

**Affirmed and Memorandum Opinion filed August 1, 2023**



**In The**

**Fourteenth Court of Appeals**

---

**NO. 14-22-00021-CV**

---

**MASTERWORD SERVICES, INC., Appellant**

**V.**

**YVAN HENNECART AND SPI GLOBAL US, INC., Appellees**

---

**On Appeal from the 11th District Court  
Harris County, Texas  
Trial Court Cause No. 2021-31097**

---

**MEMORANDUM OPINION**

In its sole issue in this interlocutory appeal, MasterWord Services, Inc. challenges the trial court's denial of its motion to compel arbitration, which MasterWord filed after the trial court denied its application for temporary injunctive relief.<sup>1</sup> Because the arbitration agreement in dispute binds one party to arbitrate,

---

<sup>1</sup> The Federal Arbitration Act (FAA) and the Texas Arbitration Act (TAA) both permit an interlocutory appeal from an order denying a motion to compel arbitration. *See* 9 U.S.C.A. § 16; Tex. Civ. Prac. & Rem. Code §§ 51.016, 171.098(a)(1); *see also In re Helix Energy Sols. Grp.*,

while allowing the other to choose whether to arbitrate, we conclude that the arbitration agreement is illusory. Accordingly, we affirm the trial court's order denying MasterWord's motion to compel arbitration.

### ***Background***

MasterWord is a language services provider that supplies translation and interpretation services to businesses and individuals. On July 29, 2020, Yvan Hennecart was hired by MasterWord as the Head of Sales. MasterWord and Hennecart signed an "Employment Agreement" (the Agreement) under which Hennecart agreed to not disclose confidential information or compete with MasterWord.

According to MasterWord's petition, Hennecart was previously employed by SPi Global US, Inc. Based on Hennecart's suggestion and recommendation, MasterWord entered into a Master Services Agreement with SPi to pursue a cooperative business venture on January 13, 2021. The Master Services Agreement between MasterWord and SPi contained similar restrictions on disclosure of confidential information and competition as the Agreement. Shortly after entering into the Master Services Agreement, MasterWord alleged that Hennecart and SPi created a "consortium" and circulated a proposed business plan to prospective participants and investors for their venture, Newco. Upon discovering Hennecart's competitive venture with Newco, MasterWord terminated Hennecart on May 6, 2021.

MasterWord then filed a petition in the trial court naming Hennecart and SPi as defendants and alleging that MasterWord had discovered the "consortium" between Hennecart and SPi on their joint venture with Newco. MasterWord asserted

---

*Inc.*, 303 S.W.3d 386, 395 n.7 (Tex. App.—Houston [14th Dist.] 2010, orig. proceeding).

five causes of action against Hennecart and SPi for (1) breach of contract—non-solicit and non-compete agreements, (2) breach of contract—non-disclosure agreements, (3) misappropriation of trade secrets and confidential information, (4) tortious interference with contracts and business opportunities, and (5) conspiracy. MasterWord’s petition also requested injunctive relief against Hennecart and SPi, asserting that Hennecart and SPi used and continued to use MasterWord’s confidential information and trade secrets to compete in its market and target its customers.

On May 28, 2021, the ancillary court found that injunctive relief was appropriate and signed a temporary restraining order against Hennecart. On June 7, 2021, the trial court extended the temporary restraining order upon MasterWord’s request. On June 18, 2021, the trial court conducted a hearing on MasterWord’s application for temporary injunction. After the hearing, the court denied the application and dissolved the temporary restraining order. On the same day that MasterWord’s request for temporary injunction was denied, the trial court entered an agreed order dismissing SPi based on a settlement agreement. Thereafter, MasterWord filed a motion to compel arbitration and abate proceedings. After a hearing, the trial court denied the motion to compel arbitration on December 15, 2021.

MasterWord filed its notice of appeal and then filed its petition for writ of mandamus with this court on January 14, 2022. MasterWord requested that this court compel the trial court to set aside its order denying the motion to compel arbitration and sign an order compelling the parties to arbitrate all disputes. This court determined that MasterWord had an adequate remedy by appeal and denied MasterWord’s petition for writ of mandamus. *See In re MasterWord Servs., Inc.*, No. 14–19–00027–CV, 2022 WL 1010486, at \*1 (Tex. App.—Houston [14th Dist.]

Apr. 5, 2022, orig. proceeding) (mem. op.).

