[DO NOT PUBLISH]

In the

United States Court of Appeals

For the Eleventh Circuit

____

No. 21-13493

Non-Argument Calendar

____

EVANS ENERGY PARTNERS, LLC,
A Delaware limited liability company,

Plaintiff-Appellant,

versus

SEMINOLE TRIBE OF FLORIDA, INC.,
A federal corporation,

Defendant-Appellee.

____

Appeal from the United States District Court
for the Middle District of Florida
D.C. Docket No. 2:20-cv-00978-JLB-MRM

____

Before ROSENBAUM, BRASHER, and ANDERSON, Circuit Judges.

PER CURIAM:

This appeal turns on whether an agreement between the Seminole Tribe of Florida and Evans Energy Partners contained a clear waiver of tribal immunity. In relevant part, the clause provides that "the Company through its parent company the Seminole Tribe of Florida, Inc., agrees to a limited waiver of its Sovereign Immunity. . . ." One of many ambiguities in this clause is that the Tribe cannot both be "the Company" and the Company's parent. After the deal went sour, Evans sued in federal court, seeking to enforce the contract's arbitration clause under the Federal Arbitration Act. The district court held that the contract did not clearly waive the Tribe's immunity. Thus, it dismissed Evans's complaint and petition to compel arbitration for lack of jurisdiction. After careful consideration, we affirm.

I. BACKGROUND

Evans Energy Partners was a wholesale and commercial distributor of petroleum products operating under the trade name "Askar Energy." In 2013, Evans and the Seminole Tribe of Florida executed an agreement by which the Tribe would purchase Askar's assets for a sum of ten-million dollars. But the Tribe wanted to do more than just buy Askar, it wanted to run it together with Evans. So the two parties entered into a "Management and Operations

Agreement," the interpretation of which is the subject of this appeal.

The agreement included two relevant provisions: a limited arbitration clause and a waiver of tribal immunity. The arbitration clause explained that, though disputes arising out of the agreement would normally be settled in the Tribe's courts, Evans retained the right "to initiate a binding arbitration proceeding . . . for the sole and exclusive purpose of terminating the Management Agreement and compelling the payment of the Termination Fee . . . ." But this right did not extend to a proceeding against the Tribe, as the parties agreed that "in no event shall the Seminole Tribe of Florida, Inc., or any of its other affiliated entities be named a party in any arbitration . . . ." Instead, Evans's rights were "restricted to compelling Seminole Energy to participate in an arbitration proceeding for the express purpose set forth herein." Seminole Energy is a third entity that is mentioned several times throughout the agreement, but whose identity is never clearly defined.

The agreement also included a clause waiving tribal immunity. That clause stated that "[T]he Company through its parent company the Seminole Tribe of Florida, Inc., agrees to a limited waiver of sovereign immunity in order to allow Evans Energy" to exercise its rights under the arbitration clause. This clause would become a point of contention when the Tribe terminated the agreement in April 2016.

About three months after termination, the Tribe petitioned for declaratory relief and damages in tribal court, which eventually

resulted in a default judgment against Evans for over two and a half million dollars. Shortly before the final judgment was issued, Evans served the American Arbitration Association, the chosen arbitral forum under the agreement, with a demand for arbitration of a breach of contract claim against the Tribe. The arbitral panel issued an opinion and order concluding that Evans could not "show that there [was] clear and unmistakable evidence that the parties intended to empower the panel with the authority to decide the gateway question of who decides the arbitrability of the[] dispute." Evans then sued the Tribe in the United States District Court for Middle District of Florida, seeking a declaratory judgment and an order compelling arbitration under the Federal Arbitration Act. The Tribe moved to dismiss under Federal Rule of Civil Procedure 12(b)(1), arguing that it was immune from suit. The district court granted the Tribe's motion, and Evans timely appealed.

II. STANDARD OF REVIEW

We review a district court's dismissal on sovereign grounds *de novo*. *Contour Spa at the Hard Rock, Inc. v. Seminole Tribe of Fla.*, 692 F.3d 1200, 1203 (11th Cir. 2012).

III. DISCUSSION

The issue in this appeal is whether the district court properly dismissed Evans's complaint for lack of jurisdiction based on tribal immunity. *Furry v. Miccosukee Tribe of Indians of Fla.*, 685 F.3d 1224, 1228 (11th Cir. 2012) ("Tribal sovereign immunity is a jurisdictional issue."). That question in turn depends on whether the

Management and Operations Agreement clearly waived the Tribe's immunity from suit. Evans argues that the district court erred in concluding that the language of the agreement did not contain a sufficiently clear waiver to support jurisdiction. We disagree.

