SUMMARY
September 21, 2023

2023COA84

No. 22CA0790, *Tolle v. Steeland* — Landlords and Tenants — Colorado Premises Liability Act; Contracts — Arbitration Clauses; Torts — Wrongful Death; Damages — Action Notwithstanding Death

A division of the court of appeals considers whether a residential lease's clause mandating arbitration of "all disputes arising in connection with this lease" covers wrongful death claims arising from a fatal apartment fire. The division concludes that, because the Premises Liability Act provides the exclusive remedy for such claims, they do not "aris[e] in connection with" the lease and are, therefore, not subject to the arbitration clause.

The division thus affirms the order of the district court denying the defendants' motion to compel arbitration of the plaintiffs' wrongful death claims.

COLORADO COURT OF APPEALS **2023COA84**

Court of Appeals No. 22CA0790
Mesa County District Court No. 21CV30319
Honorable Lance P. Timbreza, Judge

Faith Tolle and Grace Aragon,

Plaintiffs-Appellees,

v.

Steeland, LLC, and Jaida McKeever,

Defendants-Appellants.

ORDER AFFIRMED

Division V
Opinion by JUDGE YUN
Brown and Davidson*, JJ., concur

Announced September 21, 2023

Killian, Davis, Richter & Kraniak, PC, Damon Davis, Suzanne M. Keith, Grand Junction, Colorado, for Plaintiffs-Appellees

Coleman & Quigley, LLC, Isaiah Quigley, Stuart Foster, Grand Junction, Colorado, for Defendants-Appellants

*Sitting by assignment of the Chief Justice under provisions of Colo. Const. art. VI, § 5(3), and § 24-51-1105, C.R.S. 2023.

¶ 1 Do wrongful death claims based on a fatal apartment fire "aris[e] in connection with" the apartment's residential lease?

¶ 2 The defendants, Steeland, LLC, and Jaida McKeever, argue that they do and thus appeal the district court's order denying their motion to compel arbitration with the plaintiffs, Faith Tolle and Grace Aragon (the daughters). The daughters sued the defendants for the wrongful death of their mother, Debra Wood, who died in a fire in her apartment. The defendants — the owners of that apartment — say that Wood's lease contains an arbitration clause requiring the parties to arbitrate "all disputes arising in connection with this lease."

¶ 3 Because we conclude that the daughters' wrongful death claims are governed by Colorado's Premises Liability Act (PLA), § 13-21-115, C.R.S. 2023, they do not "aris[e] in connection with th[e] lease." Accordingly, we affirm the district court's order denying the defendants' motion to compel arbitration.

I. Background

¶ 4 We begin by describing the daughters' complaint. Then we turn to the defendants' motion to compel arbitration.

A. Allegations in the Complaint

¶ 5 The daughters' complaint alleges the following. Wood leased an apartment in a four-unit building in Clifton, Colorado. Steeland owned the building, and McKeever was the sole member and the manager of Steeland. The building had no smoke alarms and no sprinkler system, and each apartment had only one exit. The utility company had told McKeever that the "building needed approximately $20,000 in electrical upgrades," but McKeever — in her role as Steeland's manager — decided not to "authorize or perform them."

¶ 6 One evening in August 2020, Wood was either in the shower or in bed when a fire started near the front door of her apartment. She died of smoke inhalation before the fire department was able to put out the fire. The ensuing investigation found that the fire was unintentional and started in a window air-conditioning unit in Wood's apartment that was in "poor condition."

¶ 7 Based on these allegations, the daughters brought three claims against the defendants under the Wrongful Death Act, § 13-21-202, C.R.S. 2023: (1) negligence, based on the defendants' breach of their duty to "provide a reasonably safe property for rent";

(2) premises liability to an invitee, based on the defendants' failure to use reasonable care to protect Wood from dangers they knew or should have known about; and (3) premises liability to a licensee, based on the defendants' actual knowledge of "dangerous conditions and circumstances" that were "not of the type ordinarily present in residential apartment buildings."

¶ 8 The daughters requested noneconomic damages for "pain and suffering, inconvenience, emotional stress, and impairment of quality of life" and economic damages for funeral and memorial expenses and lost economic support from Wood.

