JS–6

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
CIVIL MINUTES—GENERAL

Case No. **CV 23-341-DMG (AGRx)** Date March 29, 2024

Title ***TRG CP, LLC v. Martell Capital Group, LLC, et al.*** Page 1 of 7

Present: The Honorable DOLLY M. GEE, UNITED STATES DISTRICT JUDGE

KELLY DAVIS	NOT REPORTED
Deputy Clerk	Court Reporter
Attorneys Present for Plaintiff(s)	Attorneys Present for Defendant(s)
None Present	None Present

Proceedings: IN CHAMBERS—ORDER RE DEFENDANTS' MOTION TO DISMISS OR STAY CASE PENDING ARBITRATION AND TO STRIKE PUNITIVE DAMAGES [27] [38]

Before the Court is Defendants Martell Capital Group, LLC d/b/a Irongate ("Irongate"), Costa Palmas Beach and Yacht Club (US), LLC (the "Beach Club"), David Waller and Mitch Laufer's motion to dismiss or, in the alternative, to stay Plaintiff TRG CP, LLC's ("TRG") claims pending arbitration in Mexico. [Doc. # 27-1 ("MTD").] Defendants move to dismiss TRG's claims for failure to state a claim and to strike its request for punitive damages. These matters are fully briefed. [Doc. ## 30 ("Opp."), 31 ("Reply"), 34-1 ("Surreply").][1]

TRG filed the operative First Amended Complaint ("FAC") on January 31, 2023. [Doc. # 16.] The FAC alleges the following claims against Irongate, Waller, and Laufer: (1) fraudulent misrepresentation; (2) promissory fraud; (3) fraudulent concealment; (4) constructive fraud and negligent concealment; (5) extortion; (6) attempted extortion by threatening letter per California Penal Code section 523; and (7) intentional interference with contractual relations. *Id.* ¶¶ 63–131.[2] Finally, TRG alleges its tenth claim of civil conspiracy against all Defendants. FAC ¶¶ 151–57.

Having carefully considered the parties' written submissions, the Court **GRANTS** the motion to stay pending arbitration in Mexico.

I.
FACTUAL BACKGROUND

A. Purchase of the Lot

Irongate, through its affiliates and subsidiaries, owns and operates a luxury resort development in Las Cabos, Mexico, known as "Costa Palmas." *Id.* ¶ 22; *see also* Decl. of Mitch

[1] On May 16, 2023, the Court granted leave for TRG to file a Surreply. [Doc. # 35.] Ultimately, it did not need to reach the Surreply's arguments about equitable estoppel.

[2] Plaintiff originally alleged an eighth claim for breach of contract and a ninth claim for breach of implied covenant of good faith and fair dealing against Beach Club, but voluntarily dismissed Beach Club as a defendant on January 26, 2024. *See* FAC ¶¶ 132–50; [Doc. # 39].

Laufer ("Laufer Decl.") ¶ 2 [Doc. # 27-2]. Waller is Irongate's Managing Director of Development and Laufer is its Director of Legal. FAC ¶¶ 20–21.

Costa Palmas opened in September 2017 and, in October 2019, Irongate opened a five-star Four Seasons Hotel and residential development there. *Id.* ¶ 22. On April 24, 2018, the Beach Club entity formed as an exclusive members-only recreational facility for Costa Palmas homeowners. *Id.* ¶ 23. Irongate "embarked on a robust marketing campaign" for the Costa Palmas development, largely targeting guests of the Four Seasons. *Id.* ¶ 24.

In early 2020, TRG's representative Amit Raizada visited Costa Palmas and met with an Irongate Sales Agent, Emma Barnes-Webb. *Id.* ¶ 25. Barnes-Webb showed Raizada several residential lots for sale and noted that he would be required to use Irongate's design and construction team for any construction on any home there. *Id.* ¶ 27. Raizada expressed interest in an ocean view villa lot marked as Lot OVV25 (the "Lot"), which listed a sale price of $6 million. *Id.* ¶ 28.

In March 2020, Barnes-Webb put TRG in touch with Waller and others at Irongate to discuss the design and construction of a home on that lot. *Id.* ¶ 31. In late March 2020, Irongate's business was slow so Waller told him his home could be completed by September 2021 since it could dedicate significant materials and labor to the project. *Id.* ¶ 32. Waller also claimed that Irongate would give the option of a fixed construction price, which would be determined after bids had been obtained. *Id.* ¶ 33.

