IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

LEGEND NATURAL GAS II HOLDINGS, LP, a Delaware limited partnership, LEGEND NATURAL GAS III HOLDINGS, LP, a Delaware limited partnership, and LEGEND NATURAL GAS IV HOLDINGS, LP, a Delaware limited partnership,	)	C.A. No. 7213-VCP
Plaintiffs,	)	
v.	)	
MARK E. HARGIS,	)	
Defendant.	)	

MEMORANDUM OPINION

Submitted: June 5, 2012
Decided: September 28, 2012

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PARSONS, Vice Chancellor.

This action is before me on a motion to compel arbitration and stay or, in the alternative, dismiss the plaintiffs' verified complaint for declaratory relief.

These claims arise out of a dispute as to whether an employee was properly terminated, and what his rights were upon termination. An employment agreement governed the employee's compensation and severance rights. Three separate partnership agreements governed the vesting, repurchase, and valuation of shares, some of which were given as compensation for the employee's employment. The employee seeks to compel arbitration as to all claims, including those relating to vesting and valuation, based on a broad arbitration provision contained in the employment agreement. The partnerships argue that they did not agree to arbitration. The core issue presented by the pending motion, however, is whether this Court or an arbitrator should decide whether the parties' claims should be arbitrated.

Because I find that the arbitration clause at issue provides clear and unmistakable evidence of the parties' intent to arbitrate the question of arbitrability, and the employee has colorable and non-frivolous arguments that the dispute is arbitrable, I conclude that the issue of substantive arbitrability must be decided by the arbitrator. Therefore, I grant the defendant's motion to compel arbitration to that extent and stay this action pending the arbitrator's decision.

I. BACKGROUND

A. The Parties

Legend Natural Gas, LLC ("Legend"), a non-party to this lawsuit, is a Delaware limited liability company engaged in natural gas exploration and production. Legend is

owned by three Delaware Limited Partnerships, Legend Natural Gas II Holdings, LP ("LNG II"), Legend Natural Gas III Holdings, LP ("LNG III"), and Legend Natural Gas IV Holdings, LP ("LNG IV" and, together, the "Partnerships" or "Plaintiffs"). The Partnerships resulted from a 2011 restructuring of three predecessor partnerships, Legend Natural Gas II, LP, Legend Natural Gas III, LP, and Legend Natural Gas IV, LP (the "Predecessor Partnerships"). The Partnerships each have a written Partnership Agreement (collectively the "Partnership Agreements").

Defendant, Mark E. Hargis, is a co-founder and investor in Legend. Between November 23, 2009 and November 16, 2011, Hargis served as Legend's "Vice President - Geoscience/Acquisitions." Hargis is also a signatory to the Partnership Agreements and an equity interest holder in the Partnerships.

B. Facts

1. The Employment Agreement

On November 23, 2009, Hargis and Legend entered into an employment agreement (the "Employment Agreement") whereby Hargis agreed to serve as Vice President – Geoscience/Acquisitions for an initial period ending on December 31, 2011.[1] The Predecessor Partnerships were signatories to the Employment Agreement and guaranteed Hargis's compensation and payments upon termination.[2] According to the Employment Agreement, Hargis's compensation would consist of: (1) a substantial "Base

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1 Gallagher Aff. Ex. D, Employment Agreement.

2 *Id.* §§ 3, 6.

Salary"; (2) a discretionary performance bonus; and (3) Hargis's Class B Interests.[3] The Employment Agreement explicitly provides that "[Hargis's] Class B Interests in the Partnerships shall be subject to the terms of the [Partnership Agreements]."[4] The Employment Agreement also contains an arbitration clause (the "Arbitration Clause"), which states:

> [A]ny dispute, controversy or claim between [Hargis] and the Company [Legend] arising out of or relating to this Agreement will be finally settled by arbitration in Houston, Texas before, and in accordance with the rules then obtaining of the American Arbitration Association.[5]

In addition, the Employment Agreement sets forth Hargis's rights upon termination of his employment. If Hargis is terminated for any reason except "Cause," Legend—and the Partnerships as guarantors—are obligated to pay Hargis a substantial severance payment.[6] If, however, Hargis is terminated for Cause, Legend has no obligation under the Employment Agreement to pay the severance payment.[7]

2. The Partnership Agreements

Pursuant to the Partnership Agreements, Hargis owns two types of partnership interests, classified as "Class A Interests" and "Class B Interests" (collectively, the

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3 *Id.* § 3.

4 *Id.* § 3(b).

5 *Id.* § 17(a).

6 *Id.* § 6(b).

