

**STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND
BUSINESS COURT**

**METRO MORTGAGE INVESTMENTS, LLC,
Plaintiff,**

v.

**Case No. 14-143844-CB
Hon. James M. Alexander**

**MPR 2000 CORPORATION, ET AL,
Defendants.**

OPINION AND ORDER RE: SUMMARY DISPOSITION

This matter is before the Court on Defendants’ motion for summary disposition and for stay of proceedings. This case arises out of a construction dispute. Defendant MPR 2000 was the construction manager and general contractor of three homes constructed in Royal Oak. Plaintiff alleges that Defendants breached their duties under the parties’ Joint Venture Agreements by, among other things, failing to pay subcontractors, laborers, and for materials, and otherwise running over budget and failing to meet construction deadlines.

Plaintiff filed its present Complaint on claims of breach of contract, slander of title, and public policy violations. Plaintiff also requested a temporary restraining order and injunctive relief.

Defendants now seek summary disposition under MCR 2.116(C)(7), which tests whether a claim is barred, among other grounds, by an agreement to arbitrate. *Maiden v Rozwood*, 461 Mich 109, 119; 597 NW2d 817 (1999).

In Michigan, “a ‘question of arbitrability’ is an issue for judicial determination unless the parties unequivocally indicate otherwise.” *Gregory J Schwartz & Co v Fagan*, 255 Mich App

229, 232 (2003), citing *Howsam v Dean Witter Reynolds, Inc.*, 537 US 79; 123 S Ct 588; 154 L Ed 2d 491 (2002). Further, MCL 691.1686(1) provides that “[a]n agreement contained in a record to submit to arbitration any existing or subsequent controversy arising between the parties to the agreement is valid, enforceable, and irrevocable except on a ground that exists at law or in equity for the revocation of a contract.”

Further, “[t]he court shall decide whether an agreement to arbitrate exists or a controversy is subject to an agreement to arbitrate.” MCL 691.1686(2). Michigan courts have consistently reasoned that “our Legislature and our courts have strongly endorsed arbitration as an inexpensive and expeditious alternative to litigation.” *Rembert v Ryan’s Family Steak Houses, Inc.*, 235 Mich App 118,133; 596 NW2d 208 (1999). As a result, “any doubts about the arbitrability of an issue should be resolved in favor of arbitration.” *DeCaminada v Coopers & Lybrand*, 232 Mich App 492, 499; 591 NW2d 364 (1998).

To ascertain the arbitrability of an issue, the court must consider whether [1] there is an arbitration provision in the parties’ contract, [2] whether the disputed issue is arguably within the arbitration clause, and [3] whether the dispute is expressly exempt from arbitration by the terms of the contract. *Huntington Woods v Ajax Paving Indus.*, 196 Mich App 71, 74-75; 492 NW2d 463 (1992); citing *Federal Kemper Ins Co v American Bankers Ins Co*, 137 Mich App 134, 139-140; 357 NW2d 834 (1984).

Defendants’ motion is based on a provision found in each of the three Joint Venture Agreements. The provision provides (in relevant part and emphasis in original):

Any dispute between Builder [MPR 2000] and Owner [Metro Mortgage Investments] regarding this Agreement, including its **interpretation** or the adequacy of any performance under it, shall be resolved exclusively by arbitration before a single arbitrator mutually acceptable to Owner and Builder.¹

In response, Plaintiff argues that Defendants’ motion should be denied solely because Defendant Michael P. Rivait (MPR’s agent) did not have a builder’s license. As a result,

¹ Paragraph 16 of the Joint Venture Agreements – each dated August 27, 2013.

Plaintiff claims that it was fraudulently induced to enter into the Joint Venture Agreements, which makes the arbitration agreement unenforceable.

Indeed, Michigan's Uniform Arbitration Act provides, at MCL 691.1686(1) that: "An agreement contained in a record to submit to arbitration any existing or subsequent controversy arising between the parties to the agreement is valid, enforceable, and irrevocable except on a ground that exists at law or in equity for the revocation of a contract."

