2026 IL App (1st) 251001-U

No. 1-25-1001

Order filed September 25, 2026

Fifth Division

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 DISTRICT

LOUIS WEBER and PUBLICATIONS INTERNATIONAL, LTD.,	)	Appeal from the Circuit Court of Cook County.
Plaintiff-Appellee,	)	
	)	No. 24 L 003775
v.	)	
	)	Honorable
BAKER TILLY US, LLP, and JEREMY BIVENS,	)	Thomas M. Donnelly, Judge, Presiding.
Defendants-Appellants.	)	

JUSTICE ODEN JOHNSON delivered the judgment of the court.
Justices C. A. Walker and Wilson concurred in the judgment.

ORDER

¶ 1 *Held*: Defendants' motion to compel arbitration was properly denied when there was no written arbitration agreement between the parties that governed the services comprising the alleged accounting malpractice claims.

¶ 2 This interlocutory appeal arises from the circuit court's grant of a motion to reconsider which denied defendants' Baker Tilly US, LLP (Baker Tilly) and Jeremy Bivens (Bivens) (collectively Baker Tilly) motion to compel arbitration and dismissal of an accounting malpractice suit filed against them by Louis Weber (Weber) and Publications International, Ltd. (PIL) (collectively Weber). On appeal, Baker Tilly contends that: (1) the parties delegated arbitrability of disputes exclusively to the arbitrator and (2) even if the circuit court had authority to decide the parties' scope dispute, it resolved that dispute incorrectly as a matter of law. For the following reasons, we affirm.

¶ 3 BACKGROUND

¶ 4 The factual and procedural background comes from the circuit court's written amended memorandum opinion and order entered on April 28, 2025.

¶ 5 Baker Tilly moved to compel arbitration and stay proceedings, which the circuit court initially granted without an evidentiary hearing. Louis Weber subsequently filed a motion to reconsider which the court granted and vacated its order compelling arbitration. In November 2024, the circuit court decided that it could not determine whether the parties agreed to arbitrate, solely based on affidavits and other materials submitted by the parties. As such, the court subsequently ordered an evidentiary hearing. After the evidentiary hearing, supplemental briefing was ordered and the circuit court entered its order denying the motion to compel arbitration.

¶ 6 A. Factual Background

¶ 7 Weber filed suit for malpractice against Baker Tilley on April 8, 2024, and alleged the following. PIL, a Chicago-based publishing company, and Weber, its founder and sole shareholder, engaged Baker Tilly to perform tax-related services over the years for which they signed engagement letters. The engagement letters contained no explicit agreement to arbitrate arbitrability but did incorporate the American Arbitration rules, which give arbitrator the authority to decide arbitrability. Additionally, the engagement letters excluded "other services" entirely from the letters and indicated that "tax consulting services" required a separate engagement letter. Those services include "R&E credit consulting and/or computations, mergers and acquisitions, due diligence, state nexus, federal or state tax controversy assistance, international tax, or organizational tax issues." Weber had done business with Baker Tilly for more than 40 years.

¶ 8 The circuit court noted that while Bivens averred that Baker Tilly never entered into oral agreements and that written contracts governed all of its work, Bivens admitted that Baker Tilly had no letters for services it performed for the tax years 2020 through 2024. The prior years' engagement letters included a mediation clause that required arbitration should mediation fail for any "differences concerning services or fees." Arbitration would follow the then current Arbitration Rules for Professional Accounting and Related Disputes of the AAA. Those rules provide that "[t]he arbitrator shall have the power to rule on his or her own jurisdiction, including any objections with respect to the existence, scope, or validity of the arbitration agreement or the arbitrability of any claim or counterclaim."

¶ 9 In 2019, the Wisconsin Department of Revenue (WDOR) issued PIL a nexus questionnaire regarding its business activities in the state of Wisconsin for earlier tax years. Baker Tilly assisted PIL in responding to the questionnaire and engaged with the WDOR to determine how to proceed. PIL's Wisconsin tax presence increased significantly as a result of 2015 restructuring based on Baker Tilly's advice; however, Baker Tilly did not file the required Wisconsin income tax returns for PIL and Weber for the tax years 2013 through 2018. Once an agreement was reached with the WDOR in March 2020 under a Liability Settlement (separate from a written, finalized Closing Agreement as required by the WDOR), Baker Tilly prepared Wisconsin tax returns for plaintiffs in April 2020, and PIL and Weber made the agreed payments in May 2020.