At the time of purchase, Beach Club invited TRG (by and through Raizada) to become a member of the Beach Club at Costa Palmas. *Id.* ¶ 35. As part of the purchase price for the Lot, Raizada purchased a membership from the Beach Club. *Id.*; *see also id.*, Ex. A [Doc. # 16-1]. Memberships have substantial value and are transferable to the subsequent purchaser of a member's home in Costa Palmas, and "greatly increases" the value of the home. *Id.* ¶ 36.

B. Construction Contract

Based on these representations, TRG executed a construction contract on April 1, 2020, and purchased the Lot on April 2, 2020 for $4,250,000. *Id.* ¶ 34.

On April 1, 2020, TRG and CP Home executed an Agreement for Project Management Services for Design and Construction, in which Grosfeld was listed and signed as the Representative for Irongate's Mexican subsidiary, "CP Home." *See* Laufer Decl. ¶ 2, Ex. 1 at 3 (the "Construction Contract") [Doc. # 27-2].[3] The Construction Contract also includes an arbitration clause, which provides:

[3] All page citations herein refer to the page numbers inserted by the CM/ECF system.

> 7.1 Arbitration. Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be determined by arbitration administered by the International Chamber of Commerce Mexico ("ICC") in accordance with its Arbitration Rules. . . . The place of arbitration shall be Los Cabos, BCS, Mexico. The governing law of the Agreement and of the arbitration shall be the applicable Mexican laws. . . . The procedures specified in this section shall be the sole and exclusive procedures for resolution of disputes arising in connection with Agreement.
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> 7.2 No Litigation; Waiver of Jury Trial; Waiver of Appeal. By agreeing to arbitration as the method for final resolution of disputes, [TRG] and CP Home acknowledge and agree that they shall not engage in litigation to resolve their disputes, except to confirm as a judgment the decision and award resulting from arbitration. . . .
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> * * *
>
> 8.1 Entire Agreement. This Agreement and its accompanying Attachments contain the entire understanding of the parties with respect to the subject matter hereof and supersede all prior agreements, oral or written, and all other communications between the parties relating to such subject matter. No salesperson, employee or agent of CP Home has authority to make any representation to or agreement with [TRG] that is not contained herein, and [TRG] acknowledges that none has been made.
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> * * *
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> 8.3 No Representations. Neither [TRG] nor CP Home has relied on any representation of the other as inducement to enter into this Agreement except as expressly set forth in this agreement.

Id. at 13–14.

C. Construction Begins

Irongate completed its design work on or about October 16, 2020, and Raizada signed off on the final design on November 9, 2020. *Id.* ¶ 37. In early December 2020, Waller sent Raizada a total maximum construction budget of $5,974,809, based on "hard bids" Irongate had received for all aspects of construction. *Id.* ¶ 38. Waller told Raizada that he still hoped to negotiate a lower price, and that construction would be complete by November 2021. *Id.* TRG approved this budget. *Id.* ¶ 39.

Construction began soon thereafter, but "almost immediately fell behind schedule." *Id.* ¶ 40. TRG alleges that Waller made several false representations, including the sale of other lots in the Costa Palmas development, the availability of Irongate's materials and labor, and the expected timeline of the project. *Id.* After expressing concerns to Waller and Grosfeld, TRG alleges that Waller continued to make additional false representations such as that Irongate was assigning new personnel to build TRG's home, that its project was a priority, and several other false estimates of the expected project timeline. *Id.* ¶ 41.

In March 2022, the home still not completed, Waller sent TRG a new construction budget indicating the price would be $6,663,125 rather than the lower fixed price they had previously discussed. *Id.* ¶ 42. TRG objected to that increased budget and "demanded" that Irongate finish the project. *Id.* ¶ 44. As a result of this dispute, TRG sent a demand letter to Irongate and a draft lawsuit for damages. *Id.* ¶ 44.