7 *Id.*

"Partnership Interests").[8] The Class A Interests required a cash capital commitment by each limited partner, whereas the Class B Interests vested based on the limited partner's term of employment.[9] Specifically, Hargis's Class B Interests in LNG II and LNG III vested on a monthly basis over a four-year period, and Hargis's Class B Interests in LNG IV vested after five years of employment with Legend.[10]

If Hargis is terminated by Legend other than for Cause, LNG II and LNG III are obligated by their respective Partnership Agreements to repurchase (A) the greater of the vested Class B Interests of such former employee or 50% of the total (vested and unvested) Class B Interests of such former employee and (B) all of any Class A Interests of such former employee, for "Fair Market Value."[11] If Hargis is terminated for Cause, the Partnerships are obligated to repurchase all of his Class A Interests for Fair Market Value; they are not obligated, however, to repurchase his Class B Interests, which are forfeited.[12] Notably, Section 7.6 of the Partnership Agreements, which specifies the "Vesting Terms" and "Resale Obligations," provides that the terms of Section 7.6 "will be subject to the provisions of any Employment Agreement."[13]

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8 Gallagher Aff. Exs. A, B, C, Partnership Agreements, § 1.1.

9 *Id.* §§ 4.1, 7.6.

10 *Id.* § 7(b).

11 Gallagher Aff. Exs. A, B ("LNG II and LNG III Partnership Agreements") § 7(c)(i).

12 Partnership Agreements § 7(c)(iv).

13 *Id.* § 7.6(a).

Section 7.7 of the Partnership Agreements describes the procedure for the calculation of Fair Market Value and specifies that the "Board of Supervisors" is responsible for making that determination.[14] If the employee does not agree with the Board's determination, the employee can dispute the determination, and an independent investment banking firm will determine Fair Market Value.[15]

The Partnership Agreements further provide that they are governed by Delaware law.[16] In addition, the Partnership Agreements—in a section titled "*Jurisdiction and Venue*"—state that:

> IN RESPECT TO ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT, EACH OF THE PARTIES HERETO CONSENTS TO THE JURISDICTION AND VENUE OF THE DELAWARE CHANCERY COURT, ANY OTHER COURT OF THE STATE OF DELAWARE AND ANY FEDERAL COURT SITTING IN THE STATE OF DELAWARE . . . .[17]

3. Hargis's termination

In a letter dated November 16, 2011 (the "Termination Letter"), Legend notified Hargis that it had decided to terminate him for Cause.[18] The Termination Letter stated:

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14 *Id.* § 7.7.

15 *Id.* § 7.7(d).

16 *Id.* § 12.7.

17 *Id.* § 12.8.

18 Def.'s Br. in Supp. of Mot. to Compel Arbitration and Stay or, in the Alternative, Dismiss Pls.' V. Compl. for Declaratory Relief ("Def.'s Opening Br.") Ex. E, Termination Letter.

(1) the bases for the termination; (2) that the decision was not curable; and (3) that the decision was final.[19] The Termination Letter also contained a settlement proposal that offered Hargis, among other things, a cash severance payment and the repurchase of his outstanding Class A Interests and vested Class B Interests. Hargis's unvested Class B Interests would be forfeited.

On January 3, 2012, Hargis filed a demand for arbitration (the "Demand") in Houston, Texas, against Legend for breach of the Employment Agreement and for defamation.[20] In the Demand, Hargis denied that Legend had Cause to terminate him and argued that Legend failed to follow the Employment Agreement's notice and cure provisions.[21]

On February 3, 2012, Legend filed an Objection to Scope of Arbitration and Response to Demand for Arbitration ("Objection and Response"). In that document, Legend asserted that Hargis was "seek[ing] relief under partnership agreements that do not call for arbitration and to which Legend is not a party."[22]

On August 31, 2012, Legend offered, and Hargis accepted, a partial judgment in the Texas arbitration determining that: (1) Hargis was terminated without cause; (2)

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19 *Id.*

20 Def.'s Opening Br. Ex. F, Demand.

21 *Id.* at 5.

22 Def.'s Opening Br. Ex. G, Objection and Response.

Legend breached the Employment Agreement; and (3) Hargis should recover reasonable legal fees.[23]

C. Procedural History

Also on February 3, 2012, the Partnerships filed a complaint in this Court seeking declaratory relief under the Partnership Agreements (the "Complaint"). The Partnerships seek a declaratory judgment that, among other things: (1) the vesting and valuation of the Partnership Interests must be resolved pursuant to Delaware law; (2) the Partnership Agreements provide the exclusive criteria for determining whether the Class B Interests have vested; (3) the determination of Fair Market Value of Class A and Class B Interests is to be made solely by the Board of Supervisors; and (4) Hargis has no vested Class B Interests in LNG IV.[24]

On April 6, 2012, Hargis filed the pending Motion to Compel Arbitration and Stay or, In the Alternative, Dismiss Plaintiffs' Verified Complaint for Declaratory Relief ("Defendant's Motion to Compel Arbitration").

