IN THE SUPREME COURT OF GUAM

GUAM YTK CORPORATION,
Plaintiff-Appellant,

v.

PORT AUTHORITY OF GUAM,
Defendant-Appellee.

Supreme Court Case No.: CVA13-009
Superior Court Case No.: CV1170-12

OPINION

Cite as: 2014 Guam 7

Appeal from the Superior Court of Guam
Argued and submitted on October 17, 2013
Hagåtña, Guam

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BEFORE: F. PHILIP CARBULLIDO, Chief Justice[1]; KATHERINE A. MARAMAN, Associate Justice; PERRY B. INOS, Justice *Pro Tempore*[2].

CARBULLIDO, C.J.:

[1] This civil action involves a lease agreement that was executed by the Port Authority of Guam (the "Port") and Guam YTK Corporation ("Guam YTK") for the construction and operation of a fisheries facility on certain property owned by the Port. A dispute arose between the parties regarding the Lease Agreement, which led Guam YTK to file an action for declaratory judgment and injunctive relief against the Port. The action required the court to determine: (1) whether the Arbitration Agreement contained in the Lease Agreement is valid and enforceable; and (2) if it is, whether arbitration should be compelled.

[2] The trial court found that the Arbitration Agreement was unenforceable because the Lease Agreement as a whole was in violation of a Guam statute. The trial court further found that the Government Claims Act served as a jurisdictional bar to Guam YTK's claims and that the Act was Guam YTK's exclusive remedy.

[3] Guam YTK asserts four errors on appeal: (1) the Superior Court erred in deciding the enforceability of the Lease Agreement because the issue was delegated to an arbitration panel; (2) the Superior Court erred in finding that, because the Lease Agreement was unenforceable, so too was the Arbitration Provision; (3) the Superior Court erroneously found that the Government Claims Act is a jurisdictional bar to the enforcement of the Lease Agreement; and (4) the

[1] The signatures in this opinion reflect the titles of the Justices at the time this matter was considered and determined.

[2] Associate Justice Robert J. Torres recused himself from this matter. On June 10, 2013, pursuant to 7 GCA §§ 6108(a) and 3109(f), Chief Justice Carbullido appointed the Honorable Perry B. Inos as Justice *Pro Tempore* in this matter.

Superior Court erred in failing to compel arbitration of the underlying disputes, because all such disputes are covered by the Arbitration Agreement.

[4] We agree with Guam YTK, and we hold that the trial court erroneously failed to compel arbitration pursuant to the Arbitration Agreement. We therefore reverse and remand this case to the trial court to compel arbitration on all issues arising out of or in connection with the Lease Agreement.

I. FACTUAL AND PROCEDURAL BACKGROUND

A. The Underlying Dispute

[5] Guam YTK and the Port entered into a lease agreement dated December 14, 2001 ("Lease Agreement"), in which the Port agreed to lease certain land and to provide certain amenities and services to Guam YTK, so that Guam YTK could construct, operate and maintain a fisheries facility.

[6] Controversies arose between the parties under the Lease Agreement. Guam YTK alleges that the Port committed material breaches of its obligations under the Lease Agreement that fall squarely within the scope of the arbitration clause. Guam YTK specifically alleged the following "material breaches":

> (1) Defendant's failure to make good-faith efforts to obtain legislative approval of the Lease Agreement; (2) Defendant's failure to deliver to Plaintiff quiet enjoyment of the use and possession of the Premises; (3) Defendant's failure to provide a reconciliation and statement of accounting for the revenues obtained from other tenants and users of the Premises; (4) Defendant's failure to credit Plaintiff with the revenues received by Defendant from the other tenants and users of the Premises; (5) Defendant's failure to timely provide utilities, including water and electrical power, that were necessary to permit construction of the fisheries facility; (6) Defendant's failure to timely provide approval of a Master Plan and Notice to Proceed to permit construction of the fisheries facility; and (7) Defendant's failure to buy out Plaintiff's interest in the Lease Agreement.

Record on Appeal ("RA"), tab 3 at 3 (Compl. Compel Arbitration, Oct. 16, 2012); *see also* RA, tab 3, Ex. 6 at 1-5 (Letter from Jay Lather, Guam YTK representative, to Mary C. Torres, Port, June 15, 2012) (discussing the material breaches). Guam YTK alleged that the Port refused to correct and/or recompense Guam YTK for the alleged breaches.

[7] Guam YTK sent the Port a Notice of Termination and Surrender. Guam YTK then made a demand for arbitration pursuant to Article 17 of the Lease Agreement. Article 17 contains the arbitration provisions, which read in relevant part:

> All disputes and controversies of every kind and nature between the parties to this Lease arising out of or in connection with this Lease, including but not limited to disputes concerning the existence, construction, validity, interpretation or meaning, performance, nonperformance, enforcement, operation, breach, continuance, or termination of the Lease, shall be submitted to final, binding arbitration.

RA, tab 3, Ex. 1 at 27 (Dev. & Lease Agreement, Dec. 14, 2001).

[8] In response to the demand for arbitration, the Port initially submitted to arbitration and named a local attorney as its party arbitrator. The parties then agreed to appoint a neutral arbitrator.

[9] The parties subsequently engaged in preliminary arbitration proceedings, until they agreed to dismiss the arbitration proceedings without prejudice for the purpose of attempting to resolve their disputes outside of arbitration. The parties further agreed that "[i]n the event the parties are unable to resolve this dispute within ninety days from execution of this letter, then each party may reinstitute the arbitration proceedings without having waived any rights or causes of action relating to this dismissal without prejudice." RA, tab 3, Ex. 4 at 1 (Letter from Anthony C. Perez, Port Att'y, to Eduardo A. Calvo, Guam YTK Att'y, Apr. 12, 2011).

[10] Following the dismissal, the parties continued to negotiate a potential settlement until at least May 18, 2012, when the Port notified Guam YTK that it was rejecting Guam YTK's

settlement offer. Thereafter, Guam YTK demanded that the dispute be resubmitted to arbitration and sent another letter to the Port, again requesting arbitration.

