

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

WESTLAKE INVESTMENTS, L.L.C.,

Plaintiff,

vs.

MLP MANAGEMENT L.L.C., et. al.,
Defendants.

MLP MANAGEMENT L.L.C., et. al.,
Third-Party Plaintiffs,

vs.

ALL STATE GUTTER, INC., et. al.,
Third-Party Defendants.

No. 4:09-cv-00095-JAJ-RAW

ORDER

This matter comes before the Court pursuant to Third-Party Defendant Houston Stafford Electrical Contractors, LP n/k/a/ IES Residential Inc.'s (hereinafter "Houston Stafford") April 22, 2009 Motion to Stay and Compel Arbitration. [Dkt. No. 37.] Plaintiff Westlake Investments, L.L.C. (hereinafter "Westlake") joined in resistance to all motions to stay, compel arbitration, and remand on May 1, 2009. [Dkt. No. 47.] Third-Party Plaintiff Pioneer Construction, Inc. (hereinafter "Pioneer") resisted the motion on May 11, 2009. [Dkt. No. 49.] On June 16, 2009, Houston Stafford filed a Reply to Pioneer's Resistance. [Dkt. No. 74.] The Court entered an order on Dec. 16, 2009 requesting the parties to submit the proper "Exh. B-2 Sub-Supplementary Conditions" Agreement between Houston Stafford and Pioneer [Dkt. No. 141], and the parties filed a joint submission of the requested document on Dec. 23, 2009. [Dkt. No. 149.] For the reasons described below, the Court denies Houston Stafford's Motion to Stay and Compel Arbitration.

I. BACKGROUND

Plaintiff Westlake's lawsuit against the defendants arises out of the sale of an apartment complex known as the "Westlake Apartments." Defendant Third-Party Plaintiff Pioneer contracted with Third-Party Defendant Houston Stafford, a Texas limited liability company, to furnish and install a complete electrical system at Westlake Apartments. Pioneer, as contractor, and Houston Stafford, as subcontractor, entered into the agreement April 23, 2002 (hereinafter "Agreement"). On or about May 6, 2002, the parties also agreed to the "Exhibit B-2 Sub-Supplementary Conditions" (hereinafter "Supplementary Conditions"). [Dkt. No. 149 at 1.]

On February 18, 2008, Westlake filed a petition in Dallas County Iowa District Court, and then in a second amended petition, named Pioneer as a defendant. Pioneer filed an amended cross-petition on January 6, 2009, alleging claims against Houston Stafford for indemnification, contribution, and breach of contract based on the terms of the Agreement. On March 4, 2009, the case was timely removed to this Court on the basis of diversity jurisdiction.

II. SUMMARY OF ARGUMENTS

Houston Stafford filed this motion to compel and stay arbitration because it argues that the terms of the Agreement unambiguously state that any claim arising out of their contractual relationship "shall be subject to arbitration." [Dkt. No. 37-2 at 5.] Houston Stafford points to Section 6.2 of the Agreement, the section on arbitration, for support of its motion. Houston Stafford argues that this provision makes Pioneer contractually bound to arbitrate the dispute. According to the express terms of Section 6.2.1, the parties must attempt mediation pursuant to Section 6.1.1 as a condition precedent to arbitration or before initiating legal proceedings. [Dkt. No. 74 at 3-4.]

Pioneer resists Houston Stafford's interpretation, and instead argues that the mediation and arbitration section of the Agreement is superceded by an arbitration provision in the

Supplementary Conditions. Pioneer asserts without opposition that the Supplementary Conditions are incorporated into the Agreement by Section 16.1.4, a provision that cross-references other documents as being included in the Agreement, such as the Supplementary Conditions. The Supplementary Conditions then alter the arbitration terms of the Agreement with the inclusion of “Item 32 - Mediation & Arbitration” (hereinafter “Item 32”). Item 32 states that, notwithstanding any provision in the agreement to the contrary, Pioneer must specifically agree in writing before being required to submit a dispute to arbitration or mediation. Id. Thus, Pioneer argues that it was not required to submit to arbitration or mediation “any dispute between it and Houston Stafford unless Pioneer [] specifically agreed in writing to arbitrate *that* particular dispute.” Id. (emphasis in original).

