STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	C.A.NO.: 2019-CP-40-05734
O.R. Colan Associates, LLC, Plaintiff,	)	**ORDER COMPELLING ARBITRATION**
vs.	)	
Parrish and Partners, LLC, Defendant.	)	

This matter came before the Court initially on September 7, 2021, upon Defendant, Parrish and Partners, LLC's motion to compel arbitration and stay C.A. No. 2019-CP-40-05734 pending resolution by arbitration. Appearing at the WebEx hearing on the Motion was Thomas E. Dudley, III, on behalf of Defendant and S. Jahue Moore, Sr., on behalf of Plaintiff, O.R. Colan Associates, LLC. A follow up web conference was held on September 30, 2021. Based on the pleadings, written submission of counsel, as well as oral arguments the Court finds the following.

Background

On or about October 10, 2019, the Plaintiff filed a complaint in the Richland County Court of Common Pleas, C.A. No. 2019-CP-40-05734 (the "Litigation") asserting two claims of action: (i) Breach of Contract, seeking recovery of money damages; (ii) Fraudulent Acts. Defendant answered and asserted in the Answer among other defenses that the matter should be compelled to arbitration. After a substitution of counsel for Defendant, Defendant filed its Motion to Compel Arbitration on or about March 30, 2021.

Facts Based on Pleadings and Submissions

On or about November 15, 2016, Defendant entered into a design subcontract agreement (the "Prime Agreement") with Blythe Construction, Inc./Zachry Construction Company (the "Contractor") for the design of a construction project, concerning reconstruction and widening work on Interstate 85 in South Carolina. A copy of the Prime Agreement was attached to the Motion to Compel Arbitration and not disputed by Plaintiff. The Prime Agreement calls for arbitration as the sole means of resolving disputes.

On or about February 28, 2017, Plaintiff O.R. Colan Associates, LLC ("Plaintiff") entered into a contract (the "Contract") with the Defendant, wherein Plaintiff was to serve as a subconsultant and perform right-of-way acquisition services for the Defendant on the Project (the "Work") in exchange for payment. A copy of the Contract was attached the Motion to Compel Arbitration and not disputed by Plaintiff. The Contract incorporates by reference the Prime Agreement.

It was not disputed that Plaintiff is a Florida corporation, whose primary place of business is Fairview Park, Ohio. Plaintiff's proposal that became the basis of the Contract with the Defendant originated from Plaintiff's Ohio office. A copy of the Plaintiff's Corporate Information and Office locations was attached to the Motion to Compel Arbitration.

Defendant is a South Carolina limited liability company, and the underlying Project took place in Upstate South Carolina. Based on this, the Court determines interstate commerce was involved in this Contract.

When entering into the Contract with Defendant, Plaintiff's Contract incorporated the terms and agreements of the Prime Agreement of Defendant's Contract with the Contractor. **Exhibit B at Article IV, Section D** filed with the Motion to Compel Arbitration. Plaintiff assented to the incorporation of the terms of the Prime Agreement by signing the Contract with Defendant.

Section 15(d) of the Prime Agreement provides arbitration as the sole form of dispute resolution. **Exhibit A at Article 15, Section D**.

South Carolina recognizes several theories upon which a non-signatory to a contract may be bound to arbitration. Mallory v. Thompson 409 SC 557, 561-562, 762 SE2d 690-692 (2014). In this case, Plaintiff did not sign the Prime Agreement that contained the arbitration provision.

Based on the Courts ruling in Mallory v. Thompson and both the Contract and Prime Agreement, this Court determines Plaintiffs consented to arbitration as the sole means to resolve disputes with the Defendant. Based on the above, Plaintiff entered into a valid contract to arbitrate disputes with Defendant, such as the current dispute at issue regarding the Work, with Defendant.

Plaintiff rested its objection to the Motion to Compel Arbitration on the contention that since the contract said South Carolina law would apply, then the requirement for a contract in South Carolina to be subject to arbitration as found in S.C. Code Ann. §15-48-10(a) would control. Plaintiff did not dispute the underlying contract involved interstate commerce. Plaintiff also did not contend that it had been prejudiced by the filing of the Motion to Compel Arbitration. Defendant noted that it raised arbitration as a defense when it originally answered the Complaint in 2019.

Plaintiff argued that since the language of the subcontract said South Carolina law would apply, no other inquiry would be made except whether the requirements in S.C. Code Ann. §15-48-10(a) were met. It was not disputed, the language in Plaintiff's contract with Defendant did not comply with the noted requirement of S.C. Code Ann. §15-48-10(a). Defendant countered that the Federal Arbitration Act preempts the South Carolina statute and therefore, the requirements in S.C. Code Ann. §15-48-10(a) didn't apply.

Plaintiff argued that South Carolina law applies to this contract. S.C. Code Ann. §15-48-10(a) provides "notice that a contract is subject to arbitration pursuant to this chapter shall by typed in underlined capital letters, or rubber-stamped prominently, on the first page of the contract and unless such notice is displayed thereon the contract shall not be subject to arbitration." But applicability of this code section to deny a Motion to Compel must also be analyzed against whether the Federal Arbitration Act applies.

The Court finds that interstate commerce was involved in the underlying contract. Section 2 of the Federal Arbitration Act states: a written provision in any maritime transaction or a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction, or the refusal to perform the whole or any part thereof… shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract.

Since the Federal Arbitration Act also applies, the Court must look to see if the Federal Arbitration Act would allow a motion to compel arbitration despite non-compliance with the South Carolina statute. Our Courts have already looked at this precise question and held the more liberal support of the Federal Arbitration Act takes precedence and arbitration should be ordered. See Soil Remediation Co. v. Nu-Way Env. 323 SC 454, 476 SE2d 149 (1996). ("The presence of interstate commerce makes the Federal Arbitration Act applicable to the present arbitration agreement. Hence, under Casarotto the Federal Arbitration Act preempts S.C. Code Ann. §15-48-10(a).")

This Court finds that because interstate commerce is evidenced to present, the Federal Arbitration Act is applicable. The Court concludes based on Soil Remediation case that the Federal Arbitration Act displaces the South Carolina Statute. I find that it does. S.C. Code Ann. §15-48-

10 directly singles out arbitration agreements by conditioning the enforceability of arbitration agreements on compliance with a special notice requirement not applicable to contracts generally. This directly conflicts with Section 2 of the Federal Arbitration Act. Therefore, I find that the Federal Arbitration Act displaces the South Carolina statute and applies to the arbitration issue in this matter. This is consistent with Soil Remediation Co., supra.

NOW, THEREFORE, IT IS ORDERED that the Defendant's Motion to Compel Arbitration is hereby **GRANTED.** This action is to be stayed and be submitted to arbitration pursuant to the Federal Arbitration Act.

IT IS FURTHER ORDERED, this matter is stayed pending the resolution of the claims between the parties.

IT IS SO ORDERED this the _____ day of January, 2022.

_____
Presiding Circuit Court Judge

Richland Common Pleas

Case Caption: O R Colan Associates Llc vs Parrish And Partners Llc

Case Number: 2019CP4005734

Type: Order/Stay

So Ordered

s/DeAndrea Gist Benjamin, #2161