County Civil Court: CONTRACTS. The agreement between the parties to submit to binding arbitration unambiguously states the parties retain the right to bring claims within the jurisdiction of small claims court within that court. The record demonstrates the cause is within the jurisdiction of small claims court. Affirmed. *Timothy Mason v. CACH, LLC,* No. 14-AP-0008-WS (Fla. 6th Cir. App. Ct. May 22, 2015).

NOT FINAL UNTIL TIME EXPIRES FOR REHEARING AND, IF FILED, DETERMINED

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
OF THE STATE OF FLORIDA, IN AND FOR PASCO COUNTY
APPELLATE DIVISION

TIMOTHY MASON,
Appellant,

v.

CACH, LLC,
Appellee.
_____/

UCN: 512014AP00008APAXWS
Appeal No: 2014-AP-0008-WS
L.T. No: 2013-SC-1557-WS

On appeal from County Court,

Honorable Frank Grey,

Timothy Mason,
Pro Se,

Bryan Manno, Esq.,
Federated Law Group, PLLC,
for Appellee.

ORDER AND OPINION

Appellant failed to demonstrate entitlement to arbitration of Appellee's claim in this matter. The arbitration clause at issue provides as an exception that each party retains the right to bring claims within the jurisdiction of small claims court in that court. The record demonstrates the claim properly falls within this exception. The order of the trial court denying the Motion to Compel Arbitration is hereby AFFIRMED.

STATEMENT OF THE CASE AND FACTS

Appellee filed an action in county court against Appellant alleging unjust enrichment and account stated, based on alleged failure to make payments pursuant to a credit card agreement. Appellant filed a Motion to Compel Arbitration and Dismiss, or in the alternative, to Stay Proceedings Pending Arbitration, contending the contractual agreement provides for arbitration on demand by either party. Appellee responded that the arbitration clause contains an exception for claims which are within the jurisdiction of small claims court. Appellant replied by asserting that a demand for arbitration had been served on Appellee, and that Appellant has a counter claim in the amount of $12,000, and therefore the small claims court lacked jurisdiction to hear the matter, and the claim should be submitted to arbitration along with Appellant's alleged counter claim.

At the hearing on the Motion to Compel, Appellant contended the failure to file the counter claim seeking $12,000 was based on the belief that filing such counter claim would suggest waiver of the right to seek arbitration of the dispute by submitting the matter to the court system for resolution. The trial court denied the Motion and Appellant filed a timely notice of appeal in this Court of the non-final order pursuant to § 682.20(1)(a), Fla. Stat.

STANDARD OF REVIEW

The Florida Arbitration Code requires the court to deny a motion to compel arbitration if it "finds that there is no enforceable agreement to arbitrate." § 682.03(3), Fla. Stat. The trial court's decision on "a motion to compel arbitration is based in part on factual findings," and "presents a mixed question of law and fact." *Woebse v. Health Care and Retirement Corp. of America*, 977 So. 2d 630, 632 (Fla. 2d DCA 2008). This Court's "review of the trial court's factual findings is limited to determining whether they are supported by competent, substantial evidence," but "the standard of review applicable to the trial court's construction of the arbitration provision and to its application of the law to the facts found is a de novo review." *Id. See Orkin Exterminating Co. v. Petsch*, 872 So. 2d 259 (Fla. 2d DCA 2004); *Healthcomp Evaluation Servs. Corp. v. O'Donnell,* 817 So. 2d 1095 (Fla. 2d DCA 2002).

LAW AND ANALYSIS

Appellant claims it was error to deny arbitration in this matter pursuant to the plain terms of the contract. The contract contains an arbitration agreement which provides in part that the parties agree any dispute arising between the parties shall be resolved by arbitration upon demand by either party, which includes disagreements "relating in any way to the Card or related services, accounts or matters . . . use of any of the Bank's banking locations or facilities," and "includes claims based on broken promises or contracts, torts, or other wrongful actions," as well as "statutory, common law and equitable claims." The agreement provides that either party "may submit a dispute to binding arbitration at any time notwithstanding that a lawsuit or other proceeding has been previously commenced." However, the agreement also provides that "the sole exception" to the agreement to arbitrate is the parties' retention of "the right to pursue in small claims court any Dispute that is within that court's jurisdiction."

Appellant alleges a formal demand letter was filed with the arbitrators named in the credit card agreement, which was also sent to Appellee, claiming $12,000 owed to Appellant by Appellee, and that based on this alleged counter claim the cause is not within the jurisdiction of small claims court.

