STATE OF MICHIGAN

COURT OF APPEALS

CENTURY PLASTICS, LLC,

Plaintiff-Appellant,

v

FRIMO, INC.,

Defendant-Appellee.

UNPUBLISHED
January 30, 2020

No. 347535
Macomb Circuit Court
LC No. 2018-001006-CB

Before: K. F. KELLY, P.J., and BORRELLO and SERVITTO, JJ.

PER CURIAM.

In this contract dispute, plaintiff appeals as of right the circuit court's order granting summary disposition in favor of defendant. We affirm.

Plaintiff is a designer and manufacturer of plastic components that are sold to manufacturers in the automotive industry. Defendant designs and installs manufacturing systems that are used to produce plastic components. Defendant is one of several subsidiaries of a the Frimo Holding Company. Plaintiff verbally requested a price quotation from defendant for the design and installation of a manufacturing system that was capable of producing plastic components that plaintiff sold to automobile manufacturers. Defendant sent plaintiff a written price quote for the design and installation of the manufacturing system and plaintiff accepted defendant's offer. Shortly after defendant installed the manufacturing system, plaintiff began experiencing significant production problems. Plaintiff thereafter filed this action seeking compensation from defendant for damages stemming from the defective manufacturing system. In lieu of answering plaintiff's complaint, defendant moved for summary disposition pursuant to MCR 2.116(C)(7), contending that the contract was subject to an arbitration provision. The trial court agreed, granting summary disposition in defendant's favor. This appeal followed.

"This Court reviews de novo the grant or denial of a motion for summary disposition to determine if the moving party is entitled to judgment as a matter of law." *Lowrey v LMPS & LMPJ, Inc*, 500 Mich 1, 5-6; 890 NW2d 344 (2016). "Under MCR 2.116(C)(7), summary disposition is appropriate if a claim is barred because of an agreement to arbitrate." *Altobelli v Hartmann*, 499 Mich 284, 295; 884 NW2d 537 (2016) (citation and quotation marks omitted).

Whether a particular issue is subject to arbitration is reviewed de novo, as is the interpretation of contractual language. *Id*.

On appeal, plaintiff argues that the circuit court erred by granting defendant's motion for summary disposition under MCR 2.116(C)(7) because the parties had no agreement to arbitrate. We disagree.

"The goal of contract interpretation is to read the document as a whole and apply the plain language used in order to honor the intent of the parties." *Greenville Lafayette LLC v Elgin State Bank*, 296 Mich App 284, 291; 818 NW2d 460 (2012) (citation omitted). In doing so, courts "must enforce the clear and unambiguous language of a contract as it is written." *Id*. (citation omitted). Arbitration is a matter of contract and thus, when interpreting an arbitration agreement, we apply the same legal principles that govern contract interpretation. *Altobelli*, 499 Mich at 295. "To ascertain the arbitrability of an issue, [a] court must consider whether there is an arbitration provision in the parties' contract, whether the disputed issue is arguably within the arbitration clause, and whether the dispute is expressly exempt from arbitration by the terms of the contract." *Fromm v Meemic Ins Co*, 264 Mich App 302, 305-306; 690 NW2d 528 (2004).

As a threshold matter, it must be determined whether there was an arbitration provision in the parties' contract. *Fromm*, 264 Mich App at 305-306 The quote provided by defendant to plaintiff included a provision stating that "[t]he offer is based on the General Terms and Conditions of Delivery and Service release of 1st July 2007. The General Terms and Conditions of Delivery and Service can either be seen on our website www.frimo.com or be provided on request."

The General Terms and Conditions of Delivery and Service (the General Terms) stated that the terms were applicable "for the following companies: FRIMO Group GmbH, FRIMO Lotte GmbH, FRIMO Freilassing GmbH, FRIMO Sontra GmbH, FRIMO Viersen GmbH, FRIMO Technology GmbH, FRIMO Control Systems GmbH, Bo Parts GmbH Automotive Spare Parts." In pertinent part, the General Terms provided at §16:

> Solely the law of the Federal Republic of Germany applies to this contract and the entire legal relationship. Application of UN Sales Law (CISG = UN Convention on Contracts for International Sale of Goods) and Conflict of Laws is excluded. Unless agreed otherwise, Osnabruck in the Federal Republic of Germany is the sole place of jurisdiction. However, [defendant] is authorized to take action against the purchaser at any other general or particular place of jurisdiction. If the purchaser's registered office is located outside the Federal Republic of Germany, [defendant] is entitled alternatively to choose to have disputes that arise under this agreement or about its effectiveness finally decided by one or more arbitrators appointed by these rules of arbitration in accordance with the Arbitration Rules of the International Chamber of Commerce, Paris, to the exclusion of the ordinary courts. The court of arbitration should be in Germany.

