AFFIRM; Opinion Filed August 21, 2020

In the
Court of Appeals
Fifth District of Texas at Dallas

No. 05-19-01443-CV

BABY DOLLS TOPLESS SALOONS, INC., BURCH MANAGEMENT COMPANY, INC., BDS RESTAURANT, INC., AND TTNA, INC., Appellants
V.
GILBERT SOTERO, AS REPRESENTATIVE OF THE ESTATE OF STEPHANIE SOTERO HERNANDEZ, EDUVIGES CHAPA III AS NEXT FRIEND OF A.C.C., A MINOR, AND IVAN HERNANDEZ, INDIVIDUALLY AND AS REPRESENTATIVE OF THE ESTATE OF STEPHANIE SOTERO HERNANDEZ, Appellees

On Appeal from the 101st Judicial District Court
Dallas County, Texas
Trial Court Cause No. DC-19-00644

MEMORANDUM OPINION

Before Justices Whitehill, Osborne, and Carlyle
Opinion by Justice Carlyle

Appellants appeal the trial court's orders denying their two separate motions to compel arbitration.[1] We affirm both orders in this memorandum opinion. *See* TEX. R. APP. P. 47.7.

[1] The original defendants in this case included only two of the appellants, Baby Dolls Topless Saloons, Inc. and Burch Management Company, Inc. In a November 1, 2019 order, the trial court denied a motion to compel arbitration filed by those two defendants. They filed an interlocutory appeal in this court. While

On March 24, 2017, Stephanie Sotero Hernandez (Ms. Sotero or Licensee) signed a "License and Lease Agreement" (the contract) with Baby Dolls Saloon–Dallas (the Club or Licensor). In the contract, the Club granted Ms. Sotero a "temporary, revocable license (the '**License**')"[2] and a "non-exclusive right to use and occupy the designated portions of the **Premises** (the 'Temporary Space Lease' or the 'Lease')" for "the performing of live erotic dance entertainment and related activities."[3]

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that appeal was pending, BDS Restaurant, Inc. and TTNA, Inc. were added as defendants and filed a substantially similar motion to compel arbitration. The trial court denied that motion on April 23, 2020, and those two defendants then filed an interlocutory appeal. At appellants' request, this court consolidated the two interlocutory appeals on June 29, 2020.

[2] In this opinion, all emphasis is original unless otherwise noted.

[3] The contract stated, among other things:

> **THIS AGREEMENT REPLACES ANY PRIOR AGREEMENT BETWEEN THE PARTIES, AND SINCE THIS AGREEMENT IS THE MOST ACCURATE DESCRIPTION OF THE NATURE OF THE RELATIONSHIP OF THE PARTIES, AND REPRESENTS WHAT THE "MEETING OF THE MINDS" SHOULD HAVE BEEN WHEN THE PARTIES ESTABLISHED THEIR RELATIONSHIP, THE TERMS AND CONDITIONS HEREIN ARE DEEMED EFFECTIVE FROM THE DATE OF ANY PRIOR AGREEMENT BETWEEN THE PARTIES, SHOULD ONE EXIST.**
>
> This **AGREEMENT** is entered into by the "**LICENSOR**" and "**LICENSEE**" for the leasing of certain portions of the "**Premises**" and the grant of **License** related thereto as follows:
>
> . . . .
>
> **3. DURATION OF LICENSE AND TEMPORARY SPACE LEASE; TERMINATION OF LICENSE AND TEMPORARY SPACE LEASE**
>
> This **Agreement** shall be for the period commencing on the date it is signed by all parties (Agreement Commencement Date) and shall terminate on December 31 of the year of execution (unless the parties agree, in writing, to modify the term). The **License** shall thereafter be automatically extended for successive one year periods running from January 1 through December 31 of each year thereafter. . . .
>
> . . . .
>
> **13. BUSINESS RELATIONSHIP OF PARTIES**

