STATE OF MICHIGAN

IN THE OAKLAND COUNTY CIRCUIT COURT

YANG MING (AMERICA) CORP.,

Plaintiff,

v.

NOVA WORLD INTERNATIONAL LLC, d/b/a NOVA SHIPPING,

Defendant.

Case No. 25-215104-CB

Hon. Victoria A. Valentine

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OPINION AND ORDER REGARDING THE DEFENDANT'S MOTION FOR SUMMARY DISPOSITION UNDER MCR 2.116(C)(7) and (8)

At a session of said Court, held in the
County of Oakland, State of Michigan
April 15, 2026

HONORABLE VICTORIA A. VALENTINE

This matter is before the Court on Defendant's Motion for Summary Disposition pursuant to MCR 2.116(C)(7) and (8), which seeks a summary dismissal of all the claims, or alternatively a stay of the proceedings, and an order requiring the Parties to participate in arbitration. Plaintiff filed a Response to which Defendant filed a Reply. The Court has reviewed the Parties'

submissions and heard oral arguments. For the reasons below, the Court DENIES Defendant's Motion.

OPINION

I. BACKGROUND

Plaintiff Yang Ming Corporation ("Yang Ming"), a foreign corporation headquartered in New Jersey, contracted with Defendant Nova World International LLC ("Nova"), a Michigan company, for the provision of ocean-based freight services for four (4) shipments from California to the United Arab Emirates.[1] The shipments made it to their destination in UAE, but were ordered by the U.S. Customs and Border Protection ("CBP") to return to their port of origin due to noncompliance with export controls, for detention, examination, and potential seizure.[2] The bills of lading ("BOLs") provide that it is "subject to all terms and conditions hereof (including the terms and conditions on the reverse hereof…)."[3] The terms and conditions on the reverse, provide in relevant part,

> In accepting this Bill, the Merchant [Nova] agrees to be bound by all the stipulations, exceptions, terms and conditions on the face and back hereof and the earner's applicable Tariff, whether written, typed, stamped or printed, as if signed by the Merchant, any local custom or privilege to the contrary notwithstanding, and agrees that all agreements or freight engagements for the shipment of Goods are superseded by this Bill. If this is a negotiable (To Order/of) bill of lading, one original bill of lading, duly endorsed must be surrendered by the Merchant to the Carrier [Yang Ming] (together with outstanding Freight) in exchange for the Goods or a Delivery Order. If this is a non- negotiable (straight) bill of lading, the Carrier shall deliver the Goods or issue a Delivery Order (after payment of outstanding Freight) against the surrender of one original bill of lading. If this is a sea, waybill, the Carrier shall deliver the Goods (after payment of outstanding Freight) to the

[1] Complaint, ¶¶ 1-2, 6-7, Exhibit A.
[2] *Id*. ¶ 11; Plaintiff's Response, p 3.
[3] Complaint, Exhibits A-B.

person that identifies itself as being the Merchant without any need to produce or surrender a copy of this sea waybill.

* * *

Sect. 1(7). "Freight" includes all charges payable to the Carner in accordance with the applicable Tariff and this Bill, including but not limited to storage, demurrage and any charges.

* * *

Sect. 19(4). The Merchant and Goods shall be jointly and severally liable to the Carrier for the payment of all Freight, demurrage, General Average, salvage, surcharges, and other charges, including but not limited to court costs, expenses and reasonable legal costs incurred in collecting sums due to the Carrier. Payment of ocean Freight and charges to a freight forwarder; broker or anyone other than the Carrier, or its authorized agent, shall not be deemed payment to the Carrier and shall be made at payer's sole risk.[4]

Despite an express demand, Nova has failed to pay the outstanding balance attributable to CBP's shipments back to the US, including freight costs and demurrage, thereby breaching the contractual provisions set forth in the BOL Terms and Conditions, to the tune of $56,107.56.[5]

