development. *Id*. at 589–90. The advertisement represented that a "*Wetlands study verifies No Wetlands*." *Id*. at 590. Relying on the advertisement, the Shakespeare Foundation entered into an as-is contract to purchase the property, with the stated intent of developing it into twenty-seven units of low-income housing. *Id*. After the Foundation tendered full payment, however, it discovered that more than a quarter of the property was unbuildable wetlands, which the Jacksons had known all along. *Id*. at 589–90.

The Foundation sued for fraudulent misrepresentation, alleging that it had relied on the misrepresentations in the advertisement. *Id*. at 590. The parties' contract, however, required arbitration of "[a]ll controversies, claims, and other matters in question arising out of or relating to this transaction or this Contract or its breach." *Id*. at 591 (emphasis omitted).

Acknowledging that the claim was based on common law fraud, the supreme court concluded that a significant relationship nonetheless existed between the claim and both the contract and the transaction, reasoning:

> [T]he fraud claim at issue here is inextricably intertwined with both the transaction from which the contract arose and the contract itself—the reliance element of the claim emanates from the transaction from which the contract arose, and the damages element of the claim arises from the execution and existence of the contract itself.

Id. at 595.

With *Jackson* as our jumping off point, we conclude that the claim set forth in Count Six is arbitrable. As an initial matter, we note that the above rationale would also seem to establish the existence of a direct relationship between the Jameses' fraud claim and the transaction and Contract here. After all, one could hardly envision a relationship more significant *or* direct than one that is "inextricably intertwined."

But even assuming that's too facile a reading of *Jackson*, we conclude that the relationship between the Jameses' fraudulent concealment claim and the Contract between it and Holdings JJJ is a direct one. Rather than relying on a general common-law duty not to make affirmative misrepresentations of material fact, as the Foundation did in *Jackson*, the Jameses rely on Holdings JJJ's failure *to disclose* the location of the drain field. And as Holdings JJJ argues, in the real estate context, "[t]he seller's 'duty to disclose' emanates from the contractual relationship between the parties," *Kelly v. Tworoger*, 705 So. 2d 670, 672 (Fla. 4th DCA 1998), *overruled on other grounds by Caufield v. Cantele*, 837 So. 2d 371 (Fla. 2002), not from a duty owed to the general public.

The Contract, therefore, placed the parties in a unique relationship that created a new duty, and it is on that duty that the Jameses' fraudulent concealment claim necessarily is premised. Moreover, the Contract specifically sets forth the extent of Holdings JJJ's disclosure duty to the Jameses under the "As-Is" purchase agreement, and the Jameses, for their part, represented and warranted to Holdings JJJ

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that "Buyer has made such independent investigations and surveys as Buyer deems necessary or appropriate ... concerning the condition, use, development or ownership of the Property." Accordingly, we readily conclude that there is a "direct relationship" between Count Six and "the terms and provisions of the contract," *see* *Seifert*, 750 So. 2d at 636, and that the claim is subject to arbitration. *Cf.* *Highlands Wellmont Health Network, Inc. v. John Deere Health Plan, Inc.*, 350 F.3d 568, 578 (6th Cir. 2003) ("[W]e hold that 'arising out of is broad enough to include a claim of fraudulent inducement of a contract."); *Gregory v. Electro–Mech. Corp.*, 83 F.3d 382, 383–85 (11th Cir. 1996) (concluding that a claim of fraudulent inducement fell within the scope of an arbitration clause covering "any dispute ... which may arise hereunder or under any agreement referred to as an exhibit herein," and the exhibits comprised the parties' obligations in connection with the purchase and sale of shares of stock).

3. Waiver

***7** Finally, the Jameses argue on appeal, as they did below, that Holdings JJJ has waived any right to arbitrate by taking action inconsistent with the assertion of that right. The trial court, however, did not reach that argument and made no findings in that regard. We therefore decline to consider it. *See* *Green Tree Servicing, LLC v. McLeod*, 15 So. 3d 682, 686 (Fla. 2d DCA 2009) ("Generally, whether a party has waived the right to arbitrate is a question of fact, reviewed on appeal for competent, substantial evidence to support the lower court's findings." (quoting *Mora v. Abraham Chevrolet-Tampa, Inc.*, 913 So. 2d 32, 33 (Fla. 2d DCA 2005))).

Conclusion

Because the trial court erred in concluding that Counts One and Six of the Jameses' third-party complaint do not present arbitrable issues, we reverse the order denying Holdings JJJ's motion to compel arbitration. We remand, however, for the court to consider the Jameses' argument that Holdings JJJ has waived its right to arbitration.

Reversed and remanded with instructions.

KELLY and BLACK, JJ., Concur.

All Citations

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Footnotes

1 Jamie and Julie Rand are cotrustees of the Trust. Jamie Rand is also a managing member of Holdings JJJ.

2 AAA's Real Estate Industry Arbitration Rules (including a Mediation Alternative) (the Real Estate Rules).

3 AAA's Commercial Arbitration Rules and Mediation Procedures (the Commercial Rules).

4 AAA's Construction Industry Arbitration Rules and Mediation Procedures (the Construction Rules).

5 Rule R-1(a) of the Commercial Rules provides, "The parties shall be deemed to have made these Rules a part of their arbitration agreement whenever they have provided for arbitration by the American Arbitration Association ('AAA') under its Commercial Arbitration Rules or for arbitration by the AAA of a *domestic commercial dispute* without specifying particular rules." Am. Arb. Ass'n Comm. Arb. R. & Med. Proc. R-1(a) (2022) (emphasis added).

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