[11] In its response to Guam YTK's request for arbitration, the Port "reversed itself and for the first time took the position that the Lease Agreement was not enforceable," claiming that the Port could not be compelled to arbitration and that Guam YTK's claims were barred under the Government Claims Act. Appellant's Br. at 5 (June 28, 2013); RA, tab 3 at 5; Ex. 8 at 1 (Letter from Michael F. Phillips, Port Board Att'y, to Eduardo A. Calvo, Guam YTK Att'y, July 26, 2012).

B. The Decision & Order

[12] Guam YTK filed a complaint on October 16, 2012, seeking to compel arbitration pursuant to Article 17 ("Arbitration Agreement") of the Lease Agreement. Guam YTK then filed a motion to compel arbitration on November 9, 2012. The Port filed its opposition, and Guam YTK filed a reply. The Port filed its answer to the complaint, and a hearing was held.

[13] The court entered an order on March 12, 2013, denying the motion and finding that: (1) the Government Claims Act was a jurisdictional bar to Guam YTK's claims; (2) the Lease Agreement as a whole was in violation of 12 GCA § 10105(i) because the lease term exceeded the five-year maximum; (3) because the Lease Agreement was in violation of section 10105(i), the Arbitration Agreement was unenforceable; and (4) the Government Claims Act was Guam YTK's exclusive remedy.

[14] The order was entered on the docket, and Guam YTK filed a timely petition for permission to appeal under Rule 4.2 of the Guam Rules of Appellate Procedure. Guam YTK's petition was granted.

II. JURISDICTION

[15] This court has jurisdiction over this appeal. 48 U.S.C.A. § 1424-1(a)(2) (Westlaw through Pub. L. 113-74 (2014)); 7 GCA §§ 3107(b), 3108(b) (2005); *see also* Guam YTK Corp. v. Port Auth. of Guam, CVA13-009 (Order at 1-4 (Apr. 22, 2013)). We have previously held that the resolution of whether an arbitration clause applies is proper for interlocutory review because such review will "'clarify further proceedings' and '[c]larify issues of general importance in the administration of justice.'" *Brown v. Dillingham Constr. Pac. Basin Ltd.*, 2003 Guam 2 ¶ 12 (quoting 7 GCA § 3108(b)(1), (3)).

III. STANDARD OF REVIEW

[16] "The standard of review in an interlocutory appeal generally is whether the . . . [trial] court abused its discretion in granting or denying the requested relief." *Id.* ¶ 6 (quoting *Feldheim v. Sims*, 760 N.E.2d 123, 129 (Ill. App. Ct. 2001)).

[17] We review issues of statutory construction *de novo*. *Guam Fed'n of Teachers v. Gov't of Guam*, 2013 Guam 14 ¶ 24 (citing *Core Tech Int'l Corp. v. Hanil Eng'g & Constr. Co.*, 2010 Guam 13 ¶ 16). "Therefore, where jurisdiction depends on statute, review of the lower tribunal's interpretation of that statute is reviewed *de novo*." *Id.* (citing *Mesngon v. Gov't of Guam*, 2003 Guam 3 ¶ 8). Statutory interpretation begins with the language of the statute. *Aguon v. Gutierrez*, 2002 Guam 14 ¶ 6. The plain meaning will prevail where there is no clearly stated legislative intent to the contrary. *Sumitomo Constr. Co. v. Gov't of Guam*, 2001 Guam 23 ¶ 17. "[I]n determining legislative intent, a statute should be read as a whole, and therefore, courts should construe each section in conjunction with other sections." *Id.*; *see also Amerault v. Intelcom Supp. Serv., Inc.*, 2004 Guam 23 ¶ 14 ("In determining the plain meaning of a statutory

provision, we look to the meaning of the entire statutory scheme containing the provision for guidance.").

[18] Issues of contract interpretation are reviewed *de novo*. *Guam Hous. & Urban Renewal Auth. v. Pac. Superior Enters. Corp.*, 2004 Guam 22 ¶ 29 (citing *Apana v. Rosario*, 2000 Guam 7 ¶ 9). "Similarly, a trial court's decision regarding the scope of an arbitration clause is also reviewed *de novo*." *Id.* (citing *Louis Dreyfus Negoce S.A. v. Blystad Shipping & Trading, Inc.*, 252 F.3d 218, 223 (2d Cir. 2001)). "In interpreting a contract, the language governs if clear and explicit and [does] not involv[e] [an] absurdity." *Brown*, 2003 Guam 2 ¶ 6 (quoting *Ronquillo v. Korea Auto., Fire, & Marine Ins. Co.*, 2001 Guam 25 ¶ 10).

IV. ANALYSIS

[19] Although Guam YTK asserts four issues on appeal, the two main issues before this court are: (A) whether arbitration should be compelled; and (B) whether the doctrine of sovereign immunity and the Government Claims Act bar arbitration. Both issues encompass Guam YTK's claims of error.

A. Whether Arbitration Should be Compelled

[20] The trial court found that the Lease Agreement as a whole was unenforceable under 12 GCA § 10105(i), and that because the Lease Agreement was unenforceable, so too was the Arbitration Agreement. Guam YTK argues that the trial court erred in ruling on the enforceability of the Lease Agreement because it was a matter that was reserved for arbitration as set forth in the Arbitration Agreement. Appellant's Br. at 10-16. Guam YTK also argues that the trial court should have examined the enforceability of the Arbitration Agreement independently from the underlying Lease Agreement and should have considered whether grounds existed for the revocation of the Arbitration Agreement. *Id.* at 16-20.

[21] Because the trial court's refusal to compel arbitration is rooted in its finding that the unenforceability of the Lease Agreement as a whole rendered the Arbitration Agreement unenforceable, we must first decide whether the trial court erred in deciding the validity and enforceability of the Lease Agreement as a whole. We must then determine whether the trial court erred in finding that the unenforceability of the Lease Agreement as a whole rendered the Arbitration Agreement unenforceable.

