

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 21-61415-CIV-SINGHAL/VALLE

R&R YACHT, LLC,

Plaintiff,

v.

ACE AMERICAN INSURANCE
COMPANY,

Defendant.

ORDER

THIS CAUSE is before the Court upon Defendant Ace American Insurance Company's ("Ace American") Motion to Compel Arbitration (DE [1-2]).¹ Plaintiff R&R Yacht, LLC ("R&R Yacht") filed a response (DE [5]), to which Ace American replied (DE [9]). The matter is, therefore, ripe for review. For the reasons discussed below, the Motion is granted.

R&R Yacht filed suit in state circuit court alleging that Ace American breached a Masterpiece Yacht Insurance Policy by failing to pay for repairs, dockage, and maintenance and by failing to provide coverage for loss-related damages to R&R Yacht's vessel, the M/Y *Risk & Reward*, a 2001 112' Westport. Ace American filed the present Motion to Compel Arbitration in state court and then removed the case to this Court pursuant to 28 U.S.C. § 1446; the Court has diversity jurisdiction over the action. 28 U.S.C. § 1332(a).

Ace American asks the Court to enforce an arbitration provision contained in the Policy's Special Conditions:

¹ The Motion to Compel Arbitration was filed in state court and was pending at the time of removal.

Alternate dispute resolution

Any dispute, controversy, proceeding or claim, whether in contract, tort, common or statutory law, arising out of or relating to:

- any claim made under this Policy for loss or damage; or
- the breach, termination, enforcement, interpretation, or validity of this Policy, including the determination of the scope or applicability of this Dispute resolution provision; or
- the relationship between you and us,

may be resolved by arbitration as provided below.

The arbitration will be conducted pursuant to the current Marine Arbitration Rules and the Shortened Arbitration Procedure of the Society of Maritime Arbitrators, Inc. The appointment of arbitrator(s) shall be conducted as follows:

- the parties shall agree on a sole arbitrator to decide the disputed issue;
- if the parties are unable to agree on a sole arbitrator, each party will appoint an arbitrator and those two (2) arbitrators will appoint a third who will serve as the chair of the arbitration panel. If one party fails to appoint its arbitrator or the two party-appointed arbitrators fail to appoint a third arbitrator, the parties are directed to follow the Rules of the Society of Maritime Arbitrators, Inc.
- any hearings shall be conducted in a locality agreed by the parties. If the parties cannot agree on a locality, then any hearing(s) shall be conducted in the State appearing in your address as contained on the Declarations Page;
- in the event of a conflict between the Rules of the Society of Maritime Arbitrators, Inc. and this Policy, the terms of this Policy shall govern;
- a demand for arbitration must be served on the other party or parties within one (1) year of the date we issue our final coverage determination;
- we may arbitrate the amount of your loss or damage without waiving our right to determine coverage or a lack of coverage for the loss;
- any decision of the arbitrator(s) shall be final, binding on the parties hereto, and not subject to further review; and

judgment upon any award rendered by the arbitrator(s) may be entered by any court having jurisdiction.

There is an “emphatic federal policy in favor of arbitral dispute resolution.” *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614, 631 (1985). Courts are to construe “any doubts concerning the scope of arbitrable issues . . . in favor of arbitration.” *Id.* at 126. The question of whether there is a valid arbitration agreement between the parties is governed by the “ordinary state-law principles that govern the formation of contracts.” *Dye v. Tamko Building Products, Inc.*, 908 F.3d 675, 680 (11th Cir. 2018) (citations omitted). “Insurance contracts, like other contracts, are construed so as to give effect to the intention of the parties; and, to determine this intent, a court must examine more than an isolated sentence or term; it must read each phrase in the context of all other provisions.” *Osborn v. Hartford Fire Ins. Co.*, 2007 WL 45932, at *1 (S.D. Ala. Jan. 4, 2007) (quoting *Celtic Life Ins. Co. v. McLendon*, 814 So.2d 222, 224 (Ala. 2001)).

R&R Yachts argues that the arbitration clause states that disputes “*may* be resolved by arbitration” and the word “*may*” – as opposed to the word “*shall*” – dictates a permissive arbitration clause and that arbitration cannot be compelled absent its consent. The court cannot, however, base its decision on one word in the contract. “Contrary to the plaintiff’s contention, the word ‘*may*’ does not give one party the right to avoid arbitration.” *Conax Florida Corp. v. Astrium Ltd.*, 499 F. Supp. 2d 1287, 1297 (M.D. Fla. 2007) (citing *Ziegler v. Knuck*, 419 So. 2d 818, 819 (Fla. 3rd DCA 1982); *Allis-Chalmers Corp. v. Lueck*, 471 U.S. 202, 204 n.1 (1985)). In *Ziegler*, Florida’s Third District Court of Appeal recognized that the word “*may*” in an arbitration clause “should be construed to give either party the option to require arbitration.” *Ziegler*, 419 So. 2d at 820 (quoting *Deaton Truck Line, Inc. v. Local Union 612, International Brotherhood of Teamsters*, 314

F.2d 418 (5th Cir. 1962).² Likewise, in this case, the parties' agreement gave either party the option to require arbitration; Ace American has availed itself of its right to arbitrate. R&R Yachts makes no showing that the parties' dispute is not within the scope of the arbitration agreement or that Ace American waived the right to arbitration. The Court concludes, therefore, that the parties agreed to arbitrate this dispute. Accordingly, it is hereby

ORDERED AND ADJUDGED that Ace American's Motion to Compel Arbitration (DE [1-2]) is **GRANTED**. The parties are directed to submit R&R Yacht's claims to arbitration in accordance with the terms of the insurance contract. This cause stands **DISMISSED**. The Clerk of Court is directed to **CLOSE** this case and **DENY AS MOOT** any pending motions. The Court retains jurisdiction to enforce any arbitration award.

DONE AND ORDERED in Chambers, Fort Lauderdale, Florida, this 25th day of January 2022.



RAAG SINGHAL
UNITED STATES DISTRICT JUDGE

Copies furnished counsel via CM/ECF

² To the extent that *Young v. Dharamdass*, 695 So.2d 828 (Fla. 4th DCA 1997), holds that the word "may" in an arbitration clause is permissive, the Court declines to adopt that holding. As stated by the *Conax Florida Corp.* court, that case "contains no analysis and lacks acknowledgement of the policy favoring arbitration." *Conax Florida Corp.*, 499 F. Supp. at 1297 n.10.