

**STATE OF MINNESOTA
IN COURT OF APPEALS
A24-0358**

Karol M. Provost,
Respondent,

vs.

John L. Lundmark,
Appellant.

**Filed December 9, 2024
Reversed and remanded
Bentley, Judge**

Beltrami County District Court
File No. 04-CV-23-990

Jeremy A. Klinger, Drahos Kieson & Christopher, P.A., Bemidji, Minnesota (for respondent)

Michael Garbow, Falsani, Balmer, Peterson & Balmer, Duluth, Minnesota (for appellant)

Considered and decided by Johnson, Presiding Judge; Bratvold, Judge; and Bentley, Judge.

SYLLABUS

Under the Minnesota Uniform Arbitration Act, Minn. Stat. §§ 572B.01-.31 (2022 & Supp. 2023), the scope of an arbitration clause that applies to “all disputes arising in connection with” an option agreement covers disputes over the exercise of the option, even if the option period may have expired, unless the agreement provides a clear indication to the contrary.

OPINION

BENTLEY, Judge

This appeal arises from an option agreement for the sale of real property providing that “all the rights” under “the Option” will terminate if the purchasing party does not give written notice of an intent to exercise the option within a certain period. The agreement contains an arbitration clause, directing that “all disputes arising in connection with [the] Agreement” are subject to binding arbitration. The main issue on appeal is whether disputes arising from an attempted exercise of the option fall within the scope of the arbitration clause, even if failure to give timely written notice of intent to exercise the option may have caused the option to lapse.

We conclude that, even though the option period may have expired, the arbitration clause in the agreement encompasses a dispute arising in connection with the attempted exercise of the option because there is no clear indication in the agreement that the arbitration clause does not apply. We therefore reverse and remand to the district court with instructions to compel arbitration.

FACTS

Appellant John Lundmark, respondent Karol Provost, and their sister Lisa LaDuke are beneficiaries to the Lundmark Family Trust. Their mother, the settlor, executed the trust in 2001 and named Lundmark as trustee. She partially funded the trust with her homestead.

By 2014, Lundmark and his family were living with his mother and caring for her in the homestead. Lundmark wanted to purchase the home from the trust, but as trustee, he was barred from transferring assets to himself during the settlor’s lifetime. To comply with

the trust while giving Lundmark the right to purchase the home, the three siblings entered an agreement creating a “legally binding Option from the Trust that gives [Lundmark] the option to purchase the Homestead following the death of [their mother]” for \$225,000. The agreement recognized that, with the option to purchase in hand, Lundmark “plans to spend his own funds to make improvements to the Homestead that will include separate living quarters” for their mother.

Paragraph 2 of the agreement sets forth “[t]he terms for the exercise of the Option.”

Subparagraph 2.1 then provides:

The Option must be exercised by [Lundmark] or his permitted assigns by written notice to that effect that is either deposited in the United States mail or that is delivered to [LaDuke] and [Provost] or their successors in interest no later than 60 days following [their mother’s] death. *A failure to give the notice within the time specified shall terminate this Option and all the rights thereunder without further act or notice whatsoever.*

(Emphasis added.) Paragraph 6 provides that the “Agreement may not be modified or terminated orally, and no modification, termination or attempted waiver shall be valid unless in writing signed by the party against whom the same is sought to be enforced.” And finally, as relevant here, paragraph 9 includes an arbitration clause, in which the parties “agree to submit all disputes arising in connection with [the] Agreement, amendments or additions thereto to binding arbitration.”

The siblings’ mother passed away on August 9, 2021. The parties do not dispute that Lundmark did not give *written* notice of his intent to exercise the option via United States mail or personally to Provost and LaDuke within 60 days. Rather, Lundmark maintains that he gave *oral* notice of his intent to exercise the option, and that over a year

later, he sent Provost a cashier's check for \$75,000, making up one-third of the \$225,000 purchase price under the agreement. Shortly thereafter, Provost confirmed receipt of the \$75,000 cashier's check and stated that she would "put it in [her] savings account on Monday." Provost also stated, "I think the house is released to you once [LaDuke] is paid." But about a month later, after consulting with her lawyer, Provost wrote Lundmark that "the option to purchase the home for \$225,000 had an expiration date that has passed." As a result, Provost expressed her view that she and LaDuke were each entitled to one-third of the full market value of the home, rather than their one-third share of \$225,000.

