NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

WESTERN HILLS WATER DISTRICT, Plaintiff and Respondent, v. WORLD INTERNATIONAL, LLC et al., Defendants and Appellants.	F089938 (Super. Ct. No. CV-24-003049) **OPINION**

APPEAL from a judgment of the Superior Court of Stanislaus County. Stacy P. Speiller, Judge.

Jeffer Mangels Butler & Mitchell, Susan Allison and Mark S. Adams; Winget Spadafora & Schwartzberg, Gabriel Z. Reynoso and Richard P. Tricker for Defendants and Appellants.

Neasham & Kramer, Patricia Kramer, William C. Neasham and Chad A. Vierra for Plaintiff and Respondent.

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A public agency water district (plaintiff and respondent) sued several former board members (defendants and appellants) alleging they violated conflict of interest laws and fiduciary duties because they were financially interested in matters in which they participated in their official capacities. Several business entities (defendants and appellants), which allegedly benefitted from the conduct of the former board members, were also sued as alleged participants in a scheme to defraud the water district.

Defendants[1] moved to compel arbitration pursuant to a contract one of the business entities had assumed in connection with its purchase of the assets of a bankrupt developer. The court granted arbitration as to one cause of action, but denied arbitration as to the remaining nine causes of action. Defendants appeal. We affirm.

FACTS

Allegations of the Original Complaint

In an agreement dated June 4, 1998, the Western Hills Water District (the Water District) agreed to provide water, sewage, and storm drainage services for a planned development called Diablo Grande.[2] The Master Agreement described Diablo Grande as a four-phase "world class destination resort and planned residential community including golf courses, vineyards, hotel, European spa, retail center, business park, and 5,000 residential units …."

Under the Master Agreement, the developer, Diablo Grande LP, agreed to advance funds to the Water District to pay for its costs of operation until the Water District's revenues became sufficient to cover its own costs. (A later addendum to the Master Agreement, dated May 14, 2009, plays a central role in this case and will be described later for chronological clarity.)

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1 Except Angels Crossing, LLC. Going forward, "defendants" will refer to all defendants appearing in the present appeal, which does not include Angels Crossing, LLC, unless otherwise noted.

2 We will join the parties in referring to this as the Master Agreement.

Stanislaus County approved a vesting tentative map for the Diablo Grande development project on December 7, 1999. At the time, all of the land in the development was owned by Diablo Grande LP.

Mello-Roos[3] bonds were issued to build the Water District's facilities and manage other public areas of the development. The Water District also issued bonds to construct and acquire public facilities.

In May 2003, Stanislaus County approved the final map of the Diablo Grande unit 1A subdivision, as well as a subdivision improvement agreement (SIA). The SIA required the subdivider to construct and complete improvements, including a water system. The SIA also required the subdivider to provide water and wastewater collections, treatment and distribution facilities.

In May 2006, Stanislaus County approved the final map of the Diablo Grande unit 1B subdivision. Three lots on the final map, lots 316–318, were designated as "'WHWD'" for West Hills Water District. However, title to these three lots was not transferred or otherwise put in the Water District's name.

In 2008, Diablo Grande LP filed Chapter 11 bankruptcy. In its statement of financial affairs, Diablo Grande LP listed several parcels as property held "for" the Water District. "Specifically, APN #025-039-002[4] is described as the site of the water treatment plant; APN #025-023-002 is the site of the water tank and the well, water pumps, and water rights on the Marshall Davis property (APN #027-001-025) which are/were the transmission line to Pump Station #1."

Through bankruptcy, Diablo Grande LP's assets were sold to World International, LLC (World.) Under the terms of the sale, World assumed Diablo Grande LP's

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3 Mello-Roos Community Facilities Act of 1982 (Mello-Roos). (Stats. 2011, ch. 493, § 4.)

4 Assessor Parcel Number (APN).

obligation to fund the Water District's revenue shortfalls until the completion of project development.

The Water District and World entered into an addendum to the Master Agreement, effective May 14, 2009 (the addendum). The addendum acknowledged and confirmed World was "assum[ing]" the Master Agreement the Water District had previously made with Diablo Grande LP. The addendum also amended section 7 of the Master Agreement, describing in greater detail World's obligation to advance funds for the Water District's operational costs. The addendum also provided that the parties would arbitrate "[a]ny dispute arising out of Section 7" that was not resolved by negotiation. This is the clause under which defendants would eventually move to compel arbitration.

