IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

ARCH INSURANCE COMPANY,	§	
	§	
Plaintiff,	§	5:24-CV-00152-FB-RBF
	§	
vs.	§	
	§	
RITA CANDELARIO,	§	
	§	
Defendant.	§	
	§	
	§	
	§	

REPORT AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE

To the Honorable United States District Judge Fred Biery:

This Report and Recommendation concerns Defendant Rita Candelario's Motion to Dismiss. *See* Dkt. Nos. 6 (Mot.), 13 (Resp.). All pretrial matters in this action have been referred for resolution pursuant to Rules CV-72 and 1 of Appendix C to the Local Rules for the United States District Court for the Western District of Texas. *See* Dkt. No. 9. Authority to enter this recommendation stems from 28 U.S.C. § 636(b)(1)(B). For the reasons set forth below, Defendant's Motion to Dismiss, Dkt. No. 6, should be **GRANTED**.

Factual and Procedural Background

Plaintiff Arch Insurance Company (Arch) filed this diversity action, seeking to enforce in this Court an alleged Texas Rule of Civil Procedure 11 Settlement Agreement pertaining to a personal-injury lawsuit pending in Reeves County Court. Arch is the insurer for the defendants in the Reeves County litigation; Arch is not itself a party to that litigation but is paying for the

defense. *See* Dkt. No. 13 at 2. Arch alleges that Rita Candelario, as the plaintiff in the Reeves County case, agreed to settle the case and should be held to that agreement.

As Arch sees things, Candelario—assisted by her state court counsel Javier Herrera—agreed to drop her claims in the Reeves County case in exchange for a $300,000 payment from Arch. Dkt. No. 12 at ¶¶ 13-15. Arch filed with the state court a series of e-mails between Arch and Herrera that allegedly evidence the settlement. *Id.* at ¶ 18. When Candelario subsequently failed to drop or release her claims, Arch refused to transmit the $300,000 to her; it later filed this action against Candelario and Herrera. *Id.* at ¶¶ 19, 21-22.

Candelario and Herrera filed a joint motion to dismiss Arch's claims. Dkt. No. 6. In April 2024, Arch voluntarily dismissed all claims against Herrera, as evidenced by Arch's filing of an amended complaint asserting only a breach-of-contract claim against Candelario. Arch also separately filed a response to Defendant's Motion to Dismiss. *See* Dkt. Nos. 11, 12 & 13. Because some arguments in Defendant's Motion to Dismiss remain applicable to Arch's live complaint, the Court addresses the motion.

A. The Motion's Rule 12(b)(1) Arguments Are No Longer at Issue.

The Court first briefly addresses Candelario's Rule 12(b)(1) request for partial dismissal due to a lack of standing, which she attributes to the original complaint's failure to properly plead a claim under the Declaratory Judgment Act. The dismissal request, however, has been mooted by the filing of the amended complaint, which seeks no relief under the Act.

The Rule 12(b)(1) portion of the motion therefore warrants no relief and should be denied.

B. There Is No Enforceable Rule 11 Agreement.

Next, the Court addresses the Rule 12(b)(6) aspect of the motion to dismiss, which remains at issue as to Arch's breach-of-contract claim. Because the Court agrees with Candelario that there is no enforceable agreement, the Rule 12(b)(6) portion of the motion should be granted.

The standards applicable to a Rule 12(b)(6) motion are familiar. Rule 12(b)(6) allows a party to move for dismissal for "failure to state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6). To survive such a motion to dismiss, "a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Iqbal*, 556 U.S. at 678.