In May 2022, even though no work had been done since March, Waller sent TRG another budget with total development costs at approximately $7.3 million. *Id.* ¶ 45. TRG alleges that Irongate tried to "strong arm" it into signing the contract by claiming it would revoke Raizada's Beach Club membership. *Id.*

D. Estoppel Certificate

As the parties' counsel continued corresponding about the dispute, Irongate refused to perform any more work on TRG's home unless it signed an "Estoppel Certificate" in which it agreed: (a) that construction costs were not fixed; (b) to pay Irongate's construction costs pursuant to the new budget; (c) to waive and release all rights to sue Irongate in the United States; and (d) to waive and release all RICO claims. *Id.* ¶ 46; *see also* Laufer Decl., Ex. 2 at 21–24 [Doc. # 27-2]. It also states that "[TRG], on behalf of itself and its affiliates, hereby agrees, warrants, and covenants that any disputes between CP Home and its affiliates arising out of or in connection with the Agreement will be resolved solely and exclusively pursuant to the arbitration provisions set forth in the Agreement." Estoppel Certificate at 23.

Additionally, the Estoppel Certificate includes a construction budget showing the actual costs of $7,217,515. *Id.* ¶ 47. TRG signed the Estoppel Certificate on July 7, 2022, and now seeks to invalidate it on the basis of duress and fraudulent inducement. *Id.* ¶ 48. Since signing the Estoppel Certificate, no additional work has been performed on the Lot. *Id.* ¶ 53.

II.
LEGAL STANDARD

The Federal Arbitration Act ("FAA") provides that written provisions to arbitrate disputes are "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; *see also AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 336 (2011). This provision reflects "both a 'liberal federal policy favoring arbitration' and the 'fundamental principle that arbitration is a matter of contract.'" *Id.* at 339 (quoting *Rent-A-Center, West, Inc. v. Jackson*, 561 U.S. 63, 67 (2010)). "The basic role for courts under the FAA is to determine '(1) whether a valid agreement to arbitrate exists and, if it does, (2) whether the agreement encompasses the dispute at issue.'" *Kilgore v. KeyBank Nat'l Ass'n*, 718 F.3d 1052, 1058 (9th Cir. 2013) (*en banc*) (quoting *Chiron Corp. v. Ortho Diagnostic Sys., Inc.*, 207 F.3d 1126, 1130 (9th Cir. 2000)).

Federal substantive law governs questions concerning the interpretation and enforceability of arbitration agreements. *Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 22–24 (1983). Courts apply ordinary state law contract principles, however, "[w]hen deciding whether the parties agreed to arbitrate a certain matter." *First Options of Chi., Inc. v. Kaplan*, 514 U.S. 938, 944 (1995). As long as an arbitration clause is not itself invalid under "generally applicable contract defenses, such as fraud, duress, or unconscionability," it must be enforced according to its terms. *Concepcion*, 563 U.S. at 339.

When such agreements involve international transactions and foreign tribunals, the Supreme Court has expressed sensitivity to the need for predictability in the resolution of disputes. *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614, 629 (1985). "Agree[ment] in advance on a forum acceptable to both parties is an indispensable element in international trade, commerce, and contracting," *id.* at 630 (citations omitted), and "[a]ll doubts are to be resolved in favor of arbitrability" such that even if the factual allegations only "touch" matters covered by the arbitration provision, then arbitration is required, *see Simula, Inc. v. Autoliv, Inc.*, 175 F.3d 716, 721 (9th Cir. 1999).

III.
DISCUSSION

A. Validity of Estoppel Certificate

Before reaching the merits of Defendants' arguments in support of its MTD, the Court must consider whether it should either dismiss the case for *forum non conveniens* or stay the case pending arbitration pursuant to the Construction Contract and or/Estoppel Certificate's arbitration clauses. In certain cases, "[n]onsignatories of arbitration agreements may be bound by the agreement under ordinary contract and agency principles." *Comer v. Micor, Inc.*, 436 F.3d 1098, 1101 (9th Cir. 2006) (citations omitted).