D. Parties' Contentions

Hargis contends that the arbitrator is the proper authority to determine whether this dispute is arbitrable. In the alternative, Hargis argues that if this Court decides to determine the question of substantive arbitrability, it should compel arbitration and dismiss Plaintiffs' lawsuit.

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[23] Letter from Gregory P. Williams, Pls.' Counsel, to the Court Ex. B (Sept. 4, 2012) ("Pls.' Sept. 4 Letter").

[24] Compl. ¶ 24.

The Partnerships respond that they never agreed with Hargis to arbitrate *anything*, and, thus, this Court must decide the issue of arbitrability. The Partnerships also contend that the Partnership Agreements and Employment Agreement reflect a clear intent that issues related to the vesting and valuation of Hargis's Partnership Interests not be subject to arbitration.

II. ANALYSIS

A. Legal Standard

A motion to dismiss based on an arbitration clause goes to the court's subject matter jurisdiction over a dispute and is properly reviewed under Court of Chancery Rule 12(b)(1).[25] "Delaware courts lack subject matter jurisdiction to resolve disputes that litigants have contractually agreed to arbitrate."[26]

This Court also possesses the inherent power to manage its own docket and may, on the basis of comity, efficiency, or common sense, issue a stay pending the resolution of an arbitration, even for those claims that are not arbitrable.[27]

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[25] *See Ishimaru v. Fung*, 2005 WL 2899680, at *13 (Del. Ch. Oct. 26, 2005). In deciding a 12(b)(1) motion to dismiss for want of subject matter jurisdiction, the court may consider documents outside the complaint. *See Acierno v. New Castle Cty.*, 2006 WL 1668370, at *1 n.8 (Del. Ch. June 8, 2006).

[26] *NAMA Hldgs., LLC v. Related World Mkt. Ctr., LLC*, 922 A.2d 417, 429 (Del. Ch. 2007) (citing *Elf Atochem N. Am., Inc. v. Jaffari*, 727 A.2d 286, 295 (Del. 1999)).

[27] *See Salzman v. Canaan Capital P'rs, L.P.*, 1996 WL 422341, at *5 (Del. Ch. July 23, 1996) (citing *Gen. Foods Corp. v. Cryo-Maid, Inc.*, 198 A.2d 681 (Del. 1964)); *Phillips Petrol. Co. v. ARCO Alaska, Inc.*, 1983 WL 20283, at *2 (Del. Ch. Aug. 3, 1983) (granting stay in favor of pending arbitration based on "common sense"). In addition, the Federal Arbitration Act permits a court to stay a lawsuit "upon being satisfied that the issue involved in such suit or proceeding is referable to arbitration under such an agreement." 9 U.S.C. § 3.

In considering a motion to compel arbitration, a court must consider: (1) whether the issue of arbitrability should be decided by the court or the arbitrator; and if by the court, (2) whether the claims should be resolved in arbitration (the issue of arbitrability).[28] I therefore begin with the first of these issues.

B. Who Decides Issues of Substantive Arbitrability?

In determining whether a claim is subject to arbitration, Delaware courts differentiate between questions of "procedural arbitrability" and "substantive arbitrability."[29] Questions of procedural arbitrability involve whether the parties have complied with the terms of the arbitration clause.[30] Substantive arbitrability involves, among other things, the applicability of an arbitration clause, the scope of an arbitration provision, and whether an arbitration clause is valid and enforceable.[31] When examining substantive arbitrability, the underlying question is "whether the parties decided in the contract to submit a particular dispute to arbitration."[32] Courts presume that parties intended courts to decide issues of substantive arbitrability, whereas the opposite presumption applies to issues of procedural arbitrability.[33]

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28 *McLaughlin v. McCann*, 942 A.2d 616, 620–21 (Del. Ch. 2008).

29 *James & Jackson, LLC v. Willie Gary, LLC*, 906 A.2d 76, 80 (Del. 2006).

30 *Carder v. Carl M. Freeman Cmtys., LLC*, 2009 WL 106510, at *3 (Del. Ch. Jan. 5, 2009).

31 *Id.*

32 *Julian v. Julian*, 2009 WL 2937121, at *4 (Del. Ch. Sept. 9, 2009).

