PATUXENT TECHNOLOGY PARTNERS, LLC	*	IN THE
Plaintiff	*	CIRCUIT COURT
vs.	*	FOR
VERIZON NETWORK INTEGRATION CORP., ET AL.	*	HOWARD COUNTY
	*	Case No. 13-C-03-54350
Defendants	*	

* * * * * * * * *

MEMORANDUM AND ORDER

Introduction

Patuxent Technology Partners, LLC ("PTP") filed its Complaint on October 1, 2002, in the Circuit Court for Baltimore County against Verizon Network Integration Corporation ("Verizon") and eight other Defendants. From April 25, 2000, until April 24, 2002, PTP and Verizon had a written agreement for PTP to perform technology services for Verizon. PTP asserts that the Verizon Program Manager assigned to this project, Armando Seay, was also a director, shareholder, officer, and employee of the Ross Technology Group, Inc. ("RTGX"), a company which represents itself as a leader in providing technical solutions for businesses. PTP alleges that its own former director of Professional Services, Katherine Adams-Seay (who is married to Mr. Seay of Verizon) left PTP and went to work for RTGX. The other Defendants are individuals who, according to the Complaint, worked for PTP on the Verizon contract and then subsequently went to work for RTGX. Eventually, RTGX began to do much of the work that PTP had previously done as well as Verizon work that PTP expected to do in the future. Unhappy with the

defections and loss of expected business, PTP filed this lawsuit against Verizon, RTGX, Seay, Adams-Seay, and the other individuals.

Verizon filed a motion to dismiss, asserting that all the claims against it must be dismissed under either Maryland Rule 2-322 (b)(1) or (2) because all claims against it are subject to arbitration or, in the alternative, are not actionable as a matter of law. The parties have extensively briefed the issues, and after this case was transferred to this County, a hearing on the motion was held before the Court. This Memorandum and Order constitutes the Court's ruling.

Statement of Facts

This case arises out of PTP's relationship as a consultant to Verizon. That relationship begins with the Consulting Agreement entered into between Verizon and PTP on April 25, 2000, which was extended and renewed through April 24, 2002. (Complaint, ¶¶34, 35. *See also* Consulting Agreement, ¶27, attached as Exhibit 1 to Defendant's original Memorandum of Law.) This agreement permitted PTP to act as an independent contractor consultant for Verizon (formerly Bell Atlantic Network Integration, Inc.) to perform services and provide materials to Verizon or their existing customers upon authorization by Verizon by way of a written Purchase Order accompanied by an associated Statement of Work. PTP describes itself as "a leader in developing sophisticated integrated information technology systems which utilizes wireless

solutions, systems engineering, web engineering, software engineering and systems integration". (Complaint, ¶15) Verizon was free to use other independent contractors for such work at its election.

PTP alleges that in the summer of 2000, Verizon, through its former Program Manager Armando Seay, entered into a subsequent agreement with PTP, referred to by PTP as the "Subcontractor Agreement", that was "in addition to, and not inconsistent with, the Consulting Agreement". (Complaint, ¶¶36, 37) PTP does not allege that the Subcontractor Agreement was a written instrument. Plaintiff characterizes it as an oral agreement, and Plaintiff refers to it in its brief as the "Oral Subcontractor Agreement of June 2000".

The Subcontractor Agreement is alleged to be an exclusive oral contract for services. More specifically, PTP agreed to assist Verizon in developing and presenting demonstrations and proposals to prospective Verizon customers in Maryland. In consideration of PTP's services, Plaintiff alleges Verizon expressly agreed to engage PTP as a subcontractor on all contracts arising from PTP's services under the original agreement. Once awarded the contract, however, Plaintiff asserts that Verizon failed to perform its duties under the Oral Agreement and breached that agreement.