Here, the plain language of the Estoppel Certificate clearly evinces the parties' intent to have all relevant disputes between CP Home and its affiliates, including Irongate, to be resolved by arbitration. *See* Estoppel Certificate at 23 ("[A]ny disputes between CP Home and its affiliates

arising out of or in connection with the [Construction Contract] will be resolved solely and exclusively pursuant to the arbitration provisions set forth in the [Construction Contract]."). It also states that the Certificate "may be relied upon by CP Home and its affiliates, successors, and/or assigns," and defines "affiliates" to include but not be limited to Irongate. *Id.*

Courts must enforce "privately negotiated agreements to arbitrate, like other contracts, in accordance with their terms." *See Volt Info. Scis., Inc. v. Bd. of Trustees of Leland Stanford Junior Univ.*, 489 U.S. 468, 478 (1989) (citing *Prima Paint Corp. v. Flood & Conklin Mfg. Co.*, 388 U.S. 395, 404, n.12 (1967)). If the Estoppel Certificate is valid, then this broad language would require all of Plaintiff's claims relating to the Construction Contract to be arbitrated.

Even though TRG contests the validity of the Estoppel Certificate, the result is the same. The FAC alleges that the Estoppel Certificate was fraudulently induced in its entirety, and thus the arbitrator must consider its validity in the first instance. *Buckeye Check Cashing, Inc. v. Cardegna*, 546 U.S. 440, 445–46 (2006) ("[U]nless the challenge is to the arbitration clause itself, the issue of the contract's validity is considered by the arbitrator in the first instance.").

The allegations in the FAC regarding Claims One through Five all essentially bring wholesale challenges to the Estoppel Certificate's validity, and therefore must be sent to arbitration.

B. Remaining Claims

Claims Six, Seven and Ten, for violation of California Penal Code section 523, intentional interference with contractual relations, and civil conspiracy, must be stayed pending arbitration.

1. Claims Seven and Ten

The language of the arbitration clause in the Construction Contract states that "[t]he procedures specified in this section shall be the sole and exclusive procedures for resolution of disputes *arising in connection with* [the Construction Contract]." Construction Contract at 13. The Ninth Circuit has interpreted this precise language broadly, to "reach every dispute between the parties having a significant relationship to the contract and all disputes having their origin or genesis in the contract." *See Simula, Inc.*, 175 F.3d at 721; *see also Mitsubishi Motors Corp.*, 473 U.S. at 622 n.9 (the question is "whether the factual allegations underlying [the claims] are within the scope of the arbitration clause, whatever the legal labels attached to those allegations."); *Jackson v. Amazon.com, Inc.*, 65 F.3d 1093, 1101 (9th Cir. 2023) ("In determining if a dispute falls within the scope of an arbitration clause, we examine the factual allegations raised in the complaint.").

If the Estoppel Certificate is valid, these two claims must both also be arbitrated because they are against Irongate (one of CP home's "affiliates"), and they implicate the same factual allegations regarding Irongate's allegedly fraudulent conduct. *See* Estoppel Certificate at 23; FAC ¶¶ 125–31 (Claim Seven), 151–57 (Claim Ten). If arbitration results in a determination that the Estoppel Certificate is not valid, then TRG can bring these claims against Irongate in a judicial forum, since the latter is not bound by the Construction Contract.

2. Claim Six

Claim Six, while covering the same subject matter, arises uniquely from California law and thus cannot be arbitrated under Mexican law as the Construction Contract would require. *See* FAC ¶¶ 116–24; Cal. Penal Code § 523; Construction Contract at 13 (requiring Mexican law to be applied to all disputes). For that reason, the arbitral resolution of the Estoppel Certificate's validity will also determine whether Claim Six can remain in the judicial forum. If Claim Six reappears before the Court, it will consider Defendants' arguments regarding the litigation privilege at that time. *See* MTD at 22–24.

IV.
CONCLUSION

Based on the foregoing, the Court **STAYS** this action and administratively closes it pending arbitration in Mexico. *See Johnmohammadi v. Bloomingdale's Inc.*, 755 F.3d 1072, 1074 (9th Cir. 2014) (citing *Sparling v. Hoffman Constr. Co.*, 864 F.2d 635, 638 (9th Cir. 1988)). Because the Court has determined that all the claims must either be sent to arbitration or stayed pending the results of that arbitration, the motions to dismiss and to strike punitive damages are **DENIED** without prejudice as moot.

The parties shall notify the Court within ten days after the conclusion of arbitration or receipt of an arbitral ruling, whichever is later, and inform the Court whether this case should be reopened to active status.

IT IS SO ORDERED.