

IN THE CHANCERY COURT, STATE OF WYOMING

2023 WYCH 3

Wayne Coleman Construction, Inc.,

Plaintiff,

v.

GH Phipps Wyoming, LLC,

Defendant.

Case No. CH-2023-0000005

WY Chancery Court
May 26 2023 11:42AM
CH-2023-0000005
70096372
N/A

FILED

Order Compelling Arbitration and Staying Action

[¶ 1] Before the court is GH Phipps Wyoming, LLC's motion to compel arbitration and stay this action. The motion is fully briefed and ready for disposition. For the following reasons, the court grants the motion and stays this action pending arbitration.

BACKGROUND

[¶ 2] This is a payment dispute between a contractor and subcontractor working on the Casper-Natrona County International Airport. Subcontractor, Wayne Coleman Construction, alleges contractor, GH Phipps, did not pay the full amount due under a contract between the parties.

[¶ 3] Wayne Coleman Construction filed its complaint on March 8, 2023 (FSX No. 69298884), alleging three claims for relief: (1) breach of contract; (2) unjust enrichment; and (3) bad faith in the contract.

[¶ 4] In response, on April 6, 2023, GH Phipps moved to compel arbitration and stay proceedings (FSX No. 69747363). GH Phipps asserts the contract at issue broadly mandates arbitration of any controversy between the parties. The arbitration provision states, in relevant part:

In the case of any claims, disputes or other matters in question between the Subcontractor and GHP of WY but not related to an action between GHP of

WY and the Owner, the Subcontractor agrees that said controversy shall be decided by arbitration conducted in Laramie, Wyoming or the county in which the project is located.

Compl., Ex. B, ¶ 11.6.

[¶ 5] In its opposition, filed on April 25, 2023, Wayne Coleman Construction questions not the arbitration provision's validity, but its applicability. (FSX No. 69892436). The subcontractor concedes the provision mandates arbitration of contractual disputes but argues the same is not true of the two tort claims—unjust enrichment and bad faith. Because this action involves non-contractual claims, Wayne Coleman Construction urges the court to retain jurisdiction and regard GH Phipps' motion as one for alternative dispute resolution assignment under Rule 40.

[¶ 6] GH Phipps replied on April 27, 2023. (FSX No. 69908749). The contractor reiterates the arbitration provision's breadth and notes the Wyoming Uniform Arbitration Act requires the court to stay the case because the breach of contract claim undisputedly falls under the provision and at the very least the non-contractual claims are interwoven with and should not be severed from the contractual claim.

LAW

[¶ 7] Wyoming law favors arbitration. *T & M Properties v. ZVFK Architects & Planners*, 661 P.2d 1040, 1043 (Wyo. 1983). Though it favors arbitration, Wyoming law does not compel parties to arbitrate unless they have agreed to do so. *Snow v. Silver Creek Midstream Holdings, LLC*, 467 F. Supp. 3d 1168, 1177 (D. Wyo. 2020). Contract creates the rights and obligations to arbitrate. *Miller v. Life Care Centers of Am., Inc.*, 2020 WY 155, ¶ 14, 478 P.3d 164, 168–69 (Wyo. 2020) (citing Wyo. Stat. § 1-36-103). Thus, state contract principles govern the arbitration analysis. *See, e.g., Kindred Healthcare Operating, Inc. v. Boyd*, 2017 WY 122, ¶ 12, 403 P.3d 1014, 1018–19 (Wyo. 2017).

[¶ 8] Courts applying these principles seek to enforce the contracting parties' intent. *Jackson State Bank v. Homar*, 837 P.2d 1081, 1089 (Wyo. 1992). If the arbitration agreement is unambiguous, the court discerns intent from the agreement's plain language. *Id.* Interpreting unambiguous arbitration agreements is a matter of law for the courts. *Thorkildsen v. Belden*, 247 P.3d 60, 62 (Wyo. 2011).

[¶ 9] A court that finds the existence of a valid arbitration agreement must define the scope of that agreement by resolving any doubts in favor of arbitration. *Miller*, ¶ 15, 478 P.3d at 169. A court that denies a motion to compel arbitration must have “positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute.” *Sanchez v. Nitro-Lift Techs., L.L.C.*, 762 F.3d 1139, 1147–48 (10th Cir. 2014) (quoting *Local 5–857 Paper, Allied–Industrial, Chemical & Energy Workers International Union v. Conoco, Inc.*, 320 F.3d 1123, 1126 (10th Cir. 2003)). This presumption of arbitrability rings especially true when the valid arbitration provision is broadly drafted. *Id.*

[¶ 10] When a court finds that an issue falls within the scope of a valid arbitration agreement, it must order the parties to proceed with arbitration. *Panhandle E. Pipe Line Co. v. Smith*, 637 P.2d 1020, 1024 (Wyo. 1981). When a court so orders, it must stay the underlying action. *Inman v. Grimmer*, 2021 WY 55, ¶ 14, 485 P.3d 396, 401 (Wyo. 2021).

[¶ 11] These order-and-stay requirements arise from Wyo. Stat. § 1-36-104(c). That subsection’s opening and ending lines mandate a stay when an issue is subject to arbitration, but the middle portion makes a stay of severable issues permissive.

Any action or proceeding involving an issue subject to arbitration **shall be stayed** if an order for arbitration or an application therefor has been made or, **if the issue is severable, the stay may be with respect thereto only**. When the application is made in such action or proceeding, the **order for arbitration shall include such stay**.

