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Rhode Island Council on Postsecondary Education v.Hellenic Society Paideia – Rhode Island Chapter, 202 A.3d 931(R.I. 2019)

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Contract Law. *Rhode Island Council on Postsecondary Education v. Hellenic Society Paideia – Rhode Island Chapter*, 202 A.3d 931 (R.I. 2019). Parties agreed to arbitrate claims of breach where arbitration provision provides that "any controversy, claim or dispute"[1] be arbitrated where breach is mentioned in a preceding provision regardless of a "[r]emedies" provision, which entitles an aggrieved party to "all rights and remedies allowed at law."[2]

FACTS AND TRAVEL

In 2005, the University of Rhode Island and the Rhode Island Board of Governors for Higher Education[3] (Plaintiffs) agreed to lease a portion of the University's Kingston campus to the Rhode Island Chapter of Hellenic Society Paideia (Defendant), who would then build a center for the Hellenic Studies Program at the University.[4] In 2012, after the ground was excavated and the foundation laid, construction came to a halt and never resumed.[5] In November of 2012, Plaintiffs sent a Notice of Default and Termination of Ground Lease to the Defendant notifying Defendant of Plaintiff's intent to terminate the lease because the building had not been finished within thirty months of beginning construction, as provided for in the lease.[6] In June of 2013, Plaintiffs sent a second letter, demanding the Defendant restore the land to its previous condition.[7]

1. R.I. Council on Postsecondary Educ. v. Hellenic Soc'y Paideia – R.I. Chapter, 202 A.3d 931, 936 (R.I. 2019).

2. *Id.* at 938.

3. The Rhode Island Council on Postsecondary Education is a public corporation holding legal title to all property owned by the University of Rhode Island. *Id.* at 933 n.1.

4. *Id.* at 933.

5. *Id.*

6. *Id.*

7. *Id.* at 933-34.

After years of unsuccessful negotiation between the parties, Plaintiffs brought a petition in the Superior Court to appoint a special master to resolve the parties' dispute.[8] Shortly thereafter, Plaintiffs amended their complaint seeking a declaratory judgment that Defendant breached the lease by not completing construction within thirty months.[9] As a consequence of the breach, Plaintiffs sought an order that the Defendant either restore the land to its previous condition or that Defendant reimburse Plaintiffs the cost of doing the same.[10] Pursuant to Rhode Island General Laws section 10-3-3, Defendant moved for a stay of litigation pending arbitration, arguing that Section 14.3 of the lease required the parties to arbitrate their disputes.[11] Section 14.3 reads, in pertinent part:

> 14.3 Conciliation; Arbitration.
>
> 14.3.1 Conciliation – In the event of any controversy, claim or dispute arising out of or relating to this Lease or with respect to any breach hereof, the parties shall seek to resolve the matter amicably through mutual discussion . . . .
>
> 14.3.2 Arbitration – If the parties fail to resolve any such controversy, claim or dispute by amicable arrangement and compromise within the thirty (30) day period immediately following the date of the notice initiating such discussions referred to in subsection (a) above . . . the aggrieved party shall submit the controversy, claim or dispute to arbitration . . . .[12]

The hearing justice found that the language of Section 14.3 of the lease "did not mandate arbitration in this case" and denied Defendant's motion for a stay of litigation.[13] In reaching that decision, the hearing justice noted that while the conciliation clause referred to "any controversy, claim or dispute arising out of or relating to this Lease or with respect to any breach hereof," the

8. *Id.* at 934.
9. *Id.*
10. *Id.*
11. *Id.*
12. *Id.* at 935–36.
13. *Id.* at 934.

arbitration clause did not include "with respect to any breach hereof."[14] Therefore, according to the hearing justice, the difference between the two clauses created a limitation on the arbitration clause; and because the arbitration clause did not include the language "with respect to any breach hereof," the parties did not intend to arbitrate issues of alleged breach.[15] After making that finding, the hearing justice denied Defendant's motion for a stay of litigation.[16] In response, Defendant moved for reconsideration of the order, but the hearing justice affirmed his previous ruling.[17] Subsequently, Defendant timely appealed, arguing that the hearing justice erred by concluding that the arbitration clause in the lease did not apply to an alleged breach.[18]