In January 2019, appellees[4] filed this wrongful death and survival action against appellants and Mayra Naomi Salazar.[5] The petition alleged (1) on January 4, 2019, Ms. Sotero and Ms. Salazar were working as entertainers at the Club, which

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> A. "The parties acknowledge that the business relationship created between the **Club** and **Licensee** is that of (a) Licensor/Licensee and (b) landlord and tenant for the joint and non-exclusive leasing of the **Premises** (meaning that other entertainers are also leasing the premises at the same time), and that this relationship is a material (meaning significant) part of this **Agreement**. . . . THE PARTIES ACKNOWLEDGE THAT **LICENSEE'S** RIGHT TO OBTAIN AND KEEP **ENTERTAINMENT FEES** PURSUANT TO THIS **AGREEMENT** IS SPECIFICALLY CONTINGENT AND CONDITIONED UPON THE BUSINESS RELATIONSHIP OF THE PARTIES BEING THAT OF LICENSOR/LESSOR AND LICENSEE/LESSEE.
>
> . . . .
>
> **18. MATERIAL BREACH BY LICENSEE**
>
> **Licensee** materially breaches this **Agreement** by:
>
> . . . .
>
> Claiming the business relationship with the **Club** as being other than that of a landlord and tenant[.]
>
> . . . .
>
> **22. ARBITRATION/WAIVER OF CLASS AND COLLECTIVE ACTIONS/ ATTORNEY FEES AND COSTS**
>
> The parties agree that this **Agreement** is subject to binding arbitration pursuant to the Federal Arbitration Act (the "FAA"), and any disputes under this Agreement as well as any disputes that may have arisen at any time during the relationship between the parties, including but not limited to under any Federal or State law, will be governed and settled by an impartial independent arbitrator appointed by the American Arbitration Association (the "AAA"), Texas branch, and the determination of the arbitrator shall be final and binding (except to the extent there exist grounds for vacation of an award under applicable arbitration statutes). . . . .
>
> . . . .
>
> **ARBITRATION SHALL BE THE SOLE FORUM TO DETERMINE THE VALIDITY, SCOPE AND BREATH** [sic] **OF THIS AGREEMENT**.
>
> . . . .
>
> **23. MISCELLANEOUS**
>
> This **Agreement** constitutes the entire understanding of the parties. . . . This **Agreement** may not be modified or amended except in accordance with a writing signed by each of the parties hereto.

[4] This lawsuit was originally filed by Ms. Sotero's father, Gilbert Sotero, as representative of the Estate of Stephanie Sotero Hernandez, and Eduviges Chapa III, as next friend of Ms. Sotero's minor child, A.C.C. Appellee Ivan Hernandez, who describes himself as Ms. Sotero's surviving spouse, later filed a petition in intervention, individually and as representative of the Estate of Stephanie Sotero Hernandez.

[5] The record does not show Ms. Salazar has appeared in this lawsuit.

was owned, operated, and managed by appellants; (2) late that evening and in the early hours of January 5, 2019, appellants served Ms. Salazar "excessive amounts of alcohol" and continued to serve her even after they were aware she was "clearly intoxicated"; (3) Ms. Sotero left the Club with Ms. Salazar and was a passenger in a car being driven by Ms. Salazar when a high-speed crash occurred on a public road; and (4) Ms. Sotero died at the crash scene. The petition asserted causes of action against appellants for negligence, gross negligence, and violation of the Texas Dram Shop Act.

Appellants filed separate general denial answers subject to their two substantially similar motions to compel arbitration and dismiss all claims. In their motions to compel arbitration, appellants contended (1) because the claims in this lawsuit "arise out of a 'dispute' under the Agreement and/or during the relationship between the parties," "the plain language of the Arbitration Provisions and the law require that this dispute be resolved in arbitration," and (2) "[a]ny challenges to the Arbitration Provisions must be submitted to the arbitrator." A copy of the contract was attached to each motion.[6]

[6] Appellants also filed a reply brief in support of the first motion to compel, reasserting substantially the same arguments. Attached to their reply brief was an affidavit of Steven William Craft, vice president of BDS Restaurant, Inc., which was described as "the business where Mayra Salazar and Stephanie Sotero were acting as independent contractors on January 4, 2019." That same affidavit was attached to the subsequent motion to compel. The affidavit's contents and attachments are not relevant to this opinion's analysis and conclusions.