In reviewing the motion, the Court must and will "accept[] all well-pleaded facts as true, viewing them in the light most favorable to the plaintiff." *Martin K. Eby Const. Co. v. Dallas Area Rapid Transit*, 369 F.3d 464, 467 (5th Cir. 2004) (quotation marks omitted). The Court, however, need not credit conclusory allegations or allegations that merely restate the legal elements of a claim. *Chhim v. Univ. of Tex. at Austin*, 836 F.3d 467, 469 (5th Cir. 2016) (citing *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)). The Court does not consider evidence outside the pleadings and documents attached to them, except for documents that are attached to a motion to dismiss or response that are referred to in the live complaint and are central to it. *See Villarreal v. Wells Fargo Bank, N.A.*, 814 F.3d 763, 766 (5th Cir. 2016). Here, the Court considers the parties' email exchange described in and attached to Plaintiff's live complaint, as well as the

Notice to Court of Filing Rule 11 Agreement attached to the live complaint. *See* Dkt. Nos. 12 (Am. Compl.), 12-1 (Rule 11 Agreement filed in state court) & 12-2 (email exchange). The Court does not consider the exhibits that accompany Defendant's Motion to Dismiss, as they are not referred to in the live complaint. *See* Dkt. No. 6; *Villarreal*, 814 F.3d at 766. Those documents would be more suitably submitted with a summary judgment motion.

This Court applies Texas's Rule of Civil Procedure 11 when a settlement agreement is at issue in a diversity case governed by Texas law. *See Cavallini v. State Farm Mut. Auto Ins. Co.*, 44 F.3d 256, 266 (5th Cir. 1995) ("We apply Texas law to the enforcement of settlement agreements in Texas diversity cases . . . [and] Texas Rule of Civil Procedure 11 controls." (quotation and citation omitted)). "That Rule provides that no agreement between attorneys or parties touching any suit pending will be enforced unless it be in writing, signed and filed with the papers as part of the record, or unless it be made in open court and entered of record." *Id.* (quotation omitted); *see also* Tex. R. Civ. P. 11.

Taking the facts alleged in the live complaint as true, *see* Dkt. No. 12, Arch's complaint sufficiently states a plausible claim for breach-of-contract under Texas law only if it satisfies the elements of a breach-of-contract claim: "(1) the existence of a valid contract; (2) performance or tendered performance by the plaintiff; (3) breach of contract by the defendant; and (4) damages sustained by the plaintiff as a result of the breach." *Smith Intern., Inc. v. Egle Group, LLC*, 490 F.3d 380, 387 (5th Cir. 2007) (citing *Valero Mktg. & Supply Co. v. Kalama Int'l, L.L.C.*, 51 S.W.3d 345, 351 (Tex. App.—Houston [1st Dist.] 2001, no pet.)). The Court need not proceed beyond the first element, as there is pleaded no agreement on all material terms such that an enforceable contract is at issue. *See Foreca, S.A. v. GRD Dev. Co.*, 758 S.W.2d 744, 746 (Tex.

1988) (noting that a court may determine intent to be bound or lack thereof based on the language of the agreement).

According to the live complaint, the e-mail communications between Arch's counsel and Candelario's counsel during the underlying Reeves County personal-injury lawsuit established an enforceable contract between Arch and Candelario.[1] The emails attached to the live complaint plausibly include statements of offer and acceptance and are accompanied by electronic signatures. For example, Arch's counsel emailed Javier Herrera for Candelario on December 19, 2023, at 6:22 p.m.,

> This [letter] shall memorialize our conversation this evening in which you confirmed you will [accept] from Arch as it[s] contribution to a full and final settlement of all claims [p]resented by Mrs. [C]andelario in the Reeves County personal injury action. . . . If this comports with our agreement, please respond confirmed.

Dkt. No. 12-2 at 2. The next day, at 1:58 p.m., Herrera replied in part, "Ms. Candelario accepts the $300,000.00 settlement offer *from Arch*." *Id.* at 1 (emphasis added). Arch further alleges that Defendant's counsel provided a W-9 form and instructions on payment of the settlement amount, further demonstrating the parties' agreement. *See* Dkt. No. 12-2 at 1, 3.