Plaintiff argues that fraud in the inducement renders a contract void at the option of the defrauded party, citing *Rooyakker & Sitz, PLLC v Plante & Moran, PLLC*, 276 Mich App 146, 162; 742 NW2d 409 (2007).

Because it was fraudulently induced to enter into a contract with an unlicensed builder, Plaintiff argues that the arbitration provision is unenforceable. MCL 691.1687(3) provides that "[i]f the court finds that there is no enforceable agreement, it shall not order the parties to arbitrate."

Plaintiff claims that MPR 2000 was not licensed at the time the parties entered into the Joint Venture Agreements. Rather, Plaintiff claims that Defendant Rinvait did not become licensed until April 21, 2014 – "long after a vast majority of the work on the three homes was complete." As Defendant points out, however, Plaintiff's argument is an inherent admission that **some** work was completed on the homes **after** Mr. Rinvait obtained his builder's license.

Plaintiff further relies on MCL 339.2412 for the proposition that an unlicensed builder loses the ability to file a lawsuit or impose a lien on property, and is subject to civil penalties, unless it is licensed "during the performance of the act or contract." And "[a] contract made in violation of a statute is void and unenforceable," quoting *American Trust Co v Michigan Trust Co*, 263 Mich 337, 339; 248 NW 829 (1933).

In their Reply Brief, Defendants argue that MCL 339.2412 statute has been interpreted by the Court of Appeals to mean that a builder is not subject to these limitations if he is licensed **at any point** “during the performance of the act or contract,” citing *Edgewood Dev, Inc v Landskroener*, 262 Mich App 162; 684 NW2d 387 (2004).

The *Edgewood* Court specifically rejected the notion that a residential builder was required to have a builder’s license at the time the contract was entered in order to comply with MCL 339.2412. In so doing, the Court of Appeals noted that MCL 339.2412’s predecessor contained the language requiring a residential builder “to allege and prove that he was duly licensed *at all times* during the performance of the act or contract.” *Edgewood*, 262 Mich App at 168 (emphasis in original). This language, however, was deleted under 1980 PA 299. As a result, the *Edgewood* Court reasoned that the legislature “evinced its intent to allow a residential builder who becomes licensed **during the performance of the act or contract** to bring an action in a court of this state for the collection of compensation for the performance of the act or contract.” *Id.* at 168 (emphasis added).

Because Plaintiff inherently admits that **some** of the work on each property was performed **after** Mr. Rinvait obtained his builder’s license, the Court finds that, under *Edgewood*, a violation of MCL 339.2412 cannot serve as the basis for Plaintiff’s claim that it was fraudulently induced to enter into the Joint Venture Agreements.

Additionally, although not dispositive in itself, the Court also notes that Paragraph 15 of each Agreement provides, in relevant part, that “Builder [MPR 2000] is properly licensed in the state of Michigan as a Builder, whose license number is 2101117806.” As a result, MPR 2000’s status as a licensed builder was a requirement of the contract that Plaintiff seeks to enforce.

In other words, MPR 2000's failure to be licensed for part of the construction may serve as a basis for a breach of contract claim because it was an obligation under the agreement, but this potential breach cannot serve to defeat an arbitration clause when parties agreed that "any dispute" regarding the agreement would be submitted to arbitration.

For the foregoing reasons, the Court finds that Plaintiff's non-equitable claims fall squarely within the Joint Venture Agreements' arbitration provisions.

Under the Uniform Arbitration Act, "If the court orders arbitration, the court on just terms shall stay any judicial proceeding that involves a claim subject to the arbitration. If a claim subject to the arbitration is severable, the court may limit the stay to that claim." MCL 691.1687(7).

Because the claims subject to arbitration constitute nearly all of Plaintiff's claims, the Court finds it appropriate to stay the entire case pending arbitration on the above issues.

For the foregoing reasons, Defendants' motion for summary disposition is GRANTED without prejudice. The remainder of this case is STAYED until further order of the Court. The parties must notify the Court within 28 days of the final arbitration report.

IT IS SO ORDERED.

February 18, 2015_____
Date

/s/ James M. Alexander
Hon. James M. Alexander, Circuit Court Judge