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 Judge: Mark Campbell

REPLY BRIEF IN SUPPORT OF DEFENDANT,
FLINTCO, LLC'S MOTION TO COMPEL ARBITRATION

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Flintco[1] respectfully submits its *Reply Brief in Support of Defendant, Flintco, LLC's Motion to Compel Arbitration and Brief in Support*. In support thereof, Flintco states as follows:

SUMMARY OF ARGUMENT

The Choctaw Nation asserts that the arbitration clause is not enforceable because: 1) Flintco "had no intention of performing up to the standards required by the Project"; 2) "the lawsuit the Nation filed is one for fraud"; and 3) "The Nation would not have consented to arbitration, or to the contract at all, except for the representations by Flintco." As set forth below, each of these arguments is without merit.

I. The parties' intent is determined from the language of the subject 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." *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). Here, the language in the arbitration clause is clear and explicit; thus, the parties' intent must be ascertained from the four corners of that document. The arbitration clause clearly evidences the parties' intent to be bound by its terms.

[1] All capitalized terms have the definitions assigned to them in Defendant's Motion to Compel Arbitration and Brief in Support, filed on January 5, 2024 (the "Motion to Compel Arbitration").

II. The label attached to the claim asserted by the Choctaw Nation is immaterial

A. The arbitration clause is "broad"

The arbitration clause states, "[a]ny Claim arising under this Agreement ... will be submitted to binding arbitration." The Choctaw Nation cites *McKinzie v. Am. Gen. Fin. Servs., Inc.*, 2012 OK CIV APP 37, ¶ 17, 276 P.3d 1082, 1087, to assert that the arbitration clause is not "broad." Yet, the language in the arbitration provision at issue in *McKinzie*[2] is not necessary for an arbitration clause to be deemed "broad."

Indeed, the United States Supreme Court declared more than 50 years ago that the following language is sufficient to deem an arbitration clause "broad,"

> Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by arbitration.

Prima Paint Corp. v. Flood & Conklin Mfg. Co., 388 U.S. 395, 398 (1967). *See also Brown v. Coleman Co.*, 220 F.3d 1180, 1184 (10th Cir. 2000) (explaining that an arbitration clause that states, "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").

Because the clause is "broad" as opposed to "narrow," "all claims with 'a significant relationship to the [Agreement,] regardless of the label attached' to them, arise out of and are related to the Agreement." *P & P Indus., Inc. v. Sutter Corp.*, 179 F.3d 861, 871 (10th Cir. 1999); *Asset Mgmt., Inc. v. Holt,* 487 F.Supp.2d 1274, 1288-89 (N.D.Okla.2007) ("As a general rule, tort claims are covered by 'broad' arbitration provisions, such as those extending to all claims 'arising

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[2] "all claims and disputes arising out of, in connection with, or relating to: My loan from Lender today; ... the validity and enforceability of this Arbitration Agreement and the Agreement, my understanding of them, or any defenses as to the validity and enforceability of the Agreement and this Arbitration Agreement; any claim or dispute based on any alleged tort (wrong), including Intentional torts; and any claim for injunctive, declaratory, or equitable relief." *McKinzie v. Am. Gen. Fin. Servs., Inc.*, 2012 OK CIV APP 37, ¶ 17, 276 P.3d 1082, 1087.

out of or relating to' the contract, so long as the tort claims 'have their roots in the relationship created by the contract.'").

The Choctaw Nation has recast its claim, from breach of contract to fraud, in an effort to avoid the arbitration clause. This it cannot do. *See Hood Elec., Inc. v. Dodson Const. Co.*, CIV-09-70-FHS, 2009 WL 960638, at *4 (E.D. Okla. Apr. 8, 2009) ("The Court concludes that all disputes raised by the parties [including] fraud [] and deceit [] fall within the scope of the parties' agreement to mediate and arbitrate. All such claims arise out of or relate to the parties' Subcontract.").

B. Even if the arbitration clause was "narrow," it would still encompass the claims at issue.

An arbitration provision will be construed as "narrow," when "the parties clearly manifested an intent to narrowly limit arbitration to specific disputes." *Cummings v. FedEx Ground Package Sys., Inc.*, 404 F.3d 1258, 1262 (10th Cir. 2005). Nowhere does the arbitration clause at issue narrow or limit its application to specifically enumerated causes of action (e.g., "breach of contract"). But even assuming the arbitration clause is "narrow," the fraud claim is not "collateral" to the parties' contract so as to escape the "purview" of the subject arbitration clause. *See Cummings v. FedEx Ground Package Sys., Inc.*, 404 F.3d 1258, 1262 (10th Cir. 2005).

