

No. 1-24-0525

NOTICE: This order was filed under Supreme Court Rule 23 and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

LVNV FUNDING, LLC,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County
)	
v.)	No. 2023 M3 002560
)	
EUGENE CARLSON,)	Honorable
)	James P. Pieczonka,
Defendant-Appellant.)	Judge Presiding.

JUSTICE REYES delivered the judgment of the court.
Presiding Justice Lampkin and Justice D.B. Walker concurred in the judgment.

ORDER

- ¶ 1 *Held:* Reversing the portion of an order compelling arbitration which directed the defendant to initiate arbitration by filing any necessary paperwork and paying the initiation fees.
- ¶ 2 Plaintiff LVNV Funding, LLC (LVNV) purchased certain indebtedness owed by defendant Eugene Carlson (Carlson). After LVNV filed a complaint against Carlson in the circuit court of Cook County to collect the debt, Carlson filed a motion to dismiss or stay the case and to compel arbitration. The circuit court found that Carlson was entitled to elect to arbitrate the matter pursuant to the optional arbitration provision in the applicable agreement.

Over Carlson's objection, however, the circuit court ordered him to initiate arbitration by filing the required paperwork and paying the initiation fees. In this interlocutory appeal pursuant to Illinois Supreme Court Rule 307(a)(1) (eff. Nov. 1, 2017), Carlson contends that the circuit court erred in directing him to initiate the arbitration and pay the initiation fees. As discussed below, we agree with this contention, and we thus partially reverse the order of the circuit court.

¶ 3 BACKGROUND

¶ 4 Carlson allegedly incurred debt to Citibank, N.A. (Citibank) by failing to make payments on a credit account issued by Citibank. LVNV purchased this debt and became the successor-in-interest to Citibank as to the account in 2021.

¶ 5 LVNV filed a complaint in 2023 in the circuit court of Cook County against Carlson to collect the amounts he purportedly owed to the original creditor, Citibank. The complaint included claims for breach of contract, implied contract/unjust enrichment, and account stated. LVNV sought damages in the amount of \$13,748.62, which represented the outstanding principal, interest, and fees.

¶ 6 After filing an answer and affirmative defenses, Carlson filed a motion pursuant to section 2-619(a)(9) of the Code of Civil Procedure (Code) (735 ILCS 5/2-619(a)(9) (West 2022)) to dismiss or stay the case and to compel arbitration. A two-page "sample Citibank arbitration agreement" was appended to the motion. The agreement generally provided that either party may arbitrate any claim, dispute, or controversy. The agreement stated that

"[a]rbitration may be requested any time, even where there is a pending lawsuit, unless a trial has begun or a final judgment entered. Neither you nor we waive the right to arbitrate by filing or serving a complaint, answer, counterclaim, motion, or discovery in a court lawsuit. To choose arbitration, a party may file a motion to compel arbitration in a

pending matter and/or commence arbitration by submitting the required AAA [American Arbitration Association] forms and requisite filing fees to the AAA.”

Carlson argued in the motion that the circuit court should enter an order compelling LVNV to “initiate any arbitral proceedings it wishes to conduct within 30 days of any order compelling arbitration in this matter.”

¶ 7 In its response, LVNV did not contest Carlson’s motion to compel private arbitration. LVNV maintained, however, that Carlson (and not LVNV) should be required to initiate the arbitration. LVNV observed that arbitration was not mandatory under the agreement, and the parties could have proceeded with the litigation if Carlson had not invoked the optional arbitration provision. According to LVNV, Carlson should be required to initiate the arbitration proceedings, as he elected to proceed with arbitration.

¶ 8 Carlson replied that LVNV’s request for an order requiring him to initiate the arbitration was inappropriate, “since it does not relate to *whether* this matter can be arbitrated but rather *how* this matter should be arbitrated.” (Emphases in original.) He asserted that the circuit court solely needed to determine if the matter was subject to arbitration; the opening of the arbitration proceedings and subsequent matters would then be addressed by AAA policies and procedures.

¶ 9 Following arguments on February 14, 2024, the circuit court ordered that the motion to compel arbitration was granted in part and denied in part. The motion was granted to the extent that Carlson requested that the matter “be compelled to arbitration” with the AAA. The circuit court further ordered that the arbitration should be initiated by Carlson, including the filing of any required paperwork and the payment of the AAA initiation fees. On March 12, 2024, Carlson filed a notice of interlocutory appeal.¹

¹ Due to a docketing error, this matter was not assigned to a panel for disposition until

¶ 10

ANALYSIS

¶ 11 In this interlocutory appeal pursuant to Illinois Supreme Court Rule 307(a)(1) (eff. Nov. 1, 2017), Carlson argues that the circuit court erred in requiring him to initiate private arbitration and to pay the initiation fees to the AAA. Rule 307(a)(1) provides that an appeal may be taken to the appellate court from an interlocutory order “granting, modifying, refusing, dissolving, or refusing to dissolve or modify an injunction.” *Id.* Illinois courts have consistently held that an order granting or denying a motion to compel arbitration is injunctive in nature and thus appealable under Rule 307(a)(1). *E.g., Salsitz v. Kreiss*, 198 Ill. 2d 1, 11 (2001); *Sturgill v. Santander Consumer USA, Inc.*, 2016 IL App (5th) 140380, ¶ 20.

