2026 Tex. Bus. 79

THE BUSINESS COURT OF TEXAS
ELEVENTH DIVISION

KEITH CHAPMAN, individually and derivatively on behalf of KYOMERA VENTURES, LLC,	§	
Plaintiff,	§	
v.	§	Cause No. 26-BC11B-0116
NICHOLAS FLORES and KYOMERA MANAGEMENT, LLC,	§	
Defendants.	§	

MEMORANDUM OPINION AND ORDER
GRANTING IN PART DEFENDANTS' MOTION TO COMPEL ARBITRATION

¶1 Before the Court is a Motion to Compel Arbitration ("the Motion") filed by Defendants Nicholas Flores and Kyomera Management, LLC ("Defendants"). Upon consideration of the Motion, the response, the reply, all exhibits submitted therewith, and the arguments of counsel, the Court **GRANTS IN PART** the Motion for the reasons set forth below.

I. BACKGROUND

¶2 Plaintiff Keith Chapman ("Plaintiff") sued Defendants alleging multiple breaches of the Limited Liability Company Operating Agreement of Kyomera Ventures, LLC ("the LLC Agreement"), asserting jurisdiction under TEX. GOV'T CODE § 25A.004(b). Plaintiff asserts direct claims for breach of fiduciary duty, breach of contract, and fraud, as well as derivative claims on behalf of Kyomera Ventures, LLC ("Ventures"), for breach of fiduciary duty and conversion. *Plaintiff's Original Petition and Verified Application for Temporary Restraining Order and Temporary Injunction ("Original Petition") at ¶¶ 41-57.*

¶3 Defendants moved to compel arbitration and abate this action pending the arbitration, arguing that Paragraph 17 of the LLC Agreement requires Plaintiff and defendant Nicholas Flores ("Flores") – Ventures' two 50% ownership members – to submit to mediation "any matter" on which they cannot reach agreement and, if mediation proves unsuccessful, to binding arbitration "under the rules of the American Arbitration Association." *Original Petition at Ex. A-1, ¶17* (Limited Liability Company Operating Agreement of Kyomera Ventures LLC). By agreement, the parties previously mediated the matters at issue in this lawsuit, unsuccessfully.

¶4 Plaintiff does not dispute that Paragraph 17 of the LLC Agreement is a valid agreement to arbitrate. *Plaintiff's Response to Defendant's Motion to Compel Arbitration ("Plaintiff's Response") at ¶3.* Rather, Plaintiff contends that his claims fall outside the scope of the arbitration clause because they do not relate to a deadlock among the members and because defendant Kyomera Management, LLC was not a signatory to the LLC

Agreement and therefore cannot compel arbitration under Paragraph 17. *Id. at ¶4.* Moreover, he argues, there is no agreement that binds Ventures to arbitrate the claims that he has asserted on its behalf. *Id.*

II. ANALYSIS

¶5 On that last point, the LLC Agreement, including its arbitration provision, is binding upon the nominal plaintiff, Ventures. *See* TEX. GOV'T CODE Sec. 101.052(f) ("A company agreement is enforceable by or against the limited liability company . . . regardless of whether the company . . . has signed or otherwise expressly adopted the agreement."). By agreeing to arbitrate any matter regarding the operation of the LLC upon which they could not reach agreement, moreover, Plaintiff and Flores clearly and unmistakably committed not only to resolve their differences through arbitration but to submit to the arbitrator any dispute over the scope of the claims to be arbitrated. *See* Commercial Arbitration Rules and Mediation Procedures of the American Arbitration Association, R-7(a) ("The arbitrator shall have the power to rule on . . . the arbitrability of any claim or counterclaim").[1]

¶6 That Paragraph 17 of the LLC Agreement clearly and unmistakably delegates to the arbitrator any questions as to the scope of the arbitration between or among Plaintiff, Flores, and Ventures does not entirely resolve the pending question. For

[1] *See TotalEnergies E&P USA, Inc. v. MP Gulf of Mexico, LLC,* 667 S.W.3d 694, 712 (Tex. 2023) ("We thus hold that, as a general rule, an agreement to arbitrate disputes in accordance with rules providing that the arbitrator 'shall have the power' to determine 'the arbitrability of any claim' incorporates those rules into the agreement and clearly and unmistakably demonstrates the parties' intent to delegate arbitrability issues to the arbitrator."); *Drusch v. Borchers*, 2026 WL 2914872, *6 (Tex. App.—15th Dist. Sept. 29, 2026, no pet.) (same, citing *TotalEnergies*).

the court, not the arbitrator, must determine *which parties* have agreed to arbitrate their disputes. *Jody James Farms, JV v. Altman Group, Inc.,* 547 S.W.3d 624, 632 (Tex. 2018) ("Even when the party resisting arbitration is a signatory to an arbitration agreement, questions related to the existence of an arbitration agreement with a non-signatory are for the court, not the arbitrator.").[2] And here, no agreement to arbitrate exists between Plaintiff and defendant Kyomera Management, LLC ("KM") or between KM and Ventures.