In their responses and sur-reply to the motions to compel arbitration, appellees asserted, among other things, (1) "an employer attempting to enforce an arbitration agreement must show the agreement meets all requisite contract elements"; (2) "Defendants' argument ignores the fact that Plaintiffs are not disputing the terms of the agreement per se, rather, Plaintiffs argue that the agreement is irrelevant to their claims and thus, they are not subject to arbitration for them"; (3) pursuant to the contract's plain language, the "Lease" portion of the contract terminated on December 31, 2017, and thus was not in effect on the date of the accident, "thereby rendering the arbitration provisions ineffective"; and (4) "in the event that [the trial court] is inclined to consider the Agreement to be valid and enforceable, (which Plaintiffs deny), the language in the agreement did not clearly and unmistakably delegate the matter of the provision's scope to the arbitrator."

At the respective hearings on the motions to compel arbitration, appellants' counsel argued, (1) "I disagree that the agreement and the license are different"; (2) "to the extent it is different, the license, the relationship of the parties continues automatically"; (3) "[i]f the license extends, then the relationship continues to exist after the termination of the agreement"; (4) "[a]ll that matters is the language of the arbitration agreement, which says any dispute between the parties of any type while the relationship is ongoing . . . , it goes to arbitration"; (5) "they've raised a meeting of the mind objection; however, those . . . relate to and are making claims based on, well, this term means X or could have meant this" and thus "are not meeting of the

mind objections; those are ambiguity objections"; and (6) "there's no question of the meeting of the minds because she signed the agreement and the agreement has the terms it has."

Appellees' counsel argued, among other things, (1) "there's no valid agreement in place, period"; (2) the contract "distinguishes between the agreement and the License"; (3) "different words in the contract are, obviously, given different meanings"; and (4) under "the rules of contract law," "the intent of the parties is determined from the [contract's] plain language," which has to be capable of being "given a definite and certain legal meaning."[7]

The trial court denied both motions to compel arbitration without stating the basis for its rulings.

We review a trial court's order granting or denying a motion to compel arbitration for abuse of discretion, deferring to the trial court's factual determinations if they are supported by evidence but reviewing its legal determinations de novo. *In re Labatt Food Serv., L.P.*, 279 S.W.3d 640, 642–43 (Tex. 2009) (orig. proceeding). A trial court abuses its discretion if it acts in an arbitrary or unreasonable manner or without reference to any guiding rules or principles. *Downer v. Aquamarine*

[7] During the hearing on the first motion to compel, the trial court asked the parties' counsel for cases "making the distinction between this agreement and license or a license incorporated within an agreement and whether or not they're separate rights and responsibilities based on whether or not you're calling the terms of the agreement include [sic] license language." Both sides indicated they would look for such cases after the hearing. At the hearing's conclusion, the trial judge told the parties to promptly email her any cases found on that issue. The record contains no further communication regarding that request.

Operators, Inc., 701 S.W.2d 238, 241–42 (Tex. 1985). Where, as here, the trial court does not make specific findings of fact or conclusions of law in support of its ruling, we will uphold the ruling if it is supported by any legal theory asserted in the trial court. *See, e.g.*, *Redi-Mix, LLC v. Martinez*, No. 05-17-01347-CV, 2018 WL 3569612, at *2 (Tex. App.—Dallas July 25, 2018, no pet.) (mem. op.); *Kmart Stores of Tex., L.L.C. v. Ramirez*, 510 S.W.3d 559, 565 (Tex. App.—El Paso 2016, pet. denied).