The Water District's Property Purchases

On June 30, 2016, a consultant for World proposed that the Water District expand its water treatment facility to meet anticipated subdivision growth. On July 13, 2016, the Water District's board of directors passed a resolution authorizing the purchase of parcels (APN# 025-039-002 and portions of APN #s 025-039-012, 025-047-001) from World in the amount of $530,000. However, these properties had previously "been designated to be transferred" to the Water District by the bankruptcy court's settlement agreement and order. Nonetheless, the board's resolution stated the acquisitions were in the best interests of the Water District. The resolution also stated it was necessary to acquire the properties instead of condemning them by eminent domain. When the resolution was passed, a majority of the board's members were former employees or affiliates of World and/or Diablo Grande LP.

On August 10, 2016, the Water District purchased APN# 025-023-002 and portions of 025-039-012 and 025-047-001 from World for $250,000.

The complaint alleged that the Water District paid nearly $800,000 in total for the properties "despite a history of being encumbered with [the Water District's] facilities (or held as immediately adjacent vacant land to the facilities) for more than 15 years and requirement for the properties to be transferred to [the Water District]." The complaint further alleged that the sales prices, which were based on appraisals, were "highly inflated" and "contrary to reality." (Fn. omitted.)

Alleged Scheme by Marrero, World and Others

In November 2016 or thereafter, Water District board member Guillermo Marrero, World, its parent company Three60, and their principals and consultants, developed a "scheme." Specifically, that they would transfer properties and liabilities to one or more newly formed corporations in order to terminate World's obligations to the Water District. The plan was that the new company would then default on its debts and tax obligations and/or file bankruptcy to avoid payment of the debts. The scheme also involved anticipated "property transfer[s] and lot line adjustments" to allow World to retain "thousands of acres outside the [Water] District['s] Boundaries …." Marrero participated in the scheme while serving as president/director of the Water District.

The new corporation anticipated by the scheme was actually created on December 10, 2019, and was named Angels Crossing LLC (Angels).

Delinquent Mello-Roos Special Taxes

After August 2017, World stopped paying the Community Facilities District Mello-Roos special taxes for the properties it owned. On January 22, 2018, defendant board members Carmen Kearney and Marrero, directed the Water District's counsel to send Marrero a list of delinquent special tax accounts to be considered for foreclosure.

On March 6, 2018, a law firm called Lavelle Law Group (LLG) submitted a proposal for foreclosure-related legal services to Marrero as president of the Water District's board. The proposal contained no specifics of compensation. In May 2018, Carmen and Douglas Kearney (also a defendant board member of the Water District), and Marrero voted to approve a legal services agreement with LLG for the collection of delinquent Mello Roos special taxes.

On July 31, 2018, LLG submitted a detailed retention fee. For the prelitigation phase, LLG would charge a "'Fixed Attorney Price $750 per parcel with Cost pass through ....'" For the litigation phase, LLG would charge an hourly attorney rate of $450 per hour, plus costs. Marrero signed the LLG proposal as board president.

Marrero did not disclose that he had a financial interest in the real property where LLG was located or that his own law firm, IPG, shared office space with LLG. Further, Marrero did not disclose that his law firm represented World. Carmen Kearney did not disclose that she was "the Chief Financial Officer involving World-owned tax delinquent properties" and was living in a residence owned by World.

LLG "was subsequently paid in excess of $169,000 in fees and costs for 'pre-litigations' legal services pertaining to the collection of delinquent Mello-Roos taxes on parcels which included those owned by World." On April 15, 2019, LLG granted an open-ended deferment of tax foreclosure efforts to World's attorney. The purported basis for the extension was to allow for a purchase-sale agreement with a third party business entity. The Water District's board did not take any public action authorizing the extended deferment.

Cessation of Operational Expenses Payment and Prospective Buyer

On May 1, 2019, World stopped its subsidy loan payment to the Water District for operational expenses under the "AMENDED MASTER AGREEMENT" in the amount of $52,000.

