Cite as 2011 Ark. App. 291

# ARKANSAS COURT OF APPEALS

DIVISION IV
**No.** CA10-893

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| CHENAL RESTORATION CONTRACTORS, LLC<br>APPELLANT<br><br>V.<br><br>LINDA DIANE CARROLL and TRADE WYNDS IMPORTS, INC.<br>APPELLEES | **Opinion Delivered** APRIL 20, 2011<br><br>APPEAL FROM THE ARKANSAS COUNTY CIRCUIT COURT, NORTHERN DISTRICT [NO. CV-09-136]<br><br>HONORABLE DAVID G. HENRY, JUDGE<br><br>REVERSED AND REMANDED |

**ROBIN F. WYNNE, Judge**

Chenal Restoration Contractors, LLC, (Chenal) appeals from an order of the circuit court granting in part and denying in part its motion to compel arbitration. In the order, the court found that the Arkansas Uniform Arbitration Act (AUAA) would apply instead of the Federal Arbitration Act (FAA) and that appellees' tort claims could not be arbitrated under the AUAA. Appellant argues that (1) the FAA should apply instead of the AUAA and (2) the claims that appellees assert as tort claims are actually breach-of-contract claims that could be arbitrated under the AUAA. We reverse and remand the order of the circuit court.

Chenal contracted with Trade Wynds Imports, Inc. (TWI), which is owned by Linda Diane Carroll, to replace the roof on TWI's store, which had been damaged by a tornado. The work authorization and direction to pay, signed by Carroll, states that in the event of a

controversy the parties are unable to resolve themselves, the parties agree to participate in nonbinding mediation. If the mediation is unsuccessful, the parties will submit to binding arbitration. The authorization also states that TWI's insurer, Lafayette United Fire, which is an out-of-state insurer, is authorized to pay Chenal pursuant to the terms of TWI's policy. In the course of performing the work, Chenal purchased materials from out-of-state suppliers and subcontracted a Florida company to install the new roof after the old roof was removed.

After performing the work, Chenal claimed that it was not fully paid in accordance with the contract and filed a demand for arbitration in which it claimed it was owed $165,518.44. On October 1, 2008, Chenal filed a materialman's lien in the amount of $165,518.44 on TWI's property. Chenal later filed a complaint for foreclosure against TWI. TWI then filed a counterclaim seeking economic recovery, relief, and punitive damages. The damaged roof contained asbestos tiles, and the counterclaim discusses at length the problems alleged by TWI with the removal and handling of the asbestos material. In the counterclaim, TWI alleges that Chenal violated the Arkansas Deceptive Trade Practices Act; that Chenal committed intentional misrepresentation, fraud, and deceit; that Chenal committed the tort of outrage; that Chenal committed negligence, gross negligence, and negligence *per se*; that Chenal breached the contract; that Chenal is unjustly holding monies of TWI; that Chenal committed a continuing trespass to TWI's land; that Chenal committed waste; that Chenal is strictly liable for damages; and that Chenal committed the tort of assault and battery.

On October 29, 2009, Chenal filed a motion to compel arbitration. In the motion, Chenal alleged that the FAA applied because interstate commerce was implicated. TWI responded to the motion, arguing that there was no valid agreement between the parties and that Chenal waived its right to arbitrate by filing suit against TWI. On December 11, 2009, the circuit court entered an ex parte order staying the arbitration. After a hearing on the motion to compel arbitration, the circuit court issued a letter opinion in which it found that the AUAA applied because there was not sufficient interstate commerce to trigger application of the FAA and that the tort claims alleged by TWI did sound in tort and were not subject to arbitration under the AUAA. The substance of the letter opinion was incorporated into an order filed by the circuit court. Chenal filed a timely appeal to this court.

Chenal is appealing from the denial of its motion to arbitrate under the FAA. We review the denial of a motion to compel arbitration de novo on the record. *Advocat, Inc. v. Heide*, 2010 Ark. App. 825, ___ S.W.3d ___. Chenal's first point on appeal is that the circuit court erred in finding that the FAA did not apply in this case. When the underlying dispute involves interstate commerce, the FAA, instead of the AUAA, applies. *Ruth R. Remmel Revocable Trust v. Regions Fin. Corp.*, 369 Ark. 392, 255 S.W.3d 453 (2007); *Walton v. Lewis*, 337 Ark. 45, 987 S.W.2d 262 (1999). State courts have concurrent jurisdiction with the federal courts to enforce rights granted by the FAA. *Lehman Props., Ltd. P'ship v. BB & B Constr. Co.*, 81 Ark. App. 104, 98 S.W.3d 470 (2003) (citing *McEntire v. Monarch Feed Mills, Inc.*, 276 Ark. 1, 631 S.W.2d 307 (1982)). The FAA "applies if the transaction involves

'interstate commerce, even if the parties did not contemplate an interstate commerce connection,'" and "the language of the FAA makes an arbitration provision enforceable in 'a contract evidencing a transaction involving commerce . . . to the limits of Congress' Commerce Clause power.'" *Pest Mgmt., Inc. v. Langer*, 369 Ark. 52, 59–60, 250 S.W.3d 550, 556 (2007) (quoting *Allied-Bruce Terminix Cos. v. Dobson*, 513 U.S. 265, 281, 115 S. Ct. 834 (1995)).

Chenal argues that interstate commerce is involved because it purchased supplies from out-of-state vendors and it subcontracted with a Florida company to perform part of the labor. The parties do not dispute that a company from Florida was subcontracted to install the new roof. The majority of TWI's counterclaim pertains to the removal of the old roof by Chenal. However, TWI does allege that the new roof is defective and was installed incorrectly, causing it to leak. TWI argues that the FAA should not apply because Chenal was the only party that engaged in out-of-state dealings. However, the standard to be applied is not whether each party engaged in interstate commerce. In fact, the parties do not even have to contemplate an interstate connection. *Pest Mgmt., Inc.*, *supra*. Although the connection to interstate commerce in this case is arguably very slight, the United States Supreme Court's decision in *Allied-Bruce*, *supra*, states that the reach of the FAA is to be stretched to the limit of Congress' Commerce Clause power. Based upon the facts presented, we hold that the underlying dispute between the parties involves interstate commerce and that the FAA applies.

Appellant's second point on appeal is that TWI's alleged tort claims are, in reality, breach-of-contract claims. The AUAA does not allow arbitration of tort claims. Ark. Code Ann. § 16-108-201(b)(2) (Repl. 2006). The FAA does allow arbitration of tort claims. 9 U.S.C. §§ 1-307 (2006). Because the FAA applies in this case, TWI's tort claims can be submitted for arbitration, and we need not consider whether any of TWI's claims sound in tort. We reverse and remand to the circuit court with instructions to enter an order consistent with this opinion.

Reversed and remanded.

ABRAMSON and BROWN, JJ., agree.