

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

ELI RUBEL

v.

**ACCLAIM FINANCIAL GROUP, LLC
and FPX, LLC**

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Case No. 6:15-cv-859

ORDER

Currently before the Court is Defendant Acclaim Financial Group, LLC’s Motion to Compel Arbitration and Dismiss or Stay Lawsuit (Doc. No. 7). In its motion, Acclaim asserts that an arbitration clause included in a contract between the parties prevents Plaintiff, Eli Rubel, from pursuing his breach of contract claim in this Court. Having considered the parties’ submissions, the Court **GRANTS** Acclaim’s motion.

I. Background

Eli Rubel was the cofounder, CEO, and largest single stockholder of a start-up software company called Secure Document Technology Company d/b/a Glider (Glider) that created a software system for automating the closing of sales contracts between companies. On February 10, 2014, Glider and Rubel entered into a Stock Sale Agreement with Defendant Acclaim Financial Group, LLC, whereby Acclaim agreed to purchase Glider and its software technology for a total of \$3,000,000, divided between an initial cash payment of \$1,000,000 and a “Promissory Note Payment” of \$2,000,000.

The Stock Sale Agreement included a provision entitled “Governing Law/Arbitration,” which sets out how the parties agreed to address disputes that might arise following the close of the sale and states in relevant part:

This Agreement and all claims or causes of action that may be based upon, arise out of or relate to this Agreement or the Transaction Documents will be

construed in accordance with and governed by the internal laws of the State of Texas applicable to agreements made and to be performed entirely within such State without regard to conflicts of laws principles thereof. Any dispute arising under or in connection with any matter of any nature (whether sounding in contract or tort) relating to or arising out of this Agreement, shall be resolved exclusively by arbitration.

Doc. No. 3-1, Stock Sale Agreement § 11.2. “Transaction Documents,” as it is used in the above provision, is defined in Section 3.1 of the Stock Sale Agreement as “documents outlined in Section 3.2,” which, in turn, states in part, “Purchaser [Acclaim] shall deliver to each Stockholder a duly executed promissory note in connection with the Promissory Note Payment . . . in the form attached hereto as **Exhibit 3.2.3** (the ‘Promissory Note’).” *Id.* § 3.2.3.

As part of the payment arrangement under the Stock Sale Agreement, Acclaim issued Rubel a promissory note (the “Rubel Note”), payable on February 10, 2015, in the amount of \$1,143,303.09 in principal, plus interest, which represented his share of the \$2,000,000 due under the Promissory Note Payment. The Rubel Note included its own dispute resolution provision entitled “Governing Law; Jurisdiction,” which states in relevant part:

EACH PARTY HERETO HEREBY IRREVOCABLY SUBMITS TO THE EXCLUSIVE PERSONAL AND SUBJECT MATTER JURISDICTION OF THE STATE OR FEDERAL COURTS OF THE STATE OF TEXAS OVER ANY SUIT, ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS NOTE.

Id. § 5(i). In early 2015, Rubel and Acclaim agreed to extend the maturity date of the Rubel Note to August 10, 2015. Rubel filed suit on September 17, 2015, alleging that he never received payment on the Note, and on October 19, 2015, Acclaim filed its Motion to Compel Arbitration.

II. Legal Standard

Courts conduct a two-step analysis when considering a motion to compel arbitration under the Federal Arbitration Act. *Tittle v. Enron Corp.*, 463 F.3d 410, 418 (5th Cir. 2006). First, the Court must determine “whether the parties agreed to arbitrate the dispute,” and second, the

Court must determine “whether legal constraints external to the parties’ agreement” foreclose arbitration of the dispute. *Id.* at 418. Rubel does not contend that external legal constraints foreclose arbitration of his breach of contract claim. Therefore, the Court needs only to reach the first step of the analysis to resolve the question of arbitrability.

Whether the parties agreed to arbitrate the dispute requires considering (a) “whether there is a valid agreement to arbitrate between the parties” and (b) “whether the dispute in question falls within the scope of that arbitration agreement.” *Id.* at 418–19. The validity of the agreement is governed by state law contract principles. *Sharpe v. AmeriPlan Corp.*, 769 F.3d 909, 914 (5th Cir. 2014). In determining the scope of the arbitration agreement, courts apply the federal policy favoring arbitration and resolve ambiguities in favor of arbitration. *Id.* Thus, “[a] valid agreement to arbitrate applies unless it can be said with positive assurance that the arbitration clause is not susceptible of an interpretation which would cover the dispute at issue.” *Jones v. Halliburton Co.*, 583 F.3d 228, 235 (5th Cir. 2009).