In December 2019, World advised the Water District that it had a prospective buyer (i.e., Angels) that would purchase the Diablo Grande project and fully assume World's obligations under the "AMENDED MASTER AGREEMENT." Despite being a Water District board member, Marrero assisted in drafting a purchase sale agreement (PSA) between World and Angels. The PSA required, as a condition precedent, that the Water District approve an assignment, assumption and release agreement (AARA). The AARA was developed and negotiated by Marrero and others in coordination with World and Three60. The proposed AARA would be signed by the Water District, World, and Angels. It provided that Angels would (1) assume ownership of World's parcels within Diablo Grande's project boundaries, (2) accept the assignment of World's obligations to pay arrearages, (3) agree to honor and abide by the terms and conditions of the amended Master Agreement between World and the Water District, and (4) subsidize the Water District's revenue shortfalls until completion of the project development.

The complaint alleged Marrero failed to "fully disclose with particularity and memorialize as required by law to [the Water District] or the public the specific basis of a conflict of interest, including but not limited to the fact that while he was a [Water District] Board Member, he and his … associate attorney JUAREZ (as legal counsel) and LUONG (corporate agent and representative[] for WORLD and THREE60) were directly involved in the preparation, negotiation and drafting of the" PSA and the AARA on behalf of World.

In April 2020, the Water District board voted to approve the AARA. Marrero declared a conflict and did not vote. However, Carmen Kearney participated in the vote even though she was conflicted. Marrero executed the AARA on behalf of the Water District.

Douglas Kearney was a member of the Water District's board until mid-2020, while Marrero and Carmen Kearney left the Water District's board on or about December 1, 2020.

Angels never paid the Water District. On October 6, 2023, the Water District declared Angels to be in default of the AARA for failing to pay its obligations under that agreement as well as the Master Agreement. Angels owed over $17 million in past Mello-Roos taxes, approximately $2 million in county property taxes, and several hundred thousand dollars in past water charges.

On August 3, 2023, Angels filed for bankruptcy. Angels sought to discharge 16 debts, including millions owed to the Water District. The Water District foreclosed on the properties owned by Angels.

Lawsuit

On April 19, 2024, the Water District filed a verified complaint against World, Three60, Angels, Marrero, and the Kearneys. The defendants filed a motion to compel arbitration pursuant to the addendum. The motion acknowledged that some of the moving parties were not signatories to the addendum, but asserted that arbitration should be granted because the claims against them were "closely intertwined and connected with the underlying contract claims …."

Before the motion was decided, the Water District filed an amended verified complaint. In the amended complaint, the Water District alleged the addendum was void under Government Code section 1090 due to Marrero and Carmen Kearney's conflict of interest in approving it.

Amended Complaint's Causes of Action

The amended complaint's first cause of action was for declaratory relief. The claim asserted that the addendum was "an illusory non-agreement" obtained and approved in violation of Government Code section 1090's prohibition on board member involvement in contracts in which they are financially interested.

The second cause of action was also for declaratory relief. This claim asserted that the AARA was invalid because it, too, was approved in violation of Government Code section 1090.

The third cause of action was also for declaratory relief. This claim asserted that the AARA provided the Water District would only consent to and accept World's assignment of liabilities, etc. under the Master Agreement "'in the event that part of the Property described in the Purchase Agreement is conveyed to Buyer from WORLD ….'" The claim further asserted that this property conveyance never occurred and, therefore, the Water District did not consent to World's assignment pursuant to the cited contractual provision.

The fourth cause of action was for breach of contract, alleged against World and Three60. Specifically, the amended complaint alleged World breached the Master Agreement and its addendum by failing to uphold its operational funding obligations.

The fifth cause of action was for breach of contract, alleged against Angels. The claim alleged Angels breached the AARA by failing to make required payments to the Water District.

The sixth cause of action alleged that Marrero and the Kearneys breached their fiduciary duties by failing to "act in the best interests of [the Water District] as opposed to their own financial or property interests." The cause of action listed several acts, including Marrero influencing the Water District to retain LLG when he had a financial interest in their "leasehold or shared office space" with Marrero's firm; Marrero and LLG failed to pursue collection or initiate foreclosure against World's property within the Water District for failure to pay Mello-Roos amounts; Marrero negotiated, drafted and executed the AARA and failed to advise the Water District that he was being paid by World and/or Angels to perform this work through his law firm; Marrero and the Kearneys advocated for the AARA; Marrero conspired with World and Three60 principals to set up a sham transaction between the Water District and Angels to relieve World of its contractual and financial obligations; and Marrero advocated for approval of the AARA without vetting Angels's financial capabilities and while knowing that Angels was an underfunded shell company.

