IN THE DISTRICT COURT IN AND FOR BRYAN COUNTY
STATE OF OKLAHOMA

CHOCTAW NATION OF OKLAHOMA, Plaintiff, v. FLINTCO, LLC; WORTH GROUP ARCHITECTS, P.C.; SPECIFIED TECHNOLOGIES, INC.; ABC ENTITIES I-X; and JOHN DOES I-X, Defendants.	Case No.: CJ-2023-230

DEFENDANT'S MOTION TO COMPEL ARBITRATION AND BRIEF IN SUPPORT

Defendant, Flintco, LLC, ("Defendant"), by and through its attorneys of record, pursuant to the Federal Arbitration Act, 9 U.S.C. §§ 1, *et seq.* (the "FAA"), respectfully requests this Court compel all claims asserted in this action to mandatory, binding arbitration. In support thereof, Defendant alleges and states as follows:

INTRODUCTION

The written contract at issue in this case contains an arbitration clause. The arbitration clause provides the parties thereto with the right to arbitrate, "[a]ny claim arising under [the] agreement." Defendant has elected to resolve the claims asserted in this action through mandatory, binding arbitration. Therefore, this Court should compel Plaintiff and Defendant (collectively the "Parties") to arbitrate all claims asserted in this action pursuant to the Parties' written contract. In addition, this Court should stay this lawsuit pending the completion of arbitration.

FACTUAL BACKGROUND

1. On June 1, 2005, Plaintiff, the Choctaw Nation ("Plaintiff"), entered into a Construction Management Agreement ("Contract") with Defendant, Flintco, LLC. *See* Construction Management Agreement, attached hereto as Exhibit "1."

2. The Contract, in relevant part, contains an arbitration clause, which provides:

> Any Claim arising under this Agreement that cannot be resolved between the Project Officer and the Project Manager for Flintco shall be submitted to a dispute resolution conference, and if the dispute is not resolved in conference, then to Mediation. If the dispute is not resolved in Mediation it will be submitted to binding arbitration. The dispute resolution conference shall consist of the submission of the dispute to the Contracting Official and the Chief Executive Officer of Flintco who shall meet to attempt to resolve the dispute prior to mediation. Mediation shall not be commenced by either party until the Contracting Official and Chief Executive Officer of Flintco have had twenty (20) days to attempt to resolve the Claim. If the dispute cannot be settled within twenty (20) days the parties shall submit to mediation with a mediator to be agreed upon by the parties. If the dispute is not resolved in mediation it will be submitted to binding arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association (the "AAA Rules") within sixty (60) days of the unsuccessful mediation. Enforcement of an arbitration award shall be sought in either the Choctaw Tribal Court, or a Federal Court with jurisdiction. Should there be no Federal Court with jurisdiction; either party may seek enforcement of an arbitration award in the State Court in Tulsa County, Oklahoma. Regardless of venue, enforcement of an arbitration award shall be consistent with the principles of the Federal Arbitration Act, 9 U.S.C. 1, *et seq.*

See Exhibit "1," p.45–46 (emphasis added).

3. On June 14, 2008, Plaintiff then executed a Council Bill, modifying the Contract to include the following arbitration provision:[1]

> In order to compel arbitration or to allow for enforcement of any arbitrator's award, the Owner agrees to a partial waiver of sovereign immunity for the sole purpose of submitting disputes arising under this Agreement to the jurisdiction of an arbitrator or arbitration panel, giving full legal effect to any order, judgment or award resulting from an arbitration proceeding, and allowing for the enforcement of an arbitration order, judgment or award.

[1] The Council Bill affirms the Parties' desire to arbitrate any claim arising under the Contract.