Houston Stafford disagrees with Pioneer’s interpretation of the effect of Item 32, and instead asserts that the court should construe Item 32 as encompassing “situations other than what is specifically defined” and subject to arbitration in Section 6.2. [Dkt. No. 74 at 5.] It contends that Item 32 is significantly broader than Section 6.2 and applies to “any dispute” that falls outside the much narrower “any claim arising out of” the Agreement language of Section 6.2. Id. Alternatively, Houston Stafford asserts that when read together, Section 6.2 and Item 32 create ambiguity. Id. at 6-7. When there are two possible interpretations, one in favor and one against arbitration, Houston Stafford proposes that because public policy favors arbitration, pursuant to the Federal Arbitration Act, the court must rule in favor of arbitration. Id. at 6.

III. DISCUSSION

A. Federal Arbitration Act

This Court first examines the effect of the Federal Arbitration Act (“FAA”) on the Agreement. Arbitration agreements are governed by the FAA. 9 U.S.C. §§ 1-16. The FAA is the result of a “congressional declaration of a liberal federal policy favoring arbitration agreements,” mandating that courts should be deferential to the arbitration process and its

results. Moses H. Cone Memorial Hospital v. Mercury Constr. Corp., 460 U.S. 1, 24 (1983). See also Van Horn v. Van Horn, 393 F. Supp. 2d 730, 742 (8th Cir. 2005); Hoffman v. Cargill, 236 F.3d 458, 461 (8th Cir. 1991). Section 2 of the FAA states that a written provision to arbitrate in any “contract evidencing a transaction involving commerce . . . shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract.” 9 U.S.C. § 2. Claims may be arbitrated so long as there is a substantive question presented and the dispute is within the scope of a valid arbitration agreement. Green Tree Fin. Corp. v. Randolph, 531 U.S. 79, 90 (2000).

According to the Supreme Court, the FAA “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 some other defense to arbitration. Moses H. Cone, 460 U.S. at 24-25. When a court is interpreting ambiguous provisions in an agreement covered by the FAA, “due regard must be given to the federal policy favoring arbitration, and ambiguities as to the scope of the arbitration clause itself resolved in favor of arbitration.” Mastrobuono v. Shearson Lehman Hutton, Inc., 514 U.S. 52, 62 (1995) (quoting Volt, 489 U.S. at 476). Because there is a “liberal reading of [the scope of] arbitration agreements,” many issues that might be considered relevant to arbitrability are instead arbitrable themselves. Moses H. Cone, 460 U.S. at 24 n.27 (citing Prima Paint Corp. v. Flood & Conklin Mfg. Co., 388 U.S. 395 (1967)). A court, not an arbitrator, must serve as the “gatekeeper” and decide whether the parties agreed to arbitrate. AT&T Tech., Inc. v. Comm. Workers of America, 475 U.S. 643, 649 (1986).

The FAA “provides two parallel devices” for enforcing an arbitration agreement: a stay in any case raising a dispute referable to arbitration, 9 U.S.C. § 3¹, and an affirmative

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Section 3 provides that if a suit is brought on the merits of a dispute covered by an arbitration agreement,

[then] the court in which such suit is pending, upon being satisfied

order to engage in arbitration, § 4². Moses H. Cone, 460 U.S. at 23. These orders require “an expeditious and summary hearing, with only restricted inquiry into factual issues.” Id. A court should grant an order compelling arbitration “unless it may be said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute.” Medcam, Inc. v. MCNC, 414 F.3d 972, 975 (8th Cir. 2005). Whether an arbitration agreement is within the scope of the FAA is a separate inquiry from the merits of the underlying claim. Id. (citing Kansas City S. Transp. Co. v. Teamsters Local 41, 126 F.3d 1059, 1067 (8th Cir. 1997)). See also 3M Co. v. Amtex Sec., Inc., 542 F.3d 1193, 1198-99 (8th Cir. 2008) (“the district court does not reach the potential merits of any claim but construes the clause liberally, resolving any doubts in favor of arbitration . . .”). A party may not be compelled to arbitrate unless it has agreed, by contract, to do so. McLaughlin Gormley King Co. v. Terminix Int’l Co. L.P., 105 F.3d 1192, 1193-94 (8th Cir. 1997). Yet an arbitration clause should be upheld if the clause seemingly covers the dispute. Volt, 489 U.S. at 479.

