IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
Assigned on Briefs January 27, 2015

**RICHARD MALONE, ET AL. V. MATHEW LASATER, ET AL.**

**Appeal from the Chancery Court for Montgomery County**
**No. MCCHCVMG125 Laurence M. McMillan, Jr., Chancellor**

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**No. M2014-00777-COA-R3-CV – Filed March 12, 2015**

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The parties executed an arbitration agreement to submit disputes arising from their franchise agreement to binding arbitration. The trial court held that, under the arbitration agreement, the individual Defendants were liable, in their personal and corporate capacities, for amounts awarded to Plaintiffs by the arbitrators. Additionally, the trial court denied Defendants' motion to dismiss for failure to state a claim, in which Defendants contended that the arbitrators' decision was invalid as a matter of law. We affirm and remand.

**Tenn. R. App. P. 3 Appeal; Judgment of the Chancery Court Affirmed and Remanded**

ARNOLD B. GOLDIN, J., delivered the opinion of the Court, in which BRANDON O. GIBSON, J., and KENNY ARMSTRONG, J., joined.

Jacob P. Mathis, Clarksville, Tennessee, for the appellant, Mathew Lasater, Annie Lasater, and Lasaters Corp., Inc.

Richard J. Malone, Pro se, appellee.

## OPINION

Plaintiffs Malone Enterprise, LLC ("Malone Enterprise"), Richard Malone ("Mr. Malone") and Allison Malone ("Ms. Malone"; collectively, "the Malones") seek damages arising from a 2009 franchise agreement and 2010 equipment lease agreement. The background facts relevant to our disposition of this matter on appeal are largely undisputed. In December 2009, Defendant Lasaters Corporation, Inc. ("Lasaters

Corporation") and the Malones entered into a franchise agreement governing the Malones' operation of a Lasaters Coffee and Tea franchise. The franchise agreement identified the parties as "Lasaters Corporation" and "Malone Enterprises, LLC (Rick & Allison Malone) dba Lasaters Coffee & Tea." It was executed by "Mat Lasater, CEO" for Lasaters Corporation, and by "Richard J. Malone" and "Allison D. Malone." The franchise agreement recited an initial term of ten years, set-forth the rights and obligations of the parties, and contained an arbitration provision that was separately initialed by Mr. Malone, Ms. Malone, and Mathew Lasater ("Mr. Lasater"). Paragraph twenty-three of the franchise agreement provided that the agreement "contain[ed] the entire agreement between Franchisee and Franchisor."

Disputes subsequently arose between the parties, who eventually agreed to submit the matter to binding arbitration. Although the parties' franchise agreement contained an arbitration clause that provided that "Any controversy arising out of this Agreement will be settled solely and totally by Arbitration … in accordance with the rules of the American Arbitration Association," the parties entered into a new arbitration agreement that provided that the arbitration panel would consist of three "Christian persons" selected by the signatories' respective pastors. The new arbitration agreement provided that all disputed issues, including procedural issues, would be submitted to the arbitrators, the arbitrators' decision would be binding, that no appeal would be permitted, and that no legal counsel would be present during the proceedings. The agreement was signed by "Rick Malone," "Allison Malone," "Mat Lasater," and "Annie Lasater."

In March 2011, the arbitrators communicated their "Unanimous Agreement of Christian Arbitration Panel" to the parties' respective pastors. The arbitrators' decision permitted "Lasaters [to] take over [the] store" and assume current inventories and required them to pay $55,000.00 to the Malones at the time of possession or before the end of March 2011. It required the Malones to pay all equipment, royalties, and rent through February 28, 2011. It also required that "Lasaters and Malones mutually apologize to each other and agree to never disparage each other in [the] future." This lawsuit ensued.

