



IN THE MISSOURI COURT OF APPEALS WESTERN DISTRICT

JAMES SANDERS,	)	
	)	
Appellant,	)	
	)	
	)	
vs.	)	WD80401
	)	
CALVERT'S EXPRESS AUTO	)	Opinion filed: December 26, 2017
SERVICE & TIRE INC., ET AL.,	)	
	)	
Respondents.	)	

APPEAL FROM THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI THE HONORABLE JOHN M. TORRENCE, JUDGE

Before Division Three: Lisa White Hardwick, Presiding Judge, Victor C. Howard, Judge,
and Alok Ahuja, Judge

James Sanders appeals the trial court's order dismissing his lawsuit against Calvert's Express Auto Service & Tire, Express Auto Sales, Service & Tire LLC, Express Auto & Tire LLC, Gary Calvert Sr., Gary Calvert Jr., Rick Herd, and Daniel Willson (collectively Respondents). The judgment is reversed, and the case is remanded with directions to stay the action.

Mr. Sanders filed a multi-count lawsuit against Respondents in Jackson County Circuit Court for employment discrimination, retaliation, vehicular battery, breach of contract, and fraud in connection with his employment as an auto mechanic at Calvert's. Based on a Severance Agreement executed between Mr. Sanders and Calvert's, its owners, and related entities,

Respondents filed a motion to dismiss or alternatively to compel arbitration or stay the case or enforce the Severance Agreement. In the Severance Agreement, Mr. Sanders agreed to voluntarily relinquish his employment with Calvert's and release it from any claims related to his employment in exchange for a severance payment of \$2000 and Calvert's promise not to dispute any unemployment benefits. The Severance Agreement also included the following paragraph, which contained an arbitration provision, a forum selection clause, and a choice of law provision:

Any dispute under or including this Agreement shall be subject to arbitration under the provisions of the Federal Arbitration Act. Further, should this arbitration clause be held unenforceable, the parties agree that any lawsuit filed under or including this Agreement shall be filed in the State Court of Johnson County, Kansas. In any event, whether or not arbitration is upheld, the laws of the State of Kansas will govern the interpretation, validity, and effect of this Agreement."

In their motion, Respondents asserted that a demand for arbitration was pending in the District Court of Johnson County, Kansas, and asked that the court either dismiss or stay the Missouri action.

Mr. Sanders filed an amended petition separating his employment discrimination and retaliation claims into counts for race discrimination, race retaliation, age discrimination, and age retaliation. Two weeks later, the trial court entered a case management order scheduling a case management conference and advising the parties that it would rule on Respondents' motions.

Thereafter, the trial court entered an order granting Respondents' motion to dismiss. It found that there was no evidence that Respondents breached their promise in the Severance Agreement not to dispute Mr. Sander's unemployment benefits claim, therefore the Severance Agreement was valid and any litigation regarding Mr. Sander's employment should be heard in Kansas. This appeal by Mr. Sanders followed.

Mr. Sanders raises four points on appeal challenging the trial court's dismissal of his action. He contends that the trial court erred in (1) finding the Severance Agreement valid, (2) treating the

motion to dismiss as a motion for summary judgment by considering evidence outside the record, (3) considering the motion to dismiss after he timely filed his amended petition, and (4) dismissing the action rather than staying the proceedings. Points one and four are dispositive and are the only points addressed.

When faced with a motion to compel arbitration, the trial court determines whether a valid arbitration agreement exists and, if so, whether the specific dispute falls within the scope of the agreement. *Ellis v. JF Enters., LLC*, 482 S.W.3d 417, 419 (Mo. banc 2016). The arbitration provision of the Severance Agreement provided that disputes under or including the Agreement are subject to arbitration under the FAA. Under the FAA, an arbitration provision is severable and must be considered separate and apart from the rest of the contract. *Id.* The validity of an arbitration provision is subject to initial court determination while the validity of the contract as a whole (if the arbitration provision is valid) is for the arbitrator to decide. *Id.* at 420-423 (citing *Nitro-Lift Techs., L.L.C. v. Howard*, 568 U.S. 17, 21 (2012); *Rent-A-Ctr., W., Inc. v. Jackson*, 561 U.S. 63, 70-71 (2010); *Buckeye Check Cashing, Inc. v. Cardegna*, 546 U.S. 440, 445 (2006); *Prima Paint Corp. v. Flood & Conklin Mfg. Co.*, 388 U.S. 395, 403-404 (1967)). An arbitration agreement is enforceable “unless the arbitration agreement itself—in isolation—is invalid under generally applicable state law principles.” *Id.* at 420.

Mr. Sanders has never, below or now on appeal, disputed that his claims fall within the arbitration agreement. He has also never attacked the arbitration provision specifically. He only challenges the Severance Agreement as a whole. Under *Ellis*, such challenge is for the arbitrator to decide. *Id.* at 423. The trial court, therefore, erred in determining that the Severance Agreement was valid. The judgment must be reversed.

At the time of Respondents' motion to dismiss or compel arbitration or stay the proceedings, they had filed a motion to compel arbitration in Kansas under the Severance Agreement. Subsequently, Mr. Sanders filed his answer and counterclaims in the Kansas case including for rescission of the Severance Agreement. According to the parties, they are now engaged in arbitration in Kansas. "The FAA requires a trial court to issue a stay if an issue in the case is referable to arbitration." *Shelter Prods., Inc. v. OMNI Constr. Co.*, 479 S.W.3d 189, 194 (Mo. App. W.D. 2016)(internal quotes and citation omitted). The arbitration agreement provided that any dispute under or including the Severance Agreement shall be subject to arbitration. Mr. Sanders's claims are referable to arbitration. The appropriate relief in this case is to stay the action. *Id.*; *Dotson v. Dillard's, Inc.*, 472 S.W.3d 599, 608 n.6 (Mo. App. W.D. 2015)("the remedy under both the FAA and Missouri's Uniform Arbitration Act is to stay the proceedings, rather than to dismiss").

The judgment is reversed, and the case is remanded with directions to stay the action pending the Kansas proceedings.


VICTOR C. HOWARD, JUDGE

All concur.