Indian tribes "are domestic dependent nations that exercise inherent sovereign authority over their members and territories." *Alabama v. PCI Gaming Auth.*, 801 F.3d 1278, 1287 (11th Cir. 2015) (quoting *Okla. Tax Comm'n v. Citizen Band Potawatomi Indian Tribe of Okla.*, 498 U.S. 505, 509 (1991)). Thus, tribes "possess the common-law immunity from suit traditionally enjoyed by sovereign powers." *Id.* (quoting *Florida v. Seminole Tribe of Fla.*, 181 F.3d 1237, 1241 (11th Cir. 1999)). This immunity extends to "suits on contracts, whether those contracts involve governmental or commercial activities and whether they were made on or off a reservation." *Kiowa Tribe of Okla. v. Mfg. Techs., Inc.*, 523 U.S. 751, 760 (1998). And although a tribe may waive its immunity by contract, such waivers must be clear to be enforceable. *C & L Enters., Inc. v. Citizen Band Potawatomi Indian Tribe of Okla.*, 532 U.S. 411, 418 (2001) (explaining that "to relinquish its immunity, a tribe's waiver must be 'clear'" and concluding that an "express contract . . . to adhere to certain dispute resolution procedures" unambiguously subjecting the tribe to binding arbitration spoke with "the requisite clarity"); *see also PCI Gaming Auth.*, 801 F.3d at 1287 ("A suit against a tribe is barred unless the tribe clearly waived its immunity . . . .") (internal quotation marks omitted); *Okla. Tax Comm'n*, 498 U.S. at 509 ("Suits against Indian tribes are thus

barred by sovereign immunity absent a clear waiver by the tribe . . . ."); *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 58 (1978) ("[A] waiver of sovereign immunity cannot be implied but must be unequivocally expressed." (internal quotation marks omitted)).

Because the parties agree that our precedents would ordinarily compel a conclusion that the Tribe is immune from suit, the only live issue is whether the agreement clearly waived that immunity. It did not. Although the agreement typically refers to the Tribe as "the Company" and the purported waiver expressly states that "the Company" waives its sovereign immunity, we cannot read "the Company" as "the Tribe" in the waiver without creating an absurdity. Were we to read the phrase "the Company" in the waiver clause as a reference to the Tribe, as that phrase is admittedly used elsewhere in the agreement, the new waiver and arbitration provision would read: *"[The Seminole Tribe of Florida, Inc.], through its parent company the Seminole Tribe of Florida, Inc.,* agrees to a limited waiver of sovereign immunity in order to allow Evans Energy to initiate a binding arbitration proceeding . . . for the sole and exclusive purpose of terminating the Management Agreement and compelling the payment of the Termination Fee . . . ." Because the Tribe cannot be its own parent company, Evans's proposed construction is facially absurd.

Instead, in the context of the waiver provision, "the Company" is best read to refer to Seminole Energy. Seminole Energy is the entity against which the agreement gives Evans arbitration rights, and Seminole Energy is the entity that must pay any

termination fee. Thus, when the contract says that "the Company" is waiving its immunity to compel the payment of the termination fee, it makes sense that "the Company" is the entity that owes that fee under the contract. This reading is also the only way to make sense of the language in the agreement that "restrict[s Evans] to compelling Seminole Energy to participate in an arbitration proceeding for the express purpose set forth herein" and providing that "in no event shall the Seminole Tribe of Florida, Inc., or any of its other affiliated entities be named a party in any arbitration . . . ."

At the very least, we cannot conclude that this language waives the Tribe's immunity "with the requisite clarity." *C & L Enters.*, 532 U.S. at 412. A contractual provision, the plain text of which subjects a tribe to binding arbitration, "no doubt memorializes the [t]ribe's commitment to adhere to the contract's dispute resolution regime." *See id.* at 422. Such a clause constitutes a clear waiver of tribal immunity. *Id.* But where the relevant provision fails to unambiguously designate the tribe as the entity subject to arbitration, that clarity is lost. The agreement at issue here doubles down on this deficiency by providing that the Tribe shall "in no event . . . be named a party in any arbitration." Such language does not waive the Tribe's immunity with any clarity at all.

Because the alleged waiver is ambiguous at best and thus fails to demonstrate the necessary clarity, it does not waive the Tribe's immunity from suit.

IV. CONCLUSION

For the foregoing reasons, the district court is **AFFIRMED**.