



Clerk of the Court
Received 11/06/2025 04:35 PM
Filed 11/06/2025 04:35 PM

Nos. 25-CV-0086 & 25-CV-0229

In the
District of Columbia
Court of Appeals

QUINN, RACUSIN & GAZZOLA CHARTERED,

Appellant,

v.

PAVICH LAW GROUP, P.C., *et al*,

Appellees.

*On Appeal from the Superior Court of the District of Columbia, Civil Division
Case No. 2021-CA-004580-B (Honorable Neal E. Kravitz, Judge)*

REPLY BRIEF OF APPELLANT

*Robert N. Kelly (DC Bar # 287276)
Jackson & Campbell, P.C.
2300 N Street, NW, Suite 300
Washington, DC 20037
Telephone: (202) 457-1600
Email: rkelly@jackscamp.com

Tara A. Barnes (DC Bar # 1016902)
Rollins, Smalkin, Richards
& Mackie, L.L.C.
300 East Lombard Street, Suite 900
Baltimore, Maryland 21202
Telephone: (410) 727-2443
Email: tbames@rsm.com

Counsel for Appellant

TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

ARGUMENT1

 I. Appellees Misperceive the Nature of the Jurisdiction Issue,
 Leading Their Argument into Irrelevancy1

 II. Appellees Fail to Undermine Appellant’s Contention that
 QRG’s Acceptance of the ACAF’s Arbitration Clause was
 Fraudulently Induced and Made Under Duress8

CONCLUSION.....9

CERTIFICATE OF SERVICE10

TABLE OF AUTHORITIES

Cases

Unit Owners Ass'n of 2337 Champlain St. Condo. v. 2337 Champlain St., LLC, 314 A.3d 1198 (D.C. 2024).....2

Rules

JAMS Streamlined Arbitration R 8(b) (2014).....8

ARGUMENT

I. Appellees Misperceive the Nature of the Jurisdiction Issue, Leading Their Argument into Irrelevancy

Appellees focus their entire argument on the jurisdiction issue, which is central to this appeal, on the proposition that the arbitrator had the discretion to make a binding determination regarding the extent of his jurisdictional remit. Yet it is well settled that an arbitrator's jurisdiction is not discretionary; such jurisdiction is only created in a contract, and contract interpretation is a matter of law, ultimately for a court to determine. The arbitrator's authority is limited to the confines of the issues contractually presented to him for arbitration. Were it not so, an arbitrator's jurisdiction would be unlimited, which clearly cannot be the case. Instead, an arbitrator's authority to decide jurisdictional issues is limited by the scope of the contractual delegation to him or her and can only be exercised within those limits. At the risk of oversimplifying, think of the issues submitted for arbitration as a box, the contours of the box being established by the contract between the parties. An arbitrator's ability to rule on his or her own jurisdiction applies only to issues contained within the box. Anything outside of the box is outside of the arbitrator's authority. Since the contours of this box are determined by the contract, they must be identified through traditional principles of contract construction, and hence are subject to de novo review by this Court. That follows from the fundamental principle that arbitration is a contractual procedure, and the interpretation of a contract is a

legal question that a court reviews de novo. *See, e.g., Unit Owners Ass'n of 2337 Champlain St. Condo. v. 2337 Champlain St., LLC*, 314 A.3d 1198, 1211 (D.C. 2024).

In making its own de novo determination this Court must conclude, based on traditional principles of contract construction, that the fee allocation and intentional tort disputes are not arbitrable, since the intent of the contracting parties was to exclude them from the contract (the Agreement Concerning Attorneys' Fees, the ACAF, JA234-236) and reserve them for future consideration.¹ Put differently, those issues were neither envisioned nor in any way referred to or described in the ACAF. To revisit our simile, those issues are “outside of the box” because the parties never agreed to submit these disputes to arbitration. That being so, the scope of the Arbitrator’s authority to rule on his own jurisdiction as to issues “inside the box” is irrelevant, as is Appellees’ extensive focus on this issue.

While Appellees fail to address the record in any meaningful way, the record is replete with references made or acknowledged by all of the parties that while the total amount of the contingency fee was revised to 46%, the relative proportion of that fee to be allocated to each of the four law firms involved in Wye Oak’s

¹ The basic legal elements guiding courts in construing contracts were addressed in Appellant’s opening brief at pp. 22-24 and we will not burden the Court by repeating it here.

prosecution of the Iraq Litigation was to be the subject of future negotiations.² The ACAF did not establish a set allocation of the 46% contingency fee among the four law firms because its primary purpose was to memorialize the agreement to modify the gross contingency fee percentage to 46%. Two documents, both dated November 29, 2019, demonstrate that this was the contemporaneous understanding of the parties to the ACAF. First, Quinn wrote to Foster and Pavich on behalf of Wye Oak:

I am authorized to advise you that Wye Oak authorizes advising the court in a fee petition that it is contingently willing to pay an aggregate of 46% of the amount recovered from Defendants to all of the law firms that have provided Iraqi litigation-related services to Wye Oak.