¶ 10 In October 2021, the WDOR sent Weber a Notice of Audit, notifying Weber that his 2015 through 2018 Wisconsin individual tax returns were being audited and further information was needed. Weber engaged Baker Tilly to respond to the audit, which services were performed under an oral agreement. In April 2022, the WDOR issued Weber a Notice of Office Audit Amount Due-Individual Income Tax and assessed Weber a total of $1,665,977.76 that was due by June 10, 2022. Baker Tilly appealed the assessment on Weber's behalf while interest accrued on the assessed amount at the rate of 18%. Weber subsequently engaged a new representative to continue the appeal with the WDOR.

¶ 11 PIL ultimately filed suit against Baker Tilly alleging accounting malpractice because it breached its duty of care and fiduciary duties when it failed to: (1) timely and accurately file Wisconsin state income tax returns for Weber and PIL; (2) fully advise Weber and PIL of their negotiations with the WDOR and liability implications regarding the same; (3) document in a Closing Agreement the Liability Settlement it negotiated with the WDOR; (4) advise them to avoid interest charges; and (5) comply with the AICPA Code of Conduct and Statements on Standards for Tax Services. PIL sought judgment in their favor against Baker Tilly for an amount over $2 million sufficient to fully compensate them for their losses and injuries.

¶ 12 Baker Tilly filed a motion to compel arbitration and stay proceedings, which the circuit court initially granted. Baker Tilly argued that all of its work for PIL was governed by the letters, which required arbitration of disputes. PIL filed a motion to reconsider, which the circuit court granted and subsequently held an evidentiary hearing to determine whether Baker Tilly had shown (1) an agreement to arbitrate arbitrability by clear and unmistakable evidence and, if not, (2) whether the parties had agreed to arbitrate disputes arising from the services that form the basis of Weber's malpractice allegations.

¶ 13 After the evidentiary hearing, the circuit court issued and entered a written memorandum opinion and order. In its memorandum opinion, the circuit court found that after reviewing all the affidavits, Baker Tilly did not show that the letters governed the malpractice allegations and that the affidavits failed to resolve whether the letters governed the malpractice allegations despite their insistence that the letters were the only agreements. PIL's affidavits insisted that other nonwritten agreements governed the alleged malpractice. While Baker Tilly insisted that it never entered into any unwritten agreements, evidence presented at the hearing showed that it provided tax services to PIL for four tax years without being able to produce a written agreement for any of those four years. Additionally, the court noted that no written letter existed for the 2020 through 2024 WDOR-related services and concluded that Baker Tilly did in fact enter into unwritten contracts without letters.

¶ 14 Despite Baker Tilly's use of unwritten agreements, that the court found was routine, Baker Tilly argued that the scope of previous letters embraced all the work that PIL alleged was malpractice. Those previous letters "expressly permit performance of additional services requested by clients." Because the letters permit additional services, Baker Tilly argued that they governed the services at issue. The circuit court noted however that Baker Tilly did not produce a separate letter for the additional work that contained arbitration agreements. Additionally, Baker Tilly argued that PIL failed to allege and prove an oral agreement. Baker Tilly asserted that no oral contracts existed because no communications "included discussion, much less agreement, on price and payment," which are material terms for a service contract. Further, Baker Tilly argued that there was no implied contract in fact because the letters permit Baker Tilly to investigate and prepare Weber's Wisconsin state tax returns. The circuit court noted that at trial, PIL must show that a contract exists for the alleged malpractice, but the sufficiency of PIL's allegations or proof was not at issue on the motion to compel arbitration.

