

STATE OF MICHIGAN
COURT OF APPEALS

JONATHAN D. AHLBRAND, CRAIG A.
JANUTOL and EAST WEST CAPITAL
CORPORATION,

UNPUBLISHED
September 3, 1999

Plaintiffs-Appellants,

v

KENNETH A. KEELEY,

No. 203646
Bay Circuit Court
LC No. 96-003910 CK

Defendant-Appellee.

Before: Gage, P.J., and White and Markey, JJ.

PER CURIAM.

Plaintiffs appeal from the circuit court's grant of summary disposition in favor of defendant in this declaratory judgment action in which plaintiff sought a declaration that defendant, in his individual capacity, is not entitled to join in the arbitration of a dispute between plaintiffs and the Kenneth A. Keeley Trust (Trust), of which defendant is the trustee, for damages defendant personally sustained when he used his own funds to pay a tax liability incurred by the Trust as a result of the Trust's purchase of approximately \$2,000,000 in unregistered securities through plaintiffs. Plaintiffs contend that § 10301 of the Uniform Code of Arbitration of the National Association of Security Dealers [NASD] limits arbitration to "[a]ny dispute, claim, or controversy . . . between a customer and a [NASD] member and/or associated person arising in connection with the business of such member or in conjunction with the activities of such associated person," and does not authorize the arbitration of defendant's individual claim against plaintiff. The circuit court determined that, although defendant was not a customer within the meaning of § 10301, defendant was entitled to join the arbitration and assert his individual claims because his claims were derivative of the Trust's claims against plaintiffs. We agree, and affirm.

Defendant's claim against plaintiffs is derivative of the customer/Trust's claim against plaintiffs, in that the financial injury suffered by defendant is the consequence of the financial injury suffered by the customer/Trust as a result of purchasing the Towers notes,¹ and in that any right of recovery of defendant is dependent on the Trust's right to recover from plaintiffs. See e.g., *Jones v Slaughter*, 54

Mich App 120, 124; 220 NW2d 63 (1974); *Kinsella v Farmers Ins Exchange*, 826 P2d 433, 435 (Colo App, 1992). A court may compel a nonsignatory to an arbitration agreement to arbitrate that party's claims that are derivative of, inseparable from, and essentially identical to the related and underlying claims of a signatory of the arbitration agreement if the signatory is contractually bound to submit the related and underlying claims to arbitration. *Jozwiak v Northern Michigan Hospitals, Inc*, 207 Mich App 161, 167-168; 524 NW2d 250 (1994); *Harte v Sinai Hospital of Detroit*, 144 Mich App 659, 664; 375 NW2d 782 (1985); *Eckel v Equitable Life Assurance Society of the United States*, 1 F Supp 2d 687 (ED Mich, 1998); *Blount v Smith Barney Shearson, Inc*, 695 So 2d 1001, 1004 (La App 4 Cir 1997); *Brown v KFC National Management Co*, 82 Hawaii 226; 921 P2d 146, 161 (1996); *Prudential Ins Co of America v Shammass*, 865 F Supp 429, 432 (WD Mich, 1993); *Bird v Shearson Lehman/American Express Inc*, 926 F2d 116, 121 (CA 2, 1991). Here, plaintiff agreed to arbitrate the customer's/Trust's claim, and defendant's claim is derivative of, inseparable from, and essentially identical to the customer/Trust's primary underlying claim. The circuit court correctly determined that under these circumstances, defendant properly sought arbitration of his claim.

Affirmed.

/s/ Hilda R. Gage

/s/ Helene N. White

/s/ Jane E. Markey

¹ According to defendant, plaintiff East West Capital Corporation is a registered broker-dealer and a member of the NASD. Plaintiff Craig Janutol is registered with the NASD as the sole owner of East West. Plaintiff Jonathan Ahlbrand was at all relevant times a registered stockbroker and representative of East West. Ahlbrand "was also responsible for East West's due diligence obligation into the bona fides of Towers Financial Corporation Notes . . . sold by Ahlbrand and East West"

The Trust purchased two Towers notes through Ahlbrand and East West, and claims that at the time of the purchase, Ahlbrand knew that numerous financial institutions had refused to loan money to Towers Financial due to, among other factors, ongoing investigations of Towers Financial by the United States Securities and Exchange Commission. Plaintiffs failed to impart this information to the Trust before it purchased the two notes. Towers Financial ceased to honor its obligations under the notes in February 1993 and filed for bankruptcy in March 1993.

As a result of the Trust's losses due to Tower Financial's dishonoring of the notes, the Trust sustained adverse tax consequences. Defendant, acting in his individual capacity and using his own private funds, paid these tax obligations.