Affirmed and Opinion Filed January 31, 2025

In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-24-00964-CV

EXENCIAL WEALTH ADVISORS, LLC, Appellant
V.
MONICA SIPES, Appellee

On Appeal from the 366th Judicial District Court
Collin County, Texas
Trial Court Cause No. 366-03013-2024

MEMORANDUM OPINION

Before Justices Smith, Jackson, and Lee
Opinion by Justice Lee

In this case, we consider whether the trial court abused its discretion in denying appellant Exencial Wealth Advisors, LLC's ("Exencial") motion to compel appellee Monica Sipes ("Sipes") to arbitrate her claim against it. Because we find the trial court did not abuse his discretion in denying the request to order arbitration, we affirm the decision in this memorandum opinion.

FACTUAL AND PROCEDURAL BACKGROUND

From 2015 to June 2024, Sipes was an employee of Exencial. In 2019, Sipes became a member and agreed to the terms of an operating agreement governing the company's membership. The operating agreement allegedly contained an arbitration clause. On the record developed in the trial court, it cannot be ascertained whether Sipes actually signed the operating agreement upon her elevation to member. In the ensuing years, this operating agreement was periodically amended by Exencial.

On May 13, 2024, Sipes filed suit against Exencial seeking a declaratory judgment regarding the terms of the operating agreement. Exencial filed a motion to stay the proceedings and enforce the arbitration clause in the operating agreement. Sipes filed a response in opposition asserting the operating agreement was not "authenticated," claiming her position as an employee or member of Exencial did not serve to bind her to the operating agreement and alleging her lack of signature on the operating agreement meant she was not bound to the consent to arbitrate provision contained within. After hearing oral arguments from both parties on July 24, 2024, the trial court denied Exencial's motion to compel arbitration. This appeal ensued.

On appeal, Exencial argues: (1) the lack of Sipes's signature is irrelevant to the applicability of the arbitration agreement; (2) Sipes and Exencial had a valid and enforceable arbitration agreement; and (3) Sipes should be compelled to arbitrate her claims against Exencial.

JURISDICTION

This interlocutory appeal is of the July 24, 2024 order denying appellant's motion to stay and compel arbitration. "[A] person may take an appeal…to the court of appeals from the judgment or interlocutory order of a district court…under the same circumstances that an appeal from a federal district court's order…would be permitted by 9 U.S.C. Section 16." TEX. CIV. PRAC. & REM. CODE § 51.016. Because appellant's motion to stay and compel arbitration was denied, jurisdiction for appellate review is appropriate.

ANALYSIS

A. Standard of Review

We review a trial court's denial of a motion to compel arbitration for an abuse of discretion. *Henry v. Cash Biz, LP*, 551 S.W.3d 111, 115 (Tex. 2018). "[A] trial court abuses its discretion when it acts in an arbitrary or unreasonable manner without reference to guiding rules or principles." *Samlowski v. Wooten*, 332 S.W.3d 404, 410 (Tex. 2011).

To prevail on a motion to compel arbitration, a party "must establish *both* (1) the existence of a valid enforceable agreement to arbitrate and (2) that the claims at issue fall within the scope of that agreement." *G.T. Leach Builders, LLC v. Sapphire V.P., LP*, 458 S.W.3d 502, 525 (Tex. 2015) (emphasis in original); *see* TEX. CIV. PRAC. & REM. CODE § 171.021(a). Appellate courts "defer to the trial court's factual

determinations if they are supported by evidence but review its legal determinations de novo." *Henry*, 551 S.W.3d at 115.

In this appeal, the parties dispute whether the lack of a signature on an agreement including a binding arbitration clause nullifies the requirement to arbitrate claims relating to the agreement. While "[t]here is a strong presumption favoring arbitration, that presumption arises only after the party seeking to compel arbitration proves that a valid arbitration agreement exists." *VSR Fin. Servs., Inc. v. McLendon*, 409 S.W.3d 817, 827 (Tex. App.—Dallas Aug. 14, 2013, no pet.).

Where the trial court does not issue findings of fact and conclusions of law, all fact findings necessary to support the trial court's judgment and supported by the evidence are implied. *Sixth RMA Partners, LP v. Sibley*, 111 S.W.3d 46, 52 (Tex. 2003).

B. Conflict of Laws

Citing § 187(2) of the Restatement (Second) of Conflict of Laws, Exencial argues Oklahoma law should govern the validity and enforceability of the operating agreement's arbitration clause. However, § 187(2)(b) lays out an exception if (1) "a state has a more significant relationship with the parties and their transaction than the state they chose; [2] whether that state has a materially greater interest than the chosen state in deciding whether this…agreement should be enforced; and [3] whether that state's fundamental policy would be contravened by the application of the law of the chosen state in the case." *DeSantis v. Wackenhut Corp.*, 793 S.W.2d

670, 678 (Tex. 1990). “Even when a relationship is not substantial, the parties may be held to the chosen state's law when they had a reasonable basis for their choice, such as choosing law they know well or that it is well developed.” *Exxon Mobil Corp. v. Drennen*, 452 S.W.3d 319, 325 (Tex. 2014).