1. Whether the trial court erred in deciding the validity and enforceability of the lease agreement as a whole

[22] It is well-settled that "an arbitration agreement is a matter of contract and '[t]he parties to an agreement are bound to arbitrate only those issues they have agreed to arbitrate, as shown by the clear language of the agreement and their intentions expressed in that language.'" *Brown*, 2003 Guam 2 ¶ 16 (quoting *Salsitz v. Kreiss*, 761 N.E.2d 724, 731 (Ill. 2001)); *see also Gov't of Guam v. Pacificare Health Ins. Co. of Micronesia, Inc.*, 2004 Guam 17 ¶ 24 ("It is a long-standing principle of consensual arbitration that the nature and scope of an arbitration panel's authority is determined by the language of the arbitration clause." (quoting *Lupone v. Lupone*, 848 A.2d 539, 541 (Conn. App. Ct. 2004))); *Guam Hous. & Urban Renewal Auth.*, 2004 Guam 22 ¶ 30 ("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." (quoting *Pacificare,* 2004 Guam 17 ¶ 26)).

[23] In interpreting a written contract, "the intent of the parties is ascertained from the writing alone." *Ronquillo*, 2001 Guam 25 ¶ 10; *see also* 18 GCA § 87105 (2005) ("When a contract is reduced to writing, the intention of the parties is to be ascertained from the writing alone, if

possible . . . ."); 18 GCA § 87104 (2005) ("The language of a contract is to govern its interpretation, if the language is clear and explicit, and does not involve an absurdity.").

[24] Two presumptions, however, apply when interpreting a contract containing an agreement to arbitrate. *Guam Hous. & Urban Renewal Auth.*, 2004 Guam 22 ¶¶ 31-32 (citing *Pacificare*, 2004 Guam 17 ¶ 26). The first presumption underscores the strong policy favoring arbitration and provides that "any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration." *Id.* ¶ 31 (quoting *Kiefer Specialty Flooring, Inc. v. Tarkett, Inc.*, 174 F.3d 907, 909 (7th Cir. 1999); *see also Sumitomo Constr. Co.*, 1997 Guam 8 ¶ 14 ("[A]ny doubt as to the arbitrator's jurisdiction is resolved in favor of arbitration."). Put differently, "ambiguities regarding the question of '*whether* a particular merits-related dispute is arbitrable because it is within the scope of a valid arbitration agreement' are construed in favor of arbitration." *Id.* (quoting *Pacificare*, 2004 Guam 17 ¶ 26) (internal quotation marks omitted). As such, "a court may not deny a party's request to arbitrate an issue 'unless it may be said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute.'" *Id.* (quoting *Kiefer Specialty Flooring*, 174 F.3d at 909) (internal quotation marks omitted).

[25] "In contrast to the first presumption, the second presumption, which must be applied in interpreting a contract's arbitration provision, favors judicial determination with respect to the forum for determining the issue of arbitrability." *Id.* ¶ 32. In particular, "'[t]he question of whether a claim or dispute is arbitrable is generally considered one for the courts, and not the arbitrators, unless the parties clearly and unmistakably reserved the question for the arbitrators.'" *Id.* (quoting *Pacificare*, 2004 Guam 17 ¶ 27). Accordingly, "[c]ourts may conduct an independent determination of the question of arbitrability if the parties have not clearly agreed

that the question of arbitrability is to be determined by the arbitrator." *Id.* (quoting *Pacificare*, 2004 Guam 17 ¶ 27).

[26] The Arbitration Agreement in this case covers a broad range of disputes and controversies. *See* RA, tab 3, Ex. 1 at 27 (Dev. & Lease Agreement). The relevant provision of the Arbitration Agreement states:

> **Section 17.1. Agreement to Arbitrate All Differences Arising out of Contract.** *All disputes and controversies of every kind and nature between the parties to this Lease arising out of or in connection with this Lease, including but not limited to disputes concerning the* existence, construction, *validity*, interpretation or meaning, performance, nonperformance, *enforcement*, operation, breach, continuance, or termination of the Lease, shall be submitted to final, binding arbitration.

Id. (emphases added). Based upon a plain reading of section 17.1 above, we agree with Guam YTK that the Arbitration Agreement clearly and unmistakably encompasses issues pertaining to the "validity" and "enforceability" of the Lease Agreement as a whole and delegates these issues to the arbitrators. *See* Appellant's Br. at 15. Nothing in the Lease Agreement (including the Arbitration Agreement itself) serves to limit the scope of arbitrability under section 17.1. The Port also does not challenge Guam YTK's interpretation of section 17.1. *See* Appellee's Br. at 6-10 (Aug. 13, 2013). Similarly, the trial court, without citing any legal authority to support its ruling, focused solely on whether the Lease Agreement as a whole (instead of the Arbitration Agreement itself) was valid and enforceable. Therefore, because the validity and enforceability of the Lease Agreement is an issue that was clearly and unmistakably reserved for arbitration under section 17.1 of the Arbitration Agreement, the trial court erred in finding that the Lease Agreement was unenforceable.[3]

[3] Guam YTK argues that had the trial court correctly applied the law and compelled arbitration, the trial court should also have determined that the "material breaches" of the underlying Lease Agreement alleged in the Complaint are subject to arbitration. Appellant's Br. at 23. The trial court, however, did not address this issue.

2. Whether the trial court erred in finding that, because the lease agreement was unenforceable, so too was the arbitration agreement

[27] As explained above, the trial court erred by addressing the validity and enforceability of the Lease Agreement as a whole because they are issues that are clearly and unmistakably reserved for arbitration. The trial court then compounded this error by holding that because the Lease Agreement was unenforceable, so too was the Arbitration Agreement.

[28] As explained below, federal law and Guam law are clear on this point: When it comes to analyzing the validity and enforceability of an arbitration agreement, courts should analyze the arbitration agreement separately from the larger contract and leave contract-validity issues for arbitration if they are clearly and unmistakably reserved for arbitration.

