

DA 19-0641

IN THE SUPREME COURT OF THE STATE OF MONTANA

2020 MT 98N

REECE KALFELL and TRISHA KALFELL,

Plaintiffs and Appellees,

v.

ABC SEAMLESS OF BILLINGS, INC.,

Defendant and Appellant.

APPEAL FROM: District Court of the Thirteenth Judicial District,
In and For the County of Yellowstone, Cause No. DV 18-935
Honorable Donald L. Harris, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Eric Edward Nord, John G. Crist, Crist, Krogh, Alke & Nord, PLLC,
Billings, Montana

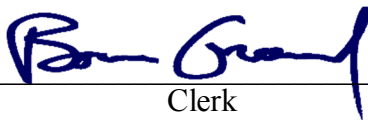
For Appellees:

Jock B. West, Tyler L. West, West Law Firm, P.C., Billings, Montana

Submitted on Briefs: March 26, 2020

Decided: April 21, 2020

Filed:


Clerk

Justice Ingrid Gustafson delivered the Opinion of the Court.

¶1 Pursuant to Section I, Paragraph 3(c), Montana Supreme Court Internal Operating Rules, this case is decided by memorandum opinion and shall not be cited and does not serve as precedent. Its case title, cause number, and disposition shall be included in this Court's quarterly list of noncitable cases published in the Pacific Reporter and Montana Reports.

¶2 ABC Seamless of Billings, Inc. (ABC) appeals from the October 8, 2019 Order Denying Motion to Compel Arbitration and to Dismiss (First Order) and the October 22, 2019 Order Denying Motion to Compel Arbitration and to Dismiss (Second Order) issued by the Thirteenth Judicial District Court, Yellowstone County. We reverse and remand to the District Court to determine if the arbitration provision contained in the parties' contract is valid and enforceable.

¶3 On June 14, 2018, Reece and Trisha Kalfell (Kalfells) filed a Complaint against ABC for breach of contract and breach of the Consumer Protection Act. ABC then filed a Motion to Compel Arbitration and to Dismiss, in which ABC admitted the contract attached as Exhibit 1 to Kalfells' Complaint was the contract between the parties but asserted Section 11 of that contract compelled the parties to arbitrate the dispute. In response thereto, the Kalfells asserted the arbitration clause contained in the parties' contract was invalid and unenforceable as it was a contract of adhesion and the arbitration clause was unconscionable and unenforceable. The District Court then issued its First Order concluding, despite both parties' assertions to the contrary, that there was no contract

between the parties as the contract attached as Exhibit 1 to Kalfells' Complaint was not signed by ABC. Thereafter, ABC filed a motion requesting reconsideration of the First Order advising the court it "was under the false impression that the contract between the parties was only executed by the [Kalfells], and not ABC. The contract, however, was executed by both parties." ABC attached the signature page of the contract signed by ABC to its motion. Without waiting for a response from the Kalfells, the District Court then sua sponte issued its Second Order which again concluded no contract existed between the parties. The District Court denied reconsideration noting the agreement date on the signature page provided by ABC appeared to be August 19, 2020, and concluding the contract does not take effect until that date and that Kalfells would have three business days thereafter to cancel.

¶4 "The existence of a contract is a question of law, which we review for correctness." *Murphy v. Home Depot*, 2012 MT 23, ¶ 6, 364 Mont. 27, 270 P.3d 72 (citing *Lockhead v. Weinstein*, 2003 MT 360, ¶ 7, 319 Mont. 62, 81 P.3d 1284).

¶5 Both parties agree they entered into the written contract, attached as Exhibit 1 to Kalfells' Complaint, and each party admits to executing the contract in 2016. The District Court's sua sponte finding that no written contract exists between the parties was incorrect. As such, this matter is reversed and remanded to the District Court to determine if the arbitration provision found in the parties' written contract is valid and enforceable.

¶6 We have determined to decide this case pursuant to Section I, Paragraph 3(c) of our Internal Operating Rules, which provides for memorandum opinions. In the opinion of the

Court, the case presents a question controlled by settled law or by the clear application of applicable standards of review.

¶7 Reversed and remanded.

/S/ INGRID GUSTAFSON

We concur:

/S/ MIKE McGRATH

/S/ BETH BAKER

/S/ JIM RICE

/S/ DIRK M. SANDEFUR