

SUPREME COURT OF FLORIDA

**GEORGE JACKSON, KERRY JACKSON, and
JACKSON REALTY TEAM, INC.,
a Florida Corporation,**

Petitioners,

v.

CASE NO.: SC11-1196

L.T. Case No(s): 1D10-1049
09-1399CA

**THE SHAKESPEARE FOUNDATION, INC., and
THE HERD COMMUNITY DEVELOPMENT
CORPORATION,**

Respondents.

PETITIONER'S BRIEF ON JURISDICTION

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TABLE OF CITATIONS

Seifert v. U.S. Home Corp., 750 So. 2d 633, 636 (Fla. 1999)4,5

Maguire v. King, 917 So. 2d 263, 266 (Fla. 5th DCA, 2005)4,5

PRELIMINARY STATEMENT

Respondents herein were Appellants below, the Shakespeare Foundation, Inc. and the Herd Community Development Corporation, a California Corporation authorized to do business in the State of Florida, will be referred to herein as “Shakespeare” and/or “Herd.”

Petitioner herein were Appellees below, George Jackson, Kerry Jackson, who will be referred to herein as the Jacksons, or individually as Mr. or Mrs. Jackson and Jackson Realty Team, Inc., which will be referred to herein as “Jackson Realty.”

STATEMENT OF FACTS

This is a relatively simple factual case because it never got beyond the Complaint phase in the Trial Court. At the trial level, Shakespeare and Herd filed a complaint alleging that the Jacksons had fraudulently misrepresented the existence of wetlands on certain real property in Bay County, Florida, that had been purchased by Shakespeare and Herd from the Jacksons. In response, the Jacksons filed a motion to dismiss based on the existence of an arbitration clause contained within the contract that required the arbitration of “[a]ll controversies, claims, and other matters in question arising out of or relating to [the] transaction or [the] Contract or its breach.” The trial court granted the motion and Shakespeare and Herd appealed.

The First District Court of Appeal (“First DCA”) recognized that this decision could create conflict when it reversed the lower tribunal’s dismissal of the Complaint on the grounds that there existed no nexus between Shakespeare and Herd’s claim and the parties’ contract.

Specifically, the facts of this case are that the parties’ Purchase and Sale Agreement (sometimes hereinafter referred to as “Contract”), regarding the sale of a piece of property, contains a clause which states, “[i]f any provision of this Contract is or becomes invalid or unenforceable, all remaining provisions will continue to be fully effective.” And the Contract further provides provides an Arbitration Agreement clause that survives the closing of the property in the “Dispute Resolution” section, which states, in pertinent part:

This contract will be construed under Florida law. All controversies, claims, and other matters in question arising out of or relating to this transaction or this Contract or its breach will be settled as follows:

(b) All other disputes: Buyer and Seller will have 30 days from the date a dispute arises between them to attempt to resolve the matter through mediation, failing which the parties will resolve the dispute through neutral binding arbitration in

the county where the Property is located. The arbitrator may not alter the Contract terms or award any remedy not provided for in this Contract. The award will be based on the greater weight of the evidence and will state findings of fact and the contractual authority on which it is based. ***

The Contract sets forth the remedies available in the event of a Default of either party in Paragraph 13, which states:

Default: (a) Seller Default: If for any reason other than failure of Seller to make Seller's title marketable after diligent effort, Seller fails, refuses or neglects to perform this Contract, Buyer may choose to receive a return of Buyer's deposit without waiving the right to seek damages or to seek specific performance as per Paragraph 14. Seller will also be liable to Broker for the full amount of the brokerage fee. ***

The Complaint states that Shakespeare and Herd "intended to develop the subject property into low-income houses with 27 units on the entire parcel." In addition, the Contract required that the Property would be delivered by the Jacksons in an "as is" condition and set out a requirement that Shakespeare and Herd conduct a "Feasibility Study" within 30 days of the Effective Date of the Contract.

This matter stands before this Court on Shakespeare and Herd's appeal of the trial court's order granting the Jacksons' Motion to Dismiss and the First DCA's reversal of that ruling. A Notice to invoke this Court's review was timely filed.