[29] "Challenges to the validity of arbitration agreements . . . can be divided into two types." *Buckeye Check Cashing, Inc. v. Cardegna*, 546 U.S. 440, 444 (2006). "One type challenges specifically the validity of the agreement to arbitrate." *Id.* The second type "challenges the contract as a whole, either on a ground that directly affects the entire agreement (*e.g.*, the agreement was fraudulently induced), or on the ground that the illegality of one of the contract's provisions renders the whole contract invalid." *Id.*

[30] Where challenges to the contract as a whole (i.e., the second type of challenge) are delegated to the arbitrator, only the first type of challenge can be addressed by the court. *See, e.g.*, *Rent-A-Center, W., Inc. v. Jackson*, 561 U.S. 63, 130 S. Ct. 2772, 2778-79 (2010); *Buckeye*, 546 U.S. at 440; *Nitro-Lift Techs., L.L.C. v. Howard*, 133 S. Ct. 500, 502 (2012) (per curiam).[4]

Further, the Arbitration Agreement does not clearly reserve the question of arbitrability for the arbitration panel. *See* RA, tab 3, Ex. 1 at 27 (Dev. & Lease Agreement); *Guam Hous. & Urban Renewal Auth.*, 2004 Guam 22 ¶ 32. Therefore, on remand, in compelling arbitration as ordered herein, the trial court should determine in the first instance whether the "material breaches" alleged in the Complaint fall within the broad scope of the Arbitration Agreement.

[4] These cases applied the Federal Arbitration Act, 9 U.S.C.A. § 2 *et seq.*

[31] In *Rent-A-Center*, the plaintiff challenged an arbitration agreement as unconscionable because he had been required to sign it as a condition of his employment. 130 S. Ct. at 2775. The contract contained a delegation clause, in which the contracting parties themselves decided whether the court or arbitrator would decide challenges to arbitrability. *Id.* The delegation clause stated that "[t]he Arbitrator, and not any federal, state, or local court or agency, shall have exclusive authority to resolve any dispute relating to the interpretation, applicability, enforceability or formation of this Agreement including, but not limited to any claim that all or any part of this Agreement is void or voidable." *Id.* The Court distinguished between the overall arbitration agreement (the "contract"), and the agreement to arbitrate arbitrability (the "delegation clause"). *Id.* at 2778-79. The plaintiff "challenged only the validity of the contract as a whole" rather than the validity of the delegation clause. *Id.* at 2779. The Court held that the plaintiff's challenge to the arbitration agreement as unconscionable—that the plaintiff had been required to sign as a condition of his employment—had to be arbitrated because the delegation clause "clearly and unmistakably" gave the arbitrator exclusive authority over the enforceability of the agreement to arbitrate. *Id.* at 2775, 2779. In accordance with a valid delegation clause, questions of arbitrability (including the arbitrability of the overall agreement to arbitrate) must go to an arbitrator. *Id.* at 2778-79.

[32] *Buckeye* involved a putative class action filed in state court alleging the underlying contract signed by Buckeye and its customers violated state laws prohibiting usury and deceptive trade practices. 546 U.S. at 443. Buckeye moved to compel arbitration of that case. *Id.* The United States Supreme Court granted certiorari to decide "whether a court or an arbitrator should consider the claim that a contract containing an arbitration provision is void for illegality." *Id.* at 442. The Supreme Court observed that "[t]he crux of the complaint is that the contract as a

whole (including its arbitration provision) is rendered invalid by the usurious finance charge," and went on to conclude that "because respondents challenge the Agreement, but not specifically its arbitration provisions, those provisions are enforceable apart from the remainder of the contract." *Id.* at 444, 446. It found that "[t]he challenge should therefore be considered by an arbitrator, not a court." *Id.* at 446. The Supreme Court ultimately held that "regardless of whether the challenge is brought in federal or state court, a challenge to the validity of a contract as a whole, and not specifically to the arbitration clause, must go to the arbitrator." *Id.* at 449.

[33] In *Nitro-Lift*, a party to the contract refused to submit to arbitration on the ground that the underlying contract, as a whole, was null and void under state law grounds. 133 S. Ct. at 501-02. The Supreme Court held that when parties agree to arbitrate contractual disputes,

> attacks on the validity of the contract, as distinct from attacks on the validity of the arbitration clause itself, are to be resolved by the arbitrator in the first instance, not by a federal or state court. For these purposes, an arbitration provision is severable from the remainder of the contract, and its validity is subject to initial court determination; but the validity of the remainder of the contract (if the arbitration provision is valid) is for the arbitrator to decide.

Id. at 503 (citations and internal quotation marks omitted).

[34] The core of Guam's statutory scheme addressing arbitration, the Guam International Arbitration Chapter ("GIAC"),[5] reflects the same approach and is consistent with the holdings of this court and the United States Supreme Court:

> *A court before which an action is brought in a matter which is the subject of an arbitration agreement shall*, if a party so requests not later than when submitting his or her first statement on the substance of the dispute, *refer the parties to*

[5] Although the Lease Agreement was executed prior to the GIAC's enactment, but when the Guam Civil Arbitration Law was in effect, our analysis would still be the same because the Civil Arbitration Law mirrors the Federal Arbitration Act. *Compare* Civil Arbitration Law, 7 GCA § 42101 *et seq.* (1993), *repealed by* Guam Pub. L. 27-081:2 (2004), *with* Federal Arbitration Act, 9 U.S.C.A. § 2 *et seq.* As explained earlier, federal courts, when interpreting the Federal Arbitration Act, have found that challenges to the validity of a contract as a whole, and not specifically to the arbitration clause, must go to the arbitrator. *See, e.g.*, *Buckeye*, 546 U.S. at 449.