B. Motion to Arbitrate

¶ 9 The defendants moved to compel arbitration and dismiss the complaint under C.R.C.P. 12(b)(1). They attached the lease signed by Wood, as the tenant, and McKeever, as the "Landlord/Owner Representative."

¶ 10 The lease says that it "binds, and ensures [sic] to the benefit of, the parties and their respective heirs, executors, administrators, legal representatives and permitted successors and assigns." The lease's arbitration clause requires the parties to arbitrate "all

disputes arising in connection with this lease." As pertinent here, the lease also provides as follows:

- "The landlord shall maintain the premises in good repair at all times, assuming Landlord and representatives have knowledge of any said developing problem or disrepair."
- "The landlord shall, at the landlord's expense, maintain the premises in a safe, habitable, and sanitary condition and comply with all laws, ordinances and regulations to the condition of premises."

¶ 11 The defendants argued that the arbitration clause bound the daughters — Wood's heirs. They also argued that, because the daughters' claims "relate to or arise from the landlord/tenant relationship . . . specifically, the propriety of upkeep and management of the leased premises during the lease term," those claims fall within the clause's scope.

¶ 12 The district court determined that the daughters were Wood's "heirs" and thus were subject to the arbitration clause even though they had not signed the lease. But the court nonetheless concluded that the arbitration clause did not apply to the daughters' claims because the clause makes no mention of wrongful death claims and

such claims are "simply too attenuated" from the lease agreement. It therefore denied the motion to compel arbitration.

II. Analysis

¶ 13 The defendants contend that the district court erred by denying their motion to compel arbitration.[1] We disagree.

A. Standard of Review

¶ 14 "We review de novo the district court's decision on a motion to compel arbitration, employing the same standards that the district court employed." *Martinez v. Mintz L. Firm, LLC*, 2016 CO 43, ¶ 17. A "motion to compel arbitration is a motion to dismiss for lack of subject matter jurisdiction." *Eychner v. Van Vleet*, 870 P.2d 486, 491 (Colo. App. 1993). When reviewing a motion to compel arbitration under C.R.C.P. 12(b)(1), we accept as true the material facts in the complaint. *City & Cnty. of Denver v. Dist. Ct.*, 939 P.2d 1353, 1358 (Colo. 1997); *see also Ingold v. AIMCO/Bluffs, L.L.C. Apartments*, 159 P.3d 116, 118 (Colo. 2007). The defendants — as the parties seeking to stay the judicial proceedings and to compel

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[1] Under section 13-22-228(1)(a), C.R.S. 2023, we have jurisdiction to review the district court's order denying the motion to compel arbitration.

arbitration — have "the burden of establishing that the matter is subject to arbitration." *Smith v. Multi-Fin. Sec. Corp.*, 171 P.3d 1267, 1270 (Colo. App. 2007).

B. Governing Law

¶ 15 The interpretation of an arbitration agreement is a question of law that the court resolves by applying principles of contract interpretation.[2] *N.A. Rugby Union LLC v. U.S. Rugby Football Union*, 2019 CO 56, ¶ 19. The court looks to the plain and ordinary meaning of the terms of that agreement and construes the agreement "to effectuate the parties' intent and the purposes of the agreement." *Id.*

¶ 16 In determining whether a particular dispute falls within the reach of an arbitration clause, "[t]he factual allegations which form the basis of the claim asserted, rather than the legal cause of action pled, should guide" the court. *City & Cnty. of Denver*, 939 P.2d at 1364. "Tort claims and claims other than breach of contract claims

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[2] The parties agree that it was for the district court to determine whether their dispute fell within the scope of the arbitration clause. *See* § 13-22-206(2), C.R.S. 2023 ("The court shall decide whether . . . a controversy is subject to an agreement to arbitrate."); *cf. City & Cnty. of Denver v. Dist. Ct.*, 939 P.2d 1353, 1363 (Colo. 1997).

are not necessarily excluded from [arbitration]." *Id.*; *see also Sweet Dreams Unlimited, Inc. v. Dial-A-Mattress Int'l, Ltd.*, 1 F.3d 639, 643 (7th Cir. 1993) ("[A] party may not avoid a contractual arbitration clause merely by 'casting its complaint in tort.'" (quoting *In re Oil Spill by "Amoco Cadiz*," 659 F.2d 789, 794 (7th Cir. 1981))).

