IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

CHA	)	**CASE NO. CV 11 768733**
	)	
Plaintiff,	)	**JUDGE JOHN P. O'DONNELL**
	)	
vs.	)	
	)	
WESTLAKE REED LESKOSKY	)	**JOURNAL ENTRY**
	)	
Defendant.	)	

John P. O'Donnell, J.:

STATEMENT OF THE CASE

Plaintiff CHA filed this lawsuit on November 8, 2011, alleging a breach by defendant Westlake Reed Leskosky of a contract under which CHA provided engineering services to the defendant. On December 22, the defendant filed a motion to stay proceedings and to compel arbitration. That motion is now fully briefed an opposition was filed by the plaintiff on January 4, 2012, and the defendant filed a reply brief on January 11 and this entry follows.

STATEMENT OF FACTS

CHA and Westlake Reed Leskosky entered into a contract dated May 12, 2009. The essence of the contract is that CHA agreed to provide engineering and design services to Westlake Reed Leskosky as a sub-consultant on a project known as the Cleveland Clinic Twinsburg Campus. In return, Westlake Reed Leskosky agreed to pay CHA $684,506. The contract between the two parties to this lawsuit incorporated the prime agreement between the

architect.

The CHA contract with Westlake Reed Leskosky and the prime agreement between Westlake Reed Leskosky and The Cleveland Clinic Foundation are attached as exhibits to the complaint. Each contract requires arbitration of any disputes arising under the agreement. In particular, the contract between CHA and Westlake Reed Leskosky provides:

> ARTICLE 8 CLAIMS AND DISPUTES
> § 8.1 Subject to Section 8.2, any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to the same dispute resolution provisions as set forth in the Prime Agreement. . .
>
> § 8.2 If the claim, dispute or other matter in question arising out of or related to this Agreement is unrelated to a dispute between the Architect and Owner, or if the Consultant is legally precluded from being a party to the dispute resolution procedures set forth in the Prime Agreement, then claims, disputes or other matters in question shall be resolved in accordance with this Section 8.2. Any such claim, dispute or matter in question shall be subject to mediation as a condition precedent to binding dispute resolution. Mediation shall be conducted as set forth in AIA Document B101™ 2007 at Sections 8.2.1, I.2.2 and 8.2.3. . . If the parties do not resolve a claim, dispute or matter in question through mediation, the method of binding dispute resolution shall be the following:
> ***
> Arbitration pursuant to the terms and conditions set forth in Section 8.3 of AIA Document B101™—2007. . .
> ***

In turn, the prime agreement between the owner and Westlake Reed Leskosky also requires arbitration as follows:

> **ARTICLE 7**
> **DISPUTE RESOLUTION**
>
> 7.1 Either Owner or Architect may from time to time call a special meeting for the resolution of claims, disputes, or other matters in questions (*sic*) between them . . . Neither party may file a demand for arbitration against the other on account of any such dispute until such meeting has been called for pursuant to this provision and . . . the parties shall then proceed to the dispute resolution provisions of 7.2 below.
>
> 7.2 . . . all disputes between them arising out of or relating to this Agreement shall be submitted to the chief executives of each of the parties for their personal discussion and resolution. . .

> 7.3 Owner and Architect agree that in the event that Owner and Architect are unable to reach an agreement with respect to any matter in dispute pursuant to the provisions of 7.1 and 7.2 above, they will then submit such matter to binding arbitration . . .

LAW AND ANALYSIS

Section 2711.03 of the Ohio Revised Code allows a party seeking to enforce a written agreement for arbitration to petition the court for an order directing that the arbitration proceed under the written agreement. Section 2711.02 provides for a stay of litigation until the arbitration is had in accordance with the written agreement.