ANALYSIS AND HOLDING

Before reaching the merits of whether the parties' dispute was arbitrable, the Rhode Island Supreme Court (the Court) addressed Plaintiffs' argument that Defendant's appeal was not properly before the Court.[19] Plaintiffs argued that an order denying a motion to stay litigation is not a final order until the issue is arbitrated, thus only reviewable by writ of certiorari.[20] However,

> any party aggrieved by any ruling or order . . . may obtain review as in any civil action, and upon the entry of any final order provided in § 10-3-3 . . . he or she may appeal to the supreme court as provided for appeals in civil actions.[21]

In the Court's view, of particular importance in the statute is the phrase "*any* [aggrieved] party" may appeal "*any* ruling".[22] The Court found that the Defendant here was aggrieved when the trial court denied Defendant's motion to stay litigation pending arbitration once the trial court found no arbitrable issue.[23]

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14. *Id.* at 936.
15. *Id.*
16. *Id.* at 934.
17. *Id.*
18. *Id.*
19. *Id.* at 934–35.
20. *Id.* at 935.
21. *Id.* (citing 10 R.I. GEN LAWS § 10-3-19).
22. *Id.* (emphasis in original).
23. *Id.*

Therefore, the Court held that the language of section 10-3-3 was intended to allow direct appeals from orders on motions to stay litigation brought under the statute.[24] Accordingly, Defendant's appeal was properly before the Court.[25]

The Court next turned to the issue of whether the alleged breach was arbitrable.[26] The Court viewed the central issue as determining whether the parties "agreed to arbitration in clear and unequivocal language."[27] The Court turned to the language of Section 14.3 of the lease itself.[28] The Court noted that, in finding breach was not an arbitrable issue, the hearing justice must have determined the "[c]onciliation" and "[a]rbitration" clauses were in conflict with one another, and therefore applied the "specific over general" rule to determine which clause would apply to allegations of breach.[29] The Court reasoned that the hearing justice's result would follow when looking at the "Conciliation" and "Arbitration" provisions separately.[30] However, the Court noted that reading the two provisions separately was error, reasoning that "in ascertaining what the intent [of the parties] is [the Court] must look at the instrument as a whole and not some detached portion thereof."[31] The Court held that Section 14.3.1 of the lease required the parties to put in a good faith effort to settle "any controversy, claim or dispute arising out of or relating to this Lease or with respect to any breach hereof."[32] Then, the Court explained the process of conciliation, which, under the agreement, required discussions

24. *Id.* (quoting Harvard Pilgrim Health Care of New England, Inc. v. Gelati, 865 A.2d 1028, 1037 (R.I. 2004) ("When the language of a statute is clear and unambiguous, we must enforce the statute as written by giving the words of the statute their plain and ordinary meaning.")).

25. *Id.*

26. *Id.*

27. *Id.* (quoting State Dep't of Corr. v. R.I. Bhd. of Corr. Officers, 866 A.2d 1241, 1247 (R.I. 2005)).

28. *Id.* at 935–36.

29. When two contractual provisions are irreconcilable with one another, the specific provision is considered an exception to the more general provision and the specific provision must apply. *Id.* at 936 (citing Park v. Ford Motor Co., 844 A.2d 687, 694 (R.I. 2004)).

30. *Id.*

31. *Id.* at 934, 936 (quoting Hill v. M. S. Alper & Son, Inc., 256 A.2d 10, 15 (R.I. 1969)).