¶ 15 Baker Tilly also argued that the 2016 letter applied because, while the work was done in 2020, a year without a letter, PIL's allegations related to the 2016 tax year. However, the circuit court found that Baker Tilly's argument failed because the letters specifically excluded the services alleged to constitute the alleged malpractice. The court noted that the letters explicitly stated that certain services were not covered, including the alleged malpractice stemming from: (1) all work related to the preparation of Wisconsin state tax returns ("determination of filing requirements in any additional states"); (2) completing a Wisconsin state nexus questionnaire ("state nexus"); (3) advising regarding the impact of the PIL/JRS restructuring ("mergers and acquisitions" and "organizational tax issues"); and (4) negotiating the state tax controversy with the WDOR ("state tax controversy assistance"). The circuit court found that the issue centered on whether Baker Tilly showed that the arbitration clauses contained in the letters applied to the alleged malpractice and concluded that Baker Tilly failed to show that the letters' arbitration clauses applied to work that was excluded from the scope of those letters.

¶ 16 The court further noted that motions to compel arbitration were fact motions, not pleading motions; and that pleading accounting malpractice did not require a plaintiff to plead the absence of an agreement to arbitration or the existence of an agreement without an arbitration clause. The court found that because Baker Tilly must establish that an arbitration agreement applied to the alleged malpractice, it bore the burden of proof as it would with any other affirmative matter. The court ultimately concluded that Baker Tilly failed to meet its burden, noting that (1) Baker Tilly's performance of work, that was explicitly excluded from the scope of the letters, without a new letter showed that it performed work without written agreements routinely; and (2) It is clear that the letters certainly showed an agreement to arbitrate arbitrability for work performed within the scope of the letter, however, it is not clear with respect to the parties' unwritten agreements. The court found that when the parties had two different contracts with different explicit or implicit arbitrability provisions, the court must decide which contract governs, and thus Baker Tilly must show that the alleged malpractice fell within the scope of the letters.

¶ 17 Despite Baker Tilly's insistence that the letters governed the services at issue, the court noted that the letters explicitly excluded certain services and PIL alleged malpractice for those excluded services. First, the letters excluded "determination of filing requirements in any additional states," and PIL alleged in their complaint that Baker Tilly's malpractice arose from the determination of filing requirements in preparation of Wisconsin state tax returns. Next, the letters excluded "state nexus," and PIL alleged that Baker Tilly's malpractice arose from its work on the Wisconsin state nexus questionnaire. The letters also excluded "state controversy assistance," but PIL alleged that the malpractice arose from Baker Tilly's work regarding a state controversy in Wisconsin. Additionally, the court noted that Baker Tilly "further undermined its credibility by claiming the work arose from a 'dispute,' not 'controversy,' and insisted that it never provided tax controversy services," despite its website indicating that it provided tax controversy services. The letters also excluded tax consulting services on mergers and acquisitions as well as organizational tax issues, but PIL alleged that the malpractice arose from advice regarding organizational tax issues related to the PIL/JRS restructuring. The circuit court found that, because Bivens admitted that the work fell within those exclusions and he insisted that the services required a separate letter and further admitted that there were no tax consulting engagement letters here, Bivens admitted that the alleged malpractice fell outside the letters' scope.

¶ 18 The court further found that Bivens admitted that a nonwritten agreement was formed to do the additional 2015 Wisconsin tax return and investigation of filing requirements relating to the additional 2015 Wisconsin tax return filed in 2020 after an investigation prompted by the WDOR questionnaire. The court also found that Baker Tilly admitted that it performed the work to resolve the tax controversy and that PIL paid for it and that Baker Tilly assisted PIL with a state nexus questionnaire, both of which fell within exclusions of and outside of the scope of the letters. In short, the court determined that Baker Tilly failed to show that the letters applied to the services alleged in PIL's complaint or that the arbitration agreement contained within the letters applied to services that were explicitly excluded.

¶ 19 The circuit court concluded that because the parties narrowly defined the scope of services in an unrelated letter and expressly excluded the services at issue in this litigation from the scope of the letters, the terms of the letters did not govern the dispute. The court further concluded that the arbitration clause contained in the letters narrowly covered any differences concerning services or fees with no reference to arbitrability, thus Baker Tilly failed to present any clear and unmistakable evidence that the parties agreed to arbitrate arbitrability or that the parties intended to arbitrate beyond the scope of services contained in the letters. Baker Tilly performed work outside the scope of services in its engagement letters and got paid for that work, implying a mutual agreement, despite its arguments to the contrary. The circuit court accordingly denied Baker Tilly's motion to compel arbitration on April 28, 2025.

¶ 20 Baker Tilly filed this timely interlocutory appeal pursuant to Rule 307(a)(1) (eff. Nov. 1, 2017) on May 27, 2025.