According to Eighth Circuit case law, when a party moves to compel arbitration, the district court is limited to determining: “(1) whether there is a valid agreement between the parties, and (2) whether the claim falls within the arbitration agreement.” Faust v. Command Ctr., Inc., 484 F. Supp.2d 953, 954 (S.D. Iowa 2007) (citing Larry’s United Super, Inc. v. Werries, 253 F.3d 1083, 1085 (8th Cir. 2001)). See also Lipton-U. City, L.L.C. v. Shurgard

that the issue involved in such suit or proceeding is referable to arbitration under such an agreement, shall on application of one of the parties stay the trial of the action until such arbitration has been had in accordance with the terms of the agreement,

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Section 4 states that a district court must enter an arbitration order “upon being satisfied that the making of the agreement for arbitration or the failure to comply therewith is not in issue.” If either of the points are in issue, then § 4 states that the “court shall proceed summarily” to a trial on that point.

Storage Ctrs., Inc., 454 F.3d 934, 937 (8th Cir. 2006); Pro Tech Indus., Inc. v. URS Corp., 377 F.3d 868, 871 (8th Cir. 2004); Lyster v. Ryan's Family Steak Houses, Inc., 239 F.3d 943, 945 (8th Cir. 2001); Gannon v. Circuit City Stores, Inc., 262 F.3d 677, 680 (8th Cir. 2001). If a court determines there is a valid arbitration agreement and the specific dispute is within the scope of the agreement, then the court must compel arbitration. Faust, 484 F. Supp.2d at 954. The arbitrator must then decide all other matters, such as “gateway procedural disputes” that do not present questions of arbitrability. Pro Tech, 377 F.3d at 872.

In applying the two-prong test to determine whether Houston Stafford may compel arbitration, the Court first looks to determine whether there is a valid agreement between the parties. Faust, 484 F. Supp. 2d at 954. Neither party disputes the overall validity of the Agreement and the Court finds that the Agreement is binding. The Supplementary Conditions are also properly incorporated by reference into the Agreement.

Turning to the second prong, the Court must analyze whether the present dispute falls within the Agreement. Id. Pioneer filed suit against Houston Stafford for indemnification, contribution, and breach of contract based upon the Agreement. Section 6.2 unambiguously states that “[a]ny claim arising out of or related to” the Agreement is arbitrable. If the only issue was whether the parties should arbitrate according to Section 6.2, then the Court would necessarily conclude that this dispute falls within the scope of the Agreement and is subject to arbitration. Id. However, the analysis cannot end at this point because the parties dispute whether Section 6.2 or Item 32 of the Supplementary Conditions applies to the claims Pioneer brought against Houston Stafford. Parties may set the terms of their own agreement to arbitrate, AT&T Tech, 475 U.S. at 649, and Pioneer argues that because Item 32 supercedes Section 6.2, that Item 32 effectively imposes a condition precedent to arbitration because Pioneer must consent to any arbitration. Pioneer argues that because it has not consented to arbitration over the claims in issue, that Houston Stafford cannot compel arbitration. It is against the backdrop of the FAA that the Court looks to the contractual terms in the Agreement in order to determine whether Section 6.2 or Item 32 controls and if

the claim falls within the agreement to arbitrate. Faust, 484 F. Supp. 2d at 954.

B. Contract Interpretation

Houston Stafford and Pioneer disagree as to whether Item 32 is broader in context and covers disputes that Section 6.2 does not reach, or whether Item 32 supercedes or adds a condition precedent to Section 6.2. A federal court sitting in jurisdiction must apply the law of the forum state. See First Bank of Marietta v. Hogge, 161 F.3d 506, 510 (8th Cir. 1998). Under Iowa law, the construction and interpretation of a contract is reviewed as a matter of law. Hartig Drug Co. v. Hartig, 602 N.W.2d 794,797 (Iowa 1999). Contract interpretation is the process of determining the “meaning of words in a contract” while construction “concerns the legal effect of a contract.” RPC Liquidation v. Iowa Dep’t of Transp., 717 N.W.2d 317, 321 (Iowa 2006). According to Iowa law and the general rules of contract interpretation, “the intent of the parties in creating the contract controls.” Kent v. Iowa, 651 F. Supp. 2d 910, 932 (S.D. Iowa 2009) (citing Smith Barney, Inc. v. Keeney, 570 N.W.2d 75, 78 (Iowa 1997)). The court should determine intent at the point when the contract was executed. Hartig, 602 N.W.2d at 797 (citing Davenport Osteopathic Hosp. Ass’n v. Hosp. Serv., Inc., 261 Iowa 247, 260, 154 N.W.2d 153, 161 (1967)). The contract’s language determines the intent, except if the intent or meaning of the contract is ambiguous. Pro-Edge L.P. v. Gue, 419 F. Supp. 2d 1064, 1084 (N.D. Iowa 2006) (citing Iowa Fuel & Minerals, Inc. v. Iowa State Bd. of Regents, 471 N.W.2d 859, 862 (Iowa 1991)).