ARGUMENT ON JURISDICTION

The First DCA's reversal directly conflicts with the Fifth DCA's decision in Maguire v. King, 917 So. 2d 263, 266 (Fla. 5th DCA, 2005). The First DCA held that when a contract contains a broad arbitration clause such as the one contained by the parties' contract, "the test for determining arbitrability of a particular claim under a broad arbitration provision is whether a 'significant relationship' exists between the claim and the agreement containing the arbitration clause, regardless of the label attached to the legal dispute." Seifert v. U.S. Home Corp., 750 So. 2d 633, 636 (Fla. 1999), (quoting Am. Recovery Corp. v. Computerized Thermal Imaging, Inc., 96 F. 3d 88, 93-94 88 (4th Cir.1996)). Seifert also states that for a tort claim to fall within the scope of an arbitration agreement, "it must, at minimum, raise some issue the resolution of which requires reference to or construction of some portion of the contract itself." Id. 750 So. 2d at 638. The First DCA held that the arbitration clause contained in the parties' contract was broad, but found that "the claim at the center of the dispute arose from a general duty owed under common law, not from the contract[,]" that the claim "was not significantly related to the contract[,]" and that the claim "does not require reference to or construction of the contract." As a result of these findings the First District reversed the Trial Court's Order dismissing the Complaint. Recognizing that its opinion conflicts with an opinion entered by the Fifth District in Maguire v. King, 917 So. 2d 263, 266 (Fla. 5th DCA, 2005), the First District certified conflict.

As a result, on page 11 of its ruling, the First DCA Certified Conflict to this Court with the Maguire decision from the Fifth DCA. The facts in Maguire were very similar to those in the matter at hand.

In Maguire, the Plaintiff sued for fraud in the inducement where the defendants allegedly misrepresented the drainage system capacity of property the defendant sold to the plaintiff.

Maguire, 917 So. 2d at 264. The defendants filed a motion to compel arbitration based on an arbitration clause contained in the parties' contract, which, similar to the one in the case at hand, stated that, “[a]ll controversies, claims, and other matters in question arising out of or relating to this transaction or this Contract or its breach” would be arbitrated. Id., 917 So. 2d at 265. The lower tribunal granted the motion on the first two counts but denied the motion as to three other counts. Id., 917 So. 2d at 264. On appeal, the Fifth DCA reversed and remanded to the lower court for an order granting the motion to compel arbitration as the other three counts.

As in the matter at hand, the Maguire court found that the arbitration clause was broad, but unlike here, the Maguire court found that a sufficient nexus existed between the plaintiff's claims and the contract. Maguire, 917 So. 2d at 266. The Maguire court found that, unlike in Seifert, that it was not a coincidence that the parties involved in the dispute had a contractual relationship. Maguire, 917 So. 2d at 266. The plaintiff's claims were inseparable from the parties' contract.

Returning to the case at bar, though the First DCA certified conflict, the First DCA argued that Maguire is distinguishable from the matter at hand. The Jacksons contend that Maguire is not distinguishable. As in Maguire, as argued by the Petitioners herein, and as argued by Judge Marstiller in the First DCA's Opinion, Shakespeare and Herd's claim cannot be argued without reference to and interpretation of the contract. The facts and issues in Maguire and the case at bar are fundamentally the same, but the First DCA and the Fifth DCA have entered essentially conflicting opinions on those facts and issues.

CONCLUSION

While the majority on the Court below was able to distinguish the facts in the case at hand from the Maguire decision of the Fifth District Court of Appeal, it is clear that this Court should take jurisdiction and review the First District Court of Appeal's Opinion entered in the matter at hand to determine whether it directly conflicts with the opinion issued by the Fifth District Court of Appeal, and to determine the issues upon their merits.

CERTIFICATE OF COMPLIANCE

Counsel for the Petitioner certifies the size and style of type used in this brief is 14-point Times New Roman.

JEAN MARIE DOWNING, ESQ.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing was furnished by U.S. Mail to Leonard Ireland, Esq. , Clayton Johnston, P.A., 18 N.W. 33rd Court, Gainesville, FL 32607, via U.S. Mail this 20th day of July, 2011.

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