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Supreme Court
SCWC-16-0000260
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IN THE SUPREME COURT OF THE STATE OF HAWAII

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DONNA H. YAMAMOTO, an individual,
Petitioner/Plaintiff-Appellant,

vs.

DAVID W.H. CHEE; TOM CHEE WATTS DEGELE-MATHEWS & YOSHIDA, LLP,
Respondents/Defendants-Appellees.

SCWC-16-0000260

CERTIORARI TO THE INTERMEDIATE COURT OF APPEALS
(CAAP-16-0000260; 1CC151001696)

MARCH 2, 2020

OPINION BY RECKTENWALD, C.J.,
CONCURRING IN PART AND DISSENTING IN PART

I respectfully dissent as to Part IV.B of the majority's opinion. The majority concludes that Yamamoto's claim is outside the scope of the Partnership Agreement. I disagree.

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While "the mere existence of an arbitration agreement does not mean that the parties must submit to an arbitrator disputes which are outside the scope of the arbitration agreement," whether a claim is arbitrable "depends on the wording of the contractual agreement to arbitrate." Cty. of Hawai'i v. UNIDEV, LLC, 129 Hawai'i 378, 394, 301 P.3d 588, 604 (2013) (quoting Hawai'i Med. Ass'n v. Hawai'i Med. Servs. Ass'n, Inc., 113 Hawai'i 77, 92, 148 P.3d 1179, 1194 (2006)) (emphasis omitted). When evaluating the scope of an arbitration agreement, "[the] contract 'should be construed as a whole and its meaning determined from the entire context and not from any particular word, phrase, or clause.'" Hawai'i Med. Ass'n, 113 Hawai'i at 92, 148 P.3d at 1194 (emphasis added). Here, the majority focuses on the preliminary provisions of the Partnership Agreement to the exclusion of all other terms in the contract.

The excerpts of the Partnership Agreement in the record¹ provide in relevant part:

¹ We have only excerpts of the Partnership Agreement in the record. In Yamamoto's response to Defendants' motion to dismiss, she objected that Defendants only provided excerpts of the Partnership Agreement: "Defendants rely on the Partnership Agreement as requiring arbitration but have failed to attach it in its entirety so Plaintiff and this Court cannot know its entire contents. Plaintiff should be permitted to obtain a full copy through discovery." However, Yamamoto has not argued that the record is incomplete on appeal, and therefore the issue has been waived.

RECITALS

This Partnership Agreement is executed with reference to the following:

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B. Each of the parties further desires to set forth the terms and conditions for the conduct of the Partnership business.

NOW, THEREFORE, in consideration of the premises, the parties hereby agree

ARTICLE I
FORMATION AND CHARACTER OF PARTNERSHIP

1.3 Purpose. The Partnership is organized solely for the purpose of rendering legal services ancillary thereto.

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ARTICLE III
PARTNER'S CAPITAL ACCOUNTS

3.1 Capital Accounts. An individual capital account shall be maintained for each Partner. **All income and expenses of any kind attributable to each Partner except amounts to be held in trust shall be credited or debited, as the case might be, to such Partner's individual capital account.** Fixed assets shall not be included in the capital accounts, but shall be accounted for separately by the Partnership. A credit balance in a Partner's capital account shall constitute a liability of the Partnership to that Partner; a debit balance in a Partner's capital account, whether occasioned by drawings in excess of such Partner's capital account or by charging such Partner for such Partner's share of Partnership loss, shall constitute an obligation of that Partner to the Partnership. A Partner with a deficit in such Partner's capital account shall be charged for any costs or expenses incurred by the Partnership by reason of such deficit, including, without limitation, any interest charges paid by the Partnership by reason of drawings on the Partnership's line of credit and allocable to such deficit.

3.2 Property Contributed; Distributed. Each Partner's capital account shall be increased by the fair market value of any capital contributed by a Partner.

If and in the event that a Partner withdraws from the Partnership, a Partner shall be entitled only to the amount in such Partner's capital account; such amount

shall be distributed to the withdrawing Partner in the same manner as to continuing Partners.

3.3 Draws. Subject to maintaining the Partnership in a sound financial and cash position, . . . 75% of the capital account for each individual Partner shall be distributed to the particular Partners on the fifteenth (15th) day of each calendar month. . . .

ARTICLE IV
INCOME AND EXPENSES

4.1 Income. The income of the Partnership shall consist of the aggregate of:

(a) All legal fees earned and received in the conduct and practice of law, less the amount of expenses actually incurred.

(b) All income earned and received in respect of any other activity of the Partnership, including rental income and gains and losses resulting from the sale of capital assets.

4.2 Expenses. The expenses of the Partnership shall consist of all rents, insurance, salaries, wages, real estate and personal property taxes and assessments, brokerage. . . . [subsequent page omitted.]