> *arbitration unless it finds that the agreement is null and void, inoperative or incapable of being performed.*

7 GCA § 42A202(a) (2005) (emphases added).[6] The GIAC defines "arbitration agreement" as:

> an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not. *An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement.*

7 GCA § 42A201(a) (2005) (emphasis added). The plain language of the two sections above shows that, regardless of whether an arbitration agreement is in the form of an "arbitration clause in a contract" or a "separate agreement," the arbitration agreement must be analyzed separately and distinctly from the underlying contract to determine whether the arbitration agreement is "null and void, inoperative or incapable of being performed." 7 GCA §§ 42A201(a), 42A202(a). Another section in the GIAC corroborates this reading of sections 42A201(a) and 42A202(a):

> The arbitral tribunal may rule on its own jurisdiction, including any objections with respect to the existence, scope or validity of the arbitration agreement. For that purpose, *an arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract. A decision by the arbitral tribunal that the contract is null and void shall not entail* ipso jure *the invalidity of the arbitration clause.*

7 GCA § 42A401(a) (2005) (emphasis added).

[35] Based on the GIAC's statutory framework, the validity of the "arbitration agreement" and the underlying contract must be analyzed separately. *See Brown*, 2003 Guam 2 ¶ 16 (quoting *Salsitz*, 761 N.E.2d at 731). Therefore, a trial court's authority to determine the validity and enforceability of an arbitration agreement does not necessarily permit it to entertain a challenge to the validity and enforceability of the underlying contract as a whole. This is so because an

[6] This citation format reflects the format used in the electronic version of the Guam Code Annotated found on the Guam Compiler of Laws website at the time of publication of this Opinion.

agreement to arbitrate may be enforceable regardless of the enforceability of the underlying contract of which it is a part.

[36] In this case, the trial court should have focused on the issue of whether the Arbitration Agreement *itself*—instead of the Lease Agreement as a whole—was valid and enforceable. The Arbitration Agreement, however, played no role in the trial court's refusal to compel arbitration. *See generally* RA, tab 19 (Dec. & Order, Mar. 12, 2013). The trial court made no finding that any ground in equity or law, such as fraud or unconscionability, existed to prevent the enforcement of the arbitration provision itself. *See id.* Instead, the trial court's analysis focused solely on whether the Lease Agreement as a whole—as opposed to the Arbitration Agreement itself—was valid and enforceable. *Id.* Further, the Port does not contest the validity and enforceability of the Arbitration Agreement itself. *See* Appellee's Br. at 6-10. The crux of the Port's argument is that the Arbitration Agreement is unenforceable because the Lease Agreement as a whole is void under 12 GCA § 10105(i). *Id.* Therefore, the Arbitration Agreement *itself* is valid and enforceable, and the trial court erred in finding that the Arbitration Agreement is unenforceable and in failing to compel arbitration pursuant to the terms of the Arbitration Agreement.

B. Whether Sovereign Immunity and the Government Claims Act Bar Arbitration

[37] The trial court found that the Government Claims Act was a jurisdictional bar to Guam YTK's claims against the Port. RA, tab 19 at 4 (Dec. & Order). This finding, however, was made prematurely because the trial court should have first determined whether sovereign immunity was even implicated before addressing the applicability of the Government Claims Act. *See Wood v. Guam Power Auth.*, 2000 Guam 18, at *4 ("The Organic Act is not 'subservient' to the laws made by the Legislature; it grants the Legislature the power to waive

sovereign immunity as it sees fit." (citing *Munoz v. Gov't of Guam*, No. 76–16A, 1978 WL 13511, at *1 (D. Guam App. Div. Mar. 13, 1978))).

1. Whether sovereign immunity bars arbitration

[38] Guam YTK argues that sovereign immunity is not implicated in this case and relies heavily on this court's holding in *Pacificare*, 2004 Guam 17. *See* Appellant's Br. at 20-22. The Port argues that sovereign immunity is implicated, but that it could be waived by obtaining legislative waivers. *See* Appellee's Br. at 6.

[39] "There is no question that the Government of Guam possesses inherent sovereign immunity from suit without its consent pursuant to the Organic Act." *Limtiaco v. Guam Fire Dep't*, 2007 Guam 10 ¶ 39 (citing *Marx v. Guam*, 866 F.2d 294, 298 (9th Cir. 1989); *Crain v. Gov't of Guam*, 195 F.2d 414, 417 (9th Cir. 1952)). The Organic Act provides, in relevant part, that:

> The government of Guam shall have the powers set forth in this Act, shall have power to sue by such name, and, *with the consent of the legislature evidenced by enacted law*, may be sued upon any contract entered into with respect to, or any tort committed incident to, the exercise by the government of Guam of any of its lawful powers.

48 U.S.C.A. § 1421a (Westlaw through Pub. L. 113-74 (2014)) (emphasis added). However, this court held in *Pacificare* that "the doctrine of sovereign immunity is not in any way implicated or threatened by the Government's compliance with its contract obligations." 2004 Guam 17 ¶ 13 n.2 (quoting *United States v. Bankers Ins. Co.*, 245 F.3d 315, 320 (4th Cir. 2001)).

[40] *Pacificare* involved a dispute between the Government of Guam and Pacificare (a private entity) regarding coverage under a health insurance agreement that the court found was subject to

the Federal Arbitration Act ("FAA").[7] *Id.* ¶¶ 1, 11. Pacificare submitted the dispute to arbitration as required under the agreement. *Id.* The arbitration panel entered an award in favor of Pacificare, who then sought to enforce the award in the Superior Court. *Id.* The trial court, however, denied Pacificare's request and vacated the arbitration award. *Id.* On appeal, the Government raised the sovereign immunity defense, which this court found to be unpersuasive. *Id.* ¶ 13 n.2. This court held that, "[b]y entering into an agreement referring disputes to arbitration, the Government is bound by the provisions of such agreement as any other party would [be], and [the] claim of sovereign immunity is unavailing to prevent enforcement of the agreement." *Id.* (citing *Hardie v. United States*, 367 F.3d 1288, 1290-91 (Fed. Cir. 2004) (rejecting claim of the United States that sovereign immunity bars compelled arbitration)).