The original Consulting Agreement contains a dispute resolution provision. *See* Consulting Agreement, ¶26. It provides

for an initial internal dispute resolution procedure followed by binding arbitration pursuant to the Construction Industry Arbitration Rules of the American Arbitration Association if the principals of both parties are unable to reach a resolution. Arbitration is compulsory for:

> [a]ll disputes, claims of either party hereto, all questions concerning interpretation or clarification of the Agreement or the acceptable fulfillment of the Agreement on the part of either party, and all questions as to compensation and to extension of time... The arbitration shall be held in Philadelphia, Pennsylvania unless otherwise agreed by the parties, and shall be final and binding on them both. Judgment may be entered on any award by any court of competent jurisdiction. The parties' agreement to arbitrate shall be governed by the United States Arbitration Act, 9 U.S.C. §§1-15, notwithstanding any provision to the contrary.

(emphasis added)

Without invoking the arbitration clause, PTP brought this action and alleges 13 contract and tort claims against Verizon. PTP claims that pursuant to the alleged "Subcontractor Agreement", Seay "specifically and expressly promised to engage PTP as a subcontractor on all prospective contracts awarded to Verizon, for which PTP had assisted it in developing its business plan and proposal". (Complaint, ¶37, 52-58) PTP alleges that Verizon accepted consulting services from PTP on a number of contracts, but later terminated PTP as subcontractor on those contracts and

engaged Defendant The Ross Technological Group, Inc. ("RTGX") in its place. (Complaint, ¶¶54-58, Counts 8-12)

In addition to its claims for breach of the "Subcontractor Agreement" (Counts 8-12), PTP attempts to attribute alleged tortious conduct by Seay to Verizon as a basis for claims against Verizon of defamation (Count 7), misrepresentation (Counts 41, 42, 45, 46), conspiracy (Count 54), and aiding and abetting (Counts 57, 58). The allegations regarding the Consulting Agreement and the alleged "Subcontractor Agreement" underlie all of PTP's tort claims. (Complaint ¶¶102-103, 306-307, 311, 316, 335-337, 339, 343-344, 346-349, 407, 430, 437)

Discussion

Plaintiff first argues that as a threshold matter, the Federal Arbitration Act ("FAA") 9 U.S.C. §§1-16, cannot apply to the factual situation alleged in the Complaint because under the Act, there must be both a "written agreement" to arbitrate and the transaction must involve "commerce". *Lopresti v. Electro-Films, Inc.*, 1992 WL 309634 at *3 (E.D. Pa. Oct. 20, 1992). Plaintiff asserts that given the plain language of the Act, the contract properly before the Court, the oral subcontractor agreement, does not satisfy either of these requirements.

Defendant is not, however, relying on the so-called oral contract alleged in the Complaint to invoke the FAA. Defendant relies instead on the original consulting agreement, which is

"written". In that agreement, Plaintiff and Defendant without any doubt agreed to have arbitration under the FAA. The reach of that agreement is what is in question, but there is no doubt that both parties were agreeing to use FAA procedures. Where they disagree is whether the FAA provision flows through to the facts alleged in the Complaint.

Plaintiff also suggests that somehow the factual scenario alleged does not evidence sufficient "commerce" so that the FAA can be invoked.[1] Plaintiff asserts that the factual allegations do not include a transaction involving commerce because all contact between parties relevant to the agreement occurred in Maryland.

The short answer to this is that under the original agreement, both parties agreed to utilize the FAA, and there is no suggestion here that Plaintiff did not so agree. Having agreed to do so, the Plaintiff cannot now be heard to suggest that activity otherwise falling within the scope of the written agreement may in retrospect not have sufficient attributes of "commerce" to allow FAA procedures to be used.

There certainly should be no cause for this Court to in any way conclude that it cannot enforce the provision, at least in the

[1] Under the FAA, "commerce" means "commerce among the several States or with foreign nations, or in any Territory of the United States or in the District of Columbia, or between any such Territory and another, or between any such Territory and any State or foreign nation, or between the District of Columbia and any State or Territory or foreign nation..." 9 U.S.C. §1.

defensive way it is now being asserted by Defendant. *Southland Corp. v. Keating*, 465 U.S. 1 (1984) (FAA can be enforced by state court actions). Indeed, in many situations, state court enforcement may be the only avenue available. Federal courts are courts of limited jurisdiction, and parties seeking to invoke their jurisdiction must assert a basis for such jurisdiction. Thus, in such a case, the absence of sufficient "commerce" being shown under Section 1 of the FAA may prevent a federal court from establishing the requisite precondition even where an independent basis of jurisdiction exists, such as federal question or diversity jurisdiction. *JDC (America) Corp. v. Amerifirst Florida Trust Co.*, 736 F. Supp. 1121 (S.D. Fla. 1990).