. . . .

[Prior page not included.] . . . demands, acts and damages that may arise out of, or by reason of, such a violation of any of the terms, provisions and conditions hereof.[]

13.10 Arbitration. In the event of any dispute between or among the Partners in connection with this Agreement, such dispute shall be resolved by arbitration[.]

The majority contends that the recitals and the purpose clause, which state that "[e]ach of the parties further desires to set forth the terms and conditions for the conduct of the Partnership business," and that "the Partnership is organized solely for the purpose of rendering legal services and services

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ancillary thereto," restrict the scope of the arbitration clause. In light of those terms, the majority concludes that, since the purpose of the Partnership Business "was not to lend money or administer 401(k) plans[,] . . . any claims arising from the arrangement do not comprise a 'dispute . . . in connection with [the Partnership] Agreement' and are therefore not subject to the arbitration clause." Majority at 24.

This construes the Partnership Agreement too narrowly. We must look to the entire contract, not just two preliminary clauses, to determine the scope of the arbitration provision. And quite simply, there is a difference between the purpose of the Agreement - to set forth the terms for operating the Partnership business - and the purpose of forming the Partnership, which was "to provide legal services." While the purpose of the Agreement was to "set forth the terms and conditions for the conduct of the partnership business," the terms and conditions necessary for conducting business included more than simply "rendering legal services." As the subsequent provisions of the Partnership Agreement demonstrate, the Partnership Agreement governed all of the internal operations of the business, including management of the partners' capital accounts and Partnership expenses, such as salaries and insurance. 401(k) retirement plans, like salaries and insurance,

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are part of the Partnership's business operation. Thus, any dispute between the partners in connection with the 401(k) plans - such as Yamamoto's claim for conversion - is "in connection with" the Partnership Agreement, and governed by the arbitration clause.

Given that the arbitration clause applies to all claims "in connection with" the Partnership Agreement, Yamamoto's claim must be adjudicated through arbitration. Yamamoto alleges that Defendants debited her partner capital account as repayment for a 401(k) loan that it had initially paid off. The Partnership Agreement sets out the terms governing the each partner's capital account and provides that "[a]ll income and expenses of any kind attributable to each partner . . . shall be credited or debited, as the case might be, to such Partner's individual capital account," and that "in the event that a Partner withdraws from the Partnership, a Partner shall be entitled only to the amount in such Partner's capital account; such amount shall be distributed to the withdrawing Partner in the same manner as to continuing Partners." Thus, in order to adjudicate Yamamoto's claim of conversion, the parties would have to resolve whether Yamamoto's account had, in fact, been properly debited, and what funds she received at the time she left the firm. The Partnership Agreement bears directly on these issues. Thus,

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Yamamoto's allegation is "in connection with" the Partnership Agreement, and therefore, is arbitrable.²

Unlike other situations where we might be "concerned with terms which are oppressive to the weaker party and which serve to limit the obligations and liability of the stronger party," Leong by Leong v. Kaiser Found. Hosps., 71 Haw. 240, 248, 788 P.2d 164, 169 (1990), here, the Partnership Agreement was negotiated by sophisticated parties - Yamamoto is a lawyer - with relatively equal bargaining power. And, the arbitration clause binds both parties equally. Id. We are not dealing with a contract of adhesion. Thus, the arbitration clause should be enforced as to all disputes, like Yamamoto's, arising in connection with the Partnership Agreement.

Because the majority's interpretation of the Partnership Agreement is unduly narrow, and its legal conclusions are unsupported by the record, I respectfully dissent as to Part

² The majority asserts that because Yamamoto does not request relief with respect to her partner's capital account, her claims are not governed by the arbitration clause. Majority at 25 n.5. However, the arbitration clause governs not only claims requesting relief regarding the Partnership Agreement, but all disputes "in connection with" the Agreement. As Yamamoto's claims are connected to her partner's capital account, they are connected to the Partnership Agreement. Had the parties intended to limit the scope of the arbitration clause, they could have adopted narrower language. See UNIDEV, 129 Hawai'i at 396, 301 P.3d at 606 ("[I]t may be inferred from the clause that the parties did not intend to restrict the reach of the arbitration clause simply to claims involving construction or arbitration of the terms of the agreement. Had the parties intended to restrict arbitration to issues related to interpretation of the [the Agreement's terms] only . . . it would have been a simple matter to draft unambiguous language to effectuate that intent.").

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IV.B. However, I concur with the majority in Part IV.A that the requirements of Hawai'i Revised Statutes (HRS) § 658A-9 were not met by the Defendants here. Thus, I would vacate the ICA's judgment and the circuit court's March 9, 2016 order compelling arbitration, and remand to the circuit court without prejudice to a renewed motion to compel arbitration if the requirements of HRS § 658A-9 are met.

/s/ Mark E. Recktenwald