The parties were unable to resolve the dispute. In February 2023, Provost petitioned the district court, seeking an order under Minnesota Statutes section 501C.0202 (2022), directing Lundmark to distribute the homestead and other trust property to the beneficiaries "pursuant to the terms of [t]he Lundmark Family Trust dated November 13, 2001." The petition alleged that "[t]he option was not exercised and [Lundmark] has refused to distribute the real property or any other Trust assets to the beneficiaries." Lundmark filed an answer and counterclaim in which he asserted defenses to Provost's action and invoked the arbitration clause. Provost moved for partial summary judgment on the issue of whether Lundmark "failed to exercise his option." In response, Lundmark moved to dismiss for lack of jurisdiction, arguing that the court had no authority to hear the dispute because it was subject to the arbitration clause. Both in the district court and on appeal, the parties have treated the motion to dismiss for lack of jurisdiction interchangeably with a motion to compel arbitration, as do we.

At a hearing, Provost argued that Lundmark’s failure to provide written notice within the 60-day deadline in paragraph 2.1 terminated “all rights under the option agreement, . . . including the right to arbitration.” Provost maintained that “the arbitration provision in the option agreement is contingent upon the exercise of the option itself, pursuant to the language of the option agreement.” The district court granted Provost “judgment as a matter of law on the issue,” ordered that “[t]he real estate . . . be distributed pursuant to the terms as documented in the Lundmark Family Trust dated November 13, 2001,” and entered final judgment on the petition. In its order, without addressing the arbitration clause, the district court concluded that “[Lundmark] has failed to deliver the required notice within 60 days after the death of [the mother], which by language in the Original Agreement terminates [Lundmark’s] rights pursuant to the Option Agreement.”

Lundmark appeals.

ISSUE

Did the district court err in failing to compel arbitration?

ANALYSIS

Lundmark argues that the dispute about his attempted exercise of the option to purchase the homestead falls within the scope of the arbitration clause, in which the parties agreed to resolve “all disputes arising in connection with [the] Agreement” in binding arbitration. Provost, in turn, argues that the scope of the arbitration clause does not extend beyond the lapse of the option, which she maintains happened when Lundmark failed to comply with the written notice provision in subparagraph 2.1. We agree with Lundmark that the scope of the arbitration clause covers this dispute.

A

As an initial matter, we consider whether the district court erred in reaching the merits of Provost’s petition without expressly deciding Lundmark’s motion invoking the arbitration clause. We review de novo a decision whether to compel arbitration, *Rodgers v. Silva*, 920 N.W.2d 664, 666 (Minn. App. 2018), including matters of contract interpretation as to whether a party agreed to arbitrate a particular dispute, *Glacier Park Iron Ore Props., LLC v. U.S. Steel Corp.*, 961 N.W.2d 766, 771 (Minn. 2021).

Under the Minnesota Uniform Arbitration Act, Minn. Stat. §§ 572B.01-.31 (2022 & Supp. 2023), “when confronted with a motion to compel arbitration, the district court must rule on the motion.” *Rodgers*, 920 N.W.2d at 666; *see also* Minn. Stat. § 572B.07(a).¹ And unless “there is no enforceable agreement to arbitrate,” the district court “*shall* order the parties to arbitrate.” Minn. Stat. § 572B.07(a) (emphasis added); *see also Rodgers*, 920 N.W.2d at 666.

Applying these settled principles, the district court here was obligated to decide whether the dispute about Lundmark’s attempted exercise of the option falls within the scope of the arbitration clause before it reached that issue on the merits. *See Rodgers*, 920 N.W.2d at 667 (reversing a grant of a motion to dismiss for failure to state a claim because

¹ “Minnesota courts must apply the FAA [(Federal Arbitration Act)] to transactions that affect interstate commerce.” *Onvoy, Inc. v. SHAL, LLC*, 669 N.W.2d 344, 351 (Minn. 2003). Neither party nor the district court addresses the FAA, nor do the parties make any argument regarding whether the agreement here affects interstate commerce. We therefore analyze this issue under Minnesota law. That said, as we discuss in footnote two below, our conclusion would be the same under either statute.