However, Maryland circuit courts are courts of general jurisdiction that do not require specific grants of statutory jurisdiction in order to have subject matter jurisdiction over a dispute. Courts and Judicial Proceedings Article §1-501. Thus, even in the absence of the requisite "commerce" necessary to establish federal court jurisdiction, this Court could enforce the parties' written agreement to utilize the FAA procedures to arbitrate their disputes. This Court can enforce the written agreement made by the parties, including the provision to employ

FAA procedures.[2]

The core question here is whether some or all the claims raised by Plaintiff are even covered by the arbitration clause of the written agreement. There are two opposing views. Defendant sees all of Plaintiff's claims arising out of and germinating from the written agreement, and thus in its view, the claims are clearly "disputes" within the scope of the arbitration agreement that arise in a continuous organic stream from the parties' relationship begun by the written agreement.

Plaintiff takes another approach and contends that the written agreement has discrete boundaries and that the claims it raises in the Complaint are ones outside those boundaries and founded on another discontinuous oral contract that, while between the same parties, is not affected or in any way governed by the terms of the original written agreement.

This Court must decide which view is correct under the applicable law.

Whether a party has agreed to arbitrate an issue is a matter of contract interpretation. A party can only be required to submit to arbitration disputes which he has agreed to arbitrate. *United*

[2] To the extent that the unavailability of federal court jurisdiction would limit enforcement, this Court could utilize the Maryland Arbitration Act, Courts and Judicial Proceedings Article §§3-201 *et seq.*, the FAA's State analogue, to address enforcement concerns. *See Holmes v. Coverall N. Am., Inc.*, 336 Md. 534 (1994).

Steelworkers of America v. Warrior & Gulf Navigation Co., 363 U.S. 574, 582 (1960). But in considering matters where the parties have invoked in their agreement the FAA, the U. S. Supreme Court has indicated its (and by implication, any construing court's) "healthy regard for the federal policy favoring arbitration". It further explained that the Act

> establishes that, as a matter of federal law, any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration, whether the problem at hand is the construction of the contract language itself or an allegation of waiver, delay, or a like defense to arbitrability.

Moses H. Cone Memorial Hosp. v. Mercury Constr. Co., 460 U.S. 1, 24-25 (1983).

While no party that did not agree in advance to arbitrate its disputes should be denied a judicial forum, there is in the context of construing contracts invoking the FAA, a "heavy presumption of arbitrability" which "requires that when the scope of the arbitration clause is open to question, a court must decide the question in favor of arbitration." *Peoples Sec. Life Ins. Co. v. Monumental Life Ins. Co.*, 867 F.2d 809, 812 (4th Cir. 1989); *American Recovery Corp. v. Computerized Thermal Imaging, Inc.*, 96 F.3d 88, 92 (4th Cir. 1996). Indeed, this heavy presumption tilts the analysis so that a party's request to arbitrate an issue should not be denied "unless it may be said with positive assurance that the arbitration clause is not susceptible of an interpretation that

covers the asserted dispute." *United Steelworkers of America v. Warrior & Gulf*, *supra*, 363 U.S. at 582-83; *Long v. Silver*, 248 F.3d 309, 316 (4th Cir. 2001); *Becker Autoradio U.S.A. Inc. v. Becker Autoradiowerk GmbH*, 585 F.2d 39, 44 (3rd Cir. 1978).

Against this background, the Court must look to the Consulting Agreement where it is undisputed that the parties initially set forth an agreement to arbitrate under the FAA, but where there is a disagreement about the scope of the agreement.

Paragraph 26 of the Consulting Agreement states that the following will be subject to arbitration (as well as the preliminary dispute resolution procedures):

> All disputes, claims of either party hereto, all questions concerning interpretation or clarification of the Agreement or the acceptable fulfillment of the Agreement on the part of either party, and all questions as to compensation and to extension of time...