In interpreting a contract, a court should interpret it “as a whole, and it is assumed in the first instance that no part of it is superfluous.” Iowa Fuel, 471 N.W.2d at 863. See also Rambo Assoc., Inc. v. South Tama County Comm. Sch. Dist., 487 F.3d 1178, 1184-85 (8th Cir. 2007) (citing DeJong v. Sioux Ctr., Iowa, 168 F.3d 1115, 1120 (8th Cir. 1999) (internal quotations omitted)). The best interpretation gives a “reasonable, lawful, and effective meaning” to all sections of the contract and does not “leave[] a portion of the agreement” meaningless. Id. See also DeJong, 168 F.3d at 1120 (an “interpretation which gives a

reasonable, lawful, and effective meaning to all terms is preferred to an interpretation which leaves a part unreasonable, unlawful, or of no effect.”) (quoting Fashion Fabrics of Iowa, Inc. v. Retail Inv. Corp., 266 N.W.2d 22, 26 (Iowa 1978)).

Interpretation of a contract involves a two-step process. First, a court looks to the selected words and determines “what meanings are reasonably possible.” Walsh v. Nelson, 622 N.W.2d 499, 503 (Iowa 2001) (quoting RESTATEMENT (SECOND) OF CONTRACTS § 202 cmt. a, at 87 (1981)). From this, a court must ascertain whether a term is ambiguous. Id. A term is not ambiguous if the parties only disagree on the meaning of a phrase. Farm Bureau Mut. Ins. Co. v. Sandbulte, 302 N.W.2d 104, 108 (Iowa 1981); PMX Indus., Inc. v. LEP Profit Int’l, 31 F.3d 701, 703 (8th Cir. 1994) (citing Farm Bureau, 302 N.W.2d at 108). “Instead, an ambiguity occurs in a contract when a genuine uncertainty exists concerning which of two reasonable interpretations is proper.” Hartig, 602 N.W.2d at 797 (citing Berryhill v. Hatt, 428 N.W.2d 647, 654 (Iowa 1988)).

If a court identifies an ambiguity, it must then “choose among possible meanings.” Walsh, 622 N.W.2d at 503 (quoting RESTATEMENT (SECOND) OF CONTRACTS § 202 cmt. a, at 87). The test for determining ambiguity is objective. DeJong, 168 F.3d at 1119. A court should give effect to the language of the contract in accordance with its plain and ordinary meaning. Tom Riley Law Firm, P.C. v. Tang, 521 N.W.2d 758 (Iowa Ct. App. 1994). Whenever possible, “the manifestations of intention of the parties to a promise or agreement” should be interpreted as consistent with each other. Pillsbury Co. v. Wells Dairy, Inc., 752 N.W.2d 430, 436 (Iowa 2008) (internal quotation omitted). The language of the entire contract must be given a “commonly accepted and ordinary” meaning, Hartig, 602 N.W.2d at 797-98 (citing Magina v. Barlett, 582 N.W.2d 159, 163 (Iowa 1998)), and “particular words and phrases” should not be “interpreted in isolation”, id. at 798 (citing Iowa Fuel, 471 N.W.2d at 863), but instead “interpreted in a context in which they are used.” Id. (citing Home Fed. Sav. & Loan Ass’n v. Campney, 357 N.W.2d 613, 617 (Iowa 1984)). A court should only look to extrinsic evidence if the words are facially ambiguous and do not result

in a reasonable meaning. PMX Indus., 31 F.3d at 703. See also Fausel v. JRJ Enters., Inc., 603 N.W.2d 612, 618 (Iowa 1999) (“If the resolution of ambiguous language involves extrinsic evidence, a question of interpretation [then] arises which is reserved for the trier of fact.”).