## Procedural History

The Malones filed a complaint for damages and a writ of attachment against Defendants' real and personal property in the Chancery Court for Montgomery County in March 2012. In their complaint, the Malones named Mathew T. Lasater ("Mr. Lasater") and Annie R. Lasater ("Ms. Lasater"; collectively, "the Lasaters") as Defendants. They alleged, in relevant part, that they had entered into a franchise relationship with the Lasaters, that "many disputes" had subsequently arisen between the parties, and that the parties had entered into binding arbitration to resolve their disputes. They asserted that the parties had executed an agreement to arbitrate in February 2011; that they had selected arbitrators in accordance with the terms of the arbitration agreement; that,

although "[t]here was no face to face arbitration session . . . the parties did submit substantial documentation and information to the arbitrators"; and that, in March 2011, the arbitrators awarded the Malones $55,000.00. They further asserted that the Lasaters had refused to pay the amounts awarded despite good faith efforts by the Malones to perform the duties specified by the arbitrators. They also alleged that the Lasaters had been selling real property and submitted that they were "fearful that the attempts to sell the property [were] done with the intent to defraud creditors." They prayed for a writ of attachment to certain real property owned by the Lasaters, for a judgment in the amount of $55,000.00, and for costs and other relief as the trial court found just. On March 9, 2012, the trial court granted their prayer for a writ of attachment against the Lasaters.

On March 20, 2012, the Lasaters filed a motion to dismiss.[1] In their motion, as subsequently twice amended, the Lasaters asserted that the arbitrators had failed to conduct a hearing; that the 2011 arbitration agreement contained no provision waiving a hearing; and that a hearing was required under Tennessee Code Annotated § 29-5-306. The Lasaters further asserted that the franchise agreement and equipment lease that were the source of the parties' dispute were executed by the Lasaters Corporation and that the Lasaters, in their individual capacities, had no contractual relationship with the Malones.

On May 4, 2012, the Malones amended their complaint by agreement of the parties and added Malone Enterprise, LLC[2] as a Plaintiff and Lasaters Corporation (hereinafter, collectively with the Lasaters, "Defendants") as a Defendant. Following a hearing on May 4, 2012, the trial court denied the Lasaters' motion to dismiss. The Lasaters[3] answered the amended complaint on May 18 and denied that they had entered into an agreement with the Malones in their individual capacities. In their answer, the Lasaters admitted to the Malones' allegation that "the Plaintiffs and the Defendants executed [the] agreement to arbitrate the dispute" described in the complaint and admitted to the arbitration agreement attached to the complaint. They denied that the arbitrators had awarded the Malones $55,000.00, that the Malones had made a good faith effort to perform the terms and conditions set-forth in the arbitration award, and that they had refused to pay the amounts awarded to the Malones. The Lasaters also denied the Malones' contention that they had sold real property with an intent to defraud creditors and denied that the Malones were entitled to a judgment pursuant to Tennessee Code Annotated § 29-6-101, *et seq*. The Lasaters further denied that the Malones were entitled to any of the relief sought in their complaint and prayed for dismissal of the matter.

[1] The Lasaters filed an amended motion to dismiss on April 5, 2012, and a second amended motion to dismiss on May 3, 2012.

[2] We observe that the record contains documentation indicating that Malone Enterprise, LLC, was administratively dissolved in August 2011. We accordingly will refer to Plaintiffs, collectively, as "the Malones."

[3] Lasaters Corporation never filed an Answer to the Amended Complaint.

The Malones filed a motion for a judgment on the pleadings in June 2012. Defendants opposed the motion, asserting, in part, that a March 2011 email from the arbitrators clarified the award and required the Malones to reimburse Defendants certain expenses incurred through March 31, 2011. They asserted that the Malones owed Defendants payment for outstanding invoices in the amount of $6,250.87, and that, prior to the commencement of this lawsuit, Defendants had paid the Malones $6,000.00 as payment toward the arbitration award. The Lasaters again asserted that they were not liable for any judgment in their individual capacities.

In July 2012, the trial court appointed a special master to determine the amount of offsets, if any, to be credited to Defendants. Upon examination of the documents provided by the parties and the testimony of the parties and witnesses, the special master noted that Defendants asserted that they were entitled to an offset in the amount of $16,648.43 against the $55,000.00 arbitration award to Plaintiffs. The special master found that the parties agreed that Defendants had paid $5,500.00 toward the $55,000.00 award and determined that Defendants were entitled to an offset in the amount of $6,250.87. By order entered November 20, 2013, the trial court awarded Plaintiffs a judgment against Lasaters Corporation in the amount of $43,249.13, plus statutory interest, and reserved the issue of the Lasaters' personal liability.

