EV

STATE OF MICHIGAN

SIXTEENTH JUDICIAL CIRCUIT COURT

GENERAL DYNAMICS LAND SYSTEMS,
Plaintiff,

vs. Case No. 19-982-CB

CLOOS ROBOTIC WELDING, INC.,
Defendant.
_____/

OPINION AND ORDER

Defendant Cloos Robotic Welding, Inc. ("Cloos Robotic") filed a motion for summary disposition under MCR 2.116(C)(7) on the basis of an agreement to arbitrate. In addition, Plaintiff General Dynamics Land Systems, Inc. ("General Dynamics") seeks summary disposition under MCR 2.116(I)(2).

I. Factual and Procedural Background

This declaratory judgment action concerns competing arbitration clauses. General Dynamics supplies vehicles in the defense market. Cloos Robotic manufactures robotic welding machines. In September 2015, General Dynamics requested proposals for the purchase of a robotic welder. Cloos Robotic submitted a proposal and after revisions, General Dynamics issued a purchase order. General Dynamics' terms and conditions provide for arbitration of claims arising out of the purchase as well as for venue and choice-of-law. General Dynamics filed an arbitration demand and statement of claim regarding a claim for breach of the purchase order but Cloos Robotic denied that the General Dynamics terms governed the transaction.

On March 13, 2019, General Dynamics filed a single-count Complaint in this Court seeking a declaration to enforce its arbitration terms. Defendant Cloos Robotic

responded with the present motion, in lieu of an answer, asserting that the arbitrator should decide which arbitration clause controls. The Court heard oral argument on April 29, 2019 and took the matter under advisement.

II. Standard of Review

A motion under MCR 2.116(C)(7) is appropriately granted when an agreement to arbitrate bars a claim. *Maiden v Rozwood*, 461 Mich 109, 118 n 3, 597 NW2d 817 (1999). "A party may support a motion under MCR 2.116(C)(7) by affidavits, depositions, admissions, or other documentary evidence." *Id.* at 119. However, "a movant under MCR 2.116(C)(7) is not required to file supportive material, and the opposing party need not reply with supportive material. *Galea v FCA US LLC*, 323 Mich App 360, 368; 917 NW2d 694 (2018). The contents of the complaint are accepted as true unless contradicted by documentation submitted by the movant." *Id.*

III. Arguments

Cloos Robotic argues that the Court should leave the decision of which arbitration clause governs the parties' relationship to the arbitrator since both parties seek, and have already started, arbitration. According to Cloos Robotic, by incorporating the AAA rules, and since both parties' terms provide for arbitration, the parties agreed to arbitrate questions of arbitrability—thus, an arbitrator, rather than the Court, should decide any dispute over the forum of arbitration. Cloos Robotic contends that the Court should only address whether the parties have an arbitrable dispute, and they agree that they do, so the Court should grant summary disposition in its favor since no questions of material fact remain. Otherwise, according to Cloos Robotic, the Court would invade the province of the arbitrator.

In response, General Dynamics argues that the Court should determine that the parties agreed to arbitrate in the first place—specifically that they had a meeting of the minds on an arbitration term. According to General Dynamics, Cloos Robotic seeks to enforce an agreement to arbitrate while refusing to recognize General Dynamic's contract terms as governing. General Dynamics denies having agreed to Cloos Robotic's arbitration terms. Therefore, General Dynamics claims that either its arbitration term controls or no arbitration term controls—as opposed to Cloos Robotic's position that either General Dynamic's term or Cloos Robotic's term will control.

IV. 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 that cannot be decided by the arbitrator." *Huntington Woods v Ajax Paving Industries, Inc (After Remand)*, 196 Mich App 71, 74, 492 NW2d 463 (1992).

Yet a court "should not interpret a contract's language beyond determining whether arbitration applies . . ." *Fromm v Meemic Ins Co*, 264 Mich App 302, 306; 690 NW2d 528 (2004). "The decision to submit disputes to arbitration is a consensual one. Arbitration is a matter of contract and a party cannot be required to submit to arbitration any dispute which he has not agreed so to submit." *Arrow Overall Supply Co v Peloquin Enterprises,* 414 Mich 95, 97; 323 NW2d 1 (1982).

Here, Cloos Robotic essentially argues that the arbitrator should settle the disagreement regarding forum because both parties ultimately seek to enforce an arbitration clause. Cloos Robotic relies on the AAA Commercial Arbitration Rules to show that "the question of arbitrability is for the arbitrator."[1]

However, Cloos Robotic's argument suffers a critical flaw because it seeks to enforce the parties' desire to arbitrate generally while simultaneously denying acceptance of General Dynamic's specific arbitration terms. The parties either agreed to arbitrate or they did not; they could not have delegated to an arbitrator the question of arbitrability if they did not first agree on arbitration. The Court will not enforce the parties' mutual desire to arbitrate absent an agreement to that effect. A party cannot be required to submit to arbitration unless it has agreed to do so. See again, *Arrow Overall Supply Co,* 414 Mich at 97.