¶ 21 ANALYSIS

¶ 22 On appeal, Baker Tilly contends that: (1) the parties delegated arbitrability of disputes exclusively to the arbitrator and (2) even if the circuit court had authority to decide the parties' scope dispute, it resolved that dispute incorrectly as a matter of law.

¶ 23 A. Jurisdiction

¶ 24 The circuit court denied Baker Tilly's motion to compel arbitration on April 28, 2025, after granting Weber's motion to reconsider. Baker Tilly filed its timely notice of appeal on May 27, 2025, pursuant to Illinois Supreme Court Rule 307(a)(1) (eff. Nov. 1, 2017). It appeals the April 28, 2025, order denying Baker Tilly's motion to compel arbitration. Rule 307(a)(1) permits interlocutory appeals from orders granting or refusing an injunction. *Id*. An injunction is a judicial process requiring a party to do a particular thing or refrain from doing a particular thing. *Herns v. Symphony Jackson Square LLC*, 2021 IL App (1st) 201064, ¶ 14. An order granting or denying a motion to compel arbitration is injunctive in nature and is appealable under Rule 307(a)(1). *Id.* Accordingly, this court has jurisdiction pursuant to Rule 307(a)(1).

¶ 25 B. Standard of Review

¶ 26 A motion to compel arbitration is fundamentally a section 2-619(a)(9) (West 2024) motion to dismiss or stay an action based on an affirmative matter, the exclusive remedy of arbitration. *Westlake Services LLC v. Williams*, 2025 IL App (1st) 241383, ¶ 13. In ruling on a motion to dismiss and compel arbitration pursuant to section 2-619, the court must interpret all pleadings and supporting documentation in the light most favorable to the nonmoving party. *Id.* Generally, the standard of review for an order granting or denying a motion to compel arbitration is abuse of discretion. *Id*. But when the circuit court's decision is made without an evidentiary hearing and without findings on any factual issues, this court's standard of review is *de novo*. *Id.* Here, the circuit court initially granted Baker Tilly's motion to compel arbitration. However, after granting Louis Weber's motion to reconsider, the circuit court held an evidentiary hearing and required additional briefing by the parties before denying the motion to compel arbitration. Thus, the appropriate standard of review is abuse of discretion.

¶ 27 C. Discussion

¶ 28 As noted above, Baker Tilly contends that the parties delegated the arbitrability of disputes to the arbitrator rather than the courts through the engagement letters and further that the circuit court erred in denying its motion to compel arbitration. Despite the circuit court's determination that there was no written contract between the parties and that the parties had an oral contract which did not have an arbitration clause. Baker Tilly nevertheless contends that the subsequent engagement of its services by Louis Weber related back to the prior engagement letters and thus the parties were bound by those original terms, including arbitration. We disagree.

¶ 29 As an initial matter, this court must determine whether it or an arbitrator should decide the motion to compel arbitration. *Westlake Services*, 2025 IL App (1st) 241383, ¶ 15. Illinois courts follow a three-pronged approach when determining whether parties agreed to arbitrate: (1) if the dispute clearly falls within the arbitration clause, the court must compel arbitration; (2) if it clearly does not, the court must deny arbitration; and (3) if it is unclear, the arbitrator decides arbitrability. *Westlake Services*, 2025 IL App (1st) 241383, ¶ 15. But, whether a claim is arbitrable on its face is initially a matter for the court to decide. *Id.* (citing *Kostkos v. KSN Joint Venture No. 1*), 142 Ill.

App. 3d 533, 538 (1986)). Further, this court must first make a substantive determination of whether a valid arbitration agreement exists. *Herns*, 2021 IL App (1st) 201064, ¶ 29.

¶ 30 In this case, there is a dispute as to whether there is an arbitration clause that applies to the malpractice case as provided in the engagement letters. Therefore, we must first determine whether the arbitration clause contained in those letters governs and we begin by determining if those engagement letters cover the later work for the Wisconsin tax matters.

