

ENTERED

January 24, 2018

David J. Bradley, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

WEST AFRICAN VENTURES LIMITED
and
SEA TRUCKS GROUP FZE,

Plaintiffs,
VS.

RANGER OFFSHORE, INC.
and
SUNTX CAPITAL PARTNERS II GP, LP,

Defendants.

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CIVIL ACTION NO. 4:17-CV-00548

ORDER

Before the Court is Plaintiff West African Ventures Limited’s (“WAV”) and Sea Trucks Group FZE’s (“STG”) Motion to Dismiss and/or Stay Defendant Ranger Offshore Inc.’s (“Ranger”) Counterclaims (Doc. #12), Defendant’s Response in Opposition (Doc. #20), Plaintiffs’ Reply to Defendant’s Response (Doc. #22), and Defendant’s Sur-reply (Doc. #24). The Court also held oral argument on August 3, 2017. After reviewing counsels’ arguments and the applicable legal authority, the Court grants Plaintiffs’ Motion to Stay this case in favor of the arbitration of Ranger’s counterclaims.

I. Background

Plaintiffs brought suit seeking to enforce eight Payment Guarantees (“Guarantees”) against Ranger and SunTx. Doc. #1 at 3. Pursuant to these Guarantees, Ranger (or SunTx) is the Guarantor of payments arising out of various contracts entered into by its subsidiaries. The subsidiaries, Ranger Subsea Nigeria Limited (“RSNL”) and Ranger International Limited (“RIL”), are party to Charterparties and Service Agreements (“Underlying Contracts”) with WAV and/or STG relating to oil and gas production projects offshore Nigeria, Africa (Shell, Conoil, and Chevron Projects).

RSNL and RIL failed to make various payments owed to WAV and STG pursuant to the Underlying Contracts. WAV and STG now seek to enforce the Payment Guarantees against Ranger and/or SunTx as the respective Guarantor. In response, Ranger brought several counterclaims against WAV and STG. Plaintiffs now move to dismiss Ranger's counterclaims under Fed. R. Civ. P. 12(b)(1) for lack of standing and Fed. R. Civ. P. 12(b)(6) for failure to state a claim upon which relief can be granted. In the alternative, Plaintiffs move for a stay of these proceedings in favor of arbitration of Defendant's counterclaims under Section 3 of the Federal Arbitration Act ("FAA"), 9 U.S.C. § 1 *et seq.*, pursuant to the language of the Guarantees and Underlying Contracts.

A. Guarantees Provisions

All Guarantees at issue in this case contain the same two provisions applicable to the Court's determination of this Motion.¹ Provision 5, "Limited Nature of this Guarantee," states:

Notwithstanding anything in this Guarantee to the contrary, the liabilities and obligations, individually or collectively of the Guarantor [Ranger] to the Beneficiary [WAV or STG] shall not be greater than the liabilities and obligations of the Contractor [RSNL and RIL] to the Beneficiary [WAV or STG] under the Contracts [Underlying Contracts], and *except as waived or acknowledged herein*, the Guarantor [Ranger] shall have the benefit of any defenses, counterclaims or limitations of liability available to the Contractor [RSNL and RIL] pursuant to the Contracts [Underlying Contracts]. (emphasis added).

Provision 4, "Guarantee," states, in relevant part:

The Guarantor [Ranger] acknowledges that the Statement of Account is accurate and that the sums which are said to be due and owing are admitted debts of the Contractor [RSNL and RIL], are not contested and that the Contractor [RSNL and RIL] *has no right to set-off, deduction or other claim or defense* in respect thereof *except* as may be expressly agreed in writing between Contractor [RSNL and RIL] and Beneficiary [WAV or STG] *or as may have been determined by a competent tribunal under the Contracts* [Underlying Contracts]. (emphasis added).

¹ The Guarantees are attached as exhibits to Plaintiffs' Complaint and the Court will hereafter refer to Provisions 4 and 5 of the Guarantees generally. Doc. #1, Ex. 1 at 3 ¶¶ 4,5; Ex. 6 at 3 ¶¶ 4,5; Ex. 7 at 2 ¶¶ 4,5; Ex. 9 at 2 ¶¶ 4,5; Ex. 10 at 2 ¶¶ 4,5; Ex. 14 at 2 ¶¶ 4,5; Ex. 15 at 2 ¶¶ 4,5; Ex. 17 at 2 ¶¶ 4,5.

Ranger argues that Provision 5 gives it the ability to assert the counterclaims that belong to RSNL and RIL (which it refers to as “counterclaims or offsets”) in this case.² WAV argues that the language of Provision 5 must be interpreted in light of the language of the Guarantee as a whole, specifically pointing the Court to Provision 4. Based upon the Guarantee as a whole, WAV argues that Ranger does not have standing to assert counterclaims that belong to RSNL and RIL, and even if it does have standing that those counterclaims are subject to mandatory arbitration as dictated by the Underlying Contracts.