To the extent Cloos Robotic seeks to enforce its own arbitration clause, it presented no evidence that General Dynamics agreed to the Cloos Robotic terms. Further, Cloos Robotic's argument glosses over the central point of contention in this matter—that is, which arbitrator, in which forum, should decide the dispute. *Huntington*

[1] The Court has considered but need not specifically address the non-binding cases Cloos Robotic cites.

Woods, 196 Mich App at 74 (Courts determine the enforceability of an arbitration contract.). It appears that the arbitration clauses differ in terms of venue and choice of law. Even *arguendo* setting aside clear Michigan case law that Courts decide question of arbitrability, Cloos Robotic's position begs the question of which arbitrator has the authority to decide which arbitration term applies in this case. Consequently, Cloos Robotic has not established its right to summary disposition on the basis of an agreement to arbitrate because Cloos Robotic's takes an untenable position that the Court should not decide which terms, if any, the parties agreed on. The Court will not enforce arbitration in the abstract without first deciding that the parties had a meeting of the minds regarding the arbitration clause.

For its part, General Dynamics seeks, under MCR 2.116(I)(2), a declaration of the threshold issue of whether the parties agreed to arbitrate their disputes. Based on the citations above, the Court has the authority to decide whether the parties have an enforceable agreement to arbitrate. See, e.g. MCL 691.1687(1)(b).

The parties do not dispute that in 2015, General Dynamics solicited proposals for the manufacture of a robotic welder by releasing a request for proposal to purchase. See, Complaint Exhibit 1. The parties also accept that Cloos Robotic submitted a responsive proposal, engaged in additional correspondence, and ultimately supplied a welder to General Dynamics in response to a purchase order.

Upon review of the evidence submitted, the Court is persuaded that there is no genuine issue of material fact that Cloos Robotic accepted General Dynamic's arbitration terms. Specifically, the terms of the Request for Proposal were subject to General Dynamic's standard terms and conditions. Complaint Exhibit B. Cloos Robotic

submitted its proposal under a cover letter stating, "The awarded purchase order will be subject to the terms and conditions listed on GDLS form 84-005-807 and 0809 in effect on the date of awarded . . ." *Id.* Exhibit D at 1-2. General Dynamics also cites to an email confirmation dated October 26, 2015 from Danyel Whalley, a Sales Administrator for Cloos Robotic, that states, "Please be advised that we accept your terms 1-3 stated below." *Id.* Exhibit E. Item 3, entitled "terms and conditions" states, "GDLS Standard Terms and Conditions will be applicable to this PO." *Id.* See also, Exhibit F (Purchase order referring to General Dynamic's terms and conditions).

General Dynamics' terms and conditions state, "Any and all claims, disputes, or other matters in question arising out of, or relating to, this Contract or the breach shall be decided in arbitration in accordance with the current Commercial Arbitration Rules of the American Arbitration Association . . . Arbitration under this paragraph shall be conducted in the AAA office in the venue specified in the Contract." *Id.* Exhibit B ¶30. The "Applicable Law and Venue" section of the Terms and Conditions provides that the laws of Michigan govern the contract and the venue is the Macomb County Circuit Court. *Id.* ¶29.

Cloos Robotic produced no evidence to contradict its apparent acceptance of General Dynamics' terms and conditions. Therefore, General Dynamics is entitled to summary disposition on the basis that Cloos Robotic agreed to General Dynamics' arbitration terms. The Court does not invade the province of the arbitrator by merely determining that the parties agreed to arbitrate. This conclusion should come with little objection from Cloos Robotic, because it represents to the Court in its briefing that "there is no dispute that the parties agreed to arbitrate all claims and disputes arising

out of the sale and purchase of a robotic welder." Such an assertion can only be meaningfully applied upon determination that the parties reached an agreement regarding arbitration. The evidence shows that the parties reached that agreement by accepting General Dynamics' terms and conditions. Therefore, the Court will grant summary disposition in favor of General Dynamics.

V. Conclusion

For the reasons set forth above, Cloos Robotic's motion is DENIED. Further, General Dynamic's motion under MCR 2.116(I)(2) is GRANTED. It is hereby adjudged and decreed that with regard to the purchase order in question, Cloos Robotic accepted and agreed to General Dynamics' terms and conditions including the clauses relating to arbitration and venue. Pursuant to MCR 2.602(A)(3), this *Opinion and Order* resolves the last pending claim and closes this case.

IT IS SO ORDERED.

DATED: JUN 17 2019

Hon. Richard L. Caretti
Circuit Judge

cc: Stuart M. Schwartz, Attorney for Plaintiff
Scott R. Murphy, Attorney for Defendant
Erika P. Weiss, Attorney for Defendant