¶ 12 A motion to compel arbitration and dismiss or stay a lawsuit is similar to a motion to dismiss pursuant to section 2-619(a)(9) of the Code (735 ILCS 5/2-619(a)(9) (West 2022)), which allows dismissal where the asserted claim is barred by an affirmative matter avoiding the legal effect of or defeating the claim. *Sturgill*, 2016 IL App (5th) 140380, ¶ 21. The affirmative matter in this case is the remedy of arbitration. See *Hartz v. Brehm Preparatory School, Inc.*, 2021 IL App (5th) 190327, ¶ 25.

¶ 13 As the circuit court ruled on Carlson’s motion without an evidentiary hearing, our review is *de novo*. *Sturgill*, 2016 IL App (5th) 140380, ¶ 20. See *Clanton v. Oakbrook Healthcare Centre, Ltd.*, 2022 IL App (1st) 210984, ¶ 41 (noting that “issues of contractual interpretation, including with respect to arbitration provisions, are reviewed *de novo*”). *De novo* consideration means we perform the same analysis as a circuit court would perform. *Bovay v. Sears, Roebuck & Co.*, 2013 IL App (1st) 120789, ¶ 26.

¶ 14 As the party seeking to compel arbitration, Carlson had the burden to establish that the parties had a valid agreement to arbitrate and that the controversy fell within the scope of the agreement. *Sturgill*, 2016 IL App (5th) 140380, ¶ 22. An arbitration agreement is “treated like any other contract.” *Vassilkovska v. Woodfield Nissan, Inc.*, 358 Ill. App. 3d 20, 24 (2005). We seek to effectuate the intent of the parties when construing a contract. *Liu v. Four Seasons Hotel, Ltd.*, 2019 IL App (1st) 182645, ¶ 25. Where the contractual language is clear, we determine the parties’ intent solely from the express language of the contract, given its plain and ordinary meaning. *Id.*

¶ 15 The plain language of the Citibank arbitration agreement generally provides that either party “*may arbitrate* any claim, dispute or controversy *** arising out of or related to” the credit account. (Emphasis in original.) The agreement also provides: “Arbitration may be requested any time, even where there is a pending lawsuit, unless a trial has begun or a final judgment entered.” The agreement further states: “To choose arbitration, a party may file a motion to compel arbitration in a pending matter and/or commence arbitration by submitting the required AAA forms and requisite filing fees to the AAA.”

¶ 16 The filing of the complaint in the circuit court by LVNV (as Citibank’s successor-in-interest) was consistent with the plain language of the arbitration agreement. Similarly, Carlson acted in compliance with the agreement by subsequently electing arbitration. The circuit court thus properly ruled that arbitration should be compelled. *Travis v. American Manufacturers Mutual Insurance Co.*, 335 Ill. App. 3d 1171, 1175 (2002) (noting that a court must compel arbitration where there is a valid arbitration agreement and the dispute falls within its scope).

¶ 17 Carlson contends, however, that the circuit court improperly ordered him to initiate arbitration with the AAA, *e.g.*, by filing the demand and paying the required initiation fees.

We agree with this contention. The circuit court’s inquiry was limited to whether an agreement to arbitrate existed and whether it encompassed the issue in dispute. See *Jensen v. Quik International*, 213 Ill. 2d 119, 123 (2004). See also *Sturgill*, 2016 IL App (5th) 140380, ¶ 22 (observing that when presented with a motion to compel arbitration, “the trial court’s inquiry is limited to certain gateway matters, such as whether the parties have a valid written agreement to arbitrate at all, and if so, whether the issues in dispute fall within the scope of the arbitration agreement”); *City of Peru v. Illinois Power Co.*, 258 Ill. App. 3d 309, 311 (1994) (noting that “[a]t a hearing to stay judicial proceedings and compel arbitration, a trial court should concern itself *solely* with whether an agreement exists to arbitrate the dispute in question” (emphasis in original)). As the “only issue before a court at a hearing to compel arbitration is whether an agreement exists to arbitrate the dispute in question” (*City of Centralia v. Natkin & Co.*, 257 Ill. App. 3d 993, 995 (1994)), the circuit court exceeded its authority by directing Carlson to initiate the arbitration by filing the required paperwork and paying the necessary initiation fees.

Therefore, the portion of the circuit court order directing such actions by Carlson is reversed.

¶ 18

CONCLUSION

¶ 19 For the foregoing reasons, the judgment of the circuit court of Cook County is hereby reversed in part, as provided herein.

¶ 20 Reversed in part.