33 *Willie Gary*, 906 A.2d at 79.

Even before courts confront questions of procedural and substantive arbitrability, however, they first must address the threshold question of who "should decide whether the parties have agreed to submit the arbitrability issue to arbitration."[34] The Supreme Court held that "when courts decide whether a party has agreed that arbitrators should decide arbitrability . . . Courts should not assume that the parties agreed to arbitrate arbitrability unless there is 'clea[r] and unmistakabl[e]' evidence they did so."[35]

Because the Employment Agreement involves interstate commerce, calls for arbitration in Texas, and is not explicitly made subject to the Delaware Uniform Arbitration Act,[36] the FAA governs this case.[37] "When deciding whether the parties agreed to arbitrate a certain matter (including arbitrability), courts generally . . . should apply ordinary state-law principles that govern the formation of contracts."[38]

In *Willie Gary*, the Delaware Supreme Court reaffirmed that courts should not presume parties agreed to arbitrate arbitrability unless there is "clear and unmistakable evidence that they did so."[39] The Court also clarified what would constitute "clear and unmistakable evidence" of parties' intent to arbitrate arbitrability. *Willie Gary* articulated

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34 *First Options of Chicago, Inc. v. Kaplan*, 514 U.S. 938, 944 (1995).

35 *Id.* (alteration in original) (citing *AT&T Techs., Inc. v. Commc'ns Workers of Am.*, 475 U.S. 643, 648–49 (1986)).

36 10 *Del. C.* §§ 5701–5725.

37 9 U.S.C. §§ 1–2; *Willie Gary*, 906 A.2d at 80 (citing *Allied-Bruce Terminix Cos. v. Dobson*, 513 U.S. 265, 273–74 (1995)).

38 *First Options*, 514 U.S. at 944.

39 *Willie Gary*, 906 A.2d at 79 (quoting *First Options*, 514 U.S. at 944).

a two prong test that requires: (1) an arbitration clause that generally provides for arbitration of all disputes; and (2) a reference to a set of arbitration rules that empower arbitrators to decide arbitrability, such as the American Arbitration Association ("AAA") Rules.[40]

Here, the language "any dispute, controversy or claim arising out of or relating to this [Employment] Agreement" generally refers all disputes to arbitration.[41] The language is broader than the arbitration clause at issue in *Willie Gary*, even though both clauses employ similar language. In *Willie Gary*, the Supreme Court concluded that the arbitration clause did not provide clear and unmistakable evidence of intent to arbitrate because the clause contained a number of carve-outs, and, thus, did not refer all controversies to arbitration.[42] Here, there are no such carve-outs.[43] Moreover, in the

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40 *Id.*

41 Employment Agreement § 17(a).

42 *Willie Gary*, 906 A.2d at 81 ("In this case, the arbitration clause . . . expressly authoriz[es] the nonbreaching Members to obtain injunctive relief and specific performance in the courts. Thus, despite the broad language at the outset, not all disputes must be referred to arbitration . . . [and] the trial court properly undertook the determination of substantive arbitrability.").

43 At oral argument, Hargis acknowledged there was a limited carve-out in Section 17(b) of the Employment Agreement for the purpose of temporarily, preliminarily, or permanently, enforcing the provisions of Section 9 (Confidentiality) and Section 10 (Agreement Not to Compete) in any state or federal court of competent jurisdiction. Tr. 7–8. As expressed in *McLaughlin*, "carveouts and exceptions to committing disputes to arbitration should not be so obviously broad and substantial as to overcome a heavy presumption that the parties agreed by referencing the AAA Rules and deciding to use AAA arbitration to resolve a wide range of disputes that the arbitrator, and not a court, would resolve disputes about substantive arbitrability." *McLaughlin v. McCann*, 942

Orix decision, this Court found that a similar clause using the language "*any* dispute, controversy, or claim *arising out of or relating to* this agreement" satisfied *Willie Gary*.[44] Thus, prong one of the *Willie Gary* test is satisfied.

Section 17(a) of the Employment Agreement specifically refers to the AAA rules, which state that "an arbitrator shall have the power to rule on his or her own jurisdiction, including any objections with respect to the existence, scope or validity of the arbitration agreement."[45] Thus, prong two of the *Willie Gary* test also is satisfied.[46] A straightforward application of *Willie Gary*, therefore, suggests that the Partnerships clearly and unmistakably agreed to submit the issue of arbitrability to the arbitrator.