Defendant asserts that the clause sweeps under the arbitration umbrella all of the claims in Plaintiff's Complaint, while Plaintiff vigorously asserts that the agreement to arbitrate in the Consulting Agreement cannot be read to step beyond its boundaries and infect a new agreement freely reached by the parties that contains no new arbitration provision.

Simple inspection of the wording of Paragraph 26 of the Consulting Agreement discloses that there was an intent to broadly require arbitration. First, the clause refers to "all disputes" as being arbitrable without any qualification. A dispute is a

"debate, controversy or difference of opinion". Random House Webster's Unabridged Dictionary, 2nd Edition 569 (1999). It is a broad term and would seem to include any disagreement that the parties had during the time of their contractual relationship. It would surely seem to include controversies that arise during the term of the contract that relate in any way to the work performed or to be performed by Plaintiff for Defendant while the parties remain in the overall relationship.

Plaintiff suggests that the balance of the phrases listing the matters that may be arbitrated are more specific and do not evidence an intent to sweep so broadly. It is correct that as the sentence reads on, the other parallel phrases get increasingly more specific running from "claims of either party hereto" to finally "questions as to ... extension of time". While this is true, there is no indication in reading this clause in its entirety and in the context of the entire consulting agreement of any desire by the contracting parties to be parsimonious in what was to be arbitrated.

Whatever doubt would otherwise infect a construction of Paragraph 26 is cured and eliminated by further examination of the federal case law which has construed language similar to that found in Paragraph 26 to be "broad arbitration clauses capable of an expansive reach." *American Recovery*, 96 F.3d at 93. *See Prima Paint Corp. v. Flood & Conklin Mfg. Co.*, 388 U.S. 395 (1967); *J.J.*

Ryan & Sons, Inc. v. Rhone Poulenc Textile, S.A., 863 F.2d 315 (4th Cir. 1988). In the Fourth Circuit's view, such broad clauses do not limit arbitration to the literal interpretation or performance of the contract, but "embrace[d] every dispute between the parties having a significant relationship to the contract regardless of the label attached to the dispute". *American Recovery*, 96 F.3d at 88 (1996).

In applying this "significant relationship" test, the *American Recovery* court found tort and equity claims that were alleged to arise under another agreement to be arbitrable because there was a sufficient relationship between the claim made by plaintiff and the original agreement containing the arbitration clause. Indeed, the court even found a *quantum meruit* claim that, by its definition must be independent of an express agreement, could still have the significant relationship to the agreement containing the arbitration clause such that it would be swept into arbitration. As the court explained:

> A claim may arise outside of an agreement and yet still be related to that agreement; we must analyze the relationship between the claim and the agreement without regard to the legal label assigned to the claim.

Id. at 95.

In this case, all of the claims raised by the Plaintiff do have a significant relationship to the consulting agreement, regardless of the creative legal label Plaintiff attaches to them.

All of the claims are said to have arisen while the original consulting agreement was still in effect and governing the parties overall business relationship. It can also be said that each of the claims arose from and originates in the work performed under the consulting agreement. Plaintiff's attempts to put an intellectual firewall between the original agreement's arbitration mandate and its claims by asserting that a new, independent oral contract arose that divorces it from the reach of the arbitration clause are not persuasive. In the Fourth Circuit's words, this is putting a "legal label" on the claim while ignoring the overall relationship of the parties, the timing and flow of the original contract, and the practical and economic implications for the parties.[3]

[3] The Fourth Circuit is not the only one to read arbitration clauses as broadly and expansively as the language of the agreement may reasonably allow. For example, *Ace Capital Re Overseas Ltd. v. Central United Life Insurance Co.*, 307 F.3d 24 (2nd Cir. 2002) demonstrates the modern trend following the Supreme Court's endorsement of the Federal Arbitration Act to have arbitration clauses reach claims, such as fraud in the inducment, that were previously considered to be collateral or outside the scope of arbitration clauses.