¶ 17 "Colorado law favors the resolution of disputes through arbitration." *J.A. Walker Co. v. Cambria Corp.*, 159 P.3d 126, 128 (Colo. 2007). The court should not permit "[c]reative legal theories asserted in complaints . . . to undermine" that preference. *City & Cnty. of Denver*, 939 P.2d at 1364. Rather, the court "must compel arbitration unless [it] can say 'with positive assurance' that the arbitration clause is not susceptible of any interpretation that encompasses the subject matter of the dispute." *Allen v. Pacheco*, 71 P.3d 375, 378 (Colo. 2003) (citation omitted).

C. Discussion

¶ 18 The defendants argue that the daughters' claims are "disputes arising in connection with th[e] lease." Specifically, the defendants assert that the lease's "respective duties and obligations regarding the condition and maintenance of the leased premises . . . form the

gravamen of the [d]aughters' allegations and claims in their [c]omplaint."

¶ 19 The arbitration clause provides: "The parties shall attempt to settle *all disputes arising in connection with this lease*. . . . If no agreement can be reached . . . the dispute . . . will be settled by binding arbitration." (Emphasis added.) "Arises" means "to originate from a specific source," *City & Cnty. of Denver*, 939 P.2d at 1366 (quoting Webster's Third New International Dictionary 117 (3d ed. 1986)), and "in connection with" means "in relation to (something)," Merriam-Webster Dictionary, https://perma.cc/VSP7-47PH. Thus, to fall within the scope of the arbitration clause, the daughters' claims must originate from and relate to the lease.

¶ 20 In our view, the daughters' claims did not "aris[e] in connection with th[e] lease." Their claims arose under and are governed by the PLA, not the lease's provisions concerning the condition and maintenance obligations. *See Rush Creek Sols., Inc. v. Ute Mountain Ute Tribe*, 107 P.3d 402, 406 (Colo. App. 2004) (we may affirm the district court's ruling on any ground supported by the record, whether or not the district court considered that ground).

¶ 21 As pertinent here, the PLA states as follows:

> In any civil action brought against a landowner by a person who alleges injury occurring while on the real property of another and by reason of the condition of such property, or activities conducted or circumstances existing on such property, the landowner is liable only as provided in subsection (4) of this section.

§ 13-21-115(3). The PLA thus provides the sole remedy against landowners for injuries on their property. *Vigil v. Franklin*, 103 P.3d 322, 328-29 (Colo. 2004); *see also Stone v. Life Time Fitness, Inc.*, 2016 COA 189M, ¶ 11 ("[I]t is well established that the PLA abrogates common law negligence claims against landowners."); *Sweeney v. United Artists Theater Cir., Inc.*, 119 P.3d 538, 540-41 (Colo. App. 2005) (affirming the exclusivity of the PLA and upholding the dismissal of the plaintiff's claims for breach of contract and negligent breach of contract).

¶ 22 The United States Court of Appeals for the Tenth Circuit reached the same conclusion in a similar case, *Wyle v. Skiwatch Condominium Corp.*, 183 F. App'x 760 (10th Cir. 2006). There, a renter of a condominium unit sued the condominium owners, alleging negligence and breach of contract for injuries the renter sustained during a fire at the condominium complex. *Id.* at 761.

The renter appealed the dismissal of his breach of contract claim. *Id.* at 762. In affirming the dismissal, the Tenth Circuit held that "[w]hether a contract existed and whether a defendant or defendants breached that contract (if one existed) is immaterial because — as the district court correctly concluded — Colorado's premises liability statute provides the exclusive remedy against a landowner for injuries sustained on the landowner's property." *Id.*

¶ 23 Here, the daughters brought a wrongful death lawsuit for the death of their mother that occurred during a fire in the mother's apartment building. The daughters' complaint alleges that Steeland owned the apartment building and that McKeever was the authorized agent responsible for the condition, circumstances, or activities in the apartment building.[3] The complaint alleges that the defendants failed to take reasonable care to protect Wood from

