IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF ARKANSAS
FAYETTEVILLE DIVISION

MATTHEW DICKSON and JENNIFER DICKSON, Individually and on behalf of all others similarly situated — **PLAINTIFFS**

v. — **No. 5:16-CV-5027 PKH**

GOSPEL FOR ASIA, INC., GOSPEL FOR ASIA-INTERNATIONAL, K.P. YOHANNAN, GISELA PUNNOSE, DANIEL PUNNOSE, DAVID CARROLL, and PAT EMERICK — **DEFENDANTS**

DEFENDANTS' REPLY IN SUPPORT OF MOTION TO COMPEL ARBITRATION AND TO STAY PROCEEDING PENDING ARBITRATION

Defendants Gospel for Asia, Inc., a Texas non-profit organization and Christian religious order ("GFA"), Gospel for Asia-International ("GFA-International"),[1] K.P. Yohannan, Gisela Punnose, Daniel Punnose, David Carroll, and Pat Emerick (collectively, "Defendants")[2] file this Reply in Support of their Motion to Compel Arbitration and to Stay Proceeding Pending Arbitration (Docs. 23 and 24), and state as follows:

INTRODUCTION

Plaintiffs, Matthew Dickson ("Mr. Dickson") and Jennifer Dickson ("Mrs. Dickson") (collectively, "Plaintiffs" or the "Dicksons"), refuse to honor the parties' mutual agreement to arbitrate. Plaintiffs argue there is no valid agreement because there was no consideration and the arbitration clause is vague. Plaintiffs also argue their claims are outside the scope of the arbitration clause. As explained below, each of Plaintiffs' arguments fails.

[1] GFA-International does not currently exist.

[2] K.P. Yohannan, Gisela Punnose, Daniel Punnose, David Carroll, and Pat Emerick are referred to, collectively, as the "Individual Defendants."

ARGUMENTS AND AUTHORITIES

I. The Agreement is a valid contract that is supported by consideration and is definite

The Statement of Agreement, including the arbitration clause within it, is a valid agreement supported by consideration that is not impermissibly vague.

A. The agreement to arbitrate is mutually binding and supported by consideration

Plaintiffs argue the arbitration clause is not supported by consideration because it is not mutual, but rather, is illusory because GFA can avoid it. Although not required because there was additional consideration, the agreement to arbitrate is mutual and GFA cannot (and is not trying to) avoid it. The Agreement, which GFA prepared and presented to the Dicksons, expressly states:

- In the last paragraph: "This Agreement between Gospel for Asia and the undersigned has been entered into after prayerful consideration on the part of both parties. All commitments contained herein have been made freely and voluntarily. There are no promises made by either party to the other regarding anything not mentioned in this Agreement."
- In the arbitration clause: The "parties agreeing that the matter will be submitted to final and binding arbitration …."

Doc. 23, its Ex. 1-A at 4; Exs. 1-B and 1-C at 3 (emphasis added).

Thus, on the face of the Agreement, the agreement to arbitrate is mutually binding on Plaintiffs and GFA. While it is not the only consideration involved, this promise by both parties to engage in the dispute resolution procedure is consideration that makes the Agreement valid and enforceable. As the Texas Supreme Court stated in *Webster*—a case Plaintiffs cite—"mutual promises to submit … disputes to arbitration constituted sufficient consideration,

because both parties [a]re bound to the promises to arbitrate." *J.M. Davidson, Inc. v. Webster*, 128 S.W.3d 223, 228 (Tex. 2003).[3]

Because the agreement to arbitrate is mutually binding, Plaintiffs' suggestion that the arbitration agreement is illusory (based on an erroneous claim that GFA can escape its obligations by modifying it terms) is incorrect. Pls.' Resp. (Doc. 31) at 6. Plaintiffs base this argument on the Fifth Circuit's *Carey v. 24 Hour Fitness* opinion, but that case involved a handbook that had a "Change-in-Terms Clause." 669 F.3d 202, 206 (5th Cir. 2012). Interpreting the language of that clause, the court stated: "[i]n effect, the agreement allows 24 Hour Fitness to hold its employees to the promise to arbitrate while reserving its own escape hatch." *Id*. In fact, the *Carey* court had to distinguish the Texas Supreme Court opinion of *In re Dillard Department Stores, Inc.*, 198 S.W.3d 778 (Tex. 2006), by explaining that "the critical distinction between *Dillard* and this case is that there was no express reservation of Dillard's right to amend the arbitration agreement." 669 F.3d at 208 n.2. Here, the agreement to arbitrate is reciprocal and mutual because the "parties" are agreeing that any dispute "will be submitted to final and binding arbitration." Doc. 23, its Exs. 1-A at 3, and Exs. 1-B and 1-C at 2. GFA is bound and has no express reservation of a right to amend the Agreement. Moreover, the parties' course of