In its seventh cause of action, the amended complaint alleged Marrero and the Kearneys violated their statutory duties under Government Code section 1090. The cause of action cited several facts: Marrero was a Water District board member at the same time he was negotiating, drafting and signing the AARA; Marrero was financially interested in the AARA; Marrero was paid $5,000 per month by World to attend Water

District board meetings and work on the AARA; Marrero's law firm billed work on the AARA to World and had bills paid by Angels; Marrero was "involved behind the scenes" in implementing and directing the negotiation, drafting and revision of the terms of the PSA between World and Angels and the AARA; Carmen Kearney was the CFO for World-Three60 while acting as treasurer for the Water District; Carmen Kearney lived in a residence provided by World while the AARA was negotiated and finalized; and Douglas Kearney was compensated as an asset manager for World and lived in a residence provided by World while the Water District negotiated and approved the AARA.

The eighth cause of action was for fraudulent inducement of contract alleged against World, Three60, Angels, and Marrero. The complaint alleged the defendants knew Angels was a newly formed corporation with little to no funding or assets, yet they represented to the Water District that Angels was in a financial position to satisfy World's outstanding financial obligations. They also falsely represented that if the Water District did not approve the AARA, then World would have no choice but to file for bankruptcy.

The ninth cause of action was for fraudulent misrepresentation and concealment of material fact, alleged against World, Three60, Marrero, and Angels. Several acts or omissions were alleged in the cause of action, including: World falsely represented to the Water District that Angels was in a position to bring World's financial obligations current and to assume them moving forward; Marrero falsely represented to the Water District that the AARA was legally necessary and the Water District had no alternatives but to consent to it; Marrero drafted and executed the AARA as president of the Water District's board; World concealed its true relationship with Marrero; Marrero concealed his financial interest in aspects of the AARA; and Marrero failed to disclose that World was a client of his law firm.

The 10th cause of action was for conspiracy to commit fraud, alleged against World, Angels, Three60, Marrero and the Kearneys. The gravamen of this cause of action was the circa-November 2016 "scheme" described above.

Operative Motion to Compel Arbitration

In response to the first amended complaint, defendants (except Angels) again moved to compel arbitration. They argued that the amended complaint's allegation that the addendum was void constituted a sham pleading, since the original complaint relied on the addendum's validity. They also contended that the Water District's claim under Government Code section 1090 was barred by the statute of limitations.

On May 21, 2025, the court ruled on the motion to compel arbitration. The court granted the motion as to the fourth cause of action, denied the motion as to the other causes of action, and denied defendants' request to stay the court action pending arbitration. Specifically, the court concluded that only the fourth cause of action arose out of section 7 of the addendum, and therefore was the only cause of action to fall within the scope of the arbitration provision.

DISCUSSION

"When presented with a motion or petition to compel arbitration, a trial court must determine whether an 'agreement to arbitrate the controversy exists.' (Code Civ. Proc., § 1281.2; [citation].) The court makes this determination in a 'summary proceeding' ([s]ee Code Civ. Proc., § 1290.2), sitting 'as a trier of fact, weighing all the affidavits, declarations, and other documentary evidence, as well as oral testimony received at the court's discretion, to reach a final determination.'" (*Ramirez v. Golden Queen Mining Co., LLC* (2024) 102 Cal.App.5th 821, 829 (*Ramirez*).)

"The party seeking arbitration has the burden of proving the existence of an arbitration agreement by a preponderance of the evidence. [Citation.] The agreement must be in writing to be valid and enforceable. (Code Civ. Proc., § 1281.) The party opposing arbitration bears the burden of proving by a preponderance of the evidence any defense to the agreement's enforcement. [Citation.] Whether the arbitration agreement is a legally enforceable contract is determined by applying general principles of California contract law." (*Ramirez, supra*, 102 Cal.App.5th at pp. 829–830, fn. omitted.)