"In general, a party seeking to compel arbitration under the FAA must establish (1) the existence of a valid, enforceable arbitration agreement and (2) that the claims at issue fall within that agreement's scope." *VSR Fin. Servs., Inc. v. McLendon*, 409 S.W.3d 817, 827 (Tex. App.—Dallas 2013, no pet.). "The issue of the contract's validity is different from the issue whether any agreement between the alleged obligor and obligee was ever concluded." *In re Morgan Stanley & Co., Inc.*, 293 S.W.3d 182, 186 (Tex. 2009) (orig. proceeding) (discussing *Prima Paint Corp. v. Flood & Conklin Mfg. Co.*, 388 U.S. 395 (1967)). "[W]hen the very existence of an agreement is disputed, a court, not an arbitrator, must decide at the outset whether an agreement was reached, applying state-law principles of contract." *Am. Med. Tech., Inc. v. Miller*, 149 S.W.3d 265, 273 (Tex. App.—Houston [14th Dist.] 2004, no pet.); *accord Morgan Stanley*, 293 S.W.3d at 189; *see also* TEX. CIV. PRAC. & REM. CODE § 171.021 (stating that if party opposing arbitration denies existence of agreement, "the court shall summarily determine that issue"). We review de novo

whether an enforceable agreement to arbitrate exists. *J.M. Davidson, Inc. v. Webster*, 128 S.W.3d 223, 227 (Tex. 2003).

"[A]n employer attempting to enforce an arbitration agreement must show the agreement meets all requisite contract elements." *Id*. at 228. To prove contract formation, a party must prove, among other elements, an offer and acceptance and a meeting of the minds on all essential elements. *Lanier v. E. Found., Inc.*, 401 S.W.3d 445, 459 (Tex. App.—Dallas 2013, no pet.); *see also McCalla v. Baker's Campground, Inc.*, 416 S.W.3d 416, 418 (Tex. 2013) ("A contract's material or essential terms are determined on a case-by-case basis."). "For there to be an offer which may ripen into a contract by simple acceptance, the offer must be reasonably definite in its terms and must sufficiently cover the essentials of the proposed transaction that, with an expression of assent, there will be a complete and definite agreement on all essential details." *Lanier*, 401 S.W.3d at 459 (citing *Principal Life Ins. Co. v. Revalen Dev., LLC*, 358 S.W.3d 451, 455 (Tex. App.—Dallas 2012, pet. denied)). The term "meeting of the minds" refers to the parties' mutual understanding and assent to the expression of their agreement. *Id*.; *Weynand v. Weynand*, 990 S.W.2d 843, 846 (Tex. App.—Dallas 1999, pet. denied).

"Although often treated as a distinct element, meeting of the minds is a component of both offer and acceptance measured by what the parties said and did and not on their subjective state of mind." *Karns v. Jalapeno Tree Holdings, L.L.C.*, 459 S.W.3d 683, 692 (Tex. App.—El Paso 2015, pet. denied). To create an

enforceable contract, the minds of the parties must meet with respect to the subject matter of the agreement and all its essential terms. *Weynand*, 990 S.W.2d at 846. "The parties must assent to the same thing, in the same sense, at the same time." *Citibank (S.D.), N.A. v. Tran*, No. 05-11-01423-CV, 2013 WL 3205878, at *4 (Tex. App.—Dallas June 21, 2013, pet. denied) (mem. op.) (quoting *Principal Life Ins.*, 358 S.W.3d at 455). Whether there is a meeting of the minds is generally a question of fact. *Franco v. Ysleta Indep. Sch. Dist.*, 346 S.W.3d 605, 608 (Tex. App.—El Paso 2009, no pet.).

