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

**NBS COMMERCIAL INTERIORS,**
**Plaintiff,**

**v.** **Case No. 15-150626-CB**
**Hon. James M. Alexander**

**CASPIAN/COLUMBIA CONSTRUCTION GROUP, INC,**
**Defendant.**
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**OPINION AND ORDER RE: MOTION FOR STAY & SUMMARY DISPOSITION**

This matter is before the Court on Defendant's motion for stay of proceedings and to compel arbitration and Plaintiff's motion for summary disposition. The Court dispenses with oral argument pursuant to MCR 2.119(E)(3).

Defendant was contracted to perform construction work for non-party Huf North America Engineering in Farmington Hills. In turn, Defendant subcontracted the furnishing and installation of a flooring system to Plaintiff. Plaintiff claims that, despite fully performing its obligations under the subcontract, Defendant has failed to pay. Plaintiff now seeks $55,530, plus interest at 10% per annum from the date of the final billing (August 27, 2014).

In response to the lawsuit, Defendant claims that Plaintiff failed to timely and properly provide labor and materials, which delayed the project and caused Defendant to suffer damages. One week after filing its Answer, Defendant also filed the present motion seeking a stay of proceedings and/or to compel arbitration based on an arbitration provision found in the parties' Subcontract

Agreement. Although not identified by Defendant, the Court will note that a motion for summary disposition based on an agreement to arbitrate is governed by MCR 2.116(C)(7).

Shortly after Defendant filed its arbitration motion, Plaintiff filed its motion for summary disposition – solely based on the argument that Defendant's Answer fails to specifically deny that Plaintiff is owed money, and as a result, the Court should deem certain allegations as admitted such that Plaintiff is entitled to summary disposition under MCR 2.116(C)(10).

The Court must first address Defendant's motion because it argues that any dispute must be submitted to arbitration. Michigan law is well-established that "a court must construe and apply unambiguous contract provisions as written." *Rory v Cont'l Ins Co*, 473 Mich 457, 461; 703 NW2d 23 (2005). Further, "[a] contract must be interpreted according to its plain and ordinary meaning." *Holmes v Holmes*, 281 Mich App 575, 593; 760 NW2d 300 (2008). "Under ordinary contract principles, if contractual language is clear, construction of the contract is a question of law for the court." *Holmes v Holmes*, 291 Mich App at 594.

Further, 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). 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." And "[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).

Arbitration provisions are found in two separate documents executed by representatives of the parties. First, the July 3, 2014 "NBS Terms and Conditions of Sale" provides, in relevant part, "This agreement and any disputes arising hereunder or in connection with [Plaintiff's] business relationship with [Defendant] shall be governed by Michigan law and shall be resolved solely by arbitration in the State of Michigan."

Second, the July 7, 2014 "Subcontract Agreement" expressly incorporates the attached "Conditions of Subcontract," which provides a specific dispute resolution process (Pages 4-5). This process involves first submitting disputes to nonbinding mediation with a neutral mediator. If unsuccessful at mediation, then the parties agreed to submit any remaining claims to binding arbitration – subject to specific terms.

Plaintiff, apparently seeking to avoid arbitration, that both arbitration provisions are void. Plaintiff first argues that the July 3, 2014 arbitration provision is "not legally enforceable" and "void due to sheer vagueness and uncertainty given the absence of essential terms." And Plaintiff argues that the July 7, 2014 arbitration provision (1) "was the product of a fraudulent 'bait and switch'" that renders it unenforceable; (2) is not binding because it was not executed by any authorized agent; and (3) was waived by Defendant.