It is also appropriate to consider the common law rule that a court should construe ambiguous language against the interest of the party that drafted it. See United States v. Seckinger, 397 U.S. 203, 210 (1970); RESTATEMENT (SECOND) OF CONTRACTS § 206 (1981); Saturn Oil & Gas Co. v. N. Natural Gas Co., 359 F.2d 297, 302 (8th Cir. 1966) (applying Nebraska law, the court found that when interpreting contractual language against the drafter, it “is usually reverted to only when a satisfactory result cannot be reached by applying more favored rules of construction.”); Christian v. First Nat’l Bank of Deadwood, S.D., 155 F. 705, 709 (8th Cir. 1907) (“if there be any doubt as to its true meaning, it is both just and reasonable that it should be construed most strongly against [the drafter].”); Iowa Fuel, 471 N.W.2d at 862-63 (“when there are ambiguities in the contract, they are strictly construed against the drafter.”); Village Supply Co. v. Iowa Fund, Inc. v. Retail Inv. Corp., 266 N.W.2d 22, 27 (Iowa 1981) (“we resolve doubts concerning the meaning of the agreement against Iowa Fund as its drafter.”). This rule serves to protect the interests of the party who did not choose the language resulting in an unfair or unintended result. RESTATEMENT (SECOND) OF CONTRACTS § 206 (1981).³ However, this rule does not apply when a legal instrument is

³ The drafters of the Second Restatement explained the rule as follows:

Where one party chooses the terms of a contract, he is likely to provide more carefully for the protection of his own interests than for those of the other party. He is also more likely than the other party to have reason to know of uncertainties of meaning. Indeed, he may leave meaning deliberately obscure, intending to decide at a later date what meaning to assert. In cases of doubt, therefore, so long as other factors are not decisive, there is substantial reason for preferring the meaning of the other party.

prepared under scrutiny of sophisticated legal counsel. See Terra Int'l, Inc. v. Miss. Chemical Corp., 119 F.3d 688, 692-93 (8th Cir. 1997) (applying Iowa law, the court held that it “decline[d] to apply the doctrine of *contra proferentem* to this case due to the relatively equal bargaining strengths of both parties and the fact that Terra was represented by sophisticated legal counsel during the formation of the license agreement.”); Kinney v. Capitol-Strauss, Inc., 207 N.W.2d 574, 577 (Iowa 1973) (“That rule is inapplicable where the instrument is prepared with the aid and approval, and under scrutiny of legal counsel for both of the contracting parties.”). In this case, the Court looks to both Section 6.2 and Item 32 to determine if the contractual language is ambiguous. Article Six of the Agreement entitled “Mediation and Arbitration” states the following:

ARTICLE 6 MEDIATION AND ARBITRATION

6.1 MEDIATION

6.1.1 *Any claim arising out of or related to this Subcontract, except claims as otherwise provided in Subparagraph 4.1.5 and except those waived in this Subcontract, shall be subject to mediation as a condition precedent to arbitration or the institution of legal or equitable proceedings by either party.*

...

6.2 ARBITRATION

6.2.1 *Any claim arising out of or related to this Subcontract, except claims as otherwise provided in Subparagraph 4.1.5 and except those waived in this Subcontract, shall be subject to arbitration. Prior to arbitration, the parties shall endeavor to resolve disputes by mediation in accordance with the provisions of Paragraph 6.1.*

[Dkt. No. 37-4 at 7] (emphasis added). However, Item 32 of the Supplementary Conditions states:

RESTATEMENT (SECOND) OF CONTRACTS § 206, cmt. *a* (1981).

32. Mediation & Arbitration: Notwithstanding any contrary provisions herein (*or anything to the contrary contained elsewhere in the Subcontract Documents*), neither Owner or Pioneer shall be required to submit *any dispute* to mediation or arbitration *unless* Owner or Pioneer *specifically agrees in writing to submit such dispute to mediation or arbitration*; and such submission shall apply only to the particular dispute described in writing and signed by Owner or Pioneer.

[Dkt. No. 149] (emphasis added).

The Court first analyzes the meaning of Section 6.2. Generally, the words “arising out of” mean “originating from, growing out of, or flowing from, and require only that there be some causal relationship” between the subject matter in dispute and the contract. Kalell v. Mut. Fire and Auto Ins. Co., 471 N.W.2d 865, 867 (Iowa 1991). A term such as “arising out of or relating to” “constitutes the broadest language [] parties could reasonably use” Fleet Tire Serv. of N. Little Rock v. Oliver Rubber Co., 118 F.3d 619, 621 (8th Cir. 1997) (the court cited a Second Circuit decision with identical language and referred to the term as “the paradigm of a broad clause.”). Furthermore, such broad language can even encompass “collateral disputes that relate to the agreement containing the clause.” Id.