[3] Plaintiffs make a passing suggestion of impropriety because the Agreement was not signed by GFA. "But neither the FAA nor Texas law requires that arbitration clauses be signed, so long as they are written and agreed to by the parties." *In re AdvancePCS Health L.P.*, 172 S.W.3d 603, 606, 608 (Tex. 2005) (holding "the trial court abused its discretion in failing to compel arbitration."); *see also Bradford v. Robert Peltier Nissan Pontiac*, No. 6:06-CV-477, 2007 WL 865685, at *2-3 (E.D. Tex. Mar. 15, 2007) (compelling arbitration where purchase order was signed by plaintiff, but not seller, although purchase order expressly stated that it required signature of seller to be valid, because performance indicated that both parties intended to be bound). Here, GFA performed by welcoming the Dicksons into the GFA community, providing the Dicksons with training, employing Mr. Dickson for nearly five (5) years, and by assisting with Mr. Dickson's application for a tax exemption. *See* Doc. 23, its Ex. 1 at ¶¶ 3, 5, 7-8. And here, as in *Bradford*, enforcement is sought against the Dicksons – *i.e.*, the parties who did sign the Agreement.

performance refutes Plaintiffs' suggestion. GFA approached Mr. Dickson when making a modification and he in fact signed a new Agreement when a change was made to the "Moral Convictions and Lifestyle" section. *See* Doc. 23, its Exs. 1-A at 3, and Exs. 1-B and 1-C at 2.

Like the *Carey* opinion, *Mendivil v. Zanios Foods, Inc.*, 357 S.W.3d 827, 832 (Tex. App.—El Paso 2012, no pet.), does not support Plaintiffs' position, as there was no mutual promise to arbitrate in that case. In *Mendivil*, the court was clear that one of the parties had not promised to arbitrate disputes and that the other party could not force it to go to arbitration. *Id*. That is simply not true here.

Moreover, even if the arbitration agreement was not mutual (which it is), there was additional consideration that supports the validity and enforceability of the Agreement. In addition to Mr. Dickson receiving employment, both Dicksons received training and other benefits by signing the Agreement and becoming members of GFA, including eligibility for a tax exemption. *See* Doc. 23, its Ex. 1 at ¶¶ 3, 7-8. Thus, regardless of Plaintiffs' mutuality argument, the arbitration agreement is supported by other consideration. As the *Mendivil* court explained, "Arbitration clauses generally do not require mutuality of obligation so long as adequate consideration supports the underlying contract." *Mendivil*, 357 S.W.3d at 831. Accordingly, the Agreement is supported by consideration and there is a valid agreement to arbitrate.

B. The Agreement is not too vague to be enforced

The Agreement is "sufficiently definite to enable a court to understand the parties' obligations," and Plaintiffs' argument to the contrary is a red herring. Pls.' Resp. (Doc. 31) at 7. Plaintiffs attempt to cast doubt on clear meaning by questioning the terms "other GFA member," "the matter," and "Unified Arbitration Act," but there is no debilitating vagueness.

Plaintiffs first argue that "any other GFA member" is unclear. But the Dicksons chose to become members of the GFA Christian religious order and then worked and lived in community with the other GFA members for years. And the Agreement provides that the Dicksons "agree to relate to fellow members of GFA as a family community by residing within close proximity to other members, meeting together regularly for prayer, fellowship, teaching, and encouraging one another …." Doc. 23, its Ex. 1-A at 3, and Exs. 1-B and 1-C at 2 (emphasis added). There is no credible question that the Dicksons are confused as to what this phrase means.[4]

Moreover, the word "matter" unmistakably refers to the prior language "any and all disputes" being addressed in the clause: "I agree that any and all disputes of any kind arising out of the relationship between myself and GFA, or any other GFA member, shall be resolved by way of conciliation, or mediation, the parties' agreeing that the matter will be submitted to final and binding arbitration …." Doc. 23, its Ex. 1-A at 4; Exs. 1-B and 1-C at 3 (emphasis added). The clause is simply an agreement to abide by Biblical dispute resolution with informal efforts of conciliation and mediation followed by arbitration if those efforts are not successful.