“the district court did not first decide [a party’s] motion to compel arbitration”). The district court’s silence on the arbitrability issue ran afoul of that requirement.

That said, it is apparent from the briefing and oral argument transcript in the district court that Provost’s position was (as it is on appeal) that the failure to comply with the exact terms of the agreement’s notice provision terminated not only the option itself, but “all rights under [the option agreement] . . . including the right to arbitration.” By stating that Lundmark’s failure to give written notice “terminate[d] [Lundmark’s] rights pursuant to the Option Agreement,” the district court appears to have accepted that argument in deciding that Provost is entitled to judgment as a matter of law.

In the interest of judicial economy, especially in light of our de novo review, we construe the district court’s order as implicitly denying Lundmark’s motion to dismiss on the basis that Lundmark’s failure to provide written notice within 60 days of his mother’s death made the arbitration clause inapplicable to disputes arising after that point. For the following reasons, that implicit ruling was erroneous.

B

Minnesota law favors arbitration. *Minn. Teamsters Pub. & L. Enf’t Emps.’ Union, Loc. No. 320 v. County of St. Louis*, 611 N.W.2d 355, 358 (Minn. App. 2000). If an enforceable agreement to arbitrate a dispute exists and is invoked by a party, the court “shall order the parties to arbitrate.” Minn. Stat. § 572B.07(a). It follows that a court presented with a motion to compel arbitration must determine “(1) whether a valid arbitration agreement exists, and (2) whether the dispute falls within the scope of the arbitration agreement.” *Amdahl v. Green Giant Co.*, 497 N.W.2d 319, 322 (Minn. App.

1993); *see also* Minn. Stat. § 572B.06(b). “In making that determination, courts generally apply state law principles that govern contract formation, to ascertain the parties’ intent.” *Churchill Env’t & Indus. Equity Partners, L.P. v. Ernst & Young, L.L.P.*, 643 N.W.2d 333, 337 (Minn. App. 2002). If a valid arbitration agreement exists, any ambiguities surrounding the scope of issues subject to arbitration “must be resolved in favor of arbitration.” *Id.* at 336.

The parties do not dispute that the agreement contains a valid arbitration clause. The issue turns on whether the dispute falls within the arbitration clause’s scope. On the one hand, the arbitration clause could be read to encompass any dispute arising in connection with the agreement, regardless of whether the option period expired. If so, those disputes must be resolved in arbitration. If, on the other hand, the arbitration clause does not cover disputes that arise after the option period expires because of a failure to give written notice, those disputes would be within the jurisdiction of the court to resolve. Because arbitrability issues turn on the intent of the parties as expressed in their agreement, we turn to “the plain language of the instrument itself” to discern which of those two scenarios best reflects the intent of the parties here. *Travertine Corp. v. Lexington–Silverwood*, 683 N.W.2d 267, 271 (Minn. 2004). In doing so, “we assign unambiguous contract language its plain meaning.” *Savelle v. City of Duluth*, 806 N.W.2d 793, 796-97 (Minn. 2011) (considering dictionary definitions to discern the meaning of contract terms).

To begin, the arbitration clause here is broad in scope. It provides that “all disputes arising *in connection with* [the] Agreement” must be submitted to arbitration. (Emphasis added.) The word “connection” means “[a]n association or relationship,” and the idiom “in

