STATE OF MINNESOTA
IN COURT OF APPEALS
A24-1556

APX Construction Group, LLC,
Appellant,

R&K Electric, Inc.,
Appellant,

vs.

Nova Academy of Cosmetology Mankato, LLC,
Respondent.

Filed June 9, 2025
Reversed and remanded
Bentley, Judge

Blue Earth County District Court
File No. 07-CV-23-4267

Aaron A. Dean, Moss & Barnett, Minneapolis (for appellant APX Construction Group, LLC)

Kyle E. Hart, Christian D. Poppe, Fabyanske, Westra, Hart & Thompson, P.A., Minneapolis, Minnesota (for appellant R&K Electric, Inc.)

Thomas C. Atmore, Richard J. Savelkoul, Patrick C. Bower, Martin & Squires, P.A., St. Paul, Minnesota (for respondent)

Considered and decided by Bentley, Presiding Judge; Ede, Judge; and Harris, Judge.

NONPRECEDENTIAL OPINION

BENTLEY, Judge

This appeal involves the interpretation of an arbitration agreement in a contract between appellant APX Construction Group, LLC, and respondent Nova Academy of Cosmetology Mankato, LLC, for the renovation of Nova's place of business.

A dispute arose relating to electrical work performed by APX's subcontractor, appellant R&K Electric, Inc.[1] Appellants demanded arbitration and subsequently commenced an action in the district court and moved to compel arbitration. The district court concluded that appellants' arbitration demand was not timely made and granted summary judgment for Nova. We now reverse that decision because the arbitration clause's scope includes the question of whether the arbitration demand was timely made—and that means the arbitrator should decide the timeliness issue, not the district court. We remand with instructions to compel arbitration.

FACTS

In July 2021, Nova and APX entered a contract, under which APX would serve as the construction manager for the renovation of Nova's business space. The contract includes an arbitration clause which states in relevant part:

> **Dispute Resolution.** Any controversy or claim, arising out of this Agreement, its interpretation, enforcement or breach including, but not limited to, claims arising from tort, shall be settled by arbitration by a single arbitrator under the then current Construction Arbitration Rules of the American Arbitration Association. An arbitration proceeding is commenced upon one party serving by certified mail demand

[1] We refer to APX and R&K Electric collectively as "appellants" throughout the opinion.

> for arbitration, setting forth the dispute(s) and requested relief. . . . Arbitration must be commenced within six (6) months after the claim or controversy arises.

The contract also includes a payment clause providing that "[a]ll progress payments shall be subject to five percent (5%) retainage, which shall be paid to [APX] with final payment."

APX subcontracted with R&K Electric to design and install the electrical work. After the renovation was complete, Nova took possession of the business space. In April 2022, APX and Nova exchanged emails regarding issues with the electrical work. In January 2023, an attorney for Nova sent a letter informing APX that the electrical work was defective. APX's attorney responded on March 2, 2023, and denied that the electrical work was defective. APX requested immediate payment of the unpaid contract balance. Nova responded that it had retained a different electrical company "to fix the problems" and would be in touch "once the repair is complete and additional costs of repair are known." APX replied, "If Nova Academy is not going to issue immediate payment, then we need to start the dispute resolution process." Nova once again said it would be in touch after the electrical repair was completed.

On April 14, 2023, Nova sent a letter to APX along with a "full and final payment of $5,178.73." Nova explained that the payment was the total of the retainage owed to APX, $36,258.73, minus the amount that the new electrical company charged to "cure the defects in the project," which Nova said was $31,080.00.

On June 19, 2023, R&K's attorney sent a demand for arbitration to Nova via certified mail and email, seeking the remainder of the balance for R&K's work. On August 14, 2023, R&K's attorney emailed the demand for arbitration again, along with a

copy of a claims-prosecution agreement between R&K and APX. Nova responded that it was "waiting for the formal claim/complaint pursuant to the APX and Nova Agreement/filing of a complaint, before getting started."

On November 17, 2023, appellants filed the complaint in this case, seeking an order compelling Nova to arbitrate the dispute over Nova's reduced payment to APX. On December 8, 2023, Nova filed an answer and a counterclaim, seeking a declaration from the court that appellants "failed to timely demand arbitration, there is no agreement to arbitrate the claim, and [appellants have] waived [their] claims." Appellants then moved to compel arbitration, and Nova moved for summary judgment. The competing motions largely focused on the parties' disagreement regarding when the controversy arose. Nova argued that the controversy arose "no later than" April 20, 2022, when APX "acknowledged" Nova's objection to appellants' request for final payment. Appellants maintained that the controversy arose on April 14, 2023, when Nova withheld funds from its final payment.