In their sole issue, appellants assert the trial court "erred by denying Appellant's Motion to Compel Arbitration and Stay or Dismiss All Claims, in violation of the [FAA]." According to appellants, "In the underlying lawsuit, Claimants opposed arbitration on only three grounds, arguing: (1) the Arbitration Agreement is invalid under the FAA because it does not implicate interstate commerce; (2) Claimants' claims are not within the scope of the arbitration agreement; and (3) the arbitration agreement is unconscionable." Appellants also contend (1) "by denying the Motion to Compel Arbitration, the trial court necessarily determined the validity and scope of the Arbitration Agreement itself and improperly superseded the express agreement of Decedent and the Club"; (2) "[t]here is no dispute about the validity and enforceability of the License and Lease Agreement, and the Arbitration Agreement therein was both procedurally and substantively fair and equitable"; and (3) "because the claims at issue relate to alleged over-service of

alcohol while Decedent was entertaining at the Club under her License and Lease Agreement, there can be no dispute that Claimants' claims arose 'during the relationship between the parties' and thus fall squarely within the scope of the Arbitration Agreement."

Appellees respond, among other things, that based on the contract's language, it is unreasonable to conclude the parties reached "a meeting of the minds" as to the contract's material terms or the arbitration provision. Appellees' argument focuses on the contract terms "relationship," "license," and "this Agreement." They assert that "without any definition whatsoever, the relationship loses meaning."

In their appellate reply brief, appellants contend (1) "Appellees' final argument no longer appears to be that their claims fall outside the scope of the arbitration agreement, but instead that an essential element of a valid contract is missing, i.e., a meeting of the minds"; (2) "Appellees waived the issue of contract formation and validity by failing to present it to the trial court"; (3) "Appellees never argued that any prima facie elements of contract formation were missing in the trial court" and "in fact, Appellees conceded the opposite"; (4) "[e]ven if it were properly before this court," appellees' argument "goes against the plain, ordinary, and generally accepted meaning of the terms in the Arbitration Agreement"; and (5) "[i]t also goes against Decedent's own acknowledgements and representations that she had read and understood all the terms and had an opportunity to ask questions and consult with her own attorney."

In support of their contentions, appellants cite the following sentence from appellees' response to the first motion to compel arbitration: "But here, Plaintiffs are not challenging the validity of the agreement to arbitrate, but rather whether the claims fall under the arbitration clause at all." As our supreme court stated, "The issue of the contract's validity is different from the issue whether any agreement between the alleged obligor and obligee was ever concluded." *Morgan Stanley*, 293 S.W.3d at 186. And, both elsewhere in their response and during the hearings on the motions to compel arbitration, appellees specifically denied the contract was valid and enforceable. We disagree with appellants' assertions that appellees "conceded" contract formation and did not dispute the contract's validity and enforceability.

As to "waiver," while the contract formation elements of definiteness and "meeting of the minds" are not necessarily synonymous, the two concepts can intertwine. *See Lucchese Boot Co. v. Rodriguez*, 473 S.W.3d 373, 385–86 (Tex. App.—El Paso 2015, no pet.) (addressing party's arguments regarding meeting of minds and definiteness of terms together where party contended terms of arbitration agreement "were not definite enough to show the parties had a meeting of the minds as to all essential terms" and "thus, no contract could have ever formed because the parties must not have mutually understood the other's terms").

Here, appellees argued in the trial court that (1) under the rules of contract law, "the intent of the parties is determined from the [contract's] plain language," which must be capable of being "given a definite and certain legal meaning," and

(2) the terms "Agreement" and "License"—which are pertinent to the contract's definition of the material term "relationship"—were not definite or certain. During the hearings, appellants acknowledged the materiality of the term "relationship" and the use of that term in the arbitration provision, but disputed appellees' position regarding the meaning of those three terms. The trial court specifically focused on, and requested additional authority regarding, those arguments. Appellants also acknowledged that appellees "raised a meeting of the mind objection."