> Any Claim arising under this Agreement that cannot be resolved between the Project Officer and the Project Manager for Flintco shall be submitted to a dispute resolution conference, and if the dispute is not resolved in conference, then to mediation. If the dispute is not resolved in Mediation it will be submitted to binding arbitration. The dispute resolution conference shall consist of the submission of the dispute to the Contracting Official and the Chief Executive Officer of Flintco who shall meet to attempt to resolve the dispute prior to Mediation. Mediation shall not be commenced by either party until the Contracting Official and Chief Executive Officer of Flintco have had twenty (20) days to attempt to resolve the claim. If the dispute cannot be settled within twenty days the parties shall submit to mediation with a mediator to be agreed upon by the parties. If the dispute is not resolved in mediation it will be submitted to binding arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association (the "AAA Rules") within sixty (60) days of the unsuccessful mediation. Enforcement of an arbitration award shall be sought in either the Choctaw Tribal Court, or a Federal Court with jurisdiction. Should there be no Federal Court with jurisdiction; either party may seek enforcement of an arbitration award in a State Court of Oklahoma. Regardless of venue, enforcement of an arbitration award shall be consistent with the principles of the Federal Arbitration Act, 9 U.S.C. 1, *et seq.*

See Council Bill, hereinafter Exhibit "2" (emphasis added).

4. On September 14, 2023, Plaintiff filed this lawsuit against Defendant, alleging, *inter alia*, fraud relating to certain construction projects performed pursuant to the Contract. *See* Petition, ¶¶ 40–56.

5. The Contract at issue involves "commerce" within the purview of the FAA. *See* Exhibit "3," ¶¶ 12; *see also* 9 U.S.C.A. § 1.

6. Pursuant to the Contract, Defendant has elected to arbitrate any claims at issue in this litigation.

ARGUMENTS AND AUTHORITIES

I. THE FEDERAL ARBITRATION ACT APPLIES IN RESOLVING THIS DISPUTE.

The Federal Arbitration Act provides in pertinent part:

> A written provision in any . . . contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction, . . . or any agreement in writing to submit to arbitration an existing controversy arising out of such a contract, transaction, or refusal, shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract.

9 U.S.C. § 2.[2] In this case, there is no dispute the Parties executed a written contract or that the Contract involves commerce.[3] *See* Exhibit "1," p.45–46; Exhibit "2." Therefore, the FAA is applicable to governing the Parties' claims. Moreover, courts have upheld arbitration provisions, pursuant to the FAA, by submitting disputes arising from large construction projects to arbitration. *See Pennsylvania Eng'g Corp. v. Islip Res. Recovery Agency*, 710 F. Supp. 456, 460 (E.D.N.Y. 1989) (finding construction contract involving multimillion dollar project falls within the definition of commerce as applicable to the FAA); *see also Warren Bros. Co. v. Cmty. Bldg. Corp. of Atlanta, Inc.*, 386 F. Supp. 656, 664 (M.D.N.C. 1974). Therefore, the FAA applies to Plaintiff's claims.

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[2] Commerce is defined by the FAA as "commerce among the several States or with foreign nations, or in any Territory of the United States or in the District of Columbia, or between any such Territory and another, or between any such Territory and any State or foreign nation, or between the District of Columbia and any State or Territory or foreign nation, but nothing herein contained shall apply to contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce." 9 U.S.C.A. § 1.

[3] The Projects include, "Broken Bow Health Center, Broken Softball Fields, Poteau Remodel, McAlester project, Durant Oasis Pool, Durant Event Center, Grant Casino Hotel, McAlester Casino, Stringtown Casino, Tribal Office Complex, Choctaw Casino and Hotel in Durant, Grant Casino Hotel, McAlester Casino, Parking Structure, Choctaw Casino in Idabel, Durant waste water treatment plant renovations, and Cultural Center in Tuska Homma." *See* Petition, ¶ 12.