[41] In this case, the trial court did not address *Pacificare*, and without offering much analysis on the issue of sovereign immunity, it simply entered an order stating that:

> the Court agrees with Defendant that the Government Claims Act is a jurisdictional bar to YTK's claims against the Port Authority of Guam. The Port Authority being a government of Guam entity, compels the Court to consider sovereign immunity. "Sovereign immunity is explicitly waived by statute for certain governmental actions that are contractual in nature or that sound in tort. The Guam Legislature has specifically provided a limited waiver of the Government of Guam's sovereign immunity through the Government Claims Act ('Claims Act'). 5 GCA §§6101 *et seq.*" *Guam Police Department v. Superior Court (Lujan)*, 2001 Guam 8 ¶ 8.

RA, tab 19 at 4 (Dec. & Order). This court, however, made it clear in *Pacificare* that sovereign immunity is not implicated or threatened in cases such as this, where a valid and enforceable arbitration agreement exists. *Pacificare*, 2004 Guam 17 ¶ 13 n.2. Just as the Government of Guam was bound in *Pacificare* to adhere to the terms of the arbitration agreement in the health

[7] The fact that the agreement in *Pacificare* was subject to the FAA is irrelevant. *See Ario v. Underwriting Members of Syndicate 53 at Lloyds for 1998 Year of Account*, 618 F.3d 277, 288 (3d Cir. 2010) (when "parties have agreed to abide by state rules of arbitration, enforcing those rules according to the terms of the agreement is fully consistent with the goals of the FAA." (citations omitted)).

insurance contract, so too should the Port. By agreeing to arbitrate "[a]ll disputes and controversies of every kind and nature . . . arising out of or in connection with" the Lease Agreement, the Port affirmatively agreed to submit to arbitration and may not use sovereign immunity as a shield to renege on that agreement. RA, tab 3, Ex. 1 at 27 (Dev. & Lease Agreement). For us to allow the Port to invoke sovereign immunity under these circumstances would essentially permit the Port to selectively hide behind the cloak of sovereign immunity when doing so would serve its litigation objectives. This is the very concern expressed by this court in *Pacificare*. It is apparently what the Port is attempting to do in this case, considering that it had previously participated in arbitration proceedings with Guam YTK.

[42] Therefore, under *Pacificare*, because sovereign immunity is not implicated or threatened in this case, the Port must comply with its agreement to arbitrate matters that are within the scope of the Arbitration Agreement.

[43] However, even if the Port is correct in arguing that sovereign immunity is implicated, sovereign immunity is waived under the Government Claims Act, which waives actions in contract. *See* 5 GCA § 6105(a) (2005). Guam YTK's action to compel arbitration is an action in contract. *See United States v. Park Place Assocs., Ltd.*, 563 F.3d 907, 919 (9th Cir. 2009) ("An action under the FAA is an action in contract to enforce the arbitration provision." (citing *Volt Info. Scis., Inc. v. Bd. of Trs. of Leland Stanford Junior Univ.*, 489 U.S. 468, 474 (1989))). Therefore, even if sovereign immunity is implicated, it has been waived.

2. Whether the Government Claims Act bars arbitration

[44] After finding that the Arbitration Agreement was unenforceable, the trial court held that it was "in agreement with [the Port] that if [Guam YTK] has a legitimate claim against the Port Authority, its exclusive remedy is the Government Claims Act." RA, tab 19 at 5 (Dec. & Order).

Guam YTK argues that the Arbitration Agreement is not subject to the Government Claims Act because arbitration is an alternative means of resolving disputes, and actions to enforce arbitration agreements are outside the scope of the Government Claims Act because they do not involve a "suit" for damages "incurred in reliance upon a contract to which the Government of Guam is a party." Appellant's Reply Br. at 16 (Aug. 27, 2013) (quoting 5 GCA § 6105(a) (2005)). It argues that the Government Claims Act does not bar arbitration because "arbitration agreements involve *alternative* means of resolving disputes, and a party is entitled to enforce any valid arbitration agreement or award through the Legislature's duly-enacted statute, GIAC." *Id.* (citing 7 GCA 42A202(a)).

[45] In support of its argument, Guam YTK relies on two cases: *Paramount Unified School District v. Teachers Ass'n of Paramount*, 32 Cal. Rptr. 2d 311 (Ct. App. 1994) [hereinafter "*Paramount*"], and *State v. P.G. Miron Construction Co.*, 512 N.W.2d 499 (Wis. 1994) [hereinafter "*Miron*"]. *Id.*

[46] In *Paramount*, an employee grievance was filed against the school district alleging violations of the collective bargaining agreement. 32 Cal. Rptr. 2d at 311. The matter was referred to arbitration as provided in the agreement, and an award was subsequently entered in favor of the employee. *Id.* The school district petitioned the trial court to vacate the arbitration award, arguing, *inter alia*, that the arbitration award was barred by the California Tort Claims Act because the employee failed to comply with its claim filing requirements. *Id.* The district court denied the petition. *Id.* The appellate court affirmed the decision. *Id.* Although the appellate court found that the issue had been waived because it was never raised before the arbitrator, it nonetheless addressed the issue on the merits "for the future guidance of arbitrators and courts confronted with this issue." *Id.* The court stated, "Were the issue properly before us,

we would conclude that the instant arbitration award is not barred by the Tort Claims Act." *Id.* It reasoned that "[t]he submission of a dispute to arbitration as an alternative to judicial adjudication is a matter of contract." *Id.* The court also stated:

> When parties voluntarily agree to submit their controversy to the arbitration process, they "remove it from the procedures applicable to trial. They thereupon [become] bound by the rules of law pertaining to arbitration." Nonjudicial arbitration proceedings are generally regulated by the procedural rules established by the arbitration agency; such proceedings are not necessarily controlled by the Code of Civil Procedure unless expressly provided by that code (Code Civ. Proc., § 1280 et seq.), by the arbitration rules, by the parties' contract, or other provisions of law regulating such nonjudicial arbitration.
>
> . . . .
>
> Inasmuch as the binding arbitration conducted herein was an *alternative* to judicial adjudication, it is clear that there never was, and will never be, a judicial adjudication of the parties' dispute. The trial court's involvement was limited to the entertaining of a special proceeding to confirm or to vacate the award. Thus, the claims filing provisions are superfluous to this case. Stated another way, this case did not involve any claim for money or damages within the meaning of the Tort Claims Act.