### ***Standard of Review and Governing Law***

The Agreement does not specifically invoke either the FAA or the TAA but provides that the Agreement shall be governed by the laws of Texas. Accordingly, both the FAA and TAA apply. *Natgasoline LLC v. Refractory Constr. Servs., Co.*, 566 S.W.3d 871, 878 (Tex. App.—Houston [14th Dist.] 2018, pet. denied) (“If an arbitration agreement does not specify whether the FAA or the TAA applies, but states that it is governed by the laws of Texas, both the FAA and the TAA apply unless the agreement specifically excludes federal law.”). The issue of arbitrability, however, is subject to the same analysis under either statute. *Rodriguez v. Tex. Leaguer Brewing Co.*, 586 S.W.3d 423, 427 (Tex. App.—Houston [14th Dist.] 2019, pet. denied).

Under Texas law, a written agreement to arbitrate is valid and enforceable if an arbitration agreement exists and the claims a party seeks to have arbitrated are claims that fall within the scope of the parties’ arbitration agreement. Tex. Civ. Prac. & Rem. Code §§ 171.001, 171.021. Generally, a party seeking to compel arbitration must establish that a valid arbitration agreement exists and that the claims at issue fall within the scope of that agreement. *G.T. Leach Builders, LLC v. Sapphire V.P., LP*, 458 S.W.3d 502, 524 (Tex. 2015). Once an arbitration movant meets that burden, a trial court must grant the motion to compel arbitration unless the opposing party proves a defense to arbitration. *Rodriguez*, 586 S.W.3d at 428.

We review a trial court’s order denying a motion to compel arbitration for abuse of discretion. *Henry v. Cash Biz, LP*, 551 S.W.3d 111, 115 (Tex. 2018). Whether the claims in dispute fall within the scope of a valid arbitration agreement and whether a party waived its right to arbitrate are questions of law that we review de novo. *Id.*; *Perry Homes v. Cull*, 258 S.W.3d 580, 598 & n.102 (Tex. 2008).

## *Discussion*

In its sole issue, MasterWord contends the trial court abused its discretion in denying the motion to compel arbitration because the arbitration agreement was not illusory, and it did not waive its right to arbitrate. Hennecart contends that the Agreement is unenforceable because MasterWord expressly retained the right to choose which disputes to arbitrate and which disputes to litigate. We first address whether the Agreement was illusory.

“A promise is illusory if it does not bind the promisor, such as when the promisor retains the option to discontinue performance.” *In re 24R, Inc.*, 324 S.W.3d 564, 567 (Tex. 2010) (orig. proceeding) (per curiam); *see also J.M. Davidson, Inc. v. Webster*, 128 S.W.3d 223, 235 (Tex. 2003) (Schneider, J., dissenting) (“[I]f the terms of a promise make performance optional, the promise is illusory and cannot constitute valid consideration.”); *see also Royston, Rayzor, Vickery, & Williams, LLP v. Lopez*, 467 S.W.3d 494, 505 (Tex. 2015).

Promises are illusory and unenforceable if they lack bargained-for consideration because they fail to bind the promisor. *See In re 24R, Inc.*, 324 S.W.3d 564, 566–67 (Tex. 2010). The same applies in the arbitration agreement context. *Lopez*, 467 S.W.3d at 505. “An arbitration agreement is illusory if it binds one party to arbitrate, while allowing the other to choose whether to arbitrate.” *Id.*

In this case, the arbitration clause relied upon by MasterWord states:

In the event of any controversy or dispute between [MasterWord] and [Hennecart] or between [Hennecart] and an agent of [MasterWord], including but not limited to directors, officers, managers or other employees of [MasterWord], who are being sued in any capacity, as to all or any part of this Agreement, any other agreement, or any dispute or controversy whatsoever pertaining to or arising out of the relationship between [MasterWord] and [Hennecart] or the dissolution or termination of same shall, *at [MasterWord]’s option*, be settled by

arbitration in Houston, Texas in accordance with the rules then existing of the American Arbitration Association, and judgment upon the award rendered may be entered in any court having jurisdiction thereof.

(Emphasis added.) The plain language of the arbitration provision does not mutually bind the parties because arbitration is “at [MasterWord’s] option.” Because the Agreement bound Hennecart to arbitrate while allowing MasterWord the choice to arbitrate, the Agreement is illusory and unenforceable. *See id.* Thus, MasterWord has not discharged its burden to establish a valid arbitration agreement exists. *Rodriguez*, 586 S.W.3d at 428.

We conclude that the Agreement is not enforceable. Accordingly, we overrule MasterWord’s sole issue on appeal and need not address whether MasterWord waived its right to arbitration by substantially invoking the judicial process. *See Tex. R. App. P. 47.1.*

### ***Conclusion***

We affirm the judgment of the trial court.

/s/ Frances Bourliot  
Justice

Panel consists of Chief Justice Christopher and Justices Bourliot and Spain.