But these emails do not evidence a definite agreement as to all material terms because there are parties and material terms missing. Under Texas law, "a contract is legally binding only if its terms are sufficiently definite to enable a court to understand the parties' obligations." *Fort Worth Indep. Sch. Dist. v. City of Fort Worth*, 22 S.W.3d 831, 846 (Tex. 2000). By its plain terms, the "agreement" embodied in the emails is an agreement as to an amount of money Arch would pay Candelario as Arch's "contribution" to a global settlement "of all claims [p]resented

[1] Neither party addresses whether and to what extent Arch's role as a nonparty insurer affects its ability to enter into a binding Rule 11 agreement or whether and to what extent the actual insured parties' assent was also required or obtained to create an enforceable Rule 11 agreement. The Court therefore does not address those issues.

by Mrs. Candelario in the Reeves County . . . action." Dkt. No. 12-2 at 2. The live complaint reflects that the underlying Reeves County litigation involves claims by Candelario against Anadarko Petroleum Corporation and Western Gas Partners. Dkt. No. 12 at 1-2. Arch, moreover, is not a party to the underlying Reeves County litigation. *Id*. Here, the Court cannot understand the parties' obligations with respect to a "full and final settlement" to which Arch's $300,000 is but a "contribution." How could Candelario have settled with Arch when there is no indication that Candelario settled with Anadarko and Western Gas? It is nonsensical to conclude that Candelario intended to settle *all claims*, including claims between her and Anadarko and Western Gas, in exchange for only $300,000 from Arch and with no signature or agreement to provide releases from either Anadarko or Western Gas. Did Arch even have authority to settle for Anadarko and Western Gas? It certainly didn't purport to sign for them.

While it is true that Texas courts can enforce Rule 11 and other agreements with some open or unresolved terms, so long as the parties' intent to be bound is apparent, doing so is not warranted when an intent to be bound is lacking. "The critical issue for determining enforceability when the parties agree that some terms will remain open is whether the parties intended for their agreement to be a present, binding agreement in the absence of an agreement on the remaining terms or whether they intended their agreement to have no legal significance until agreement on the remaining terms is reached." *MKM Engineers, Inc. v. Guzder*, 476 S.W.3d 770, 779 (Tex. App.—Houston [14th Dist.] 2015, no pet.). Without some indication as to the status of Anadarko and Western Gas's obligations under a "full settlement of all claims," Candelario's agreement to a $300,000 price term is not enforceable.

Conclusion and Recommendation

For the reasons discussed above, it is recommended that Defendant's Motion to Dismiss, Dkt. No. 6, be **GRANTED**.

Instructions for Service and Notice of Right to Object/Appeal

The United States District Clerk shall serve a copy of this report and recommendation on all parties by either (1) electronic transmittal to all parties represented by attorneys registered as a "filing user" with the clerk of court, or (2) by mailing a copy by certified mail, return receipt requested, to those not registered. Written objections to this report and recommendation must be filed **within fourteen (14) days** after being served with a copy of same, unless this time period is modified by the district court. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b). Objections, responses, and replies must comply with the same page limits as other filings, unless otherwise excused by the district court's standing orders. *See* Rule CV-7. The objecting party shall file the objections with the clerk of the court and serve the objections on all other parties. A party filing objections must specifically identify those findings, conclusions, or recommendations to which objections are being made and the basis for such objections; the district court need not consider frivolous, conclusory, or general objections. A party's failure to file written objections to the proposed findings, conclusions, and recommendations contained in this report shall bar the party from a *de novo* determination by the district court. *Thomas v. Arn*, 474 U.S. 140, 149-52 (1985); *Acuña v. Brown & Root, Inc.*, 200 F.3d 335, 340 (5th Cir. 2000). Additionally, failure to timely file written objections to the proposed findings, conclusions, and recommendations contained in this report and recommendation shall bar the aggrieved party, except upon grounds of plain error, from attacking on appeal the unobjected-to proposed factual findings and legal conclusions

accepted by the district court. *Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1415, 1428-29 (5th Cir. 1996) (en banc).

IT IS SO ORDERED.

SIGNED this 21st day of November, 2024.

RICHARD B. FARRER
UNITED STATES MAGISTRATE JUDGE