

STATE OF MICHIGAN

SIXTEENTH JUDICIAL CIRCUIT COURT

THE COLLISION STOP, INC., and
JOSEPH GORIAL,
Plaintiffs,

vs.

Case No. 2018-4864-CB

NEIL ADRIAN, LYNN ADRIAN
JANAS HOLDINGS, LLC, and
JANE DOE COMPANY,
Defendants.

OPINION AND ORDER

This matter comes before the Court on defendants Neil Adrian, Lynn Adrian, and Janas Holdings, LLC's ("Janas" or together as "Defendants") motion for stay of proceedings and to compel arbitration.

I. Factual and Procedural Background

The Collision Stop, Inc. ("Collision Stop") and Joseph Gorial (together as "Plaintiffs") brought the present lawsuit on claims arising out of a landlord-tenant relationship. Specifically, Plaintiffs allege that defendant Janas owns improved real property located at 21975 Schoenherr Road in Warren, Michigan ("Property") which it agreed to lease to Collision Stop.

On December 17, 2018, Plaintiffs filed their Complaint alleging: count I, common-law conversion; count II, statutory conversion; count III, breach of contract; count IV, fraud; count V, intentional interference with an advantageous business relationship; count VI, interference with contractual relations; count VII, silent fraud; count VIII,

accounting; count IX, replevin-claim and delivery/trespass to chattels/personality; count X, constructive trust; and count XI, violation of anti-lockout law.

On May 17, 2019, Defendants filed their motion to stay the proceedings and compel arbitration. The Court heard oral argument on Defendants' motion to stay the proceedings and compel arbitration on May 28, 2019 and took the matter under advisement.

II. Arguments

Defendants argue that the Court should stay the proceedings and compel arbitration because Plaintiffs claims relate to a written lease that contains an arbitration clause. Defendants maintain that the Court should not divide a dispute between the Court and an arbitrator.

In response, Plaintiffs argue that the arbitration clause does not apply to claims of conversion, violation of the anti-lockout statute, intentional interference with contractual relationships, fraud and constructive trust because they do not relate to the Lease.

III. Law and Analysis

The Uniform Arbitration Act provides that "on a motion of a person showing an agreement to arbitrate, and alleging another person's refusal to arbitrate under the agreement" the Court shall "proceed summarily to decide the issue and order the parties to arbitrate unless it finds that there is no enforceable agreement to arbitrate." MCL 691.1687(1)(b).

"A three-part test applies for ascertaining the arbitrability of a particular issue: 1) is there an arbitration agreement in a contract between the parties; 2) is the disputed

issue on its face or arguably within the contract's arbitration clause; and 3) is the dispute expressly exempted from arbitration by the terms of the contract." *In re Nestorovski Estate*, 283 Mich App 177, 202–03; 769 NW2d 720 (2009) citation omitted. Doubts should be resolved in favor of arbitration. *Id.*

"The existence of an arbitration contract and the enforceability of its terms are judicial questions" *Huntington Woods v Ajax Paving Industries, Inc (After Remand)*, 196 Mich App 71, 74, 492 NW2d 463 (1992). Courts liberally construe arbitration clauses "resolving all doubts about the arbitrability of an issue in favor of arbitration." *Detroit Auto Inter-Ins Exch v Reck*, 90 Mich App 286, 290; 282 NW2d 292 (1979). "Segregating disputed issues into categories" of arbitrable issues and judicially-triable issues is generally disapproved. *In re Nestorovski Estate*, 283 Mich App at 202–203 quoting *Detroit Auto Inter-Ins Exch v Reck*, 90 Mich App 286, 289; 282 NW2d 292 (1979) (An interpretation that in effect chops up a dispute in different forums militates against the benefits of arbitration).

In the present case, the Lease contains the following provision:

Any controversy or claim *relating to this contract*, including the construction or application of this contract will be settled by binding arbitration under the rules of the American Arbitration Association and any judgement granted by the arbitrator(s) may be enforced in any court of proper jurisdiction.

Defendants' Exhibit 1 emphasis added. Regarding the first prong of the three-part test for ascertaining arbitrability, Plaintiffs conceded at oral argument that the parties agree that an arbitration clause exists in the relevant Lease Agreement. Therefore, no question remains on prong one.

The second prong is also satisfied because the disputed issues arguably fall within the arbitration clause. While Plaintiffs maintain that the arbitration clause does not apply to statutory claims of conversion and anti-lockout or to torts of fraud, tortious interference, claim and delivery and constructive trust, Plaintiffs cite no legal authority or any support in the record to support their assertion.

Moreover, to the contrary, it is clear that each of the above-mentioned claims relate to the lease contract because they arise out of the landlord-tenant relationship. For example, regarding conversion, Plaintiffs allege that "while still involved in a rental relationship" Defendants locked Plaintiffs out of the Property converting personal property to their own use. Complaint ¶¶36, see also, 39, 43. The breach of contract claim certainly falls within the arbitration clause because it is based on the lease. *Id.* ¶¶51, 52. The tortious interference claim in count V of the Complaint arises from the alleged lockout, failure to disclose issues regarding the Property and alleged failure to credit rental payments. *Id.* ¶66. The fraud claim relates to alleged failure to disclose issues that prevented the Property from being used as a vehicle repair facility. *Id.* ¶74. Likewise, the accounting claim relates to revenues from the Lease agreement between the parties. *Id.* ¶82. Additionally, the claims of constructive trust and claim and delivery concern Plaintiffs' corporate assets held in connection with the Lease relationship between the parties.

For the above-stated reasons, the Court is persuaded that under a liberal construction of the arbitration clause, Plaintiffs' claims relate to the Lease agreement and therefore fall under the reach of the arbitration clause. Finally, no express exemption exists in the arbitration agreement relating to Plaintiffs' claims. For the

foregoing reasons, the Court will grant Defendants' motion under MCR 3.602(C) and compel arbitration.

IV. Conclusion

For the reasons set forth above, Defendant's motion is GRANTED and pursuant to MCR 3.602(C), the case is ordered stayed pending arbitration. Pursuant to MCR 2.602(A)(3), this *Opinion and Order* neither resolves the last pending claim nor closes this case.

IT IS SO ORDERED.

Date: JUL 19 2019


Kathryn A. Viviano
Hon. Kathryn A. Viviano, Circuit Court Judge