II. THE ARBITRATION CLAUSE REQUIRES THE CLAIMS ASSERTED IN THIS ACTION TO BE ARBITRATED.

The FAA provides that written contracts to arbitrate are "valid, enforceable, and irrevocable." 9 U.S.C.A. § 2. The FAA creates a presumption in favor of arbitration "as a shortcut to substantial justice with a minimum of court interference." *Rent–A–Center, W., Inc. v. Jackson*, 561 U.S. 63, 67, 130 S. Ct. 2772, 2776, 177 L.Ed.2d 403 (2010) ("The FAA reflects the fundamental principle that arbitration is a matter of contract . . . [and] thereby places arbitration Contracts on an equal footing with other contracts . . . and requires courts to enforce them according to their terms.").

Moreover, the FAA promotes a "liberal federal policy favoring arbitration Contracts," and "questions of arbitrability must be addressed with a healthy regard for the federal policy favoring arbitration." *Moses H. Cone Mem'l Hosp. v. Mercury Const. Corp.*, 460 U.S. 1, 24 (1983); *see also Perry v. Thomas*, 482 U.S. 483, 490 (1987) (stating that arbitration Contracts falling within the scope of the FAA "must be 'rigorously enforce[d]'") (citations omitted). Indeed, the "principal purpose of the FAA is to ensur[e] that private arbitration Contracts are enforced according to their terms." *AT&T Mobility, LLC v. Concepcion*, 563 U.S. 333, 344 (2011) (citations omitted).

With these standards in mind, compelling parties to arbitration requires analysis of only two issues: (1) whether a valid Contract to arbitrate exists; and (2) whether the particular dispute falls within the scope of that Contract. *See AT&T Tech., Inc. v. Commc'ns Workers of Am.*, 475 U.S. 643, 647–48 (1986). Once it is determined that the parties have entered into a binding contract to arbitrate, an "order to arbitrate the particular grievance should not be denied unless it may be said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute." *AT&T Tech., Inc.*, 475 U.S. at 650. As discussed *infra*, both elements of this inquiry require this Court to compel the Parties to arbitrate the disputes in this lawsuit.

III. THE COURT SHOULD COMPEL THE PARTIES TO ARBITRATION UNDER THE TERMS OF THE CONTRACT.

a. The Contract was validly executed, its terms are enforceable, and the arbitration clause is unambiguous.

There can be no dispute from the four corners of the Contract that Plaintiff, the Choctaw Nation, and Defendant, Flintco, LLC, voluntarily entered into the Contract, negotiated its terms (including the arbitration clause), and executed the Contract.

Under federal contract principles, "if the terms of a contract are not ambiguous, this court determines the parties' intent from the language of the agreement itself."[4] *Citizen Potawatomi Nation v. Oklahoma*, 881 F.3d 1226, 1239 (10th Cir. 2018); *see also Arizona v. Tohono O'odham Nation*, 818 F.3d 549, 560–61 (9th Cir. 2016) ("Federal common law follows the traditional approach for the parol evidence rule: A contract must be discerned within its four corners, extrinsic evidence being relevant only to resolve ambiguity in the contract.") (quotation and alterations omitted).

Indeed, the Contract unambiguously states, "Any Claim arising under this Agreement ... will be submitted to binding arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association." *See* Exhibit "1," p.45–46; Exhibit "2." Therefore, when viewed in its entirety, the Contract clearly demonstrates that the Parties intended to abide by the arbitration terms therein. Thus, this Court should find that the first prong of the arbitration

[4] To the extent Plaintiff argues that state law is applicable to contract formation, rather than federal law, the same is inapposite. Oklahoma's law of contract interpretation mirrors the federal common law. *See Gamble, Simmons & Co. v. Kerr–McGee Corp.*, 175 F.3d 762, 767 (10th Cir. 1999) (acknowledging that, in Oklahoma, "[i]f the contract is unambiguous its language is the only legitimate evidence of what the parties intended, and [courts] will not rely on extrinsic evidence to vary or alter the plain meaning" (citation omitted)); *see also JDT Capital, LLC v. Fowler*, CIV-20-781-SLP, 2020 WL 12811481, at *1 (W.D. Okla. Sept. 17, 2020) ("[The Western District of Oklahoma] decline[d] to reach the question of whether Oklahoma or federal common law applies to the validity and interpretation of [a contract] because of the similarity of those bodies of law.").

analysis is met, as the Parties validly entered into an enforceable contract with unambiguous arbitration terms governing this dispute.

b. The arbitration clause applies to all of the claims asserted in this action.