The Choctaw Nation attempts to distinguish its fraud claim from Flintco's alleged breach of contract by suggesting that the "independent basis is that Flintco had duties to speak," i.e., to "report deficiencies." But the Petition makes it clear that such an obligation is based on the parties' contract. *See* Petition, ¶ 16 ("The construction manager shall monitor compliance by the separate contractors with their contractual safety requirements and report deficiencies."). Thus, the very basis for the Choctaw Nation's "fraud" claim is derived from, and dependent upon, Flintco's

alleged breach of contract. In other words, even if the arbitration clause was "narrow," the Choctaw Nation's "fraud" claims would still be subject to the arbitration clause.

III. The Choctaw Nation has not asserted that its consent to the arbitration clause was induced by fraud.

Title 9, Section 4 of the United States Code[3] "does not permit the federal court to consider claims of fraud in the inducement of the contract generally." *Prima Paint Corp. v. Flood & Conklin Mfg. Co.*, 388 U.S. 395, 404 (1967). Rather, a party may only dispute the validity of a contract's arbitration provision if there was fraud in the inducement of the arbitration provision itself. *Id*; *see also Rent-A-Ctr., W., Inc. v. Jackson*, 561 U.S. 63, 70, 130 S. Ct. 2772, 2778, 177 L. Ed. 2d 403 (2010) (stating that only challenges to an agreement to arbitrate are "relevant to a court's determination [of] whether the arbitration agreement at issue is enforceable.").

In other words, "a party's challenge ... to the contract as a whole, does not prevent a court from enforcing a specific agreement to arbitrate." *Rent-A-Ctr., W., Inc. v. Jackson*, 561 U.S. 63, 70, 130 S. Ct. 2772, 2778, 177 L. Ed. 2d 403 (2010). Policy favoring arbitration serves not only to "honor the plain meaning of the statute but also the unmistakably clear congressional purpose that the arbitration procedure, when selected by the parties to a contract, be speedy and not subject to

[3] Section 4 reads in pertinent part: "The court shall hear the parties, and upon being satisfied that the making of the agreement for arbitration or the failure to comply therewith is not in issue, the court shall make an order directing the parties to proceed to arbitration in accordance with the terms of the agreement ... If the making of the arbitration agreement or the failure, neglect, or refusal to perform the same be in issue, the court shall proceed summarily to the trial thereof."

delay and obstruction in the courts." *Prima Paint Corp. v. Flood & Conklin Mfg. Co.*, 388 U.S. 395, 404, 87 S. Ct. 1801, 1806, 18 L. Ed. 2d 1270 (1967).

Thus, the only relevant issue is whether Flintco fraudulently induced the Choctaw Nation into the arbitration clause. The Petition, however, does not contain so much as a whisper of "fraud in the inducement" as to the arbitration clause. There is no allegation that Flintco misled the Choctaw Nation about the arbitration clause itself. Likewise, there is no allegation that Flintco concealed the fact that the arbitration provision was a part of the parties' contract. Indeed, the Choctaw Nation would be hard pressed to make such an allegation—as it waived its sovereign immunity for the purpose of enforcing the arbitration clause, presumably not something that the Choctaw Nation takes lightly. Clearly, the Choctaw Nation was aware of, and consented to, the arbitration clause.

CONCLUSION

The Choctaw Nation has failed to allege, much less prove, that its consent to the arbitration clause was secured by fraud. Further, because the arbitration clause is "broad," it applies to any claims arising under the Construction Management Agreement—notwithstanding the "label" that the Choctaw Nation has attached to its claim. But even if the arbitration clause is narrow, the fraud claim is not "collateral" to the subject contract; instead, it is derived from, and dependent upon, the parties' contract. This matter must be compelled to arbitration.

WHEREFORE, PREMISES CONSIDERED, Defendant, Flintco, LLC, respectfully requests this Court grant its Motion to Compel Arbitration and Brief in Support, stay all proceedings herein related to Defendant, including discovery, pending the result of binding arbitration conducted in accordance with the Construction Industry Arbitration Rules of the

American Arbitration Association (the "AAA Rules"), and grant any further relief this Court deems just and equitable.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on February 19, 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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