

FAIRSTEAD CAPITAL MANAGEMENT LLC v. BLODGETT

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C.A. No. 2022-0673-JTL

Court of Chancery of the State of Delaware

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Key takeaway: *To avoid dispute resolution collision, parties engaging under multiple contracts must evidence their clear and unmistakable intent to delegate those issues to the applicable forum when various contracts are implicated in a claim.*

In *Fairstead Capital Management LLC v. Blodgett*, principal partners Stuart Feldman and Jeff Goldberg (the “Former Partners”) of investment fund complex Fairstead Capital Management LLC (“Fairstead”) and FCM Affordable LLC (“Affordable”) sued fellow principal partner, William Blodgett. Blodgett was terminated for cause for allegedly violating his employment agreement, and his LLC member interests were cancelled because of the alleged breach. At issue were multiple documents: 1) an employment agreement containing a mandatory agreement to arbitrate all claims relating to Blodgett’s employment (the “Employment Agreement”), and 2) limited liability company agreements governing two entities owning carried interests in a variety of relevant investment vehicles, which contained mandatory forum selection clauses calling for litigation (the “LLC Agreements”).¹ The LLC Agreements also contained integration clauses, signifying the parties’ intent to consider the LLC Agreements the complete and final agreement. Following the partnership’s dissolution, Blodgett filed an arbitration demand relying on both the Employment Agreement and the LLC Agreements to litigate whether he breached his employment agreement, and whether his membership interests could be cancelled. In response, the Former Partners refused arbitration and caused the LLCs to file suit in the Court of Chancery.

Fairstead and Affordable maintained that they could not be compelled to arbitrate as a matter of law because they were non-parties to the Employment Agreement containing the mandatory agreement to arbitrate. The LLCs collectively sought a permanent injunction barring

¹ As explained by Vice Chancellor Laster, “the LLC agreements governing Fairstead and Affordable are substantively identical.”

Blodgett from arbitrating the alleged breaches. Blodgett believed the dispute regarding the cancellation of his membership interests should be arbitrated because it related to his employment and thus fell within the scope of the agreement to arbitrate. Vice Chancellor Laster granted summary judgment in favor of Fairstead and Affordable, and issued a permanent injunction barring Blodgett from litigating any claims to be arbitrated under the LLC Agreements.

Delaware law, in accordance with a majority of federal courts, provides that when parties have evidenced clear intent to arbitrate issues of arbitrability “where the arbitration clause generally provides for arbitration of all disputes and also incorporates a set of arbitration rules that empower arbitrators to decide arbitrability.” When conflicting choice-of-forum provisions call into question the parties’ intentions surrounding substantive arbitrability, it cannot be said that the parties unambiguously intended to submit questions of substantive arbitrability to an arbitrator, and the court must decide which claims will be litigated and which are arbitrable. Similarly, although Delaware courts have not previously spoken directly on the issue, federal precedent interpreting the Federal Arbitration Act² provides that a *court* must decide whether an agreement to arbitrate exists. In determining whether claims must be arbitrated, the court must construe the plain language of the contract as a whole, including any integration clauses. Competing forum provision clauses prevent courts from finding clear and unmistakable evidence of an intent to arbitrate.

In this case, the integrated LLC Agreements were executed after the Employment Agreement and expressly provided for litigation. The Employment Agreement stated in part that “[a]ll disputes, claims or controversies, that in any way relate to, arise under, or arise in connection with this Agreement of the Employee’s employment at Employer, shall be submitted to binding arbitration.” It also incorporated the rules of an arbitral tribunal empowering an arbitrator to determine questions of substantive arbitrability. Although Fairstead and Affordable were not parties to the Employment Agreement, both were bound by it because they accepted the benefits of the fund principal’s services under the Employment Agreement.³ Accordingly, Vice Chancellor Laster reasoned that the Employment Agreement provided clear and unmistakable evidence of the intent to delegate any purported breach of the Employment Agreement to an arbitrator. However, the LLC Agreements were executed

² 9 U.S.C. §§ 1–16.

³ The Court provided the alternate reasoning of promissory estoppel, explaining that a party cannot renege on the promise to litigate in a particular forum after inducing its counterparties to rely on that promise.

after the Employment Agreements and contained an integration clause which effectively cancelled out the Employment Agreement's agreement to arbitrate. The breach claims were bought under the LLC Agreements, which provided for resolving disputes through litigation, so any corresponding claims must be litigated in court.

Vice Chancellor Laster granted summary judgment in favor of Fairstead and Affordable because, as a matter of law, parties could not arbitrate claims arising under the LLC Agreements, which explicitly provided for litigation. A permanent injunction was further issued barring the defendant from litigating any claims arising under the LLC Agreements in the arbitration he initiated. Because both parties are bound by both the Employment Agreement and the LLC Agreements, the applicable claims must be disputed in both fora.