Even though the arbitral provision appears to satisfy the *Willie Gary* test in favor of having the arbitrator decide questions of substantive arbitrability, the Partnerships

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A.2d 616, 625 (Del. Ch. 2008). Similarly, in *BAYPO* the Court held that a provision "narrowly tailored to provide the parties with limited ancillary relief to protect their interests during the pendency of the arbitration process . . . does not provide the same boundless and independent access to judicial relief that prompted the ruling in *Willie Gary*." *BAYPO Ltd. P'ship v. Tech. JV, LP*, 940 A.2d 20, 26–27 (Del. Ch. 2007). Here, the carve-out is limited to the enforcement of two specific provisions, neither of which is relevant to this dispute, and, thus, does not overcome the presumption created by a reference to the AAA Rules in favor of having an arbitrator resolve disputes about substantive arbitrability.

44 *Orix LF, LP v. Inscap Asset Mgmt., LLC*, 2010 WL 1463404, at *7 (Del. Ch. Apr. 13, 2010) ("Delaware courts have found the use of both 'arising out of' and 'relating to' language in an arbitration provision to be a broad mandate.").

45 AAA Employment Arbitration Rules and Mediation Procedures § 6(a), *available at* http://www.adr.org/aaa/ShowProperty?nodeId=/UCM/ADRSTG_004362.

46 *See Willie Gary*, 906 A.2d at 78 ("[W]e adopt the majority federal view that reference to the AAA rules evidences a clear and unmistakable intent to submit arbitrability issues to an arbitrator.").

contend that this Court, and not the arbitrator, should determine whether Plaintiffs' claims fall outside the broad scope of the applicable arbitral provision. They argue that: (1) the Partnerships did not agree to arbitrate anything; and (2) Hargis's claims clearly do not arise out of or relate to the Employment Agreement.[47]

The major problem with the Partnerships' argument is that they essentially want this Court to assess definitively at the outset whether Hargis's claims arise out of or relate to the Employment Agreement. Such an assessment would amount to deciding substantive arbitrability, thereby circumventing the very purpose of *Willie Gary*, which is to effectuate the clear intent of parties to arbitrate arbitrability, when such intent is shown.[48]

The Partnerships expose one difficulty in applying *Willie Gary* and its progeny. If courts were to limit their analysis rigidly to the two prongs of *Willie Gary*, a party might be forced to submit the question of substantive arbitrability to an arbitrator, even though the claims stem from a completely different nucleus of operative facts.[49] In *Julian v. Julian*, the Court addressed this very problem, writing:

> [I]f Company A and Company B entered an emergency-vehicle purchase agreement containing a broad arbitration clause that referenced the AAA Rules, it stands to reason that in a later suit between the companies over an obviously unrelated issue, such as a business tort claim stemming from a

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47 Pls.' Br. in Opp'n to Def.'s Mot. to Compel Arbitration and Stay or Dismiss ("Pls. Answering Br.") 9–10.

48 *See Willie Gary*, 906 A.2d at 80.

49 *See Julian v. Julian*, 2009 WL 2937121, at *7 (Del. Ch. Sept. 9, 2009).

> different nucleus of operative facts, neither company should be forced to submit the question of who decides substantive arbitrability as to that issue to an arbitrator, even though the arbitral clause meets both prongs of the *Willie Gary* test.[50]

To prevent this presumably unintended result, this Court suggested that:

> When deciding who decides substantive arbitrability . . . a court conceivably could consider a preliminary question of whether or not there is a *colorable basis* for the court to conclude that the dispute is related to the agreement. If there is such a colorable basis, along with a broad clause and reference to the AAA Rules or something analogous to them, then the question of substantive arbitrability should be sent to the arbitrator.[51]

The Court in *McLaughlin v. McCann* outlined a similar approach for dealing with parties that argue "that they did not agree to arbitrate anything" despite an arbitration clause that satisfies the two prongs of *Willie Gary*.[52] The Court suggested that:

> [A]bsent a clear showing that the party desiring arbitration has essentially no *non-frivolous* argument about substantive arbitrability to make before the arbitrator, the court should require the signatory to address its arguments against arbitrability to the arbitrator.[53]

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50 *Id.*

51 *Id.* (emphasis added).

52 *See McLaughlin v. McCann*, 942 A.2d 616, 626 (Del. Ch. 2008); *see also Orix*, 2010 WL 1463404, at *1 ("[S]o long as the defendants have a colorable argument that their claims are arbitrable, the arbitrator—not this court—must determine the ultimate question of substantive arbitrability."); *GTSI Corp. v. Eyak Tech., LLC*, 10 A.3d 1116, 1120–22 (finding non-frivolous arguments in favor of arbitrability sufficient to submit substantive arbitrability to an arbitrator); *Carder v. Carl M. Freeman Cmtys., LLC*, 2009 WL 106510, at *8 (Del. Ch. Jan. 5, 2009) (finding a colorable and non-frivolous claim for arbitration sufficient to submit substantive arbitrability to an arbitrator).