Id. (citations omitted).

[47] In *Miron*, the court held that the statutory claims procedure was not applicable to arbitration because no lawsuit was initiated against the state when the contractor invoked its right to arbitration. 512 N.W.2d at 503. The court decided that there was no reason for it to determine whether the legislature expressly consented to arbitration because it was not a "suit" as the term is used in the context of the sovereign immunity doctrine. *Id.* The court defined "suit" as "any proceeding by one person or persons against another or others *in a court of law* in which the plaintiff pursues, *in such court*, the remedy which the law affords him for the redress of an injury or the enforcement of a right, whether at law or equity." *Id.* (quoting *Black's Law Dictionary* 1434 (6th ed. 1990)).

[48] However, contrary to the holding in *Paramount*, the *Miron* court held that the enforcement of the arbitration award under the state's Arbitration Act, which governs implementation and execution of arbitration procedures in the state, is not appropriate in arbitration actions against the state because it is contrary to the statutory claims procedure required for claims against the state. *Id.* at 504. As such, "at the conclusion of the arbitration process, Miron must submit any claim it may want to assert against the state to the claims board for processing . . . ." *Id.* at 504.

[49] Based upon the two cases above, two different approaches could be considered in this case, both of which are discussed below. Both approaches assume a valid and enforceable arbitration exists.

a. *Paramount* approach

[50] Under the *Paramount* approach, the parties are required to arbitrate issues that fall within the scope of the Arbitration Agreement and must also adhere to the arbitration rules and procedures set forth in the Arbitration Agreement.[8] *See Ario*, 618 F.3d at 288 ("[P]arties [may] contract to arbitrate pursuant to arbitration rules or procedures borrowed from state law, [and] the federal policy is satisfied so long as their agreement is enforced." (quoting *Roadway Package Sys., Inc. v. Kayser*, 257 F.3d 287, 292 (3d Cir. 2001))). Here, the Arbitration Agreement provides procedures for demanding arbitration under section 17.2 of the agreement and for the confirmation of arbitration awards pursuant to section 17.5. *See* RA, tab 3, Ex. 1 at 27-28 (Dev. & Lease Agreement). We therefore interpret sections 17.2 and 17.5 of the Arbitration Agreement to reflect the parties' intent to be bound by the rules and procedures of arbitration as

[8] Subject to limitations imposed by law, the parties' agreement governs the arbitration process. However, if the agreement is silent on certain arbitration procedures, the parties would then be required to follow the procedures set forth in the GIAC, which is the local regime for the enforcement of arbitration agreements and arbitration awards.

provided under the Arbitration Agreement. For instance, with respect to confirming an arbitration award, the Arbitration Agreement states: "Any decision or award rendered by a majority of the arbitrators appointed under this Lease shall be final and binding on all parties to the proceeding, and judgment on such award may be entered and confirmed by either party in the Superior Court of Guam pursuant to 7 [GCA] Section 42107" of the prior arbitration act—the Guam Civil Arbitration Law. *Id.* at 28. Because the Arbitration Agreement references the procedures under section 42107[9] of the Civil Arbitration Law for purposes of confirming an arbitration award, the parties would have to adhere to section 42107 when attempting to confirm in court any arbitration award entered in this case.[10]

[51] Any arbitration award entered will be final and conclusive and will not be vacated unless allowed by agreement or law. Therefore, under the *Paramount* approach, the parties would completely bypass the Government Claims Act claims filing process, which, if applicable, would subject the arbitration award to additional review on the merits, as explained below. *See Paramount*, 32 Cal. Rptr. 2d at 320 (stating that the claims filing provisions are superfluous).

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[9] Section 42107 of the Civil Arbitration Law provides:

> If the parties in their agreement have agreed that the judgment of the court shall be entered upon the award made pursuant to the arbitration, and shall specify the court, then at any time within one year after the award is made, any party to the arbitration may apply to the court so specified for an order confirming the award, and thereupon the court must grant such an order unless the award is vacated, modified, or corrected as prescribed in §42108 and §42109 of this Chapter. If no court is specified in the agreement of the parties, then such application may be made to the Superior Court of Guam. Notice of the application shall be served upon the adverse party, and thereupon the court shall have jurisdiction of such party as though he had appeared generally in the proceeding. If the adverse party is a resident of Guam, such service shall be made upon the adverse party or his attorney as prescribed by law for service of notice of motion in an action in the Superior Court. If the adverse party shall be a nonresident, then the notice of the application shall be served in like manner as other process of the courts served on nonresidents.

7 GCA § 42107 (1993), *repealed by* P.L. 27-081:2. Section 42107 of the Civil Arbitration Law is identical to section 42A702(b) of the GIAC and section 9 of the FAA.

[10] Although the award confirmation process of the Guam Civil Arbitration Law applies in this case, the analysis would still be the same if the GIAC applied. *See supra* note 6 and accompanying text. If the GIAC applied, the parties would follow the GIAC process. *See, e.g.*, 7 GCA §§ 42A701 (GIAC's process for vacating or setting aside an arbitration award), 42A702 (GIAC's process for confirming or setting aside an arbitration award).

b. *Miron* approach

[52] The *Miron* approach is identical to the *Paramount* approach to the extent that both require the parties to submit to arbitration. However, unlike the *Paramount* approach, any arbitration award entered would be subject to the Government Claims Act claims filing process when it comes to confirming or vacating the arbitration award. *See Miron*, 512 N.W.2d at 504 (holding that enforcement of an award under the state's arbitration act would not be appropriate because it is contrary to the statutory process required for claims against the state). Accordingly, any procedure set forth in the arbitration agreement related to confirming or vacating the arbitration award would be replaced with the Government Claims Act claims filing procedure.