It is well established that parties to a contract may incorporate an extraneous writing by reference. *Forge v Smith*, 458 Mich 198, 207; 580 NW2d 876 (1998). Under such

circumstances, the two documents should be read together. *Id*. Defendant having incorporated the General Terms into the parties' contract, under the unambiguous language of this provision, defendant had the power to compel arbitration of disputes arising under the contract.

Plaintiff assented to the terms of the price quotation, and it did not raise any concerns regarding the applicability of the General Terms. "Michigan law presumes that one who signs a written agreement knows the nature of the instrument so executed and understands its contents." *Watts v Polaczyk*, 242 Mich App 600, 604; 619 NW2d 714 (2000) (citation omitted). "Moreover, mere failure to read an agreement is not a defense in an action to enforce the terms of a written agreement." *Id*. Thus, there is a presumption that plaintiff knew of the General Terms and intended to be bound by them.

Plaintiff, however, asserts that the parties are not bound by the General Terms because the General Terms did not list defendant as an entity to which they applied. Plaintiff is correct that defendant, Frimo, Inc. is absent from the list of companies specifically named in the General Terms. Nevertheless, defendant's price quote unambiguously stated that the General Terms applied to the contract between the parties, and plaintiff assented to the terms of the price quote. Furthermore, the General Terms do not expressly preclude unlisted entities from incorporating them into their contracts. Instead, the General Terms merely provide that they are "for the following companies . . . ." Contracting parties are free to incorporate contractual terms promulgated by other writings. See, e.g., *Peabody v DiMeglio*, 306 Mich App 397, 406–07; 856 NW2d 245 (2014) ("Incorporation by reference" means "[a] method of making a secondary document part of a primary document by including in the primary document a statement that the secondary document should be treated as if it were contained in the primary one" and enforcement of such provisions respects the intent of the parties). See also, *UAW-GM Human Res Ctr v KSL Recreation Corp*, 228 Mich App 486, 502; 579 NW2d 411 (1998) (holding that a merger clause in a contract is conclusive and parol evidence is not admissible to show a lack of merger). Thus, the parties validly incorporated the General Terms promulgated by the Frimo Holding Company by reference. Accordingly, the General Terms applied to the parties' agreement even though defendant was not a specifically listed entity.

Plaintiff additionally/alternatively asserts that the circuit court's opinion and order granting defendant's motion for summary disposition was premature because discovery had not commenced. "Generally, a motion for summary disposition is premature if granted before discovery on a disputed issue is complete. However, summary disposition may nevertheless be appropriate if further discovery does not stand a reasonable chance of uncovering factual support for the opposing party's position." *Rooyakker & Sitz, PLLC v Plante & Moran, PLLC*, 276 Mich App 146, 160-161; 742 NW2d 409 (2007). Because the parties' dispute in this case is limited to whether they agreed to incorporate an arbitration agreement into their contract, and we specifically find that they did, discovery does not stand a reasonable chance of uncovering support for plaintiff's position.

Plaintiff claims that the authenticity of the General Terms was a disputed issue, but defendant attached to its motion the price quote as well as the General Terms entitled "General Terms and Conditions of Delivery and Service (as of 1 July 2007)." Plaintiff does not present any evidence that an alternative version of the terms and conditions may have been incorporated into the parties' contract or that an alternative version of the terms and conditions existed at the

time of contracting. Plaintiff may not have inquired as to the contents of the General Terms at the time of contracting, but we presume that because it signed the written agreement, plaintiff knew the nature of the instrument and understood its contents. *Watts*, 242 Mich App at 604 (citation omitted). Thus, the circuit court did not err in granting defendant's motion for summary disposition under MCR 2.116(C)(7).

Affirmed.

/s/ Kirsten Frank Kelly
/s/ Stephen L. Borrello
/s/ Deborah A. Servitto