On appeal, the essence of appellees' complained-of argument is the lack of definiteness and certainty regarding the same three terms addressed at the hearings, at least one of which is undisputedly material. On this record, we conclude appellees' appellate argument corresponds to their argument asserted in the trial court and was not waived. *See Citibank*, 2013 WL 3205878, at *4 (concluding party's trial court argument that there was no "meeting of the minds" corresponded to, and thus preserved, its complaint made for first time on appeal that terms of alleged agreement "were unclear, indefinite" and "lacked sufficient clarity"); *see also Adams v. Starside Custom Builders, LLC*, 547 S.W.3d 890, 896 (Tex. 2018) ("Rules of error preservation should not be applied so strictly as to unduly restrain appellate courts from reaching the merits of a case."); *cf. Ridge Nat. Res., L.L.C. v. Double Eagle Royalty, L.P.*, 564 S.W.3d 105, 123–28 (Tex. App.—El Paso 2018, no pet.) (concluding party's "fleeting references to ambiguity" of arbitration contract did not "subsume a meeting-of-the-minds or formation argument" in trial court because

party never argued "that the ambiguity dealt with material terms or that the conflicting provisions otherwise invalidated the arbitration agreement").

To the extent the dissent contends the "separability doctrine" precludes this court from deciding the meeting-of-the-minds contract formation issue before us, we disagree. Though the dissent maintains that the three types of contract formation issues described in *Buckeye Check Cashing, Inc. v. Cardegna*, 546 U.S. 440, 444 n.1 (2006), are the only types of "contract making" issues that are to be determined by courts rather than arbitrators, *Buckeye* did not specifically preclude a court's determination of other such issues. In *Morgan Stanley*, our supreme court specifically agreed with the following: "Despite casual assumptions to the contrary, *Prima Paint* [388 U.S. 395 (1967)] does not merely preserve for the courts challenges that are 'restricted' or 'limited' to 'just' the arbitration clause alone—this would be senseless; *it preserves for the courts any claim at all that necessarily calls an agreement to arbitrate into question*." 293 S.W.3d at 190 (quoting Alan Scott Rau, *Everything You Really Need to Know About "Separability" in Seventeen Simple Propositions*, 14 AM. REV. INT'L ARB. 1, 17 (2003)). Consistent with the separability doctrine, the "existence" of the alleged contract in this case is a matter for this court's determination. *See id*.; *see also RSL Funding, LLC v. Newsome*, 569 S.W.3d 116, 125 (Tex. 2018) (explaining that, pursuant to *Morgan Stanley*, if existence of court order approving structured-settlement-transfer agreement was essential for contract formation, trial court must decide issue of court order's

existence at outset before compelling arbitration); *Ridge*, 564 S.W.3d at 119–20 (concluding that under *Prima Paint* and *Morgan Stanley*, where party offered into evidence signed agreement containing arbitration clause, trial court "retain[ed] the authority to decide predicate issues related to [the] five elements of contract formation," including meeting of the minds); *Tex. La Fiesta Auto Sales, LLC v. Belk*, 349 S.W.3d 872, 880–81 (Tex. App.—Houston [14th Dist.] 2011, no pet.) (concluding that pursuant to *Morgan Stanley*, issue of whether arbitration clause had been revoked by subsequent agreement between parties was for trial court to determine because "[w]ithout an agreement to arbitrate, arbitration cannot be compelled"). The dissent's lengthy effort to justify its conclusion demonstrates the ongoing utility of Occam's Razor: the simplest answer is sometimes the best one. *See Loan Syndications & Trading Ass'n v. S.E.C.*, 818 F.3d 716, 718 (D.C. Cir. 2016).

Next, we address whether the parties' minds met "with respect to the subject matter of the agreement and all its essential terms." *See Weynand*, 990 S.W.2d at 846. The contract states in separate provisions (1) "[t]his **AGREEMENT** is entered into by the '**LICENSOR**' and '**LICENSEE**' for the leasing of certain portions of the '**Premises**' and the grant of **License** related thereto"; (2) "the business relationship . . . is that of (a) Licensor/Licensee and (b) landlord and tenant . . . [and] this relationship is a material (meaning significant) part of this **Agreement**"; (3) "[t]his **Agreement**" "shall terminate" on December 31, 2017, and "[t]he **License**

shall thereafter be automatically extended for successive one year periods" until terminated in writing or by breach or default; and (4) a "material breach" of "this **Agreement**" occurs if Licensee claims the business relationship "as being other than that of a landlord and tenant."