"'California has a strong public policy in favor of arbitration and any doubts regarding the arbitrability of a dispute are resolved in favor of arbitration.' [Citation.] It is the party opposing arbitration who bears the burden to show the arbitration provision cannot be interpreted to cover the claims in the complaint. [Citations.] There is no public policy, however, that favors the arbitration of disputes the parties did not agree to arbitrate.'"[5] (*Aanderud v. Superior Court* (2017) 13 Cal.App.5th 880, 890 (*Aanderud*).)

"'When deciding whether the parties agreed to arbitrate a certain matter (including arbitrability), courts generally … should apply ordinary state-law principles that govern the formation of contracts.' [Citation.] Thus, an arbitration agreement is governed by contract law and is construed like other contracts to give effect to the intention of the parties. [Citations.] 'If contractual language is clear and explicit, it governs. (Civ. Code, § 1638.)'" (*Aanderud, supra*, 13 Cal.App.5th at p. 890.)

"When conflicting extrinsic evidence was not offered below, we apply a de novo, or independent, standard of review on appeal from a trial court's determination of whether an arbitration agreement applies to a particular controversy." (*Aanderud, supra*, 13 Cal.App.5th at p. 890.)

Analysis

The trial court found that only the fourth cause of action fell under the arbitration clause. We agree.

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5 The Water District cites to *Quach v. California Commerce Club, Inc.* (2024) 16 Cal.5th 562, 578–579, which observed that in several contexts (e.g., unconscionability, waiver) the policy regarding arbitration clauses is that they be interpreted like any other contract; not more or less favorably. The parties go back and forth on this point. However, we do not find it dispositive. Under either approach, the causes of action at issue here do not fall under the arbitration clause.

After describing a negotiation-based dispute resolution procedure, the addendum to the Master Agreement provided, in pertinent part,

> "Any dispute arising out of Section 7, which has not been resolved by the above dispute resolution procedure within twenty (20) calendar days … shall be finally resolved by arbitration …."

We construe this provision like any other contract, with the goal of effecting the intention of the parties. (*Aanderud, supra*, 13 Cal.App.5th at p. 890.) The clause's language is clear, and therefore it governs here. (*Ibid*.)

Section 7 of the Master Agreement concerned World's obligations to cover certain operational expenses of the Water District and procedures related thereto. Any dispute "arising out of" that section is subject to arbitration, pursuant to the arbitration clause. The question presented is clear: which disputes raised by the complaint, if any, "aris[e]" out of World's obligations to cover certain operational expenses of the Water District.

The fourth cause of action clearly arises out of section 7. It is a breach of contract claim against World and Three60 predicated on their alleged failure to uphold their operational funding obligations. The court was correct to hold this "dispute" is subject to arbitration pursuant to the agreement of the parties.

The same cannot be said of the remaining causes of action. The first cause of action seeks to invalidate the addendum itself. A claim that an entire contract is invalid on statutory conflict of interest grounds cannot be said to arise from one of the contract's substantive sections.

Even more removed is the second cause of action's claim that the AARA was invalid on statutory conflict of interest grounds. That cause of action pertains to the validity of an agreement approved more than a decade after the addendum. It simply does not follow that the validity of one contract arises out of a specific substantive provision of a separate, substantive contract. This is an independent wrong that does not implicate the interpretation of section 7 of the addendum.

The third cause of action essentially sought a declaration that a condition precedent of the Water District's consent to the AARA failed. Again, this dispute clearly arises from the AARA, not the addendum.

The fifth cause of action was the claim that Angels breached the AARA by failing to make required payments to the Water District. Angels was the only defendant named in this cause of action, and it did not move to compel arbitration and has not appeared in this appeal.

The sixth and seventh causes of action are based on alleged breaches of fiduciary and statutory duties by Marrero and the Kearneys, none of whom were parties to the addendum. As described above, the alleged breaches of fiduciary duties largely concern the AARA, and none of their alleged breaches arose out of World's obligations to fund the Water District's operative expenses (i.e., § 7).[6] This is an independent wrong that does not implicate the interpretation of section 7 of the addendum.

