



IT IS ORDERED as set forth below:

Date: February 08, 2011

Mary Grace Diehl

**Mary Grace Diehl
U.S. Bankruptcy Court Judge**

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ROME DIVISION**

In re:	:	
	:	BANKRUPTCY CASE NUMBER
KERRY SEWARD HIX and	:	10-40091-MGD
MARGARET SUE HIX,	:	
	:	
Debtors.	:	
	:	
KERRY SEWARD HIX and	:	
MARGARET SUE HIX,	:	
	:	ADVERSARY CASE NUMBER
Plaintiffs,	:	10-04070
	:	
v.	:	CHAPTER 11
	:	
JAMES C. FLOOD and	:	
ASTRID FLOOD,	:	
	:	
Defendants.	:	

ORDER STAYING ADVERSARY PROCEEDING

The above-styled adversary proceeding is before the Court on James C. Flood and Astrid Flood’s (“Defendants”) Motion To Dismiss (“Motion”). (Docket No. 7). For the following reasons, this adversary proceeding is stayed pending an arbitration proceeding.

I. BACKGROUND

A. Factual History

As set forth in Plaintiffs' Complaint For Damages, the relevant facts are as follows. In February 2007, Plaintiffs and Defendants entered into a construction contract whereby Plaintiffs agreed to construct a log cabin in Wyoming for Defendants. *Complaint* ¶ 15. Construction of the cabin ensued in the fall of 2007. *Id.* at ¶ 20. Before the cabin was finished, construction halted when Plaintiffs and Defendants disagreed over several issues, including quality of the work, payments under the construction contract, and payments for modifications. *Id.* at ¶ 27-33. Defendants then fired Plaintiffs in May 2009. *Id.* at ¶ 32.

B. Procedural History

Plaintiffs filed their petition for relief under Chapter 11 of the Bankruptcy Code on January 9, 2010. Plaintiffs then commenced this adversary proceeding by filing a Complaint For Damages on August 25, 2010. (Docket No. 1). Plaintiffs allege that Defendants breached the construction contract by failing to make timely payments under the construction contract, failing to make payments for modifications to the cabin, and other breaches to be proved in court. Defendants responded by filing their Motion on November 30, 2010. Defendants' Motion seeks dismissal because the construction contract contains an arbitration agreement compelling the arbitration of all disputes arising under the contract. *See Contract, p. 9 at ¶ 16, Exhibit to Complaint.* (Docket No. 1). In the alternative, Defendants' Motion seeks to stay this adversary proceeding and compel arbitration of Plaintiffs' pre-petition breach of contract claim.

Plaintiffs have filed no response to Defendants' Motion. Defendants' Motion is therefore deemed unopposed pursuant to Bankruptcy Local Rule 7007-1(c). Though Defendants' Motion

is unopposed, the Court will nonetheless address whether Plaintiffs' claims should be decided by arbitration.

II. DISCUSSION

The Federal Arbitration Act ("FAA") sets forth the strong national policy favoring arbitration. 9 U.S.C. § 1 *et seq*; *Buckeye Check Cashing, Inc. v. Cardegna*, 546 U.S. 440, 443 (2006). Section 2 of the FAA provides that arbitration agreements "shall be valid, irrevocable, and enforceable, save upon grounds as exist at law or in equity for the revocation of any contract." 9 U.S.C. § 2. Courts are to rigorously enforce arbitration agreements, except when Congress has expressed an intention to preclude their enforcement. *Shearson/American Express, Inc. v. McMahon*, 482 U.S. 220, 226-27 (1987). Parties opposing arbitration have the burden to prove "that Congress intended to preclude a waiver of a judicial remedies for the [the particular claim] at issue." *Whiting-turner v. Electric Machinery Enterprises, Inc. (In re Electric Machinery Enterprises, Inc.)*, 479 F.3d 791, 795 (11th Cir. 2007) (quoting *McMahon*, 482 U.S. at 227).

The Supreme Court has set forth a three factor test for determining when a statute expresses Congress's intent to preclude enforcement of arbitration agreements. *McMahon*, 482 U.S. at 227. A court first looks to the statutory text itself, then to legislative history, and finally for the existence of any "inherent conflict between arbitration and the statute's underlying purposes." *Id.* The Eleventh Circuit has determined that neither the text nor legislative history of the Bankruptcy Code conflict with the enforcement of arbitration clauses. *Whiting-Turner*, 479 F.3d at 796. The third factor, an inherent conflict between the Bankruptcy Code and arbitration, only applies in core proceedings. *Id.* Bankruptcy courts generally do not have discretion to decline to enforce arbitration agreements in non-core proceedings. *Id.*

This Court need not even reach the issue of whether Plaintiff's claim is core or non-core, because Plaintiffs have not met their burden of demonstrating a conflict between the Bankruptcy Code and enforcing the arbitration agreement. *Dixon v. Household Realty Corp. (In re Dixon)*, 428 B.R. 911, 915-16 (Bankr. N.D. Ga. 2010). Indeed, Defendants' Motion is unopposed by Plaintiffs.

Nonetheless, the Court notes that Plaintiffs' pre-petition breach of contract claim plainly appears to be non-core. *Whiting-Turner*, 479 F.3d at 798. First, the Bankruptcy Code does not create any substantive right for breach of contract. *Highway Solutions LLC v. McKnight Construction Co. Inc., et al. (In re Highway Solutions LLC)*, 2009 WL 2611949, *2-*3 (Bankr. M.D. Ala. 2009). Second, a claim for breach of a contract is a state law claim that can and does arise outside of bankruptcy. *Id.* Thus, as Plaintiff's claim plainly appears to be a non-core, the Court lacks discretion to decline to enforce the arbitration agreement.

Consequently, Plaintiffs' claim should be decided by arbitration. This adversary proceeding is therefore stayed pursuant to 9 U.S.C. § 3. If Plaintiffs are to pursue any claims for pre-petition breach of contract as set forth in their Complaint For Damages, Plaintiffs must assert those claims in an arbitration proceeding.

Accordingly, it is

ORDERED that this adversary proceeding is stayed pending an arbitration proceeding.

The Clerk shall serve a copy of this Order upon Plaintiffs, counsel for Plaintiffs, Defendants, and counsel for Defendants.

END OF DOCUMENT