BOL Nos.	Shipper	Consignee	Notify Party	Port of Loading	Place of Delivery	Yang Ming Freight & Demurrage Charges
W232535947	Octagon Freight, UAE	Nova Shipping	Nova Shipping	China	Oakland, CA	$21,052.56
W580000016	Octagon Freight, UAE	Nova Shipping	Octagon Freight, UAE	Dubai	Oakland, CA	$20,357.93
Wl60421448	Nova Shipping	Octagon Freight, UAE	Octagon Freight, UAE	Oakland, CA	Dubai	
W160422164	Nova Shipping	Octagon Freight, UAE	Octagon Freight, UAE	Oakland, CA	Dubai	

[4] Defendant's Motion, Exhibit B.

[5] Complaint, ¶¶ 14-16. However, the damages alleged in the Complaint do not correlate to the amounts asserted by Yang Ming in its Response, Exhibit D. Furthermore, Yang Ming's asserted monetary damages in its Response – Exhibit D, do not correlate to the actual freight charges delineated in the import BOLs themselves, and Yang Ming's reporting of BOL numbers and the asserted monetary damages exhibit typographical errors several places in its filings. These discrepancies should be resolved during the course of discovery in this case.

BOL Nos.	Shipper	Consignee	Notify Party	Port of Loading	Place of Delivery	Yang Ming Freight & Demurrage Charges
W135514968	Nova Shipping	Octagon Freight, UAE	Octagon Freight, UAE	Los Angeles, CA	Dubai	
W160422722	Nova Shipping	Octagon Freight, UAE	Octagon Freight, UAE	Oakland, CA	Dubai	

II. STANDARDS OF REVIEW

Summary disposition under MCR 2.116(C)(7) is appropriate where, among other things, the claim is barred because of the "an agreement to arbitrate or to litigate in a different forum." Although not a requirement, "[a] party may support a motion under MCR 2.116(C)(7) by affidavits, depositions, admissions, or other documentary evidence. *Maiden v Rozwood*, 461 Mich 109, 119 (1999). The court must accept the plaintiff's well-pleaded allegations as true, except those contradicted by documentary evidence. *Oliver v Smith*, 290 Mich App 678, 683 (2010). "If there is no factual dispute, whether a plaintiff's claim is barred under a principle set forth in MCR 2.116(C)(7) is a question of law for the court to decide. If a factual dispute exists, however, summary disposition is not appropriate." *RDM Holdings, LTD v Continental Plastics Co*, 281 Mich App 678, 687 (2008).

A motion for summary disposition pursuant to MCR 2.116(C)(8) tests the legal sufficiency of the complaint, not whether the complaint can be factually supported. *El-Khalil v Oakwood Healthcare, Inc,* 504 Mich 152, 159-160 (2019); *Pawlak v Redox Corp*, 182 Mich App 758, 763 (1990). A motion for summary disposition based on the failure to state a claim upon which relief may be granted is to be decided on the pleadings alone. *Bailey v Schaaf*, 494 Mich 595, 603; (2013); *Parkhurst Homes, Inc v McLaughlin*, 187 Mich App 357, 360 (1991). Exhibits attached

to pleadings may be considered under MCR 2.116(C)(8) because they are part of the pleadings pursuant to MCR 2.113(C). *El-Khalil*, 504 Mich at 163.

"All well-pleaded factual allegations are accepted as a true and construed in a light most favorable to the nonmovant." *Maiden v Rozwood*, 461 Mich 109, 119 (1999); *Wade v Dep't of Corrections*, 439 Mich 158, 162 (1992). Unless the claim is so clearly unenforceable as a matter of law that no factual development could possibly justify recovery, the motion should be denied. *Parkhurst Homes*, 187 Mich App at 360; *Spiek v Dep't of Transportation*, 456 Mich 331, 337 (1998). "[T]he mere statement of a pleader's conclusions, unsupported by allegations of fact, will not suffice to state a cause of action." *ETT Ambulance Serv Corp v Rockford Ambulance, Inc*, 204 Mich App 392, 395 (1994).