It is well-established that public policy favors and encourages arbitration to avoid needless and expensive litigation. *Mak v. Silberman*, 8th Dist. App. No. 95590, 2011-Ohio-854, 2011 WL683899, ¶18. A court should look to the language of the arbitration agreement to determine whether the parties agreed to arbitrate the disputed issue. *Alexander v. Wells Fargo Financial Ohio 1, Inc.*, 122 Ohio St.3d 341, 343 (2009).

The Ohio Supreme Court has held that an arbitration clause requiring "any claim or controversy arising out of the agreement" to be submitted to arbitration is the paradigm of a broad arbitration clause, and that where such language is used, the agreement must be enforced unless it may be said with positive assurance that the arbitration clause is not susceptible to an interpretation that covers the asserted dispute. (See *Academy of Medicine of Cincinnati v. Aetna Health, Inc.*, 108 Ohio St.3d 185 (2006).) The two clauses at issue here provide that "any claim, dispute or other matter in question arising out of or related to this Agreement" and any "claims, disputes, or other matters" be resolved by arbitration. Like the agreement in *Aetna Health*

agreement is undoubtedly covered by them.

Nevertheless, CHA opposes arbitration here on equitable grounds. CHA notes that R.C. §2711.01(A) provides that arbitration agreements are generally enforceable "except on grounds that exist at law or in equity."[1] But CHA omitted an important part of the statutory language. Section 2711.01(A) does not allow an arbitration agreement to be avoided only "upon grounds that exist at law or in equity." Instead, it provides that arbitration agreements may be avoided "upon grounds that exist at law or in equity *for the revocation of any contract*." In the case of an arbitration agreement, equitable or legal grounds "for the revocation of any contract" are usually present only when the provision at issue is unconscionable or was fraudulently induced. (See, *e.g.*, *Rude v. NUCO Edn. Corp.*, 9th Dist. No. 25549, 2011-Ohio-6789, 2011 WL 6931516, ¶7.) Yet CHA makes no argument, and offers no evidence, to support a claim of unconscionability or fraudulent inducement.

What CHA really objects to is what it perceives as an unquestionably meritorious claim services were rendered and never paid for having to go through mediation and arbitration simply because Westlake Reed Leskosky refuses to pay. More particularly, CHA complains that "there is no dispute or claim that is arbitratable (*sic*) here. There is nothing to mediate or arbitrate with respect to the amount that Westlake owes CHA."[2] CHA cites to Westlake Reed Leskosky's request for time to pay due to "cash flow" problems as evidence for its claim that there is no dispute here to arbitrate.

But CHA's assertion that its right to payment is uncontroverted is belied by the fact of this lawsuit. After all, what is a lawsuit other than a dispute resolution mechanism? Additionally, Westlake Reed Leskosky's reasons for non-payment are immaterial. It is not a tort to breach a contract, no matter how willful or malicious the breach. *Salvation Army v. Blue*

[1] Plaintiff's brief in opposition, page 3.
[2]

Cross and Blue Shield, 92 Ohio App. 3d 571, 578 (8th Dist., 1993). Knowing the consequences, a party is free to breach a contract for any or no reason. Where that happens even for no reason the non-breaching party must then prove its claim in court or otherwise. While it is indisputably preferable that a party who has agreed to pay for services does not withhold payment for no reason after those services are rendered, an unjustified failure to pay does not negate the contract's arbitration clause.

CONCLUSION

For the foregoing reasons, the defendant's motion to compel arbitration is granted and the parties are ordered to proceed with a mediation and, if necessary, arbitration under the terms of their contract. This lawsuit will be placed upon the court's inactive docket and will only be returned to the active docket after arbitration and upon request by one or both parties.

IT IS SO ORDERED:

_____ Date: _____
Judge John onnell

SERVICE

A copy of this journal entry was sent by e-mail, this 31st day of January, 2012, to the following:

Gregory H. Melick, Esq.
gmelick@lnattorneys.com
Attorney for Plaintiff

Daniel M. Haymond, Esq.
Dan.Haymond@ThompsonHine.com
Attorney for Defendant

_____