

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

SCHNEIDER ELECTRIC BUILDING	§	No. 5:16-CV-828-DAE
AMERICAS, LLC, United States of	§	
America for the Use and Benefit of	§	
Schneider Electric,	§	
	§	
Plaintiff,	§	
	§	
vs.	§	
	§	
INTERNATIONAL MECHANICAL	§	
SERVICES, INC., KELLOGG	§	
BROWN & ROOT SERVICES, INC.,	§	
TRAVELERS CASUALTY AND	§	
SURETY COMPANY OF AMERICA,	§	
	§	
Defendants.	§	
	§	

ORDER GRANTING MOTIONS TO COMPEL
ARBITRATION AND DISMISSING CASE WITHOUT PREJUDICE

The matters before the Court are Defendant Travelers Casualty and Surety Company of America’s (“Travelers”), and Defendant Kellogg Brown & Root’s (“Kellogg”) Motions to Dismiss or Stay Federal Court Proceeding (Dkts. ## 4, 5.) Pursuant to Local Rule CV-7(h), the Court finds this matter suitable for disposition without a hearing. After careful consideration of the memoranda in support of the motions, the Court, for the reasons that follow, **GRANTS** both motions and **DISMISSES** the case **WITHOUT PREJUDICE**.

BACKGROUND

Plaintiff Schneider Electric Buildings Americas, LLC (“Schneider”) provided labor and equipment to Defendant International Mechanical Services, Inc. (“International”)¹ for HVAC and plumbing at Lackland Air Force Base in San Antonio, Texas (“the project”). (Dkt. # 1 at 2.) The labor and materials furnished by Schneider were subject to the terms and conditions of a written subcontract between Schneider and International. (Dkt. # 4-1.) Kellogg served as the general contractor on the project, and Travelers was the surety who issued the payment and performance bond to Kellogg, as principal on the bond for the project. (Dkt. # 5 at 2; Dkt. # 4 at 2.) According to Schneider, International failed to pay Schneider for the labor and material it provided for the project. (Dkt. # 1 at 2.)

On August 19, 2016, Schneider filed suit against International, Kellogg, and Travelers, asserting claims for breach of contract. On January 3, 2017, Kellogg and Travelers both filed motions to dismiss or stay federal court proceedings. (Dkts. ## 4, 5.) The motions to dismiss assert that Schneider must be compelled to arbitrate its claims pursuant to the subcontract between Schneider and International. (Id.) Schneider did not file a response in opposition to either motion.

¹ The record in this case does not reflect that summons was ever returned executed on International. (See Dkt. # 3.) International has not made an appearance in this case. Pursuant to Rule 4(m) of the Federal Rules of Civil Procedure, the Court dismisses without prejudice the claims against International.

LEGAL STANDARD

Under the Federal Arbitration Act (“FAA”), “[a] written provision in . . . a contract to settle by arbitration a controversy thereafter arising out of such contract . . . shall be valid, irrevocable, and enforceable, save upon such grounds exist at law or in equity for the revocation of any contract.” 9 U.S.C. § 2. The FAA “expresses a strong national policy favoring arbitration of disputes, and all doubts concerning the arbitrability of claims should be resolved in favor of arbitration.” Primerica Life Ins. Co. v. Brown, 304 F.3d 469, 471 (5th Cir. 2002).

The Fifth Circuit employs a two-step analysis to determine whether the parties have agreed to arbitrate a dispute. Sherer v. Green Tree Servicing LLC, 548 F.3d 379, 381 (5th Cir. 2008) (citations omitted). First, a court must ask if the parties agreed to arbitrate the dispute. Webb v. Instacorp., Inc., 89 F.3d 252, 258 (5th Cir. 1996). This determination requires consideration of whether a valid agreement to arbitrate exists among the parties and whether the dispute is within the scope of the arbitration agreement. Id. In making this determination, courts should apply “ordinary state-law principles that govern the formation of contracts,” but must give due regard to the federal policy favoring arbitration and resolve any ambiguities as to the scope of the arbitration clause itself in favor of arbitration. Id. Second, once a court determines that the parties agreed to arbitrate, the court must assess whether any legal restraints external to the agreement foreclose

arbitration of the dispute. OPE Int'l L.P. v. Chet Morrison Contractors, Inc., 258 F.3d 443, 445–46 (5th Cir. 2001).

