NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1170-10T1

COMBINED COMPUTER RESOURCES, INC.,

Plaintiff-Appellant,

v.

KELLY SERVICES, INC., SOURCE ONE TECHNICAL SOLUTIONS, LLC, JEFF CANTOR, CHRISTINE TEIXEIRA, and JENNIE DARROW,

Defendants-Respondents.

Submitted July 5, 2011 - Decided July 26, 2011

Before Judges Axelrad and Lisa.

On appeal from Superior Court of New Jersey, Law Division, Morris County, Docket No. L-3694-09.

Peter Petrou, attorney for appellant.

Jackson Lewis, LLP, attorneys for respondents Kelly Services, Inc., Jeff Cantor, Christine Teixeira, and Jennie Darrow (John K. Bennett of counsel; Michael D. Ridenour, on the brief).

Smith, Stratton, Wise, Heher & Brennan, LLP, attorneys for respondent Source One Technical Solutions, LLC (William E. McGrath, Jr., of counsel and on the brief).

PER CURIAM

Plaintiff, Combined Computer Resources, Inc. (CCR) appeals from the portion of the September 16, 2010 Law Division order dismissing its complaint and compelling it to arbitrate its claim against defendant Source One Technical Solutions, LLC (Source One). CCR does not contest the validity of the order with respect to the other defendants in the case, Kelly Services, Inc. (Kelly) and the individual defendants, who are employees of Kelly.

A contract between CCR and Kelly contained an arbitration provision, and CCR's claim against Kelly alleges a breach of the contract. Accordingly, CCR conceded in the trial court and concedes before us that its claim against Kelly and Kelly's employees was properly dismissed and must be resolved through arbitration.

Events related to Kelly's alleged breach of its contract with CCR provide the basis for CCR's tortious interference claim against Source One. However, Source One was not a party to the contract between CCR and Kelly, and Source One had no separate contract with CCR. Accordingly, CCR contends that it is under no contractual obligation with Source One to arbitrate its claim against Source One. CCR further argues that its claim against

Source One is beyond the scope of the arbitration provision in the contract between CCR and Kelly.

Judge Rosemary E. Ramsay disagreed with CCR and granted the motions of all defendants to dismiss the complaint and compel arbitration as to all defendants, including Source One. We agree with Judge Ramsay and affirm substantially for the reasons she expressed in her thorough and well-reasoned oral opinion of September 16, 2010.

These are the pertinent facts. CCR is a provider of information technology development services. For a number of years prior to 1998, CCR had been providing consultants to Johnson & Johnson. In 1998, Johnson & Johnson retained Kelly to serve as its vendor management organization, in which capacity it would act as an intermediary between Johnson & Johnson and providers of information technology services, such as CCR.

On December 5, 2005, CCR entered into a Service Provider Agreement (SPA) with Kelly which contained the following arbitration provision:

> Any dispute, controversy or claim arising from or related in any way to this Agreement or the interpretation, application, breach, termination or validity thereof, including any claim of inducement of this Agreement by fraud or otherwise, will be submitted for resolution to arbitration pursuant to the rules then prevailing of the CPR Institute for Dispute

> Resolution for Non-Administered Arbitration. . . .

Paragraph 15(b) of the SPA, entitled 'TRANSITION AND CONVERSION TERMS," provided as follows:

> Supplier agrees to waive all placement and conversion fees and release its employees assigned to Customer from all non-competition agreements so that they may seek employment with Kelly, Customer, or another Supplier that Kelly uses to support Customer, if any of the following occur:
>
> . . . .
>
> (iii) Upon termination of this Agreement, for whatever reason.

In January 2007, CCR assigned one of its information technology consultants, Dilip H. Patel, to provide services for Johnson & Johnson. According to CCR, its employment contract with Patel included a provision precluding Patel from engaging in any business competitive with CCR for one year following termination of the parties' agreement. CCR further contends that the agreement expressly provided that Patel would provide no services to Johnson & Johnson for one year following termination of the parties' agreement.

In January 2008, Kelly terminated its SPA with CCR. At CCR's direction, Patel left Johnson & Johnson and remained for a short time on CCR's payroll. Over the next several months, Patel left CCR and became employed as a consultant for Johnson &

Johnson. According to CCR, this constituted a violation of Patel's non-compete agreement.

Against this factual backdrop, Judge Ramsay analyzed whether the scope of the arbitration provision in the SPA between CCR and Kelly was sufficiently broad to include CCR's claim against Source One, a non-party to that agreement. The judge began by expressing the well-settled public policy favoring arbitration and the corresponding principle that agreements to arbitrate should be read liberally in favor of arbitration. In this regard, the judge further recognized the principle that courts presume disputes are subject to arbitration, "'unless it may be said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute.'" Griffin v. Burlington Volkswagen, Inc., 411 N.J. Super. 515, 518 (App. Div. 2010) (quoting EPIX Holdings Corp. v. Marsh & McLennan Cos., Inc., 410 N.J. Super. 453, 471 (App. Div. 2009)).

After then acknowledging that generally a party cannot be required to submit to arbitration unless it has contractually agreed to do so, the judge recognized the authorities which have provided exceptions by which non-signatories to arbitration provisions can be compelled to submit a dispute to arbitration. One such exception is based on principles of equitable estoppel,

which the judge found applicable in the circumstances of this case.

Under this framework, courts must analyze the connection between the claim, the arbitration agreement, and the parties. See Bruno v. Mark MaGrann Assoc., Inc., 388 N.J. Super. 539, 546-48 (App. Div. 2006). The connection here unavoidably requires analysis and interpretation of the SPA between CCR and Kelly in order to proceed to an analysis of CCR's claim against Source One. This is because Section 15(b)(iii) of the SPA appears to conflict with any asserted non-compete agreement between CCR and Patel in determining whether CCR had a protectable interest with respect to Patel's services.

Further, the very broad terms of the arbitration provision do not limit its scope to disputes only between the signatories to the SPA, but define the scope to include claims "arising from or related in any way" to the SPA, and "the interpretation, application, breach [or] termination" of the SPA. We agree with Judge Ramsay that it cannot be said "with positive assurance" that this broad provision is not susceptible of an interpretation that it covers the dispute between CCR and Source One in the facts presented in this case.

Affirmed.