connection with” means “[i]n relation to; with respect to; concerning.” *The American Heritage Dictionary of the English Language* 390 (5th ed. 2018). Although neither this court nor the supreme court has interpreted the scope of an arbitration clause with this exact language, other courts have held that arbitration clauses using the phrase “in connection with” encompass a broad array of disputes. *See, e.g., Simula, Inc. v. Autoliv, Inc.*, 175 F.3d 716, 721 (9th Cir. 1999) (concluding that “the language ‘arising in connection with’ reaches every dispute between the parties having a significant relationship to the contract and all disputes having their origin or genesis in the contract”); *J.J. Ryan & Sons, Inc. v. Rhone Poulenc Textile, S.A.*, 863 F.2d 315, 318-20 (4th Cir. 1988) (holding that an agreement to submit “[a]ll disputes arising in connection with the present contract” to arbitration encompassed claims for civil conspiracy, unfair trade practices, libel, and defamation); *O’Rourke v. Lunde*, 104 A.3d 92, 103 (Vt. 2014) (determining that a clause providing for arbitration of “[a]ny dispute or controversy arising in connection with the Agreement or in connection with the dissolution of the Partnership” encompassed the issue of attorney fees). Furthermore, the phrase “in connection with” is at least as broad as the phrase “arising under,” which the supreme court has characterized as “broad and prescrib[ing] arbitration of most claims.” *Onvoy, Inc. v. SHAL, LLC*, 669 N.W.2d 344, 352 (Minn. 2003). Disputes about Lundmark’s attempted exercise of the option and whether he is entitled to purchase the property under the agreement’s terms, despite having failed to comply with the written-notice requirement, fit comfortably within the scope of disputes arising “in connection with” the agreement.

Provost does not grapple with the breadth of the phrase “in connection with.” Rather, Provost maintains that the arbitration clause had a strict cut-off period and only applied before the option period expired when Lundmark failed to give written notice, at which point the arbitration clause terminated. To support that point, Provost directs us to the provision in subparagraph 2.1 that says: “A failure to give the notice within the time specified shall terminate this Option and all the rights thereunder without further act or notice whatsoever.”

But even if the failure to adhere to the strict notice requirement may have caused the option to lapse, the arbitration clause does not necessarily expire with the option or with the agreement as a whole. Indeed, courts in other jurisdictions that favor arbitration, as Minnesota does, have repeatedly concluded that, absent a contrary indication, arbitration clauses generally live beyond the expiration of the contract and still cover disputes that arose under the contract. *See Nolde Bros. v. Loc. No. 358, Bakery & Confectionery Workers Union, AFL-CIO*, 430 U.S. 243, 253 (1977) (holding that, “in the absence of some contrary indication, there are strong reasons to conclude that the parties did not intend their arbitration duties to terminate automatically with the contract”); *see also, e.g., Primex Int’l Corp. v. Wal-Mart Stores, Inc.*, 679 N.E.2d 624, 628 (N.Y. 1997) (recognizing “the prevailing general rule of both New York and Federal common law of contracts is that, absent a clear manifestation of contrary intent, it is presumed that the parties intended that the arbitration forum for dispute resolution provided in an agreement will survive termination of the agreement as to subsequent disputes *arising thereunder*”); *see also Nat’l R.R. Passenger Corp. v. Bos. & Me. Corp.*, 850 F.2d 756, 762 (D.C. Cir. 1988) (“Faced

with a somewhat broader arbitration clause, . . . we will presume that disputes over the termination or expiration of the contract should be submitted to arbitration.”); *see also* 1 Martin Domke et al., *Domke on Com. Arb.* § 12:2 (3d ed. 2023) (expiration of contract) (“An arbitration agreement generally lives on even when the contract containing it expires, such that disputes over a provision of that expired contract remain arbitrable.”).

We find persuasive the reasoning of the U.S. Court of Appeals for the Sixth Circuit in a case grappling with whether an arbitration clause continues to govern a dispute under an expired contract. That court recognized the federal “presumption in favor of post-expiration arbitration of matters unless negated expressly or *by clear implication* [for] matters and disputes arising out of the relation governed by contract.” *Huffman v. Hilltop Cos.*, 747 F.3d 391, 394-95 (6th Cir. 2014) (quoting *Litton Fin. Printing Div., Litton Bus. Sys., Inc. v. NLRB*, 501 U.S. 190, 204 (1991)). The court found it “intuitive” that an arbitration clause would extend beyond the expiration of the contract because a party could otherwise “avoid his contractual duty to arbitrate by simply waiting until the day after the contract expired to bring an action regarding a dispute that arose while the contract was in effect.” *Id.* (quotation omitted). It is likewise intuitive that, absent a clear indication to the contrary, an arbitration clause that applies to disputes arising “in connection with” an option agreement covers disputes relating to the exercise of the option. An alternative view would result in a conundrum in which the court would decide the merits of the dispute, and only then, after reaching that decision, would know whether the issue should have been heard in arbitration initially. To illustrate: Had the district court here ruled in favor of Lundmark on the merits of his defenses to Provost’s petition, the option would still be alive

and there would be no disagreement that the dispute should have been heard in arbitration. But it would be too late; the court already would have decided the issue.

Considering that Minnesota law favors arbitration, *Local No. 320*, 611 N.W.2d at 358, and that we have an obligation to interpret any ambiguities in the contract in favor of arbitration, *Amdahl*, 497 N.W.2d at 322, we hold under Minnesota law that the scope of an arbitration clause that applies to “all disputes arising in connection with” an option agreement covers disputes over the exercise of the option, even if the option period may have expired, unless the agreement provides a clear indication to the contrary.

Here, there is no such clear indication. Provost points to language that the failure to comply with the option’s written notice requirement terminates not only the option, but “all the rights thereunder.” But that clause is not sufficient to overcome the presumption in favor of arbitration. The arbitration clause does not only create “rights” under the agreement, it also creates obligations: “The parties *agree to submit* all disputes arising in connection with [the] Agreement . . . to binding arbitration[.]” (Emphasis added.) And the phrase “all the rights thereunder” may reasonably reference the clear rights created under the option, such as the right to purchase the property for \$225,000, and not the arbitration clause. As a result, in light of the broad arbitration clause at issue, the presumption has not been overcome and the disputes in this case must be resolved in arbitration.²

² Even assuming that the agreement here affects interstate commerce and that the FAA applies, the result would be the same. Like Minnesota law, “[t]he FAA voices a strong presumption in favor of arbitration.” *Onvoy, Inc.*, 669 N.W.2d at 351. And, “[a]ny doubt with respect to the intent of the parties regarding the scope of arbitration should be resolved in favor of arbitration.” *Id.* Given that “the presumptions favoring arbitrability” were not

Before concluding, we note that Lundmark alternatively argues that the district court erred in entering judgment as a matter of law in favor of Provost “on the ‘written notice’ issue as there remain[] material and genuine issues of fact.” Given our determination that these disputes must be resolved in arbitration, we do not reach the merits of the district court’s decision. We also decline to consider Lundmark’s request for an award of attorney fees, costs, and disbursements. Under the Minnesota Rules of Civil Appellate Procedure, “[a] party seeking attorney[] fees on appeal shall submit such a request by motion under Rule 127.” Minn. R. Civ. App. P. 139.05, subd. 1; *see* Minn. Stat. § 645.44, subd. 16 (2022) (providing that “shall” is mandatory). Rules 139.03 and 139.05 impose a 14-day limitation for submitting this request to the court of appeals. Minn. R. Civ. App. P. 139.05, subd. 1 (providing that, “[a]ll motions for fees must be submitted no later than within the time for taxation of costs”), .03, subd. 1 (providing that, “[a] prevailing party seeking taxation of costs and disbursements shall file and serve a notice of taxation of costs and disbursements within 14 days of the filing of the court’s order or decision”). If a party has appropriately made a request, we may award attorney fees on appeal when a statute enables it or a contract authorizes it, *see Barr/Nelson, Inc. v. Tonto’s, Inc.*, 336 N.W.2d 46, 53 (Minn. 1983), or as a sanction, *see* Minn. R. Civ. App. P. 139.05 1998 comm. cmt. Because Lundmark has not followed the procedure established by the appellate rules, we decline to reach his request for attorney fees.

“negated expressly or by clear implication,” we would conclude as a matter of federal law that the dispute here must be heard in arbitration. *Nolde Bros.*, 430 U.S. at 255; *see also Huffman*, 747 F.3d at 396.

DECISION

Given the broad arbitration clause here, providing for arbitration of “any dispute arising in connection with [the] Agreement,” and absent a clear indication to the contrary, we conclude that the arbitration clause encompasses disputes regarding Lundmark’s attempted exercise of the option, even if the option period may have expired. We therefore reverse the district court’s decision and remand with instructions to compel arbitration.

Reversed and remanded.