For more authority that this Court should generously construe “arising out of or related to,” this Court looks to Merriam v. Nat’l Union Fire Ins. Co. of Pittsburgh, Penn., 572 F.3d 579, 583-84 (8th Cir. 2009). The Eighth Circuit found that, pursuant to Iowa law, the phrase “arose out of or in the course of” was to be broadly interpreted. Id. At issue were specific terms in an insurance contract⁴ and whether actions leading up to an accident would qualify as occupational injuries in a breach of contract claim. Id. at 583. The Eighth Circuit found that “words like ‘arising out of’ must be given a broad, comprehensive meaning.” Id. (quoting Talen v. Employers Mut. Cas. Co., 703 N.W.2d 395, 405 (Iowa 2005) (internal

⁴ The court noted that, “[i]nsurance policies are contracts . . . and must be interpreted like other contracts, the object being to ascertain the intent of the parties.” Talen, 703 N.W.2d at 407.

quotations omitted)). See also CD Partners, L.L.C. v. Grizzle, 424 F.3d 795, 800 (8th Cir. 2005) (court found arbitration clause to be broad where it covered “any claim, controversy or dispute arising out of or relating to” the operation of a franchise business).

Item 32 similarly contains broad language, as it requires that Pioneer must agree in writing before arbitration for “any dispute.” The Merriam-Webster dictionary defines “any” as “one or some indiscriminately of whatever kind.” The phrase “all” or “any dispute” should, “at a minimum, [be interpreted as] an intention to resolve . . . any dispute”, Mastrobuono, 514 U.S. at 61 n.7, and should accordingly receive a broad interpretation. ING Fin. Partners v. Johansen, 446 F.3d 777, 779 (8th Cir. 2006).

The Court must reconcile and interpret the Agreement and Supplementary Conditions as a whole, and not in isolation of one another. Iowa Fuel, 471 N.W.2d at 863. The juxtaposition of the two clauses lead to different results and an interpretation that lends meaning to all terms is preferred over an interpretation that does not. Fashion Fabrics, 266 N.W.2d at 26.

The Court finds that Section 6.2 and Item 32 contain terms that suggest both clauses are intended to be broadly interpreted. Item 32 specifically controls when there are “contrary provisions” in the Supplemental Conditions or in the Agreement. Furthermore, Item 32 adds the additional requirement that Houston Stafford obtain Pioneer’s written consent before any dispute can be resolved in mediation or arbitration. There is no ambiguity here. Item 32 specifically recognizes that another contract provision may ordinarily require arbitration (“Notwithstanding any contrary provisions ...”) and then unambiguously states that these parties do not want to be bound to arbitrate a dispute unless they specifically agree in writing.

The Court is further aided in the analysis by considering yet another canon of contract law, that if a conflict exists between contractual provisions, “a contract’s specific term controls over a general term.” Fortune Funding, L.L.C. v. Ceridian Corp., 368 F.3d 985, 990 (8th Cir. 2004) (citing Minnesota law). See also RESTATEMENT (SECOND) OF CONTRACTS § 203(c); Corso v. Creighton Univ., 731 F.2d 529, 533 (8th Cir. 1984) (citing Nebraska law)

(“It is also axiomatic that where general and specific terms in a contract may relate to the same thing, the more specific provision should control.”); Iowa Fuel, 471 N.W.2d at 863 (“ . . . when a contract contains both general and specific provisions on a particular issue, the specific provisions are controlling.”) (citing Iowa law). Here, Section 6.2 contains the general language that is more specifically addressed in Item 32.

C. Conclusion

The Court finds that Houston Stafford needs written permission from Pioneer in order to arbitrate the claims. The claims in this case arise solely from the Agreement between Pioneer and Houston Stafford. [Dkt. No. 37-3, Exh. 1, *et. seq.*] Based on its contract interpretation, the Court finds the claims are not subject to the mandatory mediation and arbitration clause of the Agreement, because of the condition precedent of the Supplementary Conditions.

Upon the foregoing,

IT IS ORDERED

Third-Party Defendant Houston Stafford’s Motion to Stay and Compel Arbitration [Dkt. No. 37] is hereby denied.

DATED this 3rd day of March, 2010.



JOHN A. JARVEY
UNITED STATES DISTRICT JUDGE
SOUTHERN DISTRICT OF IOWA