The eighth and ninth causes of action claimed the defendants fraudulently induced the AARA and fraudulently concealed material facts. The allegedly fraudulent representations and concealments concerned issues like Angels's financial condition and other things related to the AARA. None of the allegedly fraudulent representations, concealments or inducements arose out of section 7 of the addendum.

The 10th cause of action concerned the alleged scheme whereby defendants planned to create an underfunded shell corporation to relieve World of its obligations to the Water District. This cause of action does relate in some sense to section 7, because that is the source of the financial obligations the scheme was allegedly hatched to avoid. However, the dispute is not one as to the nature or extent of World's obligations as set by section 7. Instead, the dispute is the defendants' subsequent fraud to escape those

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6 To the extent the sixth cause of action is based on incorporated allegations from the first cause of action concerning Marrero and the Kearneys' alleged conflict of interest relating to the addendum, it fails to trigger arbitration for the same reasons as the first cause of action.

obligations. This dispute is not arising from section 7, but from a subsequent scheme to avoid its obligations.

We find the case of *Rice v. Downs* (2016) 248 Cal.App.4th 175 (*Rice*) analogous. Plaintiff Rice sued his former lawyer, defendant Downs, for legal malpractice, breach of fiduciary duty and breach of contract. Rice and Downs had created a company together to develop affordable housing called Highland Property Development, LLC (HPD). Downs prepared an operating agreement while acting as counsel for Rice and the new company. The operating agreement included the following provision: "'Except as otherwise provided in this Agreement, any controversy between the parties arising out of this Agreement shall be submitted to the American Arbitration Association for arbitration in Los Angeles, California.'" (*Id.* at p. 180.)

Rice's complaint against Downs alleged he breached the operating agreement by improperly billing HPD for legal services despite the operating agreement providing that "'No Member or Affiliate of a Member, is entitled to remuneration for services rendered to the Company except as otherwise expressly provided for in this Agreement.'" (*Rice, supra*, 248 Cal.App.4th at p. 180.) The complaint also alleged Downs committed legal malpractice by, among other things, entering into a business transaction with clients while failing to advise them of potential and actual conflicts of interest. (*Id.* at p. 182.) The complaint also alleged the operating agreement and an amendment thereto were deficiently drafted by Downs, costing plaintiffs hundreds of thousands of dollars. (*Ibid.*) The complaint also sought rescission of the operating agreement due to Downs's malpractice, breach of fiduciary duty, violations of professional rules of conduct, and failure to obtain informed consent of the parties thereto. (*Ibid.*)

Downs moved to compel arbitration of Rice's complaint. (*Rice, supra*, 248 Cal.App.4th at p. 183.) The trial court compelled arbitration, concluding that the arbitration clause was "'broad enough to encompass tort causes of action'" and "'because the gravamen of these claims involves the Operating Agreements, these causes of action "arise out of'" the Operating Agreement.'" (*Ibid.*) The Court of Appeal reversed, holding that some of Rice's claims were not subject to arbitration under the arbitration clause.

The appellate court observed that "'"[W]here contracts provide arbitration for '"any controversy … arising out of or relating to the contract … "' the courts have held such arbitration agreements sufficiently broad to include torts, as well as contractual, liabilities so long as the tort claims 'have their roots in the relationship between the parties which was created by the contract.'"'" (*Rice, supra*, 248 Cal.App.4th at p. 186.) "But clauses requiring arbitration of a claim, dispute, or controversy 'arising from' or 'arising out of' an agreement, i.e., excluding language such as 'relating to this agreement' or 'in connection with this agreement,' are 'generally considered to be more limited in scope than would be, for example, a clause agreeing to arbitrate "'any controversy … arising out of *or relating to* this agreement,'" which might thus cover *misconduct arising out of the agreement* as well as contractual issues.'" (*Ibid*., italics added.)

The appellate court observed that the arbitration provision only applied to disputes "'arising out of'" the agreement, not disputes "'relating to'" or arising "'in connection with.'" (*Rice, supra*, 248 Cal.App.4th at p. 189.) Consequently, the court held that "while the arbitration provision encompasses contractual claims and perhaps even tort claims arising from the agreement, a tort claim based upon *violation of an independent duty or right originating outside of the agreement does not arise from the agreement and falls outside the scope of the arbitration provision*." (*Id.* at pp. 190–191, italics added.)