¶ 31 A motion to compel arbitration raises the sole and narrow issue of whether the parties agreed to arbitrate the dispute. *Clark v. Foresight Energy, LLC*, 2023 IL App (5th) 230346, ¶ 21. When presented with a motion to compel arbitration, the circuit court's inquiry is limited to whether the parties have a valid arbitration clause. *Id.* If the parties do have a valid arbitration clause, the question is whether the issues in dispute fall within the scope of the arbitration clause. *Id*. A court should grant a motion to compel arbitration if there is a valid arbitration agreement and the litigation falls within the scope of that agreement. *Westlake Services*, 2025 IL App (1st) 241383, ¶ 14.

¶ 32 Illinois considers arbitration to be a favored method of dispute resolution. *Clark*, 2023 IL App (5th) 230346, ¶ 23. However, arbitration is still a matter of contract and parties are bound to arbitrate only those issues they have agreed to arbitrate, as shown by the clear language of the agreement and their intentions expressed in that language. *Id.* Their agreement will not be extended by construction or implication. *Id.*

¶ 33 Whether a contract exists, its terms, and the intent of the parties are questions of fact for the trier of fact. *Mulliken v. Lewis*, 245 Ill. App. 3d 512, 516 (1993). While the construction or interpretation of a contract is usually reviewed de novo by this court, when an oral contract is involved, the standard of review is different. *Mormat Electrical & Construction Services, LLC v. Hunter Construction Services, Inc.*, 2019 IL App (5th) 170316, ¶ 8. That is because the circuit court is required to observe the conduct and credibility of the witnesses when making findings of fact about the existence and terms of an oral contract. *Id*. The intent of the parties to an oral contract is determined by the trier of fact, and a reviewing court should not set aside the circuit court's findings unless they are contrary to the manifest weight of the evidence. *Id*. A judgment is against the manifest weight of the evidence only when an opposite conclusion is apparent or when the findings appear to be unreasonable, arbitrary or not based on the evidence. *Id*.

¶ 34 The Restatement (2d) of Contracts defines a contract as "a promise or a set of promises for the breach of which the law gives a remedy, or the performance of which the law in some way recognizes as a duty." Restatement 2d of Contracts § 1. In Illinois, the elements of contract consist of (1) an offer, (2) acceptance of the offer, and (3) consideration. *Melena v. Anheuser-Busch, Inc.*, 219 Ill. 2d 135, 151 (2006). Oral agreements are binding as long as there is an offer and acceptance to compromise and there is a meeting of the minds as to the terms of the agreement. *Quinlan v. Stouffe*, 355 Ill. App. 3d 830, 837 (2005). For a contract to be enforceable, the essential terms of the contract must be definite and certain. *Id*. at 837-38. However, a contract is sufficiently definite and certain to be enforceable if the court is enabled from the terms and provisions thereof, under proper rules of construction and applicable principles of equity, to ascertain what the parties have agreed to do. *Id.* at 838. Further, an enforceable contract must include a meeting of the minds or a mutual assent as to the terms of the contract. *Id*.

¶ 35 Here, the record establishes that there was no written contract between the parties for the additional services performed by Baker Tilly in connection with the Wisconsin tax matters that were handled between 2020 and 2024. Despite Bivens' testimony that Baker Tilly never performed services without a written agreement, he was unable to provide the court with any written and signed engagement letters for those services. Further, Baker Tilly admitted that it did in fact perform services for Weber on the Wisconsin tax matters during that time period and received payment for those services. Consequently, we find that as there was no written contract between the parties, they did in fact enter into an oral contract for services pertaining to the Wisconsin tax matters. We therefore conclude that the circuit court's determination that 1) an oral contract for the Wisconsin tax services existed and 2) said contract did not contain an arbitration agreement was not against the manifest weight of the evidence.

¶ 36 Despite the lack of written engagement letters specifically pertaining to services for the Wisconsin tax matters, Baker Tilly nevertheless persists in arguing that those services were covered under the "additional services" provisions of the prior written engagement letters for those tax years which provided for arbitration. Baker Tilly contends that the older engagement letters apply because, although the Wisconsin tax matters were performed between 2020 and 2024, they relate back to tax years beginning in 2015. The circuit court found that Baker Tilly's argument failed because each of the additional services provided by Baker Tilly to Weber was specifically excluded from the parties' prior engagement letters. Specifically, the circuit court concluded that Baker Tilly failed to show that the letters' arbitration clauses applied to work that was specifically excluded from the scope of those letters.