53 *McLaughlin*, 942 A.2d at 626–27 (emphasis added).

"Arbitration is a matter of contract and a party cannot be required to submit to arbitration any dispute which he has not agreed so to submit."[54] Under *McLaughlin* and its progeny, once the two prongs of *Willie Gary* have been met, a court must make a preliminary evaluation of whether the party seeking to avoid arbitration of arbitrability has made a clear showing that its adversary has made "essentially no non-frivolous argument about substantive arbitrability."[55] This preliminary evaluation fosters *Willie Gary*'s goal of effectuating the mutual intent of the parties[56] and, consistent with the standard adopted in *Willie Gary*, should prevent the court from "delv[ing] into the scope of the arbitration clause and the details of the contract" when the parties presumptively intended that to be the job of the arbitrator.[57] Thus, a preliminary determination safeguards parties from being coerced into arbitration when they clearly did not agree to it, while requiring the court to perform only a very limited analysis beyond that explicitly required in *Willie Gary* as to whether the parties intended the question of arbitrability of a specific issue to be resolved by an arbitrator. With these principles in mind, I briefly address below each claim in terms of its purported nexus to the Employment Agreement.

As a threshold matter, I address the Partnerships' argument that "[t]he arbitration clause of the Employment Clause does not bind either the Partnerships (which are not

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54 *Howsam v. Dean Witter Reynolds, Inc.*, 537 U.S. 79, 83 (quoting *United Steelworkers v. Warrior & Gulf Nav. Co.*, 363 U.S. 574, 582 (1960)); *Willie Gary*, 906 A.2d at 78.

55 *McLaughlin*, 942 A.2d at 626–27.

56 *See Willie Gary*, 906 A.2d at 80–81.

57 *McLaughlin*, 942 A.2d at 623.

signatories) or the [P]redecessor [P]artnerships (which have the limited role of guarantors)."[58] The Partnerships have not advanced a persuasive argument as to why the technicality of the Predecessor Partnerships signing the agreement should prevent the Partnerships from being bound. The Partnerships are successors-in-interest of the Predecessor Partnerships by virtue of the 2011 restructuring.[59] Indeed, the Partnerships made this clear by stating that the "parties hereto desire to amend and restate the Original [Partnership] Agreement[s] in [their] entirety."[60] "As a general rule, a successor corporation which is merely the 'alter ego' of the predecessor is bound by the arbitration clause of an agreement made by the predecessor."[61]

As to the Partnerships' contention that their role as signatory guarantors should not result in their being bound more broadly, at least one federal court has recognized that signatory guarantors are bound to arbitration provisions contained in the signed agreement.[62] In *McLaughlin*, this Court held that "a signatory to an agreement vesting questions of substantive arbitrability to the arbitrator must resolve disputes about arbitrability against a non-signatory before the arbitrator, unless the signatory can show

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58 Pls.' Answering Br. 9.

59 *See id.* at 3.

60 Partnership Agreements Preamble.

61 MARTIN DOMKE ET AL., DOMKE ON COMMERCIAL ARBITRATION § 13:12 (3d ed. 2012).

62 *See Bettis Gp., Inc. v. Transatlantic Petrol. Corp.*, 55 F. App'x 717 (5th Cir. 2002) ("Generally, a non-signatory guarantor to an agreement containing an arbitration provision is not bound by that provision; the opposite is frequently true for signatory guarantors.").

that the non-signatory's contention that the underlying dispute is arbitrable is 'wholly groundless.'"[63] Here, both Hargis and the Predecessor Partnerships were signatories to the underlying agreement. Thus, the Partnerships must submit questions of substantive arbitrability to an arbitrator if Hargis has presented a non-frivolous argument that the underlying dispute is arbitrable.[64] Accordingly, I now examine Hargis's arguments.