¶7 Therefore, absent one of the "six scenarios in which arbitration with non-signatories may be required," *id.* at 633, the Court cannot compel Plaintiff to arbitrate its conversion claim against KM, a non-signatory to the LLC Agreement. Defendants proffer two of the "six scenarios" that enable a court to compel non-signatories to arbitration: agency and direct-benefits estoppel. But there is no persuasive evidence in the record that KM acted solely as Flores' agent with respect to the challenged actions. To the contrary, the petition references at least two, and possibly more, investors who became Flores' co-owners in KM. *See Original Petition at ¶¶28-31.*

¶8 As for direct-benefits estoppel, it clearly appears to the Court that Plaintiff's conversion claim arises out of the LLC Agreement and could not be pursued without it. *See, e.g., Original Petition at ¶¶57-61* (bringing claim derivatively on behalf of Ventures, and seeking recovery of Ventures' assets, funds, or property improperly transferred and/or misappropriated/diverted in a manner inconsistent with Ventures'

---

[2] *See also Drusch*, 2026 WL 2914872, at *5 ("As 'arbitration is strictly a matter of consent,' nobody can be compelled to arbitrate until a court decides they agreed to do so. Arbitrators cannot decide that question, because until such an agreement is proved they have no authority to decide anything.").

ownership rights). But direct-benefits estoppel typically binds non-signatories who seek to obtain a contract's benefits while avoiding the burden of arbitration included therein. Here, instead, the non-signatory is defendant KM, which seeks no benefits under the LLC Agreement. Although Plaintiff does seek contractual benefits via his conversion claim (individually and derivatively, through Ventures), and signed the LLC Agreement, he did not sign any agreement with KM. And the Texas Supreme Court has declined to compel arbitration when requested by a non-signatory who alleges that the claims against it involve "concerted misconduct" or are "substantially interdependent" with arbitrable claims. *See In re Merrill Lynch Trust Co. FSB,* 235 S.W.3d 185, 191-95 (Tex. 2007).

¶9 Under these circumstances, the Court cannot compel to arbitration the conversion claim against non-signatory KM. That claim, rather, must be stayed pending the arbitrator's resolution of the remaining claims between the parties to the LLC Agreement – both as to the scope of the arbitration and the underlying merits of Plaintiff's claims. "Thus, when an issue is pending in both arbitration and litigation, the Federal Arbitration Act generally requires the arbitration to go forward first; arbitration 'should be given priority to the extent it is likely to resolve issues material to this lawsuit.'" *Id.* at 194 (citation omitted).[3]

[3] *See also Estate of Moncrief,* 699 S.W.3d 315, 337 (Tex. 2024) (same); *Drusch,* 2026 WL 2914872, at *9 (under the FAA and the Texas Arbitration Act, "[w]hen the same issues must be decided both in arbitration and in court, 'the latter must be stayed until the former is completed.'") (citation omitted).

III. CONCLUSION

¶10 IT IS, THEREFORE, **ORDERED, ADJUDGED, AND DECREED** that Defendants' Motion to Compel Arbitration is hereby **GRANTED IN PART**, and that all claims set forth in Plaintiff's Original Petition are hereby compelled to arbitration – save and except for Plaintiff's conversion claim against defendant Kyomera Management, LLC. Other than as set forth above, the Court has made no findings, determinations, or conclusions concerning the merits of any claim or defense in this action.

¶11 IT IS, FURTHER, **ORDERED, ADJUDGED, AND DECREED** that this action, and all proceedings, deadlines, and discovery associated with it, is hereby **ABATED AND STAYED** pending the completion of the arbitration.

DATED: November 10, 2026



HON. GRANT DORFMAN
JUDGE, TEXAS BUSINESS COURT
ELEVENTH DIVISION