Given the need for "positive assurance" that a written broad arbitration agreement does not cover a resulting dispute, *Long v. Silver*, 248 F.3d 309, 316 (2001), it would be incumbent on parties enveloped in a business relationship otherwise governed by such a broad arbitration provision to expressly provide in subsequently-formed oral agreements reached during the term of the written agreement that their disputes will not be subject to arbitration, should that be their desire. Otherwise, given the state of the case law, it will be presumed that disputes that arise will be so subject. Of course, Plaintiff here does not allege in its complaint that there was any such intent positively expressed in the so-called oral agreements allegedly reached with Defendant to create a "safe harbour" from the otherwise broadly-imposed arbitration regime.[4]

Plaintiff also asserts that the existence of an integration clause in Paragraph 27 of the original consultant's agreement is evidence that the arbitration clause in Paragraph 26 was to be read narrowly and indicates that it was not to effect anything except the express terms of the written agreement "and control only matters involving that agreement". Plaintiff's Response to Defendant Verizon's Motion To Dismiss, Page 11. Plaintiff relies on the language in Paragraph 27 which says that this Agreement "constitutes the entire agreement", and further that the agreement

[4]In fact, Plaintiff concedes in its Memorandum of Law that the alleged oral

"shall not be changed except by written agreement signed by both parties."

This Court does not read the clause to limit the scope of claims subject to arbitration. As stated above, by agreeing to the broad description of matters subject to arbitration included in Paragraph 26 and effectively adopting the federal case law on the FAA, Plaintiff was agreeing not only to arbitrate matters within the four corners of the agreement but also to arbitrate all claims falling within the "significant relationship" test described above, regardless of their legal label.

Indeed, if anything, the integration clause casts doubt on Plaintiff's argument that there was a subsequent oral agreement not subject to the broad arbitration provision. If there were to be an alteration of the broad arbitration clause affecting matters that have a significant relationship to the original agreement, it would have to be by a written agreement signed by both parties in order to conform with Paragraph 27. Plaintiff does not allege that any such agreement to expressly modify or limit the arbitration clause was ever made by the parties in adopting the so-called oral agreement mentioned in the Complaint or that it was reduced to writing.

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agreement was silent as to the method of dispute resolution. Plaintiff's Response to Defendant Verizon's Motion to Dismiss, Page 3.

In sum, there is a significant relationship between all of the claims made by the Plaintiff in the Complaint before this Court and the original Consulting Agreement containing the expansive arbitration clause. As such, the Plaintiff is required to arbitrate its claims against Defendant, and this Court must dismiss them.[5]

Verizon further asserts that it is entitled to court costs and attorneys' fees it has incurred in connection with the Motion because Paragraph 26 of the Consulting Agreement further provides that:

> A party that resorts to litigation in derogation of the arbitration agreement shall be liable to the other party for court costs and attorneys' fees to obtain a stay of litigation, its dismissal, or an order compelling arbitration.

PTP's only argument against the award of costs and fees is based on its contention that the alleged new oral agreement arose, thus blocking any further force and effect of the written Agreement, including the costs and fees provision. Since the Court has found PTP's argument not to have merit as it effects the flow-through nature of the broad arbitration clause, PTP is liable for Verizon's court costs and attorneys' fees. The amount and reasonableness of Verizon's claim will need to be established.

[5] In light of this Court's ruling dismissing all claims because of the operation of the arbitration clause, it is not necessary for the Court to rule on Verizon's other arguments for dismissal of the claims against it.

Conclusion

For these reasons, it is, this 3rd day of December, 2003,

ORDERED, that Verizon's Motion to Dismiss is granted; and it is further,

ORDERED, that all claims against Verizon Network Integration Corporation are dismissed; and it is further,

ORDERED, that Verizon is entitled under the agreement to have PTP pay to it the court costs and attorneys' fees necessary for it to obtain this order of dismissal; and it is further,

ORDERED, that if the parties are unable to agree on the amount to be awarded, they shall jointly notify the Court in writing within 30 days of the date of this Order, and further proceedings will be scheduled on that issue.

/s/
Dennis M. Sweeney
JUDGE

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