The Florida Arbitration Code and federal statutory provisions provide "three elements for courts to consider in ruling on a motion to compel arbitration of a given dispute: (1) whether a valid written agreement to arbitrate exists; (2) whether an arbitrable issue exists; and (3) whether the right to arbitration was waived." *Seifert v. U.S. Home Corp.*, 750 So. 2d 633, 636 (Fla. 1999). Appellant contends the cause is not properly before small claims court due to the allegation of a counter claim against Appellee. Appellant acknowledges no counter claim has been filed, but contends that filing such claim with the trial court would indicate a waiver of the right to arbitrate, which Appellant seeks to invoke. Appellant maintains that courts favor arbitration, and it was error to deny the Motion to Compel Arbitration, citing *Moses H. Cone Mem'l Hosp. v. Mercury Constr.*, 460 U.S. 1, 24-25 (1983) (holding that pursuant to federal law, "doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration").

Although Appellant provides authority and citation to arbitration case law, the record does not demonstrate Appellant has stated a basis for the alleged counter-claim,

or any specific challenge to either the contractual agreement as a whole, or to the arbitration clause specifically. Rather, Appellant seeks to compel arbitration based solely on the stated amount of Appellant's alleged counter claim.

Appellee responds that the trial court correctly denied the Motion, based on the exception contained in the contract that claims falling within the jurisdiction of small claims court may be brought in that court. The action filed by Appellee seeks to collect $2,154.91 allegedly owed by Appellant pursuant to the credit card agreement, and therefore falls within the jurisdiction of small claims court.

Appellant has not demonstrated entitlement to arbitration pursuant to the standard in *Seifert*, 750 So. 2d at 636, and the trial court correctly denied the Motion pursuant to § 682.03(3), Fla. Stat. Arbitration agreements must be interpreted using principles of contract interpretation, and courts must give effect to the parties' intentions. *See Seifert*, 750 So. 2d at 636; *Western Beef v. Compton Inv. Co.*, 611 F. 2d 587, 591 (5th Cir. 1980). The contract language represents the parties' intentions, unless it is ambiguous, and claims are only subject to arbitration where the parties have so agreed. *See Western Beef*, 611 F. 2d at 591; *Regency Group v. McDaniels*, 647 So. 2d 192, 193 (Fla. 4th DCA 1994). The agreement between the parties clearly states that each party retains the right to bring claims that fall within the jurisdiction of small claims court in that court, and the record demonstrates the claim at issue is within the jurisdiction of small claims court.

Although Appellant alleges a counter claim exists which would exceed the amount in controversy of the small claims court's jurisdiction, Appellant has not filed any counter claim or made any allegations which would demonstrate arbitration is required in this matter. The record does not include the basis for Appellant's counter claim or any challenge to the agreement between the parties. When determining whether a particular claim is subject to arbitration the court must look to "the factual allegations of the complaint to determine whether those allegations implicated the contractual agreement and hence the arbitration clause." *Seifert*, 750 So. 2d at 638. A party seeking to compel arbitration must be able to demonstrate the "existence of some nexus between the dispute and the contract containing the arbitration clause," and the policy favoring

arbitration should not "be used as a shield to block a party's access to a judicial forum in every case." *Id.* at 638, 642. The record does not demonstrate a right to compel arbitration in this matter, and the order of the trial court is therefore affirmed.

MOTION FOR ATTORNEY'S FEES

Appellee filed a Motion for Sanctions and Attorney's Fees pursuant to Fla. R. App. P. 9.410, based on Appellant's filing of a Motion to Compel Arbitration in this Court. Appellant filed a Motion to Withdraw the Motion to Compel Arbitration within 10 days after service of the Motion for Attorney's Fees, and the Motion to Withdraw is hereby granted. Appellee has not demonstrated compliance with the safe harbor provision of Rule 9.410, or that attorney's fees are otherwise authorized in this matter, and the Motion is denied.

CONCLUSION

The record does not demonstrate entitlement to arbitration in this matter, which is within the jurisdiction of small claims court and is therefore excluded from the parties' arbitration agreement. The trial court properly denied the Motion to Compel Arbitration and is hereby AFFIRMED.

It is ORDERED AND ADJUDGED that the order of the trial court is AFFIRMED.

It is further ORDERED that Appellee's Motion for Attorney's Fees is DENIED.

DONE AND ORDERED in Chambers at New Port Richey, Pasco County, Florida this 22 day of May, 2015.

Original order entered on May 22, 2015, by Circuit Judges Daniel D. Diskey, Shawn Crane and Susan Gardner.