Following briefing by the parties and a hearing in January 2014, the trial court determined that the Lasaters had executed the February 2011 agreement to arbitrate in their individual capacities. It found that the Lasaters, accordingly, were personally liable for the amounts awarded by the arbitrators. The trial court specifically denied the Malones' motion for a judgment on the pleadings and additionally denied "any other pending motion[.]" The trial court entered final judgment in the matter on March 18, 2014, and Defendants filed a timely notice of appeal to this Court.

## Issues Presented

Defendants/Appellants present two issues for our review, as they state them:

1) Whether the trial court erred in granting judgment against the Defendants, Mathew and Annie Lasater, individually, as they lacked a contractual relationship with Plaintiffs.

2) Whether the trial court erred in granting judgment against the Defendant, Lasaters Corporation, Inc., as the judgment was based upon an invalid arbitration decision.

## Discussion

Before turning to the issues presented for our review, we note, as an initial matter, that the parties were represented by counsel in the proceedings before the trial court and that Defendants are represented by counsel on appeal. The Malones are not represented by counsel on appeal, however. Although the appellate record contains appellee information for both Mr. Malone and Ms. Malone, we observe that the Appellee brief contains the signature of Mr. Malone only. To the extent that Mr. Malone seeks to represent Malone Enterprise, we note that a corporate officer who is not a lawyer cannot represent the corporation in a court proceeding. *Estate of Green v. Carthage General Hosp., Inc.*, 246 S.W.3d 582, 584 (Tenn. Ct. App. 2007). Additionally, a corporation cannot proceed *pro se*. *Old Hickory Eng'g and Mach. Co., Inc. v. Henry*, 937 S.W.2d 782, 785 (Tenn. 1996). Although Mr. Malone may represent himself, he may not represent Ms. Malone. *See Pledged Property II, LLC v. Morris*, No. W2012–01389–COA–R3–CV, 2013 WL 1558318, at *1 (Tenn. Ct. App. April 15, 2013). Because neither counsel for Malone Enterprise nor Ms. Malone filed a brief in this matter, we shall refer to the Appellee as Mr. Malone.[4]

## Personal Liability of the Lasaters

We turn first to the Lasaters' assertion that the trial court erred in determining that they were personally liable for the arbitrators' award in favor of the Malones. In their brief, the Lasaters submit that the trial court erred by focusing on that part of the arbitration agreement granting the arbitration panel "the authority to make decisions and/or create agreements for the parties" when determining that "[t]o hold that the decision of the arbitration panel applied only to the corporate entity, would simply ignore the plain language of the written decision, and the plain language of the Agreement wherein the parties clearly gave the panel the authority to 'create agreements for the parties.'" The Lasaters' argument, as we understand it, is that the basis of the parties' dispute was the franchise agreement executed by Mr. Lasater as CEO of Lasaters Corporation, which contained an arbitration clause, and that the corporate entities would not have entered into the February 2011 arbitration agreement but for the contractual arbitration clause.

The Lasaters do not dispute that the arbitration agreement does not reference Mr. Lasater as CEO of Lasaters Corporation. Rather, they submit that the evidence does not demonstrate intent on the part of Mr. Lasater to be personally bound by the agreement. The Lasaters assert that the trial court did not consider the entire relationship between the parties but focused only on a single line in the arbitration agreement. They rely on *T.R. Mills Contractors, Inc. v. WRH Enterprises, LLC*, 93 S.W.3d 861 (Tenn. Ct. App. 2002),

[4] We note that Ms. Malone and Malone Enterprises remain Appellees in this matter; they simply are not represented and may be considered as not participating on appeal.

for the proposition that, because an agreement to arbitrate "simply shifts the forum of dispute settlement" and "does not affect the rights and duties of the parties[,]" the Lasaters cannot be personally liable under the arbitration agreement where they were not personally bound by the franchise agreement. The Lasaters submit that "[t]he [a]rbitration [a]greement merely ironed out procedural guidelines as to how the arbitration would occur and what matters were being submitted to arbitration. It did not change the original contractual relationship between the parties, which existed solely between the two business entities[.]" They argue that the February 2011 arbitration agreement is supplementary to the arbitration clause contained in the franchise agreement, that the franchise agreement is the controlling document, and that the franchise agreement and arbitration agreement should be read together as the entire agreement of the parties.