III. NOVA'S MOTION TO DISMISS UNDER MCR 2.116(C)(8)

A. Arguments

Nova avows that it never agreed to pay the freight for the return import shipments and never accepted the designation as "consignee" under any of the BOLs Yang Ming seeks payment for. The consignee to whom the cargo was required to be delivered was CBP, and the returned containers were indeed delivered to CBP, not Nova. Nova contends that as a result, it is a legal impossibility for Nova to be named as consignee. Thus, the BOLs underlying Yang Ming's single claim misrepresent the facts, attempting to create a false basis for a claim against Nova. Therefore, the Complaint, predicated on Nova's liability as a "consignee," fails as a matter of law.

Section 19(4) of the BOL Terms and Conditions states that the Merchant, Nova, is responsible to the Carrier, Yang Ming, for the "payment of all freight, demurrage, general average,

salvage, surcharges, and other charges…".[6] Yang Ming argues that the return ocean charges occasioned by the CBP's directive regarding the shipped goods constitutes "other" charges as stated in Section 19(4). Yang Ming also asserts that Nova's designation as "consignee" on the BOLs creates contractual obligations regardless of the circumstances that necessitated the return and that Nova's argument that it cannot be a consignee because CBP directed the return of containers misunderstands the nature of BOLs. The fact that CBP ordered the return does not negate Nova's designation as consignee on the shipping documents or eliminate the contractual obligations flowing from that designation. Yang Ming contends that, taking the allegations as true, it has sufficiently pled a breach of contract claim and Nova's motion should be denied.

B. **Analysis**

Absent a relevant statute,[7] the general maritime law, as developed by the judiciary, applies.[8] Anyone who contracts to pay for ocean freight can be held liable in accordance with ordinary contract law as applied in maritime matters.[9] Law governing maritime freight liability has established that the party who sends the goods—the "shipper" or "consignor"—is "primarily liable to the carrier for freight charges."[10] That is generally true even when a BOL purports to

[6] Complaint, Exhibit B.

[7] The federal Carriage of Goods by Sea Act ("COGSA"), 46 USC §§ 1300–1315 (2000), applies to specified classes of shipments, and governs certain aspects of the relationship between carrier and shipper. For example, it imposes specific duties and liabilities on the carrier, including an obligation to furnish a BOL to the shipper, 46 USC § 1303; and it provides procedures and a statute of limitations for claims against the carrier for lost or damaged goods. But it does not cover or create a cause of action for the collection of freight charges, as in this case. Another set of federal statutory provisions, 49 USC §§ 80101-80116, applicable to any transportation of goods via common carrier "from a place in a State to a place in a foreign country," *id.* § 80102, also imposes statutory duties on carriers and regulates BOLs for such transportation; but, like COGSA, it does not create liability for freight charges or regulate collection of freight charges by the carrier.

[8] *East River SS Corp v Transamerica Delaval, Inc,* 476 US 858, 864 (1986).

[9] See *Norfolk S Ry Co v Kirby, 543* US 14, 26 (2004).

[10] *Louisville & Nashville RR Co v Cent Iron & Coal Co*, 265 US 59, 67-68 (1924) ("Ordinarily, the person from whom the goods are received for shipment assumes the obligation to pay the freight charges; and his obligation is ordinarily a primary one." This probably remains the usual situation. Yet *Louisville* itself, as well as circuit courts in subsequent cases, have held that this pattern and presumption can be overcome by statute, by contractual provisions, or by the parties' course of conduct. See *A/S Dampskibsselskabet Torm v Beaumont Oil Ltd,* 927 F2d 713, 716-22 (CA 2,

impose liability on the receiver of the goods (the "consignee").[11] After all, "the shipper is presumably the consignor; the transportation ordered by him is presumably on his own behalf; and a promise by him to pay therefor is inferred."[12] However, the shipper's obligation to pay is