B. Underlying Contracts’ Arbitration Agreement

All of the Underlying Contracts contain mandatory arbitration clauses. The arbitration clause (Provision 34(a)) within the Charterparties states “. . . any dispute arising out of or in connection with this Charter Party shall be referred to arbitration in London . . .”. Doc. #1, Ex. 2 at 22; Ex. 3 at 24; Ex. 4 at 24; Ex. 5 at 18; Ex. 11 at 18; Ex. 12 at 18; Ex. 13 at 18. The Service Agreements also have a dispute resolution provision with an arbitration clause. Doc. #1, Ex. 8 at 11, Ex. 16 at 10. Accordingly, the appropriate place for dispute resolution based on the Underlying Contracts is an arbitration tribunal. Ranger argues that its counterclaims are not subject to arbitration because it is not a party to the Underlying Contracts and also that WAV has waived any right to arbitration by bringing suit to enforce the Guarantees.

II. Legal Standard

When a court determines there is a written agreement to arbitrate and that issues raised are within that agreement, the court must stay the case in favor of arbitration upon a party’s

² WAV and STG argue that the language of the Guarantee(s) does not give Ranger standing to assert the counterclaims that belong to RSNL and RIL, however, the Court finds that Provision 5 allows Ranger to bring such claims subject to the limitations of Provision 4 as discussed by the Court in this Order. Therefore, WAV and STG’s Fed. R. Civ. P. 12(b)(1) motion to dismiss Ranger’s counterclaims for lack of standing is denied.

motion to stay under 9 U.S.C. § 3. *Complaint of Hornbeck Offshore (1984) Corp.*, 981 F.2d 752, 754 (5th Cir. 1993) (citing *Midwest Mech. Contractors, Inc. v. Commw. Constr. Co.*, 801 F.2d 748, 751 (5th Cir. 1986)).³ The arbitrability of a dispute is to be decided by the courts on the basis of the contract entered into by the parties. *Life of Am. Ins. Co. v. Aetna Life Ins. Co.*, 744 F.2d 409, 413 (5th Cir. 1984). Under Texas law, a court construing a contract must read the contract in a manner that confers meaning to all of its terms, rendering the contract's terms consistent with one another. *Tittle v. Enron Corp.*, 463 F.3d 410, 419 (5th Cir. 2006). "When provisions in an agreement appear to be in conflict, the court should examine and consider the entire writing, seeking to harmonize and reconcile the conflicting provisions to the greatest extent possible." *Derr Const. Co. v. City of Houston*, 846 S.W.2d 854, 862 (Tex. App.—Houston [14th Dist.] 1992, no pet) (citations omitted). In doing so, "the court should favor an interpretation that gives effect to all provisions of the contract so that none will be rendered meaningless and the primary purpose of the agreement and intent of the parties will be effectuated." *Id.*

Furthermore, even when a party is not a signatory to a contract, it may be compelled to arbitrate if it seeks to enforce terms of a contract containing an arbitration provision. *See R.J. Griffin & Co v. Beach Club II Homeowners Ass'n.*, 384 F.3d 157, 161–64 (4th Cir. 2004); *Washington Mut. Fin. Grp., LLC v. Bailey*, 364 F.3d 260, 268 (5th Cir. 2004); *Bridas S.A.P.I.C. v. Government of Turkmenistan*, 345 F.3d 347, 361–62 (5th Cir. 2003). For example, if a non-signatory's breach-of-warranty or breach-of-contract claims are based on terms of a written

³ These cases analyzed a stay of proceedings in favor of arbitration under 9 U.S.C. § 3 which states: "if any suit or proceeding be brought in any of the courts of the United States upon any issue referable to arbitration under an agreement in writing for such arbitration, the court in which suit is pending . . . shall upon application of one of the parties stay the trial of the action until such arbitration has been had in accordance with the terms of the agreement. . .".

contract, then the non-signatory cannot avoid an arbitration provision within that contract. *See Int'l Paper Co. v. Schwabedissen Maschinen & Anlagen GMBH*, 206 F.3d 411, 418 (4th Cir. 2000).

III. Analysis

A. Contract Language and Arbitration

Ranger asserts counterclaims for breach of the Underlying Contracts, declaratory judgment concerning the interest rate in the Underlying Contracts, accounting, and tortious interference and unjust enrichment relating to the Chevron Project (which it pled as a “counterclaim or offset to amounts allegedly owed on the Conoil Project”), arguing that Provision 5 of the Guarantees allows it to bring these counterclaims or offsets. Doc. #20 at 6–9, 15. However, by the plain language of Provision 4 of the Guarantees, any claims against or offsets to payments owed under the Guarantees must have either been agreed to by the parties or determined by the tribunal specified in the Underlying Contracts before Ranger could assert them under Provision 5.