We understand that discussions will continue among the lawyers and Wye Oak as to how each of the firms will be compensated for the services rendered to Wye Oak.

See email exchange of November 29, 2019, JA272 (emphasis added). Then, the minutes documenting the November 29, 2019 Wye Oak Board Meeting report recite that:

During the call, Mr. Pavich proposed that the then-pending impasse among the attorneys with respect to attorney fees which had been reported to the Board at its meeting on November 26 and 27, 2019 be at least partially resolved

² Paragraph 1 of the ACAF states only that “Wye Oak will pay to the Law Firms a total contingency fee of 46%” “Law Firms” is a defined term in the ACAF, identified in the preamble to the agreement as The Pavich Law Group (“PLG”), Kalbian Hagerty (“KH”), Quinn, Racusin & Gazzola (“QRG”) and Whiteford, Taylor & Preston (“WTP”). JA234.

by an agreement among Wye Oak and all four law firms that have participated in the *Iraqi* litigation pursuant to which Wye Oak would agree to increase its contingency fee commitment to 46% to compensate all four firms, with varying amounts within the 46% allowance to be determined at a later time.

See Minutes of November 29, 2019 Wye Oak Board of Directors Meeting at p. 1, JA274 (emphasis added).

The recitals also emphasized the central focus of the ACAF in clarifying that that allocation of the total contingency fee was undecided in the ACAF. JA235. Moreover, as explained in Appellant’s opening brief at p. 19, QRG did not and could not have agreed to the inclusion of allocation in the ACAF without violating both the firm’s prior recusal from participating in any proceeding with respect to determination of its compensation for Iraq Litigation services, and the Rules of Professional Conduct, which would have subjected QRG to disciplinary proceedings.³ In short, since it was not an agreement that provided for an allocation of the contingency fee, the allocation issue did not “arise out of or relate to” the ACAF and hence was outside of the scope of the Arbitrator’s jurisdiction. *Id.*

While it is true that the ACAF provided that “[a]ny claim or dispute between any of the aforementioned parties arising out of or relating to this Agreement [the

³ QRG has also contended that the Rules of Professional Conduct require Wye Oak’s informed consent to a division of fees among all four law firms entitled to a share of the contingency fee agreed to in ACAF.

ACAF] . . . including any fee owed to any party, shall be resolved by arbitration in the District of Columbia,” the only disputes over fees that would “arise out of or relate to” the ACAF were the hourly fees set out in Paragraph 2 of the ACAF relating to appellate advocacy and collection efforts by the law firms on behalf of Wye Oak. *See* ACAF at ¶ 2, JA201. In other words, disputes over those hourly fees were “inside the box” while the allocation of the total contingency fee between the four participating law firms was not. Fee allocation was not addressed, much less resolved, in the ACAF, and therefore the Arbitrator acted improperly in assuming jurisdiction over that issue.

The tort claims that resulted in the award by the Arbitrator of very substantial monetary damages against QRG were asserted in claims made long after the ACAF was executed and hence are also outside of the box; these claims allege acts or omissions that relate to arrangements which pre-existed the ACAF and are not addressed in the ACAF itself. As the Arbitrator himself characterizes those claims, they arose out of, not the ACAF, but rather:

- Purported fraudulent omissions by QRG prior to 2017 relating to the procurement of litigation funding from an outside source by PLG; *see* Final Award at p. 69, JA156.

- Purported fraudulent inducement of WTP by QRG to convince WTP to agree in 2017 to represent Wye Oak in the Iraq Litigation; *see* Final Award at pp. 70-71, JA157-158.
- Purported fraudulent interference by QRG with PLG’s position on its rightful share of the contingency fee; *see* Final Award at p. 74, JA161.

None of these tort claims was connected in the slightest way with the ACAF. Indeed, the very absence of any mention of them in the ACAF lends further emphasis to this conclusion. More to the point for purposes of evaluating the scope of the Arbitrator’s authority resolve jurisdictional issues, none of these claims “arose out of” the ACAF itself. Instead, they purport to arise out of perceived misconduct that pre-dated the ACAF and its arbitration clause by two years or more. As a consequence these claims, like the fee allocation issue, were outside the limited scope of the ACAF’s arbitration clause, as they arise, not out of the ACAF, but out of allegations relating to prior fee and related financial arrangements. The Arbitrator’s action in assuming jurisdiction over those claims was in direct conflict with the parameters of the governing contract, the ACAF.