Texas is directly interested in Sipes as a Texas resident, an employee in Texas, and in the performance of her duties in Texas. Further, Exencial may be headquartered in Oklahoma but the company has offices in eight other states, four of which are in Texas. As in *DeSantis*, “[a]lthough it is always problematic for one state to balance its own interests fairly against those of another state, the circumstances of this case leave little doubt, if any, that Texas has a materially greater interest than [Oklahoma] in deciding whether the…agreement in this case should be enforced.” *DeSantis*, 793 S.W.2d at 679.

The latter point is particularly true when the first question to be decided is the existence of a binding agreement. Exencial points to the agreement’s choice of law provisions to insist on the application of Oklahoma law, but Sipes denies the enforceability of the contract in the first place. We therefore turn to the law of this forum on the issue of whether there is a binding agreement to arbitrate, before we use the terms of that agreement to settle the choice of law question.

C. Existence of a Binding Agreement

In Texas, a valid and enforceable contract, "including agreements to arbitrate, are: (1) an offer, (2) an acceptance, (3) a meeting of the minds, (4) each party's consent to the terms, and (5) execution and delivery of the contract with the intent it be mutual and binding." *Law Off. of Thomas J. Henry v. Cavanaugh*, No. 05-17-00849-CV, 2018 WL 2126936, at *3 (Tex. App.—Dallas May 7, 2018, pet. denied) (mem. op.).

In the present case, Sipes states she entered into a membership agreement "[i]n an effort to retain her employment with Exencial…" As a "condition precedent to enforcement of a contract—including an arbitration agreement—the agreement must clearly and explicitly require a signature before it becomes binding." *Firstlight Fed. Credit Union v. Loya*, 478 S.W.3d 157, 170 (Tex. App.—El Paso Oct. 7, 2015, no pet.); *see Wright v. Hernandez,* 469 S.W.3d 744, 758 (Tex. App.—El Paso July 17, 2015, no pet.); *Lujan v. Alorica,* 445 S.W.3d at 448–49 (Tex. App.—El Paso Sep. 19, 2014, no pet.) (when a contract expressly requires a signature prior to it becoming binding, the existence of the instrument is destroyed by the other party's failure to sign the instrument). There was an operating agreement attached to Exencial's motion to compel, which included the agreement to arbitrate; however, it did not contain Sipes's signature.

These preceding points are not immediately fatal as to the existence of a valid contract as "a court may look to other evidence to establish the parties' assent to the

terms of the contract." *Cavanaugh*, 2018 WL 2126936, at *3 (quoting *Firstlight*, 478 S.W.3d at 168). However, Exencial offered only an affidavit from the company's Chief Operating Officer regarding his familiarity with a 2021 operating agreement. While this affidavit may be sufficient to authenticate the 2021 operating agreement by way of the affiant's position and personal knowledge that an operating agreement existed, the testimony is insufficient to determine whether Sipes was bound to it. Additionally, Exencial asserted Sipes did sign the operating agreement but did not offer the signed version into evidence: "We have a signature. Again, it's not in evidence today. We do have a signature that we can admit into evidence where she did agree to it." As this Court's review is limited to the record as it existed in the trial court, counsel's assertions that such a signature exists cannot serve to be admissible evidence of Sipes's affirmative assent. Without evidence of the mutual assent of both Exencial and Sipes, this Court cannot find the trial court abused his discretion in failing to find a valid and enforceable contract to arbitrate under Texas law.

Because we cannot find the trial court abused his discretion in failing to find a valid and enforceable agreement to arbitrate, We need not consider Exencial's argument that the agreement required Sipes to submit her claims to arbitration.

CONCLUSION

Exencial failed to establish that the trial court abused his discretion in denying Exencial's Motion to Compel Arbitration, We affirm the decision below.

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/Mike G. Lee//
MIKE LEE
JUSTICE

Court of Appeals
Fifth District of Texas at Dallas

JUDGMENT

EXENCIAL WEALTH ADVISORS, LLC, Appellant

No. 05-24-00964-cv V.

MONICA SIPES, Appellee

On Appeal from the 366th Judicial District Court, Collin County, Texas
Trial Court Cause No. 366-03013-2024.
Opinion delivered by Justice Lee. Justices Smith and Jackson participating.

Based on the Court's opinion of this date, the judgment of the trial court is **AFFIRMED**.

Judgment entered this 31st day of January, 2025.