DISCUSSION

Kellogg and Travelers contend that the subcontract between Schneider and International mandates arbitration of the claims at issue in this case. (Dkts. ## 4, 5.) The subcontract at issue in this case clearly states, in relevant part, that:

SECTION 27: Disputes Procedure

27.01 In case of any dispute between the Subcontractor and Contractor, the Subcontractor agrees to be bound to the Contractor to the same extent that the Contractor is bound to the Owner by the terms of the Contract Documents and by any and all decisions or determinations made thereunder by the party or boards so authorized in the Contract Documents. The Subcontractor also agrees to be bound to the final decision of a court of competent jurisdiction, whether or not the Subcontractor is a party to such proceeding. If such a dispute is prosecuted or defended by the Contractor against the Owner under the terms of the Contract Documents or in court action, the Subcontractor agrees to furnish all documents, statements, witnesses and other information required by the Contractor for such purpose. It is expressly understood that as to any and all work done and agreed to be done by the Subcontractor and as to any and all materials, equipment or services furnished or agreed to be furnished by the Subcontractor, and as to any and all damages incurred by the Subcontractor in connection with this Agreement, the Contractor shall not be liable to the Subcontractor to any greater extent than the Owner is liable to and pays the Contractor for the use and benefit of the Subcontractor for such claims. No dispute shall interfere with the progress of the Work and the Subcontractor agrees to proceed with his work as directed, despite any disputes it may have with the Contract or Owner, or other parties.

27.02 If at any time any controversy should arise between the Contractor and the Subcontractor with respect to any matter or thing

involved in, related to or arising out of this Agreement, which controversy is not controlled or determined by Subparagraph 26.01 [Document Review], above, or other provisions of this Agreement, then said controversy shall be decided as follows:

(A) If the Subcontractor decides to appeal from the written decision of the Contractor, then the controversy shall be decided by arbitration in accordance with the then current rules of the Construction Industry Arbitration Rules of the American Arbitration Association, and the arbitration decision shall be final and binding on both parties.

(B) This Agreement to arbitrate shall be specifically enforceable.

(C) If arbitration is conducted by the Owner and the Contractor concerning, involving or relating to any dispute between the Contractor and the Subcontractor, then the Subcontractor agrees to a joint arbitration among the Owner, Contractor and Subcontractor² as well as with any other parties thereto, pursuant to the conditions or rules specified by the Contract Documents.

(Dkt. # 4-1 at 24–25 (emphasis added).) Additionally, according to Travelers, the terms of the general contract between International and Kellogg require that all disputes arising out of the project be arbitrated. (Dkt. # 4 at 3.)

The Court finds that the parties agreed to arbitrate the claims at issue in this case—a valid arbitration agreement exists and Schneider’s breach of contract claim against all defendants appears to fall within the scope of that agreement. (See Dkt. # 4-1.) The subcontract between Schneider and International is signed by both parties. (Dkt. # 4-1 at 28.) Additionally, the subcontract’s language “as well as any other parties thereto” includes Schneider’s claims against

² The owner is the U.S. Army Corps of Engineers, the contractor is International, and the subcontractor is Schneider. (Dkt. # 4-1 at 2.)

Travelers, as the surety, and Kellogg, as the general contractor—Schneider’s claims arise out of or relate to the project, the subject of which is covered by the subcontract. Accordingly, the Court finds that the parties agreed to arbitrate Schneider’s breach of contract claims because there is a valid arbitration agreement and the claims are covered under the arbitration provision of the subcontract, as stated above.

Since the Court has determined that the parties agreed to arbitrate, the next step of the inquiry considers whether any legal constraints exist external to the subcontract that would render the arbitration provision unenforceable. These constraints may include unconscionability, duress, fraudulent inducement, revocation, and other defenses to contract formation. Rodgers-Glass v. Conroe Hosp. Corp., No. H-14-3300, 2015 WL 4190598 at *8 (S.D. Tex. July 10, 2015). Schneider did not respond to either motion to dismiss, and the Court’s review of the record does not indicate that any obvious legal constraints exist. Therefore, arbitration should be compelled in this case.

The FAA provides that when a court properly and mandatorily refers claims to arbitration it shall stay the case until arbitration is complete. However, “[t]he weight of authority clearly supports dismissal of the case [as opposed to staying the suit] when all of the issues raised in the district courts must be submitted to arbitration.” Rodgers-Glass, 2015 WL 4190598 at *8 (quoting

Alford v. Dean Witter Reynolds, Inc., 975 F.2d 1161, 1164 (5th Cir. 1992)). In this case, all of Schneider's claims are subject to mandatory arbitration, and the Court therefore chooses dismissal as the appropriate procedure.

CONCLUSION

Based on the foregoing, the Court **GRANTS** Travelers and Kellogg's Motions to Dismiss or Stay Federal Court Proceeding (Dkts. ## 4, 5), and **DISMISSES** the case **WITHOUT PREJUDICE** so that Schneider may pursue the case in arbitration in accordance with the terms of the arbitration agreement as stated in the subcontract.

IT IS SO ORDERED.

DATED: San Antonio, Texas, January 27, 2017.

A handwritten signature in black ink, appearing to read 'David Alan Ezra', is written over a horizontal line.

David Alan Ezra
Senior United States District Judge