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2001 Survey of Rhode Island Law: Cases: Contract Law

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Contract Law. *Bjartmarz v. Pinnacle Real Estate Tax Service*, 771 A.2d 124 (R.I. 2001). When a party claims fraud in inducement of a contract containing an arbitration clause, the trial court must resolve predicate facts to the invocation of the contract summarily via trial or through an evidentiary hearing that would be limited to issue of alleged fraud in inducement before allowing the matter to go to arbitration.

FACTS AND TRAVEL

In September 1997, National Information Group purchased American Realty Tax Services and changed its name to Pinnacle Real Estate Tax Services. In that same month, Pinnacle asked its employees in its Rhode Island office to sign application and employment agreements.¹ Pinnacle employee James E. Bjartmarz, who was originally hired by American Realty Tax Services, originally refused to sign the agreements because he disagreed with the arbitration clause in the application agreement because it specified that arbitration disputes would be resolved in California.² He also disagreed with various other provisions contained in the agreements, such as the biweekly schedule of payments and the offering of regular pay for working on holidays.³ Despite his objections, Bjartmarz signed the employment agreement on March 19, 1998. According to Pinnacle, it no longer required Bjartmarz to sign the application agreement.⁴ Pinnacle still required Bjartmarz to sign the employment agreement for him to receive a pay raise.⁵ Unlike the application agreement, however, the employment agreement's arbitration clause did not specifically require arbitration in California, but simply stated that all employment disputes shall be resolved by binding arbitration.⁶ On October 21, 1998, Bjartmarz filed a pro se complaint against Pinnacle in the superior court.⁷ His complaint included counts for failure to make weekly payments, failure to furnish an accurate statement of earnings and violation

1. *Bjartmarz v. Pinnacle Real Estate Tax Serv.*, 771 A.2d 124, 125 (R.I. 2001).

2. *Id.*

3. *Id.*

4. *Id.*

5. *Id.*

6. *Id.*

7. *Id.* at 126.

of the Rhode Island Whistleblowers' Protection Act.⁸ At the hearing, Bjartmarz asserted fraud in the inducement. Specifically, that he had signed the employment agreement because Pinnacle had told him that it would then fax him back the requested changes to the agreement. These changes were to include removal of the arbitration clause, the holiday-pay provision, and the biweekly pay provision.⁹ Thereafter, the motion justice denied both Pinnacle's motion to dismiss and its motion for a stay, as well as its later-filed motion for reconsideration.¹⁰ Pinnacle, on certiorari, argues that the motion justice erred in denying its motion for a stay.¹¹ It contends that the superior court must stay proceedings, pursuant to section 10-3-3, if the matter is referable to arbitration.¹² It further contends that the motion justice should not have relied on unsworn statements by Bjartmarz on the day of the hearing concerning what the parties allegedly discussed before Bjartmarz signed the agreement.¹³ Pinnacle additionally argues that any belated claim of fraud in the inducement can be handled at arbitration because it was asserted against the agreement as a whole, and not specifically against the arbitration clause and therefore, this claim should be decided via arbitration.¹⁴

ANALYSIS AND HOLDING

The Rhode Island Supreme Court stated that under section 10-3-3, "if any suit or proceeding be brought upon any issue referable to arbitration under an agreement in writing for arbitration, the court in which the suit is pending, upon being satisfied that the issue involved in the suit or proceeding is referable to arbitration under such an agreement, shall . . . stay the trial of the action until the arbitration has been had. . . ."¹⁵ However, the court stated, if one is induced to enter into a contract based upon a fraudulent statement from another party to the contract, then the party who

8. *Id.*; see The R.I. Whistleblower's Protection Act – Protection, R.I. Gen. Laws § 28-50-3 (2000).

9. *Bjartmarz*, 771 A.2d at 126.

10. *Id.*

11. *Id.*

12. *Id.*

13. *Id.*

14. *Id.*

15. *Id.* at 126 (quoting R.I. Gen. Laws § 10-3-3 (1997)).

has been fraudulently induced is not bound by the contract.¹⁶ Citing *Prima Paint Corp. v. Flood & Conklin Mfg.*,¹⁷ the court pointed out that while a fraud in the inducement claim is still referable to arbitration, the court went on to say that a claim for fraud in the inducement specifically pertaining to the acceptance of an arbitration provision in a contract may be adjudicated by a court.¹⁸ Bjartmarz's responses to the motion justice's questions that alleged fraud were not made under oath or in furtherance of any claim in the complaint for fraud in the inducement.¹⁹ Thus, ordinarily, the motion judge should not have allowed those statements to defeat the defendant's motion to stay.²⁰ However, if the motion judge was inclined to overlook this in light of the plaintiff's pro se status, the judge should have proceeded to trial on the fraud in the inducement claim or scheduled an evidentiary hearing on that issue.²¹ If it is determined that the plaintiff's claim is groundless, the issue should go to arbitration.

CONCLUSION

In *Bjartmarz v. Pinnacle Real Estate Tax Service*, the Rhode Island Supreme Court held that when an arbitration clause is at issue in a fraud in the inducement claim, the trial judge should summarily decide the issue of fraud in the inducement or hold an evidentiary hearing to determine the issue. If allegations of fraud are determined to be groundless, the matter must then go to arbitration.

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16. *Id.* at 127.

17. 388 U.S. 395 (1967).

18. *See Bjartmarz*, 771 A.2d at 127.

19. *Id.*

20. *Id.*

21. *Id.*