Mr. Malone, on the other hand, submits that the parties chose to utilize a "nontraditional means" to settle their disputes and end their business relationship, and that they ended their relationship "in a manner which was highly personal involving their close community to both arbitrate and provide individual accountability[.]" He asserts that the Lasaters took an active role in drafting the arbitration agreement and that the parties agreed to resolve their dispute in a manner whereby they would be held "accountable to their church and persons in the community close to them." Mr. Malone submits, "When the Lasaters signed the Arbitration Agreement they consented [to grant] full power to the arbitration panel to render any decisions relating to the issues the parties agreed to submit to arbitration."

An arbitration agreement contained in a written contract does not alter the contractual rights or duties of the parties but shifts the dispute-resolution forum from the courts to the arbitrators. *T.R. Mills Contractors, Inc. v. WRH Enterprises, LLC*, 93 S.W.3d 861, 868 (Tenn. Ct. App. 2002) (citation omitted). Additionally, as the Lasaters assert, a corporate representative who signs a contract generally is not personally bound by the contract. *84 Lumber Co. v. R. Bryan Smith*, 356 S.W.3d 380, 382 (Tenn. 2011) (citations omitted). "A representative may be personally bound, however, when the clear intent of the contract is to bind the representative." *Id.* at 383. Further, a corporate representative may execute a contract in a corporate capacity and guarantee its obligations in a personal capacity. *Id.* "Whether or not a particular contract shows a clear intent that one of the parties was contracting as an individual or in a representative capacity must be determined from the contract itself." *Lazarov v. Klyce*, 255 S.W.2d 11, 14 (Tenn. 1953) (citation omitted). The court's role when interpreting a contract is to ascertain the intention of the parties. *84 Lumber*, 356 S.W.3d at 383 (citation omitted). "The intention of the parties is based on the ordinary meaning of the language contained within the four corners of the contract." *Id.* Contract interpretation is a matter of law. *Id.* Our review accordingly is *de novo* with no presumption of correctness. *Id.*

In this case, the arbitration agreement contained within the franchise agreement

provided:

> The parties, known as Franchisee and Franchisor, to this Agreement, Corporately *and individually*, hereby irrevocably waive trial by Judge and/or Jury in any action, proceeding, or counter claim, whether at law or in equity, brought by either of the parties. Any controversy arising out of this Agreement will be settled solely and totally by Arbitration in the County of Montgomery, State of Tennessee, by three (3) Arbitrators in accordance with the rules of the American Arbitration Association. The party bringing such request for arbitration or any other judicial action shall be responsible in full for all legal fees of both parties without exception. The decision of the Arbitrators shall be entered in any court having jurisdiction. The parties agree that arbitration shall be conducted on an individual and not a class-wide basis. The parties hereto agree to said arbitration without exception and having independently reviewed this provision and have initialed same to indicate our intention in that regard. (Emphasis added)

The provision was separately initialed by Mr. Malone, Ms. Malone, and Mr. Lasater. The franchise agreement was signed by Mr. Malone, Ms. Malone, and Mr. Lasater, as CEO for Lasaters Corporation.

In 2011, the parties executed a new written agreement to arbitrate that was drafted by the parties and was signed by Mr. Malone, Ms. Malone, Mr. Lasater and Ms. Lasater, who was not a signatory to the franchise agreement. Paragraph I of the arbitration agreement provided:

> The parties understand and acknowledge that by signing below they are agreeing to submit all disputed issues to the arbitration panel as selected by the parties' respective pastors. The decisions and/or rulings of the arbitration panel shall be final, and each party is bound to the decisions and/or rulings of the panel. All parties agree to honor the selection of the arbitrators by each parties' respective pastor.

Paragraph II stated:

> The arbitrators shall assume a direct and final decision-making role over all disputed issues between the parties. The parties understand and acknowledge that this arbitration panel shall consist of three (3) Christian persons, one from each parties' respective church congregation and another from a third, neutral church congregation. The third member of the arbitration panel shall be selected by agreement of the parties' respective pastors. **The parties understand and acknowledge that the panel of arbitrators has the authority to make decisions and/or to create agreements for the parties. The parties understand and consent to any rulings or decisions of the arbitration panel.** (Emphasis in original.)