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[3] "Under the PLA, the term 'landowner' encompasses both: (1) 'an authorized agent or a person in possession of real property'; and (2) 'a person legally responsible for the condition of real property or for the activities conducted or circumstances existing on real property.'" *Jordan v. Panorama Orthopedics & Spine Ctr., PC*, 2015 CO 24, ¶ 22 (quoting § 13-21-115(1), C.R.S. 2014). "Both statutory definitions confer landowner status on those who are responsible for the conditions, activities, or circumstances existing on real property." *Id.* Based on the allegations in the complaint, both defendants qualify as "landowners" under the PLA.

dangerous conditions of which they knew or should have known, such as the lack of fire extinguishers, smoke detectors, a sprinkler system, and a fire escape, as well as the faulty electrical system and air-conditioning unit. Taking the complaint's allegations as true, these failures were breaches of the duty that the defendants owed Wood — and by extension, her daughters as Wood's heirs — under the PLA. *See* § 13-21-115(4)(c)(I); *see also Maes v. Lakeview Assocs., Ltd.*, 892 P.2d 375, 377 (Colo. App. 1994) (a tenant is an invitee under the PLA), *aff'd*, 907 P.2d 580 (Colo. 1995).

¶ 24 Thus, the source of the daughters' claims — "in terms of their factual content" — is the PLA. *City & Cnty. of Denver*, 939 P.2d at 1366. The PLA applies to the daughters' claims not because of the existence of the lease or any terms in the lease but because the "injury" (in this case, the death) occurred on the defendants' property and resulted from the condition of or circumstances existing on that property. *Vigil*, 103 P.3d at 328; *see also* § 13-21-115(3) (the PLA governs "any civil action brought against a landowner by a person who alleges injury occurring while on the real property of another and by reason of the condition of . . . or circumstances existing on such property"). Further, the claims

could not have "aris[en] in connection with" the lease's provisions regarding maintenance and the condition of the property because those provisions do not apply to the landowners' duties under the PLA. *Vigil*, 103 P.3d at 328 (explaining that the PLA's "definition of the landowner duty" owed to trespassers, licensees, and invitees "is *complete* and *exclusive*, fully abrogating landowner common law duty principles") (emphasis added). We can therefore say "with positive assurance" that the daughters' claims do not fall within the scope of the arbitration clause. *Allen*, 71 P.3d at 378 (citation omitted); *see also Jefferson Cnty. Sch. Dist. No. R-1 v. Shorey*, 826 P.2d 830, 838 (Colo. 1992).

¶ 25 We are not persuaded otherwise by the defendants' argument that the principle of freedom of contract requires arbitration. "An arbitration agreement is a contract," so "we must interpret the agreement in a manner that best effectuates the intent of the parties" in accordance with the "plain language of the agreement." *Allen*, 71 P.3d at 378. As discussed above, the language to which the parties agreed — "all disputes arising in connection with th[e] lease" — shows that they did not intend to arbitrate claims like those the daughters brought because those claims originate from

and relate to the PLA, not the lease agreement. We do not suggest that PLA claims are never arbitrable. But, as the district court found, it is "simply too attenuated" to say that the arbitration clause in this case reached such claims.

¶ 26 Nor are we persuaded by the defendants' argument that, because the daughters' claims are derivative of claims that Wood could have asserted against the defendants, they are subject to the arbitration clause. This argument is based on the defendants' contention that the arbitration clause would have required Wood, if she had survived, to arbitrate her negligence and premises liability claims. Our conclusion, however, would apply equally to those claims. Like the wrongful death claims the daughters actually brought, Wood's hypothetical claims would have arisen under and been governed by the PLA, not the lease.

¶ 27 Because the daughters' claims do not fall within the scope of the arbitration clause, the district court did not err by denying the defendants' motion to compel arbitration and dismiss the case. Accordingly, we need not address the daughters' alternative grounds for upholding the district court's ruling.

III. Disposition

¶ 28 We affirm the district court's order.

JUDGE BROWN and JUDGE DAVIDSON concur.