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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

DARIEN EPHRAM, INC.,

Plaintiff and Respondent,

v.

MAHROKH YASHAR et al.,

Defendants and Appellants.

B279827

(Los Angeles County
Super. Ct. No. BC630850)

APPEAL from an order of the Superior Court of Los Angeles County. Elizabeth R. Feffer, Judge. Affirmed.

Novian & Novian, LLP, Farid Novian and Jonathan A. Schuab for Defendants and Appellants.

Law Offices of Nico N. Tabibi, Nico N. Tabibi for Plaintiff and Respondent.

Plaintiff and respondent Darien Ephram, DDS, Inc. (Ephram) filed a complaint against defendants and appellants Mahrokh Yashar, Yashar DDS, Kamran Azizi, DMD, and Orion DMD, LLC (collectively, Defendants) asserting numerous claims related to the purchase of a dental practice. Defendants challenge on appeal the trial court's denial of their motion to compel arbitration of Ephram's claims. We affirm the trial court order.

FACTUAL AND PROCEDURAL BACKGROUND

Complaint

According to Ephram's complaint, in August 2015, Ephram and Yashar DDS (Yashar)¹ executed a purchase and sale agreement (Purchase Agreement), whereby Ephram purchased a dental practice from Yashar. The agreement included the purchase of all tangible and intangible properties of the practice, including furniture and equipment, dental instruments, and patient records. At the time of the purchase, Yashar operated the dental practice out of a building leased from Orion DMD, LLC (Orion)² pursuant to a lease agreement (Lease Agreement). In connection with the purchase of the practice, Ephram, Yashar, and Orion executed an assumption and assignment of the Lease Agreement (Lease Assignment). Per the terms of the Lease Assignment, Ephram agreed to make all payments and perform all terms, covenants, and conditions of the Lease Agreement.

¹ Our further references to Yashar include the dental corporation as well as its president, defendant and appellant Mahrokh Yashar.

² Our further references to Orion include the company as well as its president, defendant and appellant Kamran Azizi, DMD.

In the course of negotiating the purchase, Ephram visited the practice on two occasions. During a July 13, 2015 visit, Yashar represented to Ephram that the plumbing and dental chairs were in working order, there had been no break-ins on the premises, and co-pays were being collected from patients. During a July 30, 2015 visit, Yashar and Orion represented there had been no security issues attributable to a faulty gate in the parking lot.

A few weeks after purchasing the practice, Ephram discovered numerous and substantial preexisting issues with the dental chairs and building's plumbing, and a pest infestation believed to have been caused by the faulty plumbing. In addition, Ephram learned that Yashar had not collected co-pays from patients, and the practice had previously been burglarized. Ephram further discovered a prior owner of the practice was operating a competing dental practice three blocks away.

Based on the above allegations, Ephram asserted causes of action against Yashar for breaches of terms and warranties contained in the Purchase Agreement. As to both Yashar and Orion, Ephram asserted causes of action for fraud, conspiracy to defraud, negligent misrepresentation, breach of implied covenants of good faith and fair dealing contained in the Purchase Agreement and Lease Assignment, and rescission of the Purchase Agreement and Lease Assignment.

Petition to Compel Arbitration

On October 18, 2016, Defendants filed a motion to compel arbitration of Ephram's claims based on an arbitration agreement contained in an addendum to the Lease Agreement (Arbitration Agreement). Paragraph A of the Arbitration Agreement states that, "[e]xcept as provided in Paragraph B

below, the Parties agree to resolve any and all claims, disputes or disagreements arising under this Lease . . . by and through arbitration . . . and irrevocably waive any and all rights to the contrary.” Paragraph B excludes from arbitration “[a]ll claims by either party which (a) seek anything other than enforcement or determination of rights under this Lease, or (b) are primarily founded upon matters of fraud, willful misconduct, bad faith or any other allegations of tortious action, and seek the award of punitive or exemplary damages.”

In moving to compel arbitration, Defendants argued Ephram’s causes of action “arise out of, relate to, or, at minimum, reference the Lease [Agreement].” Defendants detailed numerous references throughout the complaint to faulty plumbing and a pest infestation, which they generally asserted related to breaches of duties arising from the Lease Agreement. In addition, Defendants argued that Ephram’s causes of action for fraud, conspiracy to defraud, and negligent misrepresentation, “though facially falling within the arbitration agreement’s Paragraph B exceptions, have no bearing on the arbitrability of the dispute” because Ephram was “barred from bringing tort-based claims relating to the Lease [Agreement] based upon the numerous exculpatory clauses and limitations of liability set forth in the Lease [Agreement], which disallow such claims.” Defendants urged the court to consider such claims as contractual rather than tortious.

In opposition, Ephram asserted it had not received a copy of the Arbitration Agreement prior to executing the Lease Assignment. It additionally objected on hearsay grounds to Defendants’ inclusion of the Lease Agreement in their petition.

In their reply brief, Defendants asserted Ephram received the addendum containing the Arbitration Agreement, and even if he had not, it was referenced twice in the Lease Agreement. Defendants additionally set forth various legal theories upon which Ephram could be compelled to arbitrate its claims, even if it had not received the Arbitration Agreement.

The trial court denied Defendants' motion to compel arbitration. The court stated that the parties did not offer extrinsic evidence regarding the terms of the Arbitration Agreement and, therefore, "the determination of whether the claims fall within the proposed Arbitration Agreement is a question of law." The court noted that, although Defendants argued Ephram's claims fall within the broad arbitration provision in Paragraph A, they failed to address the "extremely broad" limitation found in Paragraph B. Based on its review of the complaint, the court determined that Ephram's claims fall within Paragraph B's limitation because each claim seeks "much more than 'enforcement or determination of rights under [the Lease Agreement].'" For example, the court noted that because the Purchase Agreement "was not in existence when the subject Lease [Agreement] was entered into, it is clear that the claims based upon breaches of the 2015 [Purchase Agreement] fall outside the terms of the 2013 Lease [Agreement]. Further, . . . the main issue is the [Purchase Agreement], relating to the dental practice, and not the Lease [Agreement] itself. . . . Plaintiff's claims only tangentially involve the Lease [Agreement] and, therefore, are expressly not within the terms of the arbitration agreement, which applies to claims which only seek 'enforcement or determination of rights under this Lease [Agreement].'" The court concluded that the "limitation on which

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