32. *Id.* at 937.

between the parties via telephone or in person meetings.[33] However, should those conciliation efforts fail, the arbitration clause would be engaged.[34]

Additionally, the Court noted Section 14.3.2 starts with "[i]f the parties fail to resolve any such controversy, claim or dispute . . . ."[35] Despite Section 14.3.2 making no specific mention to allegations of breach, the Court found that by using the word "such,"[36] the arbitration provision must refer to the conciliation provision immediately before it, which did refer to breach.[37] The Court found that when Section 14.3.1 and Section 14.3.2 are read together, the two provisions created a two-step process for resolving disputes.[38] Accordingly, in the Court's view, the two provisions could be read to avoid conflict with one another, and the "specific over general" rule did not apply.[39]

Plaintiffs also argued that even if Section 14.3 requires the parties to arbitrate allegations of breach, Section 10.2.1[40] gave Plaintiffs the option to litigate disputes if they so chose.[41] Section 10.2.1 provides that in the event of default, "[l]andlord may terminate this Lease upon thirty (30) days written notice to Tenant and, in addition to any right or remedy set forth herein, shall have all rights and remedies allowed at law or in equity or by statute or otherwise."[42] According to Plaintiffs, "all rights and remedies allowed at law" includes the right to bring a civil action in court.[43] In support of their argument, Plaintiffs relied on *AVCORR*

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33. *Id.*

34. *Id.*

35. *Id.*

36. *Id.* "[T]he word 'such' when used in a contract or statute, must, in order to be intelligible, refer to some antecedent, and will generally be construed to refer to the last antecedent in the context[.]" *Id.* (quoting Am. Smelting and Refining Co. v. Stettenheim, 177 A.D. 392 (N.Y. App. Div. 1917)) (alterations in original).

37. *Id.*

38. *Id.* at 936.

39. *Id.* at 936–37 (citing *Park*, 844 A.2d at 694).

40. Article X of the lease provides for particular remedies in the event of default; Section 10.2 is titled "Remedies." *Id.* at 938.

41. *Id.*

42. *Id.*

43. *Id.*

Management,[44] where the Court held that, although the parties' agreement required them to arbitrate certain issues, a "rights and remedies" provision in that agreement gave the parties an option to litigate disputes.[45] However, the Court distinguished the present case from *AVCORR Management*, noting that the arbitration clause in *AVCORR Management* was limited to disputes arising only under specific circumstances rather than the breadth of the arbitration provision here, which provides that "*any* controversy, claim or dispute" is referable to arbitration.[46] Further, the parties in *AVCORR Management* specifically consented to the jurisdiction of the Rhode Island courts in the event of "any dispute arising out of [the] [a]greement[.]"[47] Thus, the Court held that, without limning specific issues eligible for arbitration or consenting to the jurisdiction of Rhode Island courts, the reservation of rights and remedies provision here merely directed the arbitrator to have all types of remedies allowed at law available.[48]

In reaching its conclusion, the Court found of particular importance that Section 10.2.1 used the words "rights and remedies" together rather than using each word individually.[49] The Court explained that when used alone, "rights" would refer to the means available to a particular party to obtain its redress, including litigation, and "remedies" would refer only to the particular redress that may be available for an aggrieved party.[50] However, since the words appear as "rights and remedies," the Court concluded that Section 10.2.1 gives an aggrieved party the opportunity to seek redress if that party's rights under the

44. AVCORR Mgmt., LLC v. Central Falls Det. Facility Corp., 41 A.3d 1007, 1010 (R.I. 2012).

45. *R.I. Council on Postsecondary Educ.*, 202 A.3d at 938. Plaintiffs noted that the title and language of the provisions in question in the instant case contained similar language as the provisions in AVCORR Management. *Id.* (citing *AVCORR Mgmt.*, 41 A.3d at 1009).

46. *Id.* (emphasis added).

47. *Id.* (quoting *AVCORR Mgmt.*, 41 A.3d at 1012).

48. *Id.* In reaching that decision, the Court relied on cases from the Sixth Circuit and Massachusetts Appeals Court, both holding that rights and remedies provisions do not render an arbitration clause meaningless. *Id.* at 938–39 (citing Robert Bosch Corp. v. ASC Inc., 195 Fed. App'x 503 (6th Cir. 2006) and Dixon v. Perry & Slesnick, P.C., 914 N.E.2d 97 (Mass. App. Ct. 2009)).

49. *Id.* at 939.

