



IOWA TRIBE OF OKLAHOMA DISTRICT COURT

**IOWA TRIBE OF
OKLAHOMA**

PLAINTIFF(S)

**SCOT L. CLAUS,
D. SAMUEL COFFMAN, and
VAIL C. CLOAR**

**ATTORNEY(S) FOR
PETITIONER(S)**

vs.

Case No. CIV-21-02

**MONSTER TECHNOLOGY
GROUP LLC; and AMERICAN
ARBITRATION
ASSOCIATION**

DEFENDANT(S)

RICHARD GRELLNER

**ATTORNEY(S) FOR
RESPONDENT(S)**

ORDER

DATE: October 11, 2023

JUDGE: Garrett Eller

On the 25th day of May, 2023, this Court ordered the parties to brief two (2) issues pertinent to what has been requested of this Court regarding multiple contracts and potentially conflicting clauses within the same. The Court has reviewed the briefs, responses, and the record and does hereby find:

The Iowa Tribe of Oklahoma (the “Tribe”) has maintained its stance that the Intellectual Property and Online Gaming Assets Purchase Agreement dated November 18, 2016 (the “November 2016 Agreement”) has been terminated and/or superseded by the Intellectual Property and Other Assets Purchase Agreement, dated September 15, 2017 (the “September 2017 Agreement”). Monster Technology Group, LLC (“Monster”) maintains the claims brought against the Tribe in Monster’s First Amended Petition filed January 29, 2021, filed under the rules of the American Arbitration Association (“AAA”), are all associated with the November 2016 Agreement. The Tribe seeks, in its original Complaint,

EXHIBIT

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a permanent injunction related to the pending arbitration, an injunction related to the exercise of jurisdiction over the Tribe, and a declaratory judgement relating to the exclusivity of any action related to the September 2017 Agreement being heard in this Court.

The pending arbitration action, referred to by both parties in their filed briefs, requests relief specifically from, and only under the scope of, the November 2016 Agreement. The Complaint filed in this matter requests relief and declarations of this Court regarding, and solely under the scope of, the September 2017 Agreement. While each side argues, in both the most recent briefs and other filings of record, as to which contract this dispute falls under, there have been no requests of this Court to determine the validity, existence, enforceability, or any other prima facie issue relating to the agreements.

This Court entered a Preliminary Injunction order against the pending arbitration claim made by Monster on the 13th day of April, 2021. In such Order, this Court made a finding of having subject matter jurisdiction. This finding, as stated in the Order, specifically referenced the September 2017 Agreement.

Within the scope of subject matter jurisdiction, ripeness is at issue here. The Tenth Circuit has stated,

“Ripeness is principally "a question of timing" that prevents "courts, through avoidance of premature adjudication, [**7] from entangling themselves in abstract disagreements." Id. at 1499. Generally, we evaluate ripeness under a two-factor test that considers "both the fitness of the issue for judicial resolution and the hardship to the parties of withholding judicial consideration." *Sierra Club v. Yeutter*, 911 F.2d 1405, 1415 (10th Cir. 1990).

As to fitness, we focus on "whether the case involves uncertain or contingent future events that may not occur as anticipated, or indeed may not occur at all." *Gonzales*, 64 F.3d at 1499. In assessing hardship, we look at "whether the challenged action creates a 'direct and immediate dilemma' for the parties." *Id.* (quoting *El Dia, Inc. v. Hernandez Colon*, 963 F.2d 488, 495 (1st Cir. 1992)).

Auto-Owners Ins. Co. v. Bolt Factory Lofts Owners Ass'n, 823 Fed. Appx. 686, 690

Applying the analysis as laid out by the Tenth Circuit, this Court has first assessed whether the case involves uncertain or contingent future events that may not occur as anticipated or indeed may not occur at all. The cause of action brought by Monster in its Amended Petition for Arbitration is solely based on the November 2016 Agreement. The dispute as to whether that agreement is in existence, terminated, or having some other disposition continues to become a central issue at hand. Therefore, since the Complaint filed by the Tribe is specifically within the scope of the September 2017 Agreement, then it is clear that the case involves uncertain or contingent future events (the filing of a cause of action under the September 2017 Agreement) that may not occur as anticipated, or indeed may not occur at all. Continuing to the second factor, the hardship inquiry is reviewed on whether the challenged action creates a direct and immediate dilemma for the parties. The challenged action filed in this Court is asking to declare certain relationships between the parties regarding an agreement that is not at issue. While there is no doubt an ongoing dilemma between the parties, having a declaratory judgement issued related to an agreement that may not even be at issue does not create a current or ongoing issue and creates a circular effect that brings the discussion back to the first element of this factor test.

"As a jurisdictional prerequisite, ripeness may be examined by [the] court sua sponte." *Friends of Marolt Park v. United States DOT*, 382 F.3d 1088, 1093 (Citing *Keyes v. School Dist. No. 1*, 119 F.3d 1437, 1444 (10th Cir. 1997)). Under the order entered by this Court on April 13, 2021, the ruling of subject matter jurisdiction over the topics and controversies would have been ripe for review if such controversies were actually under the September 2017 Agreement. However, that, is not the case. All claims have been brought specifically under the November 2016 Agreement and this Court has been presented no other evidence or testimony to the contrary but for references to other agreements. If one party seeks damages or claims under a specific agreement, contract, or other relationship of the parties, it would be improper to utilize another source document to create jurisdiction.

The matter, being first filed under the rules of the AAA, would have more than one avenue for a party to obtain a determination of what is actually at issue. One such avenue being rule thirty-four (34) of the rules and procedures of the AAA, which states, "The arbitrator may allow the filing of and make rulings upon a dispositive motion only if the arbitrator determines the moving party has shown that the motion is likely to succeed and to dispose of or narrow the issues in the case." The Second (2nd) Circuit has held that when an "...agreement here incorporates American Arbitration Association ("AAA") rules, which expressly permit the arbitrator to consider dispositive motions. AAA Employment Arbitration Rules and Mediation Procedures R. 27. AAA Rule 27 does not exclude motions to dismiss from such permissible "dispositive motions." (*Hermes of Paris, Inc. v. Swain*, 2021 U.S. App. LEXIS 33075). While this matter specifically cites the rules for

employment, the language is the same under Rule thirty-four (34) for commercial arbitration matters.

The November 2016 Agreement has been argued to no longer exist due to termination language in the September 2017 Agreement. That question is not before this Court, nor has it been asked of this Court to be determined. As such this Court will not make any judicial determination as to the continued existence, termination, supersession, or any other legal effect regarding the November 2016 Agreement.

IT IS HEREBY ORDERED Plaintiff's Motion for Default Judgment is denied;

IT IS FURTHER HEREBY ORDERED Defendant's Motion to Dismiss is denied;

IT IS FURTHER HEREBY ORDERED Plaintiff's Motion to Strike Defendant's Motion to Dismiss is moot;

IT IS FURTHER HEREBY ORDERED pursuant to a sua sponte review, this Court has not obtained subject matter jurisdiction due to the lack of ripeness of any judiciable matter;

IT IS FURTHER HEREBY ORDERED the temporary injunction enjoining the arbitration from advancing is stricken;

IT IS FURTHER HEREBY ORDERED due to the lack of subject matter jurisdiction regarding the ripeness of the claims presented, this matter is dismissed without prejudice;



Judge Garrett Eller