1. Claims related to Section 7.6 of the Partnership Agreements

A number of the Partnerships' claims relate to Section 7.6 of the Partnership Agreement, which provides for the vesting and repurchase of Partnership Interests. Specifically, the Complaint seeks a declaratory judgment that: (1) "Any disputes arising under the Partnership Agreements, including those involving subjects addressed in Section[] 7.6 . . . , are governed by Delaware law"; (2) "Section 7.6 of each of the Partnership Agreements provides the exclusive criteria for determining whether Class B [I]nterests thereunder have vested"; (3) "Hargis had no vested Class B Interests in LNG IV as of November 16, 2011, the date of Hargis'[s] termination of employment, and thus, under Section 7.6 of the LNG IV partnership agreement, Hargis is not entitled to any compensation for any Class B Interests in LNG IV"; and (4) "Any disputes concerning

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63 *McLaughlin*, 942 A.2d at 626–27; *see also Ishimaru*, 2005 WL 2899680, at *17–18 (holding that a non-signatory subsidiary could enforce the arbitration provision in an agreement executed by its parent company). In some cases, a non-signatory may be bound to arbitration under a third-party beneficiary theory or an estoppel theory. *See NAMA Hldgs., LLC v. Related World Mkt. Ctr., LLC*, 922 A.2d 417 at 430–431 (Del. Ch. 2007) (citing *E.I. duPont de Nemours & Co., Inc. v. Rhone Poulenc Fiber & Resin Intermediates, S.A.S.*, 269 F.3d 187, 194 (3d Cir. 2001)).

64 *McLaughlin*, 942 A.2d at 626–27.

Hargis'[s] right or entitlement to receive compensation in exchange for Class A Interests and Class B Interests in the Partnerships, including without limitation disputes over whether such interests have properly vested . . . , are governed by the Partnership Agreements and Delaware Law."[65]

In more concrete terms, this dispute involves whether or not Hargis was terminated for cause and his rights upon termination. Hargis denied that he was terminated for cause, and sought relief to recover damages in the Texas arbitration. Legend and Hargis subjected themselves to arbitration in Texas as to whether Hargis was terminated for cause. In that proceeding, the parties now have stipulated to a partial judgment that Hargis was terminated without cause.[66] Among the remaining issues, therefore, are the nature and extent of Hargis's rights to the Class B Interests. As the dispute goes forward, there will be questions regarding both the vesting and valuation of those interests. Thus, some of the specific issues still in dispute relate to the vesting and repurchase of Hargis's Class B Interests.

I find that Hargis's contention that the Partnerships' claims relating to the vesting and repurchase of interests are arbitrable is not "obviously groundless."[67] As Hargis points out, Section 7.6 of the Partnership Agreements states that "[t]he terms of this

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65 Compl. ¶ 24.

66 *See* Pls.' Sept. 4 Letter.

67 *See McLaughlin*, 942 A.2d at 627.

Section 7.6 will be subject to the provisions of any Employment Agreement."[68] Moreover, Hargis credibly argues that "whether the Partnerships are obligated to repurchase Hargis'[s] Class B interests hinges solely on whether Hargis was terminated for Cause as defined in the Employment Agreement." In that regard, I note that Section 1 of the Partnership Agreements states that "'Cause' has the meaning set forth in the Employment Agreement."[69] Furthermore, the parties have reported that a partial judgment has been entered by consent in the arbitration that Hargis was terminated without Cause and that Legend breached the Employment Agreement.[70]

Based on these facts and arguments, I find that the Partnerships have not clearly shown that Hargis cannot make any non-frivolous argument that the Partnerships' claims regarding Section 7.6 are related to his Employment Agreement and are, therefore, subject to arbitration. Thus, for the claims concerning the vesting and repurchase of Hargis's Partnership Interests, an arbitrator should determine the question of substantive arbitrability.

2. Claims related to Section 7.7 of the Partnership Agreements

The Partnerships also make a number of claims relating to Section 7.7 of the Partnership Agreements, which Section provides for the valuation of interests. Specifically, the Partnerships seek a declaration that: (1) "Any disputes arising under the

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68 Def.'s Opening Br. 16 (citing Partnership Agreements § 7.6(a)).

69 Def.'s Reply Br. in Supp. of the Mot. to Compel Arbitration and Stay or, in the Alternative, Dismiss Pls.' V. Compl. for Declaratory Relief ("Def.'s Reply Br.") 4–5.

70 *See* Pls.' Sept. 4 Letter.

Partnership Agreements, including those involving subjects addressed in . . . Section[] 7.7, are governed by Delaware law"; (2) "Section 7.7 of the Partnership Agreements provides the exclusive procedure and requirements for, as well as the limitations on, any determination of the fair market value of Class A and Class B Interests for each of the Partnerships and such determination is to be made solely by the Board of Supervisors"; and (3) "Any disputes concerning Hargis'[s] right or entitlement to receive compensation in exchange for Class A Interests and Class B Interests in the Partnerships including without limitation . . . disputes over the value of such interests, are governed by the Partnership Agreements and Delaware law."[71] In simpler terms, these claims relate to the valuation of Hargis's Partnership Interests if a court or arbitrator determines that he is entitled to such interests.