Paragraph III provided that the matters to be determined by arbitration were 1) procedural

issues; 2) breach of contract questions; 3) "character issues/attitudes"; and 4) "financial matters," including a "settlement to dissolve business association[.]"

We agree with the trial court that the arbitration agreement evidences clear intent on the part of the parties, in their individual capacities and, where applicable, in their capacities as corporate officers, to be bound by the decisions of the arbitrators. As the trial court noted, the arbitration agreement granted the arbitrators the right to make decisions and to create agreements for the parties. It also granted the arbitrators broad authority to resolve the parties' disputes, including financial/business disputes and character issues/attitudes issues, and to draft a settlement agreement to dissolve their business relationship. Further, although the parties' business and financial disputes arose from their franchise agreement and equipment lease, their 2011 arbitration agreement constituted a new, written agreement to submit all disputes to a Christian arbitration panel.[5] The arbitration agreement modified the franchise agreement with respect to the arbitration provision, and Mr. Lasater's signature on the arbitration agreement, without notation of his corporate title (which was clearly indicated on the franchise agreement itself), evidences his intent to be personally bound by and liable under the decisions of the arbitrators. As the trial judge stated: "The court can only conclude that had the parties not wished to bind themselves personally, they would have signed the Arbitration Agreement in their corporate capacities, which they did not do." Moreover, as our supreme court observed in *84 Lumber*, a corporate officer may agree to be contractually bound in both his corporate and individually capacities, and may execute a contract in his corporate capacity and guarantee it in his individual capacity. *84 Lumber*, 356 S.W.3d 380, 383. Additionally, we observe that Ms. Lasater was not a signatory to the franchise agreement; that she signed the arbitration agreement in her personal capacity; and that there is nothing in the record to indicate that she signed, or had the authority to sign, the arbitration agreement in any capacity other than her individual capacity. We affirm the judgment of the trial court that the Lasaters individually and Lasaters Corporation are jointly liable for amounts awarded to the Malones by the arbitrators.

**Validity of the Arbitration Decision**

We turn next to Lasaters Corporation's assertion that the trial court erred in affirming the judgment of the arbitration panel against Lasaters Corporation and in favor of the Malones because the decision was invalid. Lasaters Corporation asserts that the arbitration agreement was invalid where it fails to comply with the mandates of Tennessee Code Annotated § 29-5-307; that the arbitrators exceeded their scope and authority; and that the arbitrators failed to abide by the express procedural terms of the arbitration agreement and the mandates of Tennessee Code Annotated § 29-5-306.

[5] There is no dispute that Mr. Lasater had authority to enter into the 2011 arbitration agreement as CEO for Lasaters Corporation.

Upon review of the record transmitted on appeal, we observe that Lasaters Corporation did not file an answer to the Malones' complaint. The only answer contained in the record was filed on May 18, 2012, after the Malones amended their complaint to add Lasaters Corporation as a Defendant. The May 18 answer was filed by Mr. Lasater and Ms. Lasater, individually; Lasaters Corporation never filed an answer to the pleading. We additionally note that the Lasaters did not assert a counter-claim in their answer, and they did not allege that the arbitration award was invalid with respect to Lasaters Corporation. Similarly, Lasaters Corporation was not a party to this proceeding when the Lasaters filed the second amended motion to dismiss contained in the record, and no subsequent motion to dismiss was filed by Defendants. We also observe that the Lasaters did not raise the question of the validity of the arbitration agreement under Tennessee Code Annotated § 29-5-307 or the question of whether the arbitrators exceeded the scope of their authority in their motions to dismiss. Additionally, the issues were not raised in Defendants' memorandum for the hearing before the special master or in the Lasaters' January 2014 pre-trial brief.

There is nothing in the record to demonstrate that the questions of the validity of the arbitration agreement under Tennessee Code Annotated § 29-5-307 or whether the arbitrators exceeded the scope of their authority was ever raised in the trial court. It is well-settled that issues not raised in the trial court may not be raised for the first time on appeal. *Barnes v. Barnes*, 193 S.W.3d 495, 501 (Tenn. 2006). These issues accordingly are waived.