[53] The *Miron* approach is akin to the framework set forth in *Pacific Rock Corp. v. Department of Education*, 2001 Guam 21 [hereinafter "*Pacific Rock II*"]. In *Pacific Rock II*, this court held that when a party's claim for breach of contract for monetary damages is subject to the Procurement Law, "the Procurement Law serves as the final administrative remedy that is a prerequisite to filing a claim pursuant to the Claims Act." 2001 Guam 21 ¶¶ 1, 53 (discussing the interplay between the Guam Procurement Law and the Government Claims Act in a breach of contract case for monetary damages).

[54] Guam YTK argues that *Pacific Rock II* is analogous to this case[11] and that it provides "essential guidance for harmonizing the different laws at issue here." Reply Br. at 19. Guam YTK argues that because the Lease Agreement is subject to the Procurement Law, the parties would have been required to exhaust their administrative remedies under the Procurement Law

[11] We disagree that *Pacific Rock II* is analogous for the following reasons. First, *Pacific Rock II* does not involve an agreement to arbitrate. Second, the framework provided in *Pacific Rock II* runs afoul of the policy favoring the finality and conclusiveness of an arbitration award because under that framework (as explained below), the award would still be subject to additional review on the merits at the Government Claims Act level and then potentially with the judicial system.

had it not been for the Arbitration Agreement. *Id.* & n.6 (quoting 12 GCA § 10105(b) (2005)). However, given that the parties have executed an arbitration agreement, Guam YTK argues that they are bound to exhaust the arbitration remedy before they could take any legal or administrative action. *Id.*; *see also Brown*, 2003 Guam 2 ¶ 16 (quoting *Salsitz*, 761 N.E.2d at 731).

[55] The arbitration remedy is exhausted upon the issuance of an arbitration award. *See Miron*, 512 N.W.2d at 504 ("Though the arbitration process is distinct from a judicial proceeding, any award granted at the conclusion of arbitration may itself become the subject of a suit, since at that point, an actual claim has come into existence."). At that point, the parties would have to initiate the Government Claims Act process by filing a claim with the Claims Officers "within 18 months from the date the claim arose." 5 GCA §§ 6106(a), 6201 (2005); *see also* Reply Br. at 20 (arguing that "the remedies and time limits under the [Government] Claims Act are clearly not triggered until the agreed-upon arbitration procedures or administrative remedies have run their course."). If a claimant fails to file a timely government claim, a suit based on the unfiled claim will be barred. 5 GCA § 6106(b) (2005).

[56] Upon receipt of the claim, the Claims Officer would then have to investigate each claim to "determine its merits." 5 GCA § 6203 (2005). This involves "administer[ing] oaths to claimants and witnesses, and to require the production of any books, records or documents that may be material or relative as evidence in connection with the claim." 5 GCA § 6204 (2005). The Claims Officer, if necessary, may "conduct a formal hearing in connection with the investigation of any claim." 5 GCA § 6205 (2005). If the claim is rejected, the claimant may then institute an action in the Superior Court of Guam. 5 GCA § 6208 (2005).

c. Adoption of the *Paramount* approach

[57] Based upon the above, we find that the *Paramount* approach is in line with our local and national policies favoring arbitration, and we herein adopt the *Paramount* approach. As stated previously, "[b]y entering into an agreement referring disputes to arbitration, the Government is bound by the provisions of such agreement as any other party would . . . ." *Pacificare*, 2004 Guam 17 ¶ 13 n.2.

[58] The *Paramount* approach ensures the arbitration award is final and conclusive, and that only limited judicial review is available as set forth in the arbitration agreement. Under this approach, courts may not review the merits of the controversy, the validity of the arbitrator's reasoning, or the correctness of the arbitration award. *See id.* ¶¶ 24, 50.

[59] To adopt the *Miron* approach would seriously undermine this court's and the Guam Legislature's strong policy consideration for the use and promotion of the arbitration process. Under the *Miron* approach, once an arbitration award is submitted to the Claims Officer under the Government Claims Act process, the officer is authorized to vacate an award based on the merits. As such, the officer's review of the award will not be limited in scope, as the officer is authorized to question witnesses, review exhibits, and even hold hearings on the merits of the arbitration award. Therefore, the *Miron* approach contradicts our policies favoring arbitration and would defeat the purpose of requiring the parties to adhere to their agreement to arbitrate.

[60] Further, it appears that the United States Supreme Court favors the *Paramount* approach. *See Southland Corp. v. Keating*, 465 U.S. 1 (1984). In *Keating*, the Supreme Court held that the California Franchise Investment Law, which required judicial consideration of claims brought pursuant to that statute, was preempted by the Federal Arbitration Act. *Id.* at 10-16. The Supreme Court stated that "[i]n enacting § 2 of the federal Act, Congress declared a national

policy favoring arbitration and withdrew the power of the states to require a judicial forum for the resolution of claims which the contracting parties agreed to resolve by arbitration." *Id.* at 10.

[61] Therefore, the trial court erred in finding that the Government Claims Act is a jurisdictional bar to Guam YTK's claims.

V. CONCLUSION

[62] We find that the Arbitration Agreement is valid and enforceable and that arbitration is not barred by sovereign immunity and the Government Claims Act. We further find that the Arbitration Agreement applies to Guam YTK's breach of contract claims for relief because the claims "aris[es] out of or in connection with" the Lease Agreement. Accordingly, we **REVERSE** the trial court's denial of Guam YTK's motion to compel arbitration on all issues, and **REMAND** the case for the trial court to compel arbitration on all issues arising out of or in connection with the Lease Agreement and to make findings not inconsistent with this opinion.

Original Signed By: Katherine A. Maraman

KATHERINE A. MARAMAN
Associate Justice

Original Signed By: PERRY B. INOS

PERRY B. INOS
Justice *Pro Tempore*

Original Signed By: F. Philip Carbullido

F. PHILIP CARBULLIDO
Chief Justice

I do hereby certify that the foregoing is a full true and correct copy of the original on file in the office of the clerk of the Supreme Court of Guam

APR 17 2014

By: IMELDA B. DUENAS
Assistant Clerk of Court
Supreme Court of Guam