Finally, the reference to the Unified Arbitration Act in the Agreement does not render the clause unenforceably vague. Initially, this is a simple misnomer where *Unified* Arbitration Act was stated instead of *Uniform* Arbitration Act. Texas, where GFA is headquartered, long ago adopted the Uniform Arbitration Act. *Jack B. Anglin Co., Inc. v. Tipps*, 842 S.W. 2d 266, 268

[4] Plaintiffs not only ignore the words of the Agreement, but also the Declaration of David Carroll when they make both their ambiguity and lack of signature points with respect to other GFA members. The Declaration provides "[a]s a general matter, members of GFA agree to Biblical reconciliation and arbitration." Doc. 23, it Ex. 1, at ¶ 9. And "[the Individual Defendants] are each committed to Biblical dispute resolution and arbitration." *Id.* at ¶ 10. Additionally, signatures are not required, and Plaintiffs' claims against the Individual Defendants should be arbitrated for the reason discussed in Defendants' initial brief. *See* Doc. 24, at p. 9 and n.7.

n.2 (Tex. 1992) ("At least 36 states, including Texas, have adopted all or part of the Uniform Arbitration Act to encourage and facilitate the use of arbitration.").

Plaintiffs rest their Unified Arbitration Act argument on a mistaken interpretation of the "integral provision" rule, which Plaintiffs do not claim has been adopted by the Eighth Circuit.[5] This concept arises when an arbitration clause sets a specific arbitral forum and that forum no longer exists when a party seeks to compel arbitration. Plaintiffs cite *Ranzy v. Tijerina*, 393 F. App'x 174 (5th Cir. 2010), for the proposition that "[w]here an arbitration clause requires the use of rules that cannot be applied, courts routinely decline to compel arbitration." Pls.' Resp. (Doc. 31) at 9 (emphasis added). *Ranzy* actually holds that "a federal court need not compel arbitration in a substitute forum if the designated forum becomes unavailable." 393 F. App'x at 176 (emphasis added). And in determining that the arbitral forum was integral to the agreement, the *Ranzy* court noted that the arbitration clause made at least four distinct references to the contractually designated arbitration forum, the "NAF." *Id.* at 175.

By contrast, the Agreement here does not designate a forum (much less one that has ceased to exist). The "Unified Arbitration Act" is referenced only once, and only for procedures and rules: "that matter will be submitted to final and binding arbitration in accordance with the rules and procedures set forth in the Unified Arbitration Act." Doc. 23, its Ex. 1-A at 4; Exs. 1-B and 1-C at 3 (emphasis added). This is consistent with the Texas version of the Uniform Arbitration Act, which does not designate a forum and supplies only rules and procedures.

[5] The Seventh Circuit has criticized and rejected the "integral provision" rule. *See Green v. U.S. Cash Advance Ill., LLC*, 724 F.3d 787, 790-92 (7th Cir. 2013). And although the Eleventh Circuit has stated that "it remains the majority rule among Circuit Courts," it cited no Eighth Circuit authority in support of that assertion. *See Inetianbor v. CashCall, Inc.*, 768 F.3d 1346, 1350 n.1 (11th Cir. 2014) (citing Second, Third, Fifth, and Ninth Circuit cases).

In fact, Plaintiffs' other case on this point highlights the inapplicability of this "integral provision" rule. In *Inetianbor v. CashCall, Inc.*, 768 F.3d 1346, 1351 (11th Cir. 2014), the court distinguished clauses such as the present one from the rule and noted that the rule will not prevent arbitration where there is only an identification of procedural rules that are to be applied. In *Inetianbor*, the court addressed *Brown v. ITT Consumer Fin. Corp.*, 211 F.3d 1217, 1222 (11th Cir. 2000), an earlier Eleventh Circuit opinion where the court discussed the "integral provision" rule but compelled arbitration. *Inetianbor*, 768 F.3d at 1351. In *Inetianbor*, the Eleventh Circuit distinguished *Brown* as follows:

> In *Brown*, the arbitration agreement provided for the procedural rules only, stating that "[A]ny dispute ... shall be resolved by binding arbitration under the Code of Procedure of" an unavailable arbitration forum. 211 F.3d at 1220. Unlike in *Brown*, the arbitration agreements we consider here select not just the rules of procedure, but also the arbitral forum.

768 F.3d at 1351 (emphasis added).[6] *Inetianbor* goes on to note that Section 5 of the FAA provides what to do if the agreement contains no method for selecting an arbitrator, or if "any party thereto shall fail to avail himself of [a provided] method, or if for any other reason there shall be a lapse in the naming of an arbitrator or arbitrators or umpire, or in filling a vacancy." *Id.* at 1349. In this case, arbitration is proper because simply selecting the rules of procedure is distinguishable from selecting the arbitral forum.[7]

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[6] By contrast, in *Inetianbor*, the Eleventh Circuit held that the parties' intended their forum selection clause to be a central part of the agreement to arbitrate. 768 F.3d at 1351. The contract referenced the Tribe as forum in five of its nine paragraphs regarding arbitration. *Id*.