We turn finally to Lasaters Corporation's argument that the arbitration award was invalid where the arbitration panel failed to hold a hearing as required Tennessee Code Annotated § 29-5-306. We begin our discussion of this issue by noting that it was not presented in any pleading filed by Lasaters Corporation. Rather, this issue was asserted in the Lasaters' motion to dismiss, as twice amended. As noted above, the Lasaters filed their motion to dismiss and amended motions before Lasaters Corporation was added as a party to this action. In their motion and amended motions, the Lasaters prayed for dismissal of the matter for failure to state a claim, asserting that the arbitrators failed to comply with section 29-5-306 and that "there [was] no clause in the parties' Arbitration Agreement waiving [the] right to a hearing." Lasaters Corporation did not file an answer in the matter and, as far as we can ascertain from the record, Lasaters Corporation did not raise the issue of the validity of the arbitration agreement under section 29-5-306 in the trial court.

In their collective memorandum for the hearing before the special master, Defendants did not challenge the validity of the arbitration award, but asserted they were entitled to an offset in the amount of $16,648.43. We additionally note that, following a hearing on May 4, the trial court summarily denied the Lasaters' motion to dismiss by order entered May 11, 2012. It appears that the issue of the failure to conduct a hearing was not raised by Lasater Corporation in the trial court but by the Lasaters in their

individual capacities only. Defendants do not raise this issue on behalf of the Lasaters individually on appeal, and Lasater Corporation may not challenge the judgment against it on this basis for the first time on appeal.

Additionally, even assuming the issue was properly raised in the trial court, and notwithstanding the waiver of appeal contained in Paragraph IX of the parties' arbitration agreement, Tennessee Code Annotated § 29-5-312 provides:

> Upon application of a party, the court *shall* confirm an award, unless, *within the time limits hereinafter imposed,* grounds are urged for vacating or modifying or correcting the award, in which case the court shall proceed as provided in §§ 29-5-313 and 29-5-314.

Tenn. Code Ann. § 29-5-312 (2012) (emphasis added). Section 29-5-313 governs the grounds on which an arbitration award may be vacated. The section provides, in relevant part, that "the court shall vacate an award" if the arbitrators "refused to hear evidence material to the controversy or otherwise so conducted the hearing, contrary to § 29-5-306, as to prejudice substantially the rights of a party[.]" Tenn. Code Ann. § 29-5-313(a)(1)(D) (2012). Section 29-5-313(b), however, states:

> An application under this section *shall* be made within ninety (90) days after delivery of a copy of the award to the applicant, except that, if predicated upon corruption, fraud or other undue means, it *shall* be made within ninety (90) days after such grounds are known or should have been known.

Tenn. Code Ann. § 29-5-313(b) (2012) (emphasis added).[6]

In their brief, Defendants acknowledge that they received the arbitrators' written award on March 3, 2011. Defendants do not allege that the award was predicated upon corruption or fraud. Rather, although not so stated, Defendants seek to set-aside the award under section 29-5-313(a)(1)(D) on the ground that the arbitrators did not conduct a hearing as required by section 29-5-306.[7] It is undisputed that Defendants did not file an application to vacate the award within ninety days after March 3, 2011, as required by section 29-5-313(b). Accordingly, the trial court was without authority to vacate the award under section 29-5-313, and it was required to confirm it under section 29-5-312. We, therefore, confirm the trial court's order confirming the arbitration award.

## Holding

In light of the foregoing, we affirm the trial court's judgment enforcing the

[6] Section 29-5-314 governs grounds and procedure for modification of an award and also contains a ninety-day application period.

[7] To the extent that "undue means" as provided in subsection 313(b) may be construed as sufficiently elastic so as to encompass the failure to hold a hearing, Defendants certainly were aware that a hearing was not held when the award was delivered to them in March 2011.

arbitration award with respect to Lasaters Corporation and also affirm its determination that Mr. Lasater and Ms. Lasater, in their individual capacities, were jointly liable under the arbitration agreement. Costs on appeal are taxed to Appellants, Mathew Lasater, Annie Lasater, and Lasaters Corporation, Inc., and their surety, for which execution may issue if necessary. This case is remanded for such further proceedings as may be necessary and as are consistent with this opinion.

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ARNOLD B. GOLDIN, JUDGE