Whether there is a colorable basis for this Court to conclude that the Partnerships' claims regarding Section 7.7 are related to the Employment Agreement is less clear than for the claims under Section 7.6. On the one hand, the valuation of interests is subject to an intricate process prescribed in the Partnership Agreements that is arguably outside of the scope of the Employment Agreement. Nonetheless, Hargis argues that the valuation of his interests "touches" matters covered by the Employment Agreement, and thus "falls within the scope of the arbitration agreement."[72] Moreover, Hargis contends that his "entitlement to the value of his Class B Interests derives from both the Employment

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71 Compl. ¶ 24.

72 Def.'s Opening Br. 16–17 (citing *Pennzoil Exploration & Prod. Co. v. Ramco Energy Ltd.*, 139 F.3d 1061 (5th Cir. 1998)).

Agreement and the Partnership Agreements . . . [and that the] vesting and *valuation* of Hargis'[s] interest in the Partnerships cannot be separated from his employment relationship with Legend."[73]

While the Partnerships cite a number of authorities in opposition to Hargis's arguments, they effectively invite this Court to decide whether the Partnerships' claims in this action are arbitrable. But, "to resolve good faith disputes about substantive arbitrability, would conflate the substantive arbitrability analysis with the arbitrability analysis proper, and usurp the role *Willie Gary* says belongs to the arbitrator."[74] Rather, under *McLaughlin* and its progeny, this Court's role is limited to ascertaining whether or not Hargis has presented a colorable or non-frivolous claim that the disputes pertaining to Section 7.7 are related to the Employment Agreement. Because Hargis has met this low threshold, an arbitrator also should determine the question of substantive arbitrability as to any claims concerning valuation and any other issues regarding Section 7.7. Therefore, I so hold, but express no opinion on the ultimate arbitrability of any such claim pertaining to Section 7.7.

C. The Motion to Stay

Having succeeded in having the aspects of this litigation involving vesting, repurchase, and valuation referred to the arbitrator at least for purposes of determining substantive arbitrability, Hargis seeks to stay or, in the alternative, dismiss the

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73 *Id.* (emphasis added).

74 *Orix LF, LP v. Inscap Asset Mgmt., LLC*, 2010 WL 1463404, at *8 (Del. Ch. Apr. 13, 2010).

Partnerships' remaining claims. This Court possesses the inherent power to manage its own docket, including issuing a stay pending the resolution of an arbitration, on the basis of comity, efficiency, or common sense.[75] Moreover, the FAA provides that the court shall stay the trial "upon being satisfied that the issue involved in such suit or proceeding is referable to arbitration" under an arbitration agreement.[76] Because I find that the parties agreed to arbitrate arbitrability and that Hargis's assertion that several of the Partnerships' claims and arguments are arbitrable is not wholly groundless, I stay this action pending the arbitrator's decision on the arbitrability of those claims.[77]

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75 *See supra* note 27 and accompanying text; s*ee also, LightLab Imaging, Inc. v. Axsun Techs., Inc.*, 2012 WL 1764225, at *1 (Del. Ch. May 10, 2012).

76 9 U.S.C. § 3.

77 In this action, the Partnerships also seek, for example, a declaration that "[t]he [P]artnership [A]greements are valid and fully enforceable by the parties thereto." Compl. ¶ 24. It is questionable, however, whether what remains of this claim is ripe or justiciable. *See Stroud v. Milliken Enters., Inc.*, 552 A.2d 476, 479–80 (Del. 1989) (citing *Rollins Int'l, Inc. v. Int'l Hydronics Corp.*, 303 A.2d 660, 662–63 (Del. 1973)). Even in a case involving solely claims for declaratory relief, the parties still must meet the prerequisites of an actual controversy, which are:

> (1) It must be a controversy involving the rights or other legal relations of the party seeking declaratory relief; (2) it must be a controversy in which the claim of right or other legal interest is asserted against one who has an interest in contesting the claim; (3) the controversy must be between parties whose interests are real and adverse; [and] (4) the issue involved in the controversy must be ripe for judicial determination.

Id. At this stage in the proceedings, it is unclear what issues will remain following the arbitrator's decision on the issues of substantive arbitrability discussed *supra*. Therefore, it would be inefficient and speculative to attempt to assess in a vacuum the ripeness or justiciability of the Partnerships' remaining claims.

III. CONCLUSION

For the foregoing reasons, Hargis's motion to compel arbitration is granted at least with respect to arbitrating the arbitrability of the claims related to vesting, repurchase, and valuation. Additionally, this case is stayed pending the arbitrator's decision.

IT IS SO ORDERED.