50. *Id.*

agreement have been breached.[51] Finding that breach was an arbitrable dispute under the agreement, the Court held the "rights and remedies" language gave the parties the "right" to arbitrate an alleged breach, and provided the arbitrator may provide redress with any appropriate remedy available at law.[52] The Court went on to note that even if it found that Section 10.2.1 provides the parties an option to litigate breach, the Court adheres to the United States Supreme Court's practice in "resolving any doubt in favor of arbitration."[53]

After concluding that the parties intended to arbitrate claims after attempting to resolve any disputes through conciliation, the Court found that the parties made extensive efforts to conciliate the dispute over the years given the extensive amount of correspondence sent between the parties; therefore the alleged breach was eligible for arbitration.[54] Accordingly, the Court vacated the Superior Court's denial of stay of litigation and remanded to enter a stay of litigation pending arbitration, as provided by Rhode Island Law.[55]

Chief Justice Suttell disagreed with the Court's holding; he found that the absence of the phrase "or with respect to any breach hereof" in Section 14.3.2 meant that the parties did not intend to arbitrate allegations of breach.[56] Chief Justice Suttell agreed that the word "such" in Section 14.3.2 must have been referring back to Section 14.3.1, but posited that the provisions under Article X enumerate a number of remedies available in the event of default.[57] Looking to the heart of the dispute between the parties, Plaintiffs were complaining about Defendant's failure to finish construction within the thirty-month time frame required under the lease.[58] In Chief Justice Suttell's view, the lack of "with respect to any breach hereof" in Section 14.3.2 and the language of Section 10.2.1, which allowed for "all rights and remedies allowed at law" in the event of default, must mean that the parties did not intend to arbitrate

51. *Id.*
52. *Id.* at 940.
53. *Id.* (quoting Brown v. Amaral, 460 A.2d 7, 10 (R.I. 1983)).
54. *Id.*
55. *Id.* (citing 10 R.I. GEN. LAWS § 10-3-3).
56. *Id.* at 941.
57. *Id.*
58. *Id.*

allegations of breach.[59] Accordingly, Chief Justice Suttell found that denial of the motion to stay litigation was appropriate and the parties could litigate this dispute given they did not explicitly agree to arbitrate issues of breach.[60]

COMMENTARY

The Court found that the lease called for arbitration in the event of alleged default despite the absence of clear language that an alleged breach was an arbitrable dispute in Section 14.3.2 because it referred to Section 14.3.1, which did include the language "any controversy, claim or dispute."[61] In doing so, however, the Court seems to overlook Section 10.2.1, providing for specific remedies in the event of default, which is, after all, what the dispute was about.[62] While acknowledging that whether a party can arbitrate a particular dispute depends on whether they intended to arbitrate that particular dispute, the Court seems to have overlooked the principle of looking at the entire agreement in determining the parties' intent.[63] It seems the Court looked at Section 14.3.1 and Section 14.3.2 together, but ignored how those provisions relate to Section 10.2.1.[64] Granted, the "Conciliation; Arbitration" provisions were closer in proximity to one another than to Section 10.2.1, but the provisions must be considered as part of the whole document in determining the intent of the parties.[65] Chief Justice Suttell highlighted that the clear language of the arbitration provision was silent as to breach, while breach was clearly discussed in Section 10.2.1.[66] Therefore, the parties seem to have contemplated the possibility of breach, but left it out of Section 14.3.2 for some reason.[67] The Court seemed to couch its opinion on the notion that the "rights and remedies" language in Section 10.2.1 was meant to supply the arbitrator with the remedies

59. *Id.*
60. *Id.*
61. *Id.* at 937.
62. *See id.* at 934, 941.
63. *See id.* at 934.
64. *See id.* at 936–37, 939.
65. *See id.* at 934.
66. *Id.* at 941.
67. *See id.*

available to provide relief, but pays no mind that Section 10.2.1's purpose is to address remedies in the event of default, which of course, was the precise issue in the present dispute.[68]

CONCLUSION

The Rhode Island Supreme Court held that parties agreed to arbitrate allegations of breach where the arbitration clause only refers to breach in the immediately preceding provision, and any rights and remedies provision thereafter is intended to direct the arbitrator as to the proper recourse of a particular dispute, not to provide the parties an option to litigate disputes not specifically identified in the arbitration provision.

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68. *See id.* at 937–39.