Wyo. Stat. 1-36-104(c) (emphasis added).

[¶ 12] In short, the Uniform Arbitration Act states courts must stay issues subject to arbitration and may stay severable issues. *See Sand v. Sch. Serv. Emps. Union, Loc.*, 402 N.W.2d 183, 185–86 (Minn. Ct. App. 1987) (interpreting identical provision in Minnesota’s Uniform Arbitration Act)

ANALYSIS

[¶ 13] The parties do not dispute the validity of the arbitration provision. The issue is whether the provision is broad enough to encompass the non-contractual claims. And, if not, then what is to be done with the non-contractual claims?

A. The arbitration provision encompasses each claim.

[¶ 14] Determining scope begins with the arbitration provision’s language. The provision makes arbitrable “any claims, disputes or other matters in question between the Subcontractor and GHP of WY . . .” *Compl.*, Ex. B, ¶11.6. Notably, the provision does not limit these “claims, disputes or other matters” to contractual claims, contractual disputes, or other matters arising from or related to the contract. *Id.*

[¶ 15] The provision’s only limitation excludes “claims, disputes or other matters . . . related to an action between GHP of WY and the Owner. . .” *Id.* This limitation does not narrow the provision’s scope in this action between contractor and subcontractor.

[¶ 16] Because the parties did not narrow the arbitration provision’s reach, this court concludes the parties intended to arbitrate all claims, contractual and non-contractual. This conclusion follows the presumption of arbitrability, effectuates plain language, and aligns with the ways other courts have viewed such broadly worded arbitration provisions.

[¶ 17] As noted above, given the policy favoring arbitration, courts determine the scope of arbitration agreements by resolving any doubts in favor of arbitration. *Miller*, ¶15, 478 P.3d at 169. Here, plain language leaves little room for doubt. The plain meaning of “claims,” “disputes,” and other “matters” does not distinguish between contractual and non-contractual claims.

- “Claim” means “[t]he assertion of an existing right; any right to payment or to an equitable remedy, even if contingent or provisional.”¹
- “Dispute” means “[a] conflict or controversy, esp[ecially] one that has given rise to a particular lawsuit.”²
- “Matter” means “[a] subject under consideration, esp[ecially] involving a dispute or litigation.”³

[¶ 18] Courts view broadly worded arbitration provisions as encompassing both contractual and non-contractual claims. For instance, the Wyoming Supreme Court treated an expansive arbitration provision as intent to arbitrate any dispute arising from

¹ Claim, Black’s Law Dictionary (11th Ed. 2019).

² Dispute, Black’s Law Dictionary (11th Ed. 2019).

³ Matter, Black’s Law Dictionary (11th Ed. 2019).

the relationship between the parties. *Jackson State Bank*, 837 P.2d at 1088-89. Courts from other jurisdictions take a similar approach. *See, e.g., Westminster Sec. Corp. v. Petrocom Energy Ltd.*, 456 F. App'x 42, 43–44 (2d Cir. 2012) (finding the “arbitration agreement was worded broadly enough to encompass [plaintiff’s] unjust enrichment claim” because the claim fell within the scope of plaintiff’s role under the agreement); *Olsen Sec. Corp. v. Certain Underwriters at Lloyd’s London*, No. CV 22-3120, 2023 WL 405437, at *6 (E.D. La. Jan. 25, 2023)(holding arbitration provision covering “all matters in difference” between the parties encompassed extracontractual claims, including bad faith).

[¶ 19] Because the court concludes each claim is subject to arbitration, the court must stay the entire action. Wyo. Stat. § 1-36-104(c)(“An action or proceeding involving an issue subject to arbitration shall be stayed . . .”). If the court reached the opposite conclusion, it would nevertheless enjoy discretion to either limit the stay to the contractual claims or stay the entire action. Wyo. Stat. § 1-36-104(c) (“[I]f the stay is severable, the stay may be with respect thereto only.”).

B. The court has no choice but to stay this action.

[¶ 20] Having concluded each claim is arbitrable and the entire action must be stayed, the court need not address the severability issue. The court, though, will address Wayne Coleman Construction’s request to treat GH Phipps’ motion to compel arbitration as one for assignment under Rule 40.

[¶ 21] Nothing in statute or case law permits such treatment. When the court assigns a case to alternative dispute resolution, it “retains jurisdiction” and “shall not suspend any deadlines or cancel any hearings or trial.” W.R.C.P.Ch.C. 40(b)(2)(F).

[¶ 22] Compare this to the Uniform Arbitration Act. When an issue falls within the scope of a valid arbitration agreement, the court must order the parties to proceed with arbitration. Wyo. Stat. § 1-36-104(c); *Panhandle E. Pipe Line Co*, 637 P.2d at 1024 (Wyo. 1981). The arbitration order must stay the underlying action. Wyo. Stat. § 1-36-104(c); *Inman*, ¶ 14, 485 P.3d at 401. This is what the court must do here.

CONCLUSION

[¶ 23] For the reasons explained, GH Phipps’ motion to compel arbitration is **GRANTED**. This case is **STAYED** pending the outcome of arbitration proceedings.

IT IS SO ORDERED.

Dated: 05/26/2023

/s/ Richard L. Lavery
CHANCERY COURT JUDGE