In a written order and memorandum, the district court granted Nova's motion for summary judgment, denied appellants' motion to compel arbitration, and dismissed appellants' complaint with prejudice. In denying appellants' motion to compel arbitration, the district court concluded that it had the authority to determine the timeliness of appellants' demand for arbitration because the district court "has the jurisdiction to determine the scope and applicability of the agreed upon statute of limitations." In granting Nova's motion for summary judgment, the district court determined that appellants'

"demand for arbitration was untimely per the arbitration agreement outlined in the contract."

This appeal followed.

DECISION

The parties disagree about whether the district court erred by determining whether the arbitration demand was timely. Appellants argue that Minnesota law and the plain language of the contract require the arbitrator to decide the issue of timeliness because the "controversy . . . aris[es] out of th[e] Agreement, its interpretation, enforcement or breach." And, according to appellants, whether the demand was timely is part of the controversy at issue. Nova, on the other hand, relies on the premise that "the court, not an arbitrator, decides whether a valid agreement to arbitrate a controversy exist[s]," and, in their view, the agreement to arbitrate does not exist if the demand is not made within six months of when the controversy arose.

As an appellate court, we review a district court's determination of arbitrability de novo. *Amdahl v. Green Giant Co.*, 497 N.W.2d 319, 322 (Minn. App. 1993). "A reviewing court is not bound by the trial court's interpretation of the arbitration agreement and independently determines whether the trial court correctly interpreted the clause." *Elsenpeter v. St. Michael Mall, Inc.*, 794 N.W.2d 667, 672 (Minn. App. 2011) (quoting *Michael-Curry Cos. v. Knutson S'holders Liquidating Tr.*, 449 N.W.2d 139, 141 (Minn. 1989)).

"Minnesota law favors arbitration." *Provost v. Lundmark*, 15 N.W.3d 664, 669 (Minn. App. 2024) (citing *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)). "When considering a motion to compel arbitration, the court's inquiry is limited to (1) whether a valid arbitration agreement exists, and (2) whether the dispute falls within the scope of the arbitration agreement." *Amdahl*, 497 N.W.2d at 322. "If the court determines that an agreement to arbitrate a dispute exists, the court must order arbitration." *Id.* Courts "should resolve any doubts concerning the scope of arbitrable issues in favor of arbitration." *Johnson v. Piper Jaffray, Inc.*, 530 N.W.2d 790, 795 (Minn. 1995) (quotation omitted).

Applying those principles here, we conclude that Minnesota law and the plain language of the contract support appellants' position—that the arbitrator, and not the court, must determine whether the demand was timely made.

A. Minnesota Law

The Minnesota Uniform Arbitration Act (MUAA), Minn. Stat. §§ 572B.01-.31 (2024), is instructive because it defines the roles of the court and the arbitrator in resolving disputes that invoke an arbitration agreement. The district court is tasked with "decid[ing] whether an agreement to arbitrate exists or a controversy is subject to an agreement to arbitrate." Minn. Stat. § 572B.06(b). But the arbitrator "shall decide whether a condition precedent to arbitrability has been fulfilled and whether a contract containing a valid agreement to arbitrate is enforceable." *Id.* (c). Our caselaw illustrates that procedural issues of arbitrability—such as whether a time limit applies—are one kind of condition precedent that the arbitrator must decide. *See City of Morris v. Duininck Bros., Inc.*, 531 N.W.2d 208, 210 (Minn. App. 1995) (holding that procedural arbitrability issues, such as "[w]hether or not Contractor waived its right to arbitration," must be decided by an arbitrator);

Millwrights Loc. 548, United Brotherhood of Carpenters & Joiners, AFL-CIO v. Robert J. Pugleasa Co., 419 N.W.2d 105, 107 (Minn. App. 1988).

In *Duininck Brothers*, we explained the reasoning behind the rule that is now codified in section 572B.06(c). We noted that "procedural issues are often intertwined with the substantive dispute intended for arbitration; we do not want to try an issue in two different forums." *Id.* The waiver issue in *Duininck Brothers* required "inquiry into threshold issues such as what the parties knew, when they knew it, and what they did about it." *Id.* at 211. We concluded that those issues were "procedural questions for the arbitrator to determine, not for the trial court." *Id.*; *see also Pugleasa*, 419 N.W.2d at 109 (concluding that a party's "excuses for untimeliness . . . are issues which bear on . . . waiver" and "are more properly addressed to the arbitrator as a threshold issue").