¶ 37 The primary objective in interpreting any contract, including an arbitration agreement and a release, is to give effect to the intent of the parties. *Clark*, 2023 IL App (5th) 230346, ¶ 24. The language of the contract alone, given its plain and ordinary meaning, is the best indication of the parties' intent. *Id.* A contract must be construed as a whole, viewing each part in light of the others. *Id.* The intention of the parties may not be gathered from detached portions of the contract or from any clause or provision standing alone. *Id.* The interpretation of a contract is reviewed *de novo*. *Id.*

¶ 38 Parties are only bound to arbitrate those issues they have agreed to arbitrate by clear language. *Id.* ¶ 25. Generic arbitration clauses are an exception to the "clear language" principle. *Id.* Courts have generally construed "generic" arbitration clauses broadly and have concluded that parties are obligated to arbitrate any dispute that arguably arises under an agreement containing a generic provision. *Id.*

¶ 39 A generic arbitration clause is nonspecific in designating what issues should be arbitrated and is characterized by language providing that all claims "arising out of" or "relating to" the contract shall be decided by arbitration. *Id.* ¶ 26. To determine the scope of a generic arbitration clause, a court should examine the wording of the clause along with the terms of the contract in which the clause is found. *Id.* If an arbitration clause contains the phrase "arising out of the agreement" but fails to also include the phrase "or relating to the agreement," it is narrower than a generic clause and any arbitration should be limited to the specific terms of the contract or agreement containing the arbitration clause. *Id.*

¶ 40 In this case, Weber's complaint raised alleged accounting malpractice allegations stemming from: (1) all work related to the preparation of Wisconsin state taxes ("determination of filing requirements in any additional states"); (2) completing a Wisconsin state nexus questionnaire ("state nexus"); (3) advice regarding the impact of the PIL/JRS restructuring ("mergers and acquisitions" and "organizational tax issues"); and (4) negotiating the state tax controversy with the WDOR ("state tax controversy assistance"). As noted above, the additional work related to the Wisconsin tax matters covered the time period between 2013 and 2018. Baker Tilly included engagement letters for both PIL and Weber between 2012 and 2017, and additional engagement letters for Weber individually for 2018 and 2019. Our review reveals that all of the engagement letters contain substantially similar language regarding what they covered and what was explicitly excluded.

¶ 41 As an example, the 2015 engagement letter between Baker Tilly and PIL signed on August 16, 2016, states that it covered the preparation of the 2015 US and state tax returns. The letter explicitly states:

> "[i]f your business activities have changed or are being conducted in states in addition to those where you conducted business last year, it is your responsibility to inform us. This engagement letter does not include a determination of filing requirements in any additional states. If a determination or nexus study of additional state filing requirements is necessary, we will discuss that issue with you and determine whether a separate engagement letter is required."

With respect to additional services, the 2015 engagement letter stated:

> "[f]rom time to time, you may request that we provide services outside the scope of this engagement, hereinafter referred to as "Additional Services." *** If you request that we provide additional personal financial planning services, then such services are subject to Additional Disclosures, which are attached to this letter. Tax consulting services related to the following require a separate engagement letter, regardless of the anticipated fee: research tax credit consulting and/or computations, mergers and acquisitions, due diligence, state nexus, federal or state controversy assistance, international tax, or

organizational tax issues. Any professional services outside the scope of this engagement letter are defined above must be mutually agreed to in writing."

¶ 42 It is clear from the explicit language in the engagement letter that each of the accounting malpractice allegations covered services that were specifically excluded. It follows then that if the services that resulted in the alleged malpractice were explicitly excluded from the engagement letters, the arbitration clause contained within the engagement letters would not apply to those services. Baker Tilly's argument that the various engagement letters somehow related back to and covered services related to the specifically excluded Wisconsin tax matters is meritless.

¶ 43 As we have determined that there was no written agreement inclusive of an arbitration clause that covered services for the Wisconsin tax matters because those services were the subject of oral agreements that did not contain arbitration clauses, we conclude that the circuit court properly denied Baker Tilly's motion to compel arbitration.

¶ 44 CONCLUSION

¶ 45 For the foregoing reasons, the judgment of the circuit court of Cook County is affirmed.

¶ 46 Affirmed.