In the case before this Court, it can and should be concluded that the scope of the arbitration clause, and by extension the scope of arbitral jurisdiction, is plainly confined to “[a]ny claim or dispute . . . arising out of or relating to this Agreement.” ACAF at ¶ 3, JA201 (emphasis added). There is nothing in the remainder of the

ACAF relating to the allocation of the contingency fee among the four law firms. There is nothing in the ACAF relating to disputes over prior fee agreements or related financial arrangements, all of which allegedly arose out of conduct that preceded the ACAF itself and resulted in the eventual presentation of claims against QRG by PLG and WTF only after the ACAF came into effect. *See* JA200-203, *passim*.

In sum, it is the construction of the contract which circumscribes the scope of the Arbitrator's jurisdiction which is central to this appeal. It is that issue which this Court can, and should, consider *de novo*. In doing so, it is Appellant's belief that this Court must recognize that an arbitrator's ability to make a determination on jurisdictional issues can only be exercised within the ambit of the contractual delegation of matters for a decision through arbitration. Were it otherwise an arbitrator's ability to assume jurisdiction over matters would be unlimited, which cannot be true. To argue, as Appellants might, that an arbitrator's jurisdiction can extend to all disputes between the contracting parties would, in essence, be to concede the principle involved – that it is the contract which sets forth the boundaries within which an arbitrator can exercise jurisdictional discretion. As the record amply demonstrates, the fee allocation issue and tort claims were outside of those

boundaries – outside of the box – and hence the Arbitrator’s assumption of jurisdiction over them was improper and should be set aside.⁴

II. Appellees Fail to Undermine Appellant’s Contention that QRG’s Acceptance of the ACAF’s Arbitration Clause was Fraudulently Induced and Made Under Duress

Appellees concede that fraud or coercion can render an arbitration clause unenforceable, with the caveat that the fraud or coercion must apply to the delegation clause itself, and not just to the agreement generally. Yet the record summarized in Appellees’ opening brief in Section II, pages 28-32, does just that. Appellees further assert that QRG failed to show that fraud or coercion applied specifically to JAMS Rule 8(b), yet the substance of that rule is subsumed in QRG’s fraudulently induced and coerced acceptance of the arbitration clause itself. Appellees’ argument fails to disturb Appellant’s contention that the arbitration clause, including the JAMS Rule 8(b), was obtained through fraud, duress and coercion, and is therefore unenforceable.

⁴ JAMS Rule 8(b) does not change this outcome because a JAMS arbitrator’s discretion to decide jurisdictional issues can only be exercised within the confines of the contractual delegation of arbitral authority in the first place.

CONCLUSION

For the foregoing reasons, Appellant Quinn, Racusin & Gazzola Chtd. respectfully requests that this Court (1) reverse the Superior Court's denial of the Petition for Judicial Review and Motion to Vacate Arbitration Award; (2) reverse the Superior Court's action granting the Respondents' cross-motion for confirmation of the Arbitrator's Final Award; and (3) vacate the Final Award.

Respectfully submitted,

/s/ Robert N. Kelly

Robert N. Kelly (Bar No. 287276)*
Jackson & Campbell, P.C.
2300 N Street NW, Suite 300
Washington, DC 20037
Telephone: 202-457-1600
Facsimile: 202-457-1678
Email: rkelly@jackscamp.com

Tara A. Barnes (Bar No. 1016902)
Rollins, Smalkin, Richards & Mackie, L.L.C.
300 East Lombard Street, Suite 900
Baltimore, MD 21202
Telephone: 410-727-2443
Facsimile: 410-727-4497
Email: tbarnes@rsrm.com

*Counsel for Appellant Quinn, Racusin &
Gazzola Chtd.*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on November 6, 2025, a copy of this *Reply Brief* of *Appellant* was served via the Court's electronic filing system upon the following:

Tara A. Barnes, Esq.
Rollins Smalkin, Richards & Mackie, LLC
300 E. Lombard Street, Suite 900
Baltimore, MD 21202
Co-Counsel for Appellant

Stuart A. Berman, Esq.
Lerch, Early & Brewer, Chtd.
7600 Wisconsin Avenue, Suite 700
Bethesda, MD 20814
Counsel for Appellee Pavich Law Group, P.C.

C. Allen Foster, Esq.
Benjamin Andres, Esq.
Eric Rowe, Esq.
Masten Childers, III, Esq.
Erik D. Bolog, Esq.
Whiteford Taylor Preston, LLP
1800 M Street, NW, Suite 450N
Washington, DC 20036
Counsel for Appellee Whiteford Taylor Preston, LLP

William P. McGrath, Esq.
Kalbian Hagerty, LLP
888 17th Street, NW, Suite 1000
Washington, DC 20006
Counsel for Appellee Kalbian Hagerty, LLP

Joe R. Reeder, Esq.
Greenberg Traurig, LLP
2101 L Street, NW, Suite 1000
Washington, DC 20036
Counsel for Appellee Wye Oak Technologies, Inc.

/s/ Robert N. Kelly
Robert N. Kelly