III. Analysis

Acclaim asserts that Rubel must proceed with his breach of contract claim against it through arbitration because the Stock Sale Agreement’s arbitration clause extends to “any dispute arising under or in connection with any matter of any nature relating [to] or arising out of the Agreement.” Doc. No. 7 at 5. And because the Rubel Note was executed as an integral part of the Agreement, it necessarily falls within the categories of claims the parties agreed to arbitrate.

Rubel responds that the Note and the Stock Sale Agreement are two separate agreements, each of which is enforceable under its own terms. Thus, because the Note contains its own dispute resolution provision that conflicts with the Agreement’s arbitration provision, Rubel maintains that the arbitration provision is invalid. Alternatively, Rubel argues that even if the

arbitration provision is valid, his breach of contract claim based on nonpayment of the Note does not fall within the scope of the parties' agreement to resolve claims through arbitration.

As a preliminary matter, the Court concludes that the Stock Sale Agreement and the Note should be construed together. *See Lizalde v. Vista Quality Markets*, 746 F.3d 222, 226 (5th Cir. 2014) (“When several documents represent one agreement, all must be construed together in an attempt to discern the intent of the parties, reconciling apparently conflicting provisions and attempting to give effect to all of them, if possible.”). Although each of these documents governs different aspects of the Glider acquisition, the parties do not dispute that both were executed at the same time as part of the transaction, and both documents expressly anticipate the execution of the other. *See Personal Sec. & Safety Sys. Inc. v. Motorola Inc.*, 297 F.3d 388, 393 (5th Cir. 2002). Furthermore, the parties demonstrated the importance of each document to the overall transaction by attaching a form of the Promissory Note to the Stock Sale Agreement. These circumstances indicate that each of “[t]he individual agreements were integral and interrelated parts of the [Glider acquisition],” and for that reason, they should be read together. *See id.* Thus, the Court cannot disregard the existence of the Stock Sale Agreement’s arbitration clause simply because Rubel has asserted a breach of contract claim based on nonpayment of the Note. Instead, the Court must examine and consider both writings in an effort to harmonize and give effect to all of their provisions so that none will be rendered meaningless. *Lizalde*, 746 F.3d at 227; *FPL Energy, LLC v. TXU Portfolio Mgmt. Co., L.P.*, 426 S.W.3d 59, 63 (Tex. 2014).

A. Validity of the Arbitration Agreement

“[T]he question whether an arbitration provision conflicts with other dispute resolution provisions is properly analyzed under the ‘validity’ step of the arbitration analysis.” *Sharpe*, 769 F.3d at 915. State law controls this consideration “and the Federal Arbitration Act’s presumption in favor of arbitration is not implicated.” *Id.* Rubel argues that the Note’s dispute resolution

provision conflicts with the Stock Sale Agreement's arbitration clause because the Note specifically provides that with regard to "any suit, action or proceeding arising out of or relating to [the] Note," both parties "irrevocably submit[ted themselves] to the exclusive personal and subject matter jurisdiction of the state or federal courts of the State of Texas." Rubel Note § 5(i). Rubel maintains that this demonstrates that the parties bound themselves to separate dispute resolution methods for the Stock Sale Agreement and the Note.

Rubel further contends that the Stock Sale Agreement's language supports this interpretation. Pointing to the first sentence of Section 11.2 of the Agreement, Rubel notes that the parties agreed Texas law would govern both the Agreement and the Transaction Documents—which, by definition, include the Rubel Note. *See* Agreement § 11.2 ("This Agreement and all claims or causes of action that may be based upon, arise out of or relate to this Agreement or the Transaction Documents will be construed in accordance with and governed by the internal laws of the State of Texas . . ."). Rubel argues that the next sentence, however, establishes that only disputes related to the Agreement, and not those related to the Transaction Documents, are subject to arbitration. *See id.* ("Any dispute arising under or in connection with any matter of any nature (whether sounding in contract or tort) relating to or arising out of this Agreement, shall be resolved exclusively by arbitration."). Thus, because the arbitration clause does not use the term "Transaction Documents," Rubel maintains that the parties agreed to litigate claims arising out of the Rubel Note, rather than submit them to arbitration.

