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IN THE
COURT OF APPEALS OF INDIANA

Khaldoun E. Haddad and
Issa E. Haddad,
Appellants,

v.

Properplates, Inc., Manjeet
Singh Bhattal, and Jaipal Atwal,
Appellees.

July 28, 2022

Court of Appeals Case No.
21A-PL-2560

Appeal from the Lake Superior
Court

The Honorable John M. Sedia,
Judge

Trial Court Cause No.
45D01-2107-PL-542

Weissmann, Judge.

- [1] In this appeal of an order compelling arbitration, we are asked whether the owner of a construction project must arbitrate its claims against the project's general contractor when: (1) their construction contract only requires arbitration of the general contractor's "disputes"; but (2) the general contractor has denied the owner's claims and asserted counterclaims. Concluding the general contractor's denials and counterclaims do not make the owner's claims arbitrable, we reverse in part, affirm in part, and remand for further proceedings as specifically set forth below.

Facts

- [2] Khaldoun and Issa Haddad (the Haddads) entered into a construction contract with Properplates Inc., Manjeet Singh Bhattal, and Jaipal Atwal (collectively, Properplates). When a dispute arose concerning the construction project, the Haddads filed a complaint against Properplates, asserting claims for breach of contract, breach of warranty, indemnification, and negligence. Properplates denied the Haddads' claims and filed counterclaims for breach of contract, fraud in the inducement of contract, and tortious interference with a business relationship.
- [3] Properplates then moved to dismiss the Haddads' complaint and compel arbitration of the parties' claims under the terms of the construction contract. The contract specifically provided:

The CONTRACTOR [Properplates] and the CLIENT [the Haddads] hereby mutually agree in advance that in the event that the CONTRACTOR has a dispute concerning this Contract, the CONTRACTOR must submit such dispute to either the American Arbitration Association or to such other private arbitration service which has been approved by the secretary of the Executive of Consumer Affairs and Business Regulations, and the consumer shall be required to submit to such arbitration as provided under current state and federal laws.

App. Vol. II, p. 35.

- [4] The Haddads opposed Properplates' motion, arguing that the contract's arbitration clause only applied to Properplates' counterclaims, not to the claims asserted in the Haddads' complaint. The trial court held otherwise, concluding:

The language of th[e] provision is clear and unambiguous: if the Contractor – i.e. Properplates – has a dispute concerning the Contract, the Contractor must submit the dispute to arbitration. Obviously, Properplates has a dispute under the Contract as they deny the allegations of [sic] Complaint and have filed a Counter-claim against Haddads. The matter must be submitted to arbitration.

Id. at 7. Accordingly, the trial court dismissed the case without prejudice and ordered the parties to arbitration. The Haddads appeal.

Discussion and Decision

- [1] The parties agree that the contract does not generally require the Haddads to arbitrate their claims but does generally require Properplates to arbitrate its

claims. But the parties dispute whether the arbitration clause compelled arbitration of all issues as soon as Properplates filed its counterclaims.

[2] We review a trial court’s decision on a motion to compel arbitration de novo. *Doe v. Carmel Operator, LLC*, 160 N.E.3d 518, 521 (Ind. 2021). Indiana has a strong policy favoring arbitration agreements. *Progressive Se. Ins. Co. v. Empire Fire & Marine Ins. Co.*, 88 N.E.3d 188, 194 (Ind. Ct. App. 2017). When construing arbitration agreements, we resolve every doubt in favor of arbitration and the “parties are bound to arbitrate all matters, not explicitly excluded, that *reasonably* fit within the language used.” *Id.* (emphasis added). If the language of an arbitration clause is unambiguous, “we give it its plain and ordinary meaning in view of the whole contract, without substitution or addition.” *Care Grp. Heart Hosp., LLC v. Sawyer*, 93 N.E.3d 745, 752 (Ind. 2018); *see also Progressive Se. Ins. Co.*, 88 N.E.3d at 194 (“[W]hether parties agreed to arbitrate a dispute is a matter of contract interpretation . . .”).

[3] The parties agree Properplates’ counterclaims fit within the arbitration clause’s plain meaning. The clause specifies disputes concerning the contract shall be submitted to arbitration if the “CONTRACTOR has a dispute concerning this Contract[.]” App. Vol. II, p. 17. The clause unambiguously requires Properplates to send its disputes under the contract to arbitration. Properplates’ counterclaims constitute a “dispute concerning this Contract” and, therefore, must be arbitrated. *Id.*

- [4] But the same is not true for the Haddads. “[P]arties are only bound to arbitrate those issues that by clear language they have agreed to arbitrate; arbitration agreements will not be extended by construction or implication.” *Mislenkov v. Accurate Metal Detinning, Inc.*, 743 N.E.2d 286, 289 (Ind. Ct. App. 2001). The arbitration agreement only required the Haddads to “submit” to arbitration of Properplates’ claims, but the contract does not require the Haddads to arbitrate their own contract disputes. App. Vol. II, p. 17. In other words, the plain language of the contract contemplates non-arbitrable claims.
- [5] In this context, Properplates’ preferred interpretation—that the word “disputes” includes contested non-arbitrable claims—becomes unreasonable. Such an interpretation effectively renders all claims arbitrable, regardless of the party that brings them. The plain language of the contract reflects no such intent. Despite this State’s policy favoring arbitration, we cannot shoehorn such a requirement where it does not reasonably fit. *See Progressive Se. Ins. Co.*, 88 N.E.3d at 194.
- [6] We acknowledge that there is likely overlap between the Haddads’ claims and Properplates’ counterclaims. However, [Indiana Code § 34-57-2-3\(f\)](#) provides:
- [i]f the court determines that there are other issues between the parties that are not subject to arbitration and that are the subject of a pending action or special proceeding between the parties and that a determination of such issues is likely to make the arbitration unnecessary, the court may delay its order to arbitrate

until the determination of such other issues or until such earlier time as the court specifies.

Because the contract does not require arbitration of the Haddads' claims, this statute allows the reversal of the trial court's previous order and permits the trial court to determine whether to hear the Haddads' dispute first before sending Properplates' dispute to arbitration.

- [7] Under the relevant statutes and the plain language of the contract, the trial court did not err in compelling arbitration of Properplates' claims. However, the contract provision does not compel the Haddads' claims to arbitration. We therefore reverse its submission of the Haddads' claims to arbitration and dismissal of the case. We remand for the trial court to consider whether to delay arbitration pending the resolution of the Haddads' claims.

Robb, J., and Pyle, J., concur.