The second step of the inquiry is similarly satisfied in this case as the dispute and the claims involved clearly arise from the terms of the Contract. Courts in the Tenth Circuit apply a three-part test to determine whether an issue falls within the scope of an arbitration clause. *See Sanchez v. Nitro-Lift Tech.*, LLC, 762 F.3d 1139, 1146 (10th Cir. 2014).

The Court first classifies the arbitration provision as "either broad or narrow." *Id.* (quoting *Cummings v. FedEx Ground Packaging Sys., Inc.*, 404 F.3d 1258, 1261 (10th Cir. 2005)). Second, the Court determines whether the issue is collateral to the narrow or broad clause. *See id.* If the issue is collateral to a narrow clause, the collateral matter is generally considered beyond its purview; however, "[w]here the arbitration clause is broad, there arises a presumption of arbitrability and arbitration of even a collateral matter will be ordered if the claim alleged implicates issues of contract construction or the parties' rights and obligations under it." *Id.* (emphasis original).

The first part of this scope test supports compelling arbitration, as the Contract states, "Any Claim arising under this Agreement … will be submitted to binding arbitration." *See* Exhibit "1," p.45–46; Exhibit "2." (emphasis added); *Williams v. Imhoff*, 203 F.3d 758, 764-67 (10th Cir. 2000) (broadly construing the phrase "arising out of" to mean "'originating from,' 'growing out of,' or 'flowing from'" and collecting cases); *Brown v. Coleman Co.*, 220 F.3d 1180, 1184 (10th Cir. 2000) (explaining that arbitration clause stating "all disputes or controversies arising under or in connection with this Contract . . . will be settled exclusively by arbitration" was "the very definition of a broad arbitration clause") (omission in original) (emphasis added); *P & P Indus., Inc. v. Sutter*

Corp., 179 F.3d 861, 871 (10th Cir. 1999) (stating that arbitration clause covering "[a]ny controversy, claim, or breach arising out of or relating to this Contract . . . is a 'broad' one").

The second and third steps of this scope test further support compelling arbitration because none of Plaintiff's claims are merely "collateral" to the Contract. Instead, the causes of action asserted by Plaintiff are wholly reliant upon the Contract. Even if one of these claims could be classified as "collateral," arbitration would still be proper as each claim concerns the Parties' rights or obligations under the Contract and the Parties' claims and damages originate from the Contract. Moreover, "any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration, whether the problem at hand is the construction of the contract language itself or an allegation of waiver, delay, or a like defense to arbitrability." *Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 24–25, 103 S. Ct. 927, 941, 74 L. Ed. 2d 765 (1983).

Because the Parties' claims fall under the broad scope of the arbitration terms in the Contract, the parties should be compelled to prosecute these actions in arbitration. *Accord, Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth*, 473 U.S. 614, 626-28 (1985) (arbitration should be compelled where a valid arbitration contract exists that covers the claims at issue).

CONCLUSION

For the foregoing reasons, Defendant, Flintco, LLC, respectfully requests this Court compel arbitration of the claims asserted in this action to mandatory, binding arbitration. Furthermore, this Court should stay all proceedings herein relating to Flintco, including discovery, pending the arbitration between Plaintiff and Defendant.

WHEREFORE, PREMISES CONSIDERED, Defendant, Flintco, LLC, respectfully requests this Court compel arbitration of all claims asserted in this action, stay all proceedings herein related to Flintco, including discovery, pending the outcome of the arbitration between Parties, and further grant any relief this court deems just and equitable.

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CERTIFICATE OF SERVICE

I hereby certify that on January 3, 2024, I caused to be mailed in the United States Mail with proper postage fully prepaid thereon, a true and correct copy of the above and foregoing upon the following:

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