Rubel's argument is unpersuasive. Although the Note does indicate that the parties agreed to submit themselves to the jurisdiction of Texas courts with regard to any suit, action or proceeding arising out of or relating to the Note, the dispute resolution provision does not unequivocally exclude application of the Agreement's arbitration clause to the Note. Rather, the

Note's provision functions as a forum selection clause. Instead of encompassing "any dispute" as the arbitration clause does, the Note's dispute resolution provision extends only to "any suit, action or proceeding." Thus, when reading the arbitration clause in conjunction with the Note's dispute resolution provision, it becomes clear that the Note requires the parties to "litigate in Texas courts only those disputes that are not subject to arbitration—for example, a suit to challenge the validity or application of the arbitration clause or an action to enforce an arbitration award." *Motorola*, 297 F.3d at 396. Under such an interpretation, the Note's provision "still has effect in determining where any lawsuit—even one that may result in an order compelling arbitration—must be brought." *Sharpe*, 769 F.3d at 916. Accordingly, the Court concludes that the two provisions do not conflict, and therefore, the parties' agreement to arbitrate disputes arising out of matters related to the Stock Sale Agreement is valid.

B. Scope of the Arbitration Agreement

Where, as here, an arbitration provision purports to cover all disputes "relating to" the agreement, the Fifth Circuit has held that "the provision is 'not limited to claims that literally 'arise under the contract,' but rather embrace[s] all disputes between the parties having a significant relationship to the contract regardless of the label attached to the dispute.'" *Motorola*, 297 F.3d at 393 (quoting *Pennzoil Exploration & Prod. Co. v. Ramco Energy Ltd.*, 139 F.3d 1061, 1067 (5th Cir.1998)). In challenging the scope of the Agreement's arbitration clause, Rubel reasserts his arguments made regarding the clause's validity. Because the provision references only "the Agreement," and not the "Transaction Documents," Rubel maintains that disputes arising out of the Note are not within the scope of the arbitration provision.

Rubel's argument sidesteps the arbitration clause's clear language. Although it does not directly reference the Transaction Documents, the arbitration clause does state that "[a]ny dispute arising under . . . any matter of any nature . . . relating to . . . this Agreement, shall be


resolved exclusively by arbitration.” *See id.* The Transaction Documents—and more specifically, the Rubel Note—are “matters relating to the Agreement” for the same reasons the Court concluded that the Note and the Agreement should be construed together. In executing the Agreement, the parties explicitly contemplated that Acclaim would issue promissory notes to each of Glider’s shareholders to secure payment of the remaining balance of the Glider purchase price. As such, it is evident that the Agreement and the Rubel Note are “integral and interrelated parts” of the same transaction. *Motorola*, 297 F.3d at 393. Stated differently, the circumstances surrounding the completion of the Glider acquisition make clear that the Note and disputes arising thereunder have a significant relationship to the Agreement. Therefore, by the plain language of the arbitration clause, Rubel’s breach of contract claim against Acclaim must be resolved by arbitration. *See id.* at 394–95 (“[W]here the parties include a broad arbitration provision in an agreement that is ‘essential’ to the overall transaction, we will presume that they intended the clause to reach all aspects of the transaction—including those aspects governed by other contemporaneously executed agreements that are part of the same transaction.”). Accordingly, the Court **GRANTS** Defendant Acclaim Financial Group, LLC’s Motion to Compel Arbitration.

IV. Conclusion

For the reasons discussed more thoroughly above, Defendant Acclaim Financial Group, LLC's Motion to Compel Arbitration and Dismiss or Stay Lawsuit (Doc. No. 7) is **GRANTED**. Rubel's breach of contract claim against Acclaim shall be submitted to arbitration in accordance with the parties' agreement and is **DISMISSED WITH PREJUDICE** from this action.

It is SO ORDERED.

SIGNED this 9th day of February, 2016.


MICHAEL H. SCHNEIDER
UNITED STATES DISTRICT JUDGE