Provision 5 states, “. . . and, except as waived or acknowledged herein” Ranger has the “benefit of any defenses, counterclaims or limitations of liability” available to RSNL and RIL pursuant to the Underlying Contracts. When Provision 5 is read in harmony with Provision 4, it is clear that Ranger cannot bring offsets, defenses, or counterclaims to the amounts owed under the Guarantees unless such “defenses, counterclaims or limitations of liability” are available to RSNL and RIL. Provision 4 states that RSNL and RIL have “no right of set-off, deduction or other claim or defense” except what may have been determined by a “competent tribunal under the Contracts.” The “competent tribunal under the Contracts” is an arbitration

tribunal in London, United Kingdom.⁴ Additionally, irrespective of the language of the Guarantees, Ranger's counterclaims seek to enforce the terms of the Underlying Contracts which contain mandatory arbitration provisions. Accordingly, Ranger's counterclaims must be arbitrated before they can be asserted in this litigation to challenge the amounts owed under the Guarantees. In the Fifth Circuit, dismissal of a case without prejudice is appropriate "when all of the issues raised in the district court must be submitted to arbitration." *Alford v. Dean Witter Reynolds, Inc.*, 975 F.2d 1161, 1164 (5th Cir.1992). Therefore, having concluded that all of Ranger's counterclaims are subject to an arbitration agreement, the Court finds it proper to dismiss the counterclaims in the entirety.⁵

B. No Waiver of Arbitration

Furthermore, WAV and STG did not waive arbitration by bringing this suit to enforce the Guarantees. The Guarantees at issue in this case are absolute guarantee of payment contracts.⁶ It is undisputed that the Guarantees do not contain an arbitration provision themselves. However, Ranger's "counterclaims or offsets" are connected to or arise out of the Underlying Contracts which do contain arbitration clauses. Waiver can "result from some overt act in Court that

⁴ The Underlying Contract "Chaterparties" agree to arbitration in London, United Kingdom. Doc. #1, Ex. 2 at 22; Ex. 3 at 24; Ex. 5 at 18; The Underlying Contract "Service Agreements" agree to arbitration in "London, United Kingdom or such other place as agreed by the Parties." Doc. #1, Ex. 8 at 11, Ex. 16 at 10

⁵ All of Ranger's counterclaims are subject to arbitration as discussed in this Order. By dismissing Ranger's counterclaims in favor of arbitration, the Court does not foreclose Ranger from asserting these claims as an offset to the amount owed under the Guarantees once its claims have been properly arbitrated.

⁶ An unconditional guarantee is an obligation of the guarantor to pay the debt of the principal debtor and there is no requirement that the principal obligor be joined in an action to recover debt from the guarantor and there is no condition precedent to its enforcement against the guarantor other than a default by the principal debtor. *Cox v. Lerman*, 949 S.W.2d 527, 530 (Tex. App.—Houston [14th Dist.] 1997, no pet.). In this case, RSNL and RIL defaulted in payment and therefore WAV and STG properly seek to enforce payments owed against Ranger and SunTx.

evinces a desire to resolve the arbitrable dispute through litigation rather than arbitration.” *Gulf Guar. Life Ins. Co. v. Conn. Gen. Life Ins. Co.*, 304 F.3d 476, 484 (5th Cir. 2002). WAV and STG initiating this lawsuit to enforce the Guarantees was not an act to resolve an arbitrable dispute through litigation. It is Ranger’s “counterclaims or offsets” connected to or arising out of the Underlying Contracts which give rise to the issue of arbitration. Therefore, because there has been no waiver and Ranger’s claims are subject to arbitration according to the Underlying Contracts and the language of Provisions 4 and 5 of the Guarantees, Ranger’s counterclaims are dismissed in favor of arbitration.

C. Stay of the Case as to Ranger

In accordance with the Court’s dismissal of Ranger’s counterclaims in favor of arbitration, the Court hereby stays this case as to Ranger. Because the counterclaims asserted by Ranger could potentially reverse or diminish any amount awarded by this Court under the Guarantee, the Court finds it within the purview of judicial efficiency and the Court’s discretion to stay these proceedings as to Ranger until the counterclaims or offsets connected to or arising from the Underlying Contracts are properly settled through arbitration. *See Ambraco, Inc. v. Bossclip B.V.*, 570 F.3d 233, 243 (5th Cir. 2009) (citing *Landis v. North American Co.*, 299 U.S. 248, 254 (1936) (stating “the power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants.”)).

IV. Conclusion

For the foregoing reasons, Plaintiffs WAV and STG’s Motion to Dismiss the counterclaims under Fed. R. Civ. P. 12(b)(1) is DENIED; Plaintiffs Motion to Dismiss and Stay Defendant Ranger’s counterclaims in favor of arbitration is GRANTED. Therefore, the Court

orders this case stayed as to Ranger in favor of arbitration for six months or, if the parties have initiated arbitration within this time, until the issuance of a final arbitration decision on the viability of Ranger's claims.

It is so ORDERED.

JAN 24 2018

Date



The Honorable Alfred H. Bennett
United States District Judge