Thus, "this Agreement" and the "License" are treated separately in some instances, including for termination purposes, but are specifically combined in others. Both terms are also used elsewhere throughout the contract, with "this Agreement" appearing in the arbitration provision and nearly all other provisions. Rather than merely presenting an ambiguity that could potentially be resolved by reconciling particular conflicting provisions, this disparity precludes certainty and definiteness as to the meaning of those two terms throughout the contract, including in the arbitration provision. Most importantly, this disparity precludes certainty and definiteness regarding the definition of the undisputedly material term "relationship," which contains the term "this Agreement" and includes both "Licensor/Licensee" and "landlord and tenant" components. The material term "relationship" is used throughout the contract, again, including in the arbitration provision.[8]

[8] The dissent's meeting-of-the-minds analysis focuses primarily on explaining the dissent's own interpretation of the contract's renewal provision, rather than on the contract as a whole and the undisputedly material term "relationship." "[N]o one phrase, sentence or section [of a contract] should be isolated from its setting and considered apart from the other provisions." *Nasser v. Liberty Mut. Fire Ins. Co.*, 508 S.W.3d 254, 258 (Tex. 2017); *see also Royal Indem. Co. v. Marshall*, 388 S.W.2d 176, 181 (Tex. 1965) (stating we may neither rewrite parties' contract nor add to its language).

On this record, we conclude the trial court could have properly determined the parties' minds could not have met regarding the contract's subject matter and all its essential terms such that the contract is not an enforceable agreement. *See Lanier*, 401 S.W.3d at 459; *Weynand*, 990 S.W.2d at 846. Consequently, the trial court did not abuse its discretion by denying the motions to compel arbitration. *See J.M. Davidson*, 128 S.W.3d at 228 (employer attempting to enforce arbitration agreement must show agreement meets all requisite contract elements).

We decide appellants' sole issue against them and affirm the trial court's November 1, 2019 and April 23, 2020 orders denying appellants' motions to compel arbitration.

/Cory L. Carlyle/
CORY L. CARLYLE
JUSTICE

Whitehill, J., dissenting

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Court of Appeals
Fifth District of Texas at Dallas

JUDGMENT

BABY DOLLS TOPLESS SALOONS, INC., BURCH MANAGEMENT COMPANY, INC., BDS RESTAURANT, INC., AND TTNA, INC., Appellants

No. 05-19-01443-CV V.

GILBERT SOTERO, AS REPRESENTATIVE OF THE ESTATE OF STEPHANIE SOTERO HERNANDEZ, EDUVIGES CHAPA III AS NEXT FRIEND OF A.C.C., A MINOR, AND IVAN HERNANDEZ, INDIVIDUALLY AND AS REPRESENTATIVE OF THE ESTATE OF STEPHANIE SOTERO HERNANDEZ, Appellees

On Appeal from the 101st Judicial District Court, Dallas County, Texas Trial Court Cause No. DC-19-00644. Opinion delivered by Justice Carlyle. Justices Whitehill and Osborne participating.

In accordance with this Court's opinion of this date, we **AFFIRM** the trial court's November 1, 2019 and April 23, 2020 orders denying appellants' motions to compel arbitration.

It is **ORDERED** that appellees Gilbert Sotero, as Representative of the Estate of Stephanie Sotero Hernandez, Eduviges Chapa III as Next Friend of A.C.C., a Minor, and Ivan Hernandez, Individually and as Representative of the Estate of Stephanie Sotero Hernandez, recover their costs of this appeal from appellants Baby Dolls Topless Saloons, Inc., Burch Management Company, Inc., BDS Restaurant, Inc., and TTNA, Inc.

Judgment entered this 21st day of August, 2020.