Applying this principle, the appellate court concluded that the malpractice claim did not arise out of the operating agreement because it was based on violations of duties created by the attorney-client relationship, not violations of the operating agreements. (*Rice, supra*, 248 Cal.App.4th at p. 191.) The court held that the breach of fiduciary duty and rescission claims fell outside the arbitration clause for similar reasons. (*Id.* at pp. 193–194.) The court expressly rejected Downs's argument that because the operating agreement's existence was a "'but for'" cause of his alleged malpractice and breach of fiduciary duty, those claims necessarily arose out of the operating agreement. (*Id*. at pp. 191–193.)

We agree with *Rice* that "claim[s] based upon violation of an independent duty or right originating outside of the agreement does not *arise* from the agreement and falls outside the scope of the arbitration provision." (*Rice, supra*, 248 Cal.App.4th at p. 191.) Here, the Water District's claims (except for the fourth cause of action) were based on violations of independent duties or rights originating outside section 7 of the addendum—i.e., fiduciary duties owed by virtue of board service, rights conferred by different contracts other than the addendum, etc.

Narrow vs. Broad Construction

Defendants emphasize that arbitration clauses should be construed broadly, and that the court erred in viewing it narrowly. However, while arbitration clauses in general are not to be construed narrowly, it is obvious that some arbitration clauses are written more narrowly than others. As cases like *Rice* demonstrate, clauses pertaining to claims "'arising out of'" a contract are more narrow in scope than clauses pertaining to claims "'relating to'" or "connected with" a contract. (*Rice, supra*, 248 Cal.App.4th at pp. 189, 190.)

Defendants also argue that merely because a contractual arbitration clause applies to disputes "arising" out of a contractual provision, that does not mean only contractual claims are covered; tort claims can also be covered. But we do not find the causes of action outside the scope of the arbitration clause because they sound in tort or fraud.

Rather, we find them outside the scope of the arbitration clause because they are not disputes arising out of section 7 of the addendum.[7]

Defendants emphasize that the arbitration clause refers to disputes that were not "resolved by the above dispute resolution procedure …." (Boldface omitted.) That procedure, which essentially mandated negotiations, applied to not just disputes "'arising out of'" section 7, but also those "'relating to'" section 7. (Boldface omitted.) But the scope of the dispute resolution procedure is not at issue here. Defendants did not move to compel negotiations under the initial dispute resolution procedure of section 7(m)(1). They moved to compel arbitration under section 7(m)(3). And that clause only applies to disputes "arising out of" section 7, which were not resolved by the initial dispute resolution procedure.[8] Indeed, an argument could be made that the use of this language elsewhere in the contract suggests its omission from the arbitration provision cuts *against* defendants' position. (See *Rice*, *supra*, 248 Cal.App.4th at pp. 188–189.)

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[7] Given these conclusions, we do not reach the remaining contentions of the parties, such as whether the addendum is void, voidable, or valid, and whether the Water District is prevented from raising the issue due to sham pleading or estoppel. While finding the addendum void might have supported an appeal by the Water District challenging the grant of arbitration as to the fourth cause of action, they have not appealed. In all other respects, the contention is moot in light of our conclusion that the nine causes of action are not subject to arbitration even if the agreement is valid and enforceable.

The Water District's challenge to the trial court's stay order is not cognizable because the Water District did not appeal.

At oral argument, appellants' counsel requested that we direct the trial court to stay the civil proceedings pending arbitration proceedings. However, appellants did not develop an argument to that effect in the appellate briefing, so we will not address it.

[8] It is not entirely clear defendants would prevail even if the arbitration clause contained the broader "relating to" language. While the "'relating to'" language does cover a broader range of claims, it still only applies to claims that have their "roots in the relationship between the parties which was created by the contract." (*Berman v. Dean Witter & Co.* (1975) 44 Cal.App.3d 999, 1003.) Here, many of the claims are against former board members, whose relationship with the Water District are rooted in their service on the board.

DISPOSITION

The order granting the motion to compel arbitration in part, and denying the motion in part, is affirmed. Respondents are awarded costs on appeal.

Meehan

MEEHAN, J.

WE CONCUR:

Detjen

DETJEN, Acting P. J.

Snauffer

SNAUFFER, J.