[7] Nor do Plaintiffs' other cases support their efforts to avoid arbitration here. This is not a case where pages of the agreement are missing, such that GFA cannot show a "meeting of the minds." *See Dreyfuss v. Etelecare Global Solutions-U.S. Inc.*, 349 F. App'x 551, 553-54 (2d. Cir. 2009). Nor is this a non-traditional arbitration clause where an isolated, haphazard reference to the term

II. The dispute is within the scope of the arbitration clause

Plaintiffs' claims are within the scope of the arbitration clause, which is not limited simply to employment or contract disputes, but extends to "any and all disputes of any kind arising out of the relationship between [Plaintiffs] and GFA, or any other GFA member." Doc. 23, its Ex. 1-A at 4; Exs. 1-B and 1-C at 3 (emphasis added). With each of the Dicksons becoming members of the GFA Christian religious order, the Dicksons had a relationship with GFA. Part of that relationship was signing the Agreement where they agreed to GFA's mission. In fact, the Dicksons agreed with GFA that GFA's mission includes supporting "by prayer and finances the national ministries of the Gospel of Jesus Christ in Asia." Doc. 23, its Ex. 1-A at 1; Exs. 1-B and 1-C at 1 (emphasis added). Thus, the relationship between GFA and the Dicksons included financial support of national ministries. The widows and orphans donation—about which the Dicksons complain in this suit—was to support such a national ministry.[8] Accordingly, the Dicksons donating to GFA in furtherance of the GFA mission was part of their relationship with GFA. And the Dicksons' allegation that GFA has acted contrary to its mission (allegedly diverting funds from its national ministries), is a dispute arising out of the Dicksons' relationship with GFA. Thus, the Dicksons' claims are within the scope of the "any and all disputes of any kind arising out of the relationship" clause.

"arbitration" is not sufficiently "express, plain, clear, and certain," to evince the parties' agreement to arbitrate. *See Bates v. MTH Homes—Texas, L.P.*, 177 S.W.3d 419, 424 (Tex. App.—Houston [1st Dist.] 2005, no pet.). Plaintiffs' other two cases—*Playoff Corp. v. Blackwell*, 300 S.W.3d 451, 455-58 (Tex. App.—Fort Worth 2009, pet. denied), and *T.O. Stanley Boot Co. v. Bank of El Paso*, 847 S.W.2d 218, 221-22 (Tex. 1992)—are cited for the unremarkable proposition that a contract must be definite, and the Agreement here is.

[8] The webpage the Dicksons cited in their Complaint even states: "Your donation will provide Gospel for Asia-supported missionaries with the means to help these precious women and children of God." Compl. at p. 33.

Even if there was any doubt about this, the cases Plaintiffs cite acknowledge the universally held principle that "[d]oubts regarding an agreement's *scope* are resolved in favor of arbitration because there is a presumption favoring agreements to arbitrate under the FAA." *In re Kellogg Brown & Root, Inc.*, 166 S.W.3d 732, 737 (Tex. 2005).

Moreover, the language and context of the arbitration clauses in Plaintiffs' cases are distinguishable from an agreement to join a religious order and the "relationship" language here. The holdings of those fact-specific cases are inapplicable to the facts in this case. Plaintiffs' cases do not support their argument that the present dispute is outside the scope of the arbitration clause or that compelling arbitration here would be an absurd result.[9] The claims arise out of Plaintiffs' relationship with GFA and thus are within the scope of the arbitration clause.

CONCLUSION

Defendants pray that the Court compel Plaintiffs to arbitrate the claims and stay this proceeding pursuant to 9 U.S.C. § 3 until such arbitration has been had.

[9] The Fifth Circuit's *Halliburton* opinion, finding gang rape by fellow employees to be outside the scope of an employment arbitration agreement, has no bearing here. *See Halliburton*, 583 F.3d at 235-40. And Plaintiffs' other cases are similarly distinguishable because those arbitration clauses had a scope that was expressly limited to disputes arising out of or relating to the contract between the parties. *See Ford v. NYLCare Health Plans of Gulf Coast, Inc.*, 141 F.3d 243, 246 (5th Cir. 1998) (clause said "Any controversy or claim arising out of or relating to this Agreement"); *Coors Brewing Co. v. Molson Breweries*, 51 F.3d 1511, 1513 (10th Cir. 1995) (clause said "Any dispute arising in connection with the implementation, interpretation, or enforcement of this Agreement"). Of course, the clause is not limited to disputes arising out of the Agreement here. Whether Plaintiffs can maintain this action without reference to the Agreement is irrelevant to this Court's analysis of the instant motion to compel arbitration because the language of the arbitration clause is not limited to claims arising out of the Agreement.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on May 10, 2016, I electronically filed Defendants' Reply in Support of their Motion to Compel Arbitration and to Stay Proceeding Pending Arbitration with the Clerk of the Court, to be served by operation of the Court's electronic filing system on the attorneys of record.

/s/ Debra K. Brown