In support, Plaintiff generally makes cursory and conclusory arguments and only cites legal authority with respect to its argument regarding the July 3 arbitration provision.[1] But Michigan law is

1 Plaintiff first cites MCL 691.1686, which provides that an agreement to arbitrate may be voidable on grounds "that exist is law or in equity for the revocation of a contract." Plaintiff then cites *Opdyke Inv Co v Norris Grain Co*, 413

clear that, "A party may not merely announce a position and leave it to [the] Court to discover and rationalize the basis for the claim." *National Waterworks, Inc v International Fidelity & Surety, Ltd*, 275 Mich App 256, 265; 739 NW2d 121 (2007).

While the Court is inclined to agree that the July 3 arbitration provision is extremely vague, the July 7 agreement is not. And, as stated, Plaintiff fails to cite to any authority with respect to this contract – instead, simply announcing its position and making unsupported arguments seeking to invalidate the same.

For example, Plaintiff claims that the Court should not enforce the July 7 contract because the same was the product of a fraudulent "bait and switch." But Plaintiff cites no authority for this concept. And, in response, Defendant argues that the July 7 contract is enforceable because it is undisputed that the same was presented to Plaintiff before any work began. And, Defendant argues, Plaintiff's representative freely signed the same. The Court agrees and rejects Plaintiff's cursory "bait and switch" argument.

Next, Plaintiff concludes (in two sentences) that the July 7 contract was not executed by a Plaintiff-authorized agent. In response, Defendant argues that the person signing the agreement, David Rastigue, was the Plaintiff representative on-site that was in charge of the job. Further, Mr. Rastigue was the Plaintiff contact who Defendant communicated with on the July 3 contract.

Coupled with Mr. Rastigue's failure to advise Plaintiff that he could not execute the contract, these acts led Defendant to believe that Mr. Rastigue had apparent authority to sign the same on Plaintiff's behalf.[2]

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Mich 354, 359; 320 NW2d 836 (1982) for the notion that "a contract can fail for indefiniteness if the trier of fact finds that it does not include an essential term to be incorporated into the final contract."

2 "Apparent authority may arise when acts and appearances lead a third person reasonably to believe that an agency relationship exists." *Meretta v Peach*, 195 Mich App 695, 698-99; 491 NW2d 278 (1992). Further, "Persons dealing

Finally, Plaintiff argues that Defendant waived the arbitration clause found in the July 7 contract. In support, Plaintiff argues that Defendant essentially dragged its feet in selecting a neutral mediator to begin the dispute-resolution process.

Defendant responds that Plaintiff's Complaint (disavowing the July 7 contract) was filed only a week after Plaintiff's counsel conveyed some mediator names to Defendant. Further, Defendant claims that the parties have mediation scheduled on April 19 before a mutually selected mediator. As a result, Defendant claims that Plaintiff's waiver argument is meritless. The Court agrees.

Because the parties' July 7, 2014 Subcontract Agreement is valid and binding and contains a broad arbitration provision that governs this dispute, this matter is appropriately resolved through the dispute-resolution process contained in said Agreement. As a result, Defendant's motion to stay or compel arbitration is GRANTED.

As provided in the July 7 Agreement, the parties must first attempt mediation to resolve their disputes. If the same is unsuccessful, then the parties must submit any unresolved issues to arbitration in accordance with their Agreement.

Because the Court has granted Defendant's motion, it need not consider Plaintiff's motion for summary disposition.[3]

**IT IS SO ORDERED.**

March 29, 2016 /s/ James M. Alexander
Date Hon. James M. Alexander, Circuit Court Judge

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with an agent have the right to act upon the presumption that he is authorized to do and perform all things within the usual scope of his principal's business. The general rule is that the powers of an agent are *prima facie* coextensive with the business intrusted to his care." *Wholesale Co v Sefa*, 351 Mich 17, 27; 87 NW2d 94 (1957) (internal citations and quotations omitted).

3 The Court will note, however, that assuming arguendo that it did consider said motion, it would deny the same. It is apparent that Defendant's responses to Plaintiff's allegations are based on Defendant's claims that Plaintiff did not appropriately fulfill its obligations under the contract, which leaves disputed the amount of claimed damages.