Here, the dispute about the timeliness of appellants' demand is also "intertwined with the substantive dispute intended for arbitration" and will require "inquiry into threshold issues such as what the parties knew, when they knew it, and what they did about it." *See Duininck*, 531 N.W.2d at 210-11. Nova maintains that the controversy arose sometime between when it informed appellants about the defective electrical work and when it told appellants that it was hiring another electrical company to fix the defects. Appellants maintain that the controversy arose when Nova refused to pay the entire bill. They also argue that, even if Nova is right that the deadline to demand arbitration lapsed, they should not be held to the deadline under principles of tolling, waiver, or laches. These disputes all go to determining whether a condition precedent to arbitration—the six-month deadline—applies.

Our understanding that a time limit is a condition precedent to arbitrability is also supported by *Howsam v. Dean Witter Reynolds, Inc.*, 537 U.S. 79 (2002). In *Howsam*, the United States Supreme Court analyzed section 6(c) of the Revised Uniform Arbitration Act (RUAA), which is identical to Minn. Stat. § 572B.06(c). 537 U.S. at 84-85. Specifically, the Court interpreted that provision in light of comment 2 to the relevant provision of the RUAA, which says that

> in the absence of an agreement to the contrary, issues of substantive arbitrability . . . are for a court to decide and issues of procedural arbitrability, *i.e.*, whether prerequisites such as *time limits*, notice, laches, estoppel, *and other conditions precedent* to an obligation to arbitrate have been met, are for the arbitrators to decide.

Id. at 85 (citing RUAA § 6(c), cmt. 2 (Unif. L. Comm'n 2000)) (emphasis added). The Supreme Court concluded that a six-year time limit for submitting a dispute to arbitration was a procedural dispute for the arbitrator to decide under section 6(c) of the RUAA. *Id.* at 82-83, 85. We find that conclusion persuasive, given that Minnesota courts "give great weight" to other jurisdictions' interpretations of a uniform law. *Johnson v. Murray*, 648 N.W.2d 664, 670 (Minn. 2002); *cf.* Minn. Stat. § 572B.29(a) (stating that in "applying and construing [the MUAA], consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it"). Whether appellants complied with the time limit is a condition precedent that, under the MUAA, must be decided by an arbitrator.

B. The Plain Language of the Agreement

We note that the MUAA provisions in section § 572B.06(c) are waivable and may be amended by the parties to an agreement to arbitrate. *See* Minn. Stat. § 572B.04(a) (providing that, other than certain listed exceptions, parties may waive or vary requirements of sections 572B.01 to 572B.31). But here, the plain language of the contract between APX and Nova is consistent with the MUAA and does not waive application of section 572B.06(c).

When interpreting a contract, "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). In doing so, "we assign unambiguous contract language its plain meaning" and may consider dictionary definitions of contract terms. *Savela v. City of Duluth*, 806 N.W.2d 793, 796-97 (Minn. 2011).

The arbitration clause in this case states that "[a]ny controversy or claim, arising out of this Agreement, its interpretation, *enforcement* or breach" shall be settled by arbitration. (Emphasis added.) Enforcement is "[t]he act or process of compelling compliance with a law, mandate, command, decree, or agreement." *Black's Law Dictionary* 667 (12th ed. 2024). The issue of the reduced final payment is a "claim . . . arising out of" the contract between Nova and APX, and appellants' demand for arbitration on that issue is appellants' attempt to "compel[] compliance" with the overall contract and arbitration agreement. *Id.* Because the plain language of the contract requires arbitration of claims relating to

"enforcement" of the contract, it does not denote an intent to waive application of section 572B.06(c).

In sum, we conclude that Minnesota law and the plain language of the contract require an arbitrator to decide the issue of the timeliness of the demand for arbitration in this case. We therefore reverse the district court's denial of appellants' motion to compel arbitration and its grant of respondent's motion for summary judgment. We remand with instructions to compel arbitration.[2]

Reversed and remanded.

[2] Because we conclude that the district court should not have determined the issue of the timeliness of appellants' demand for arbitration, we do not decide whether the district court applied the correct trigger date to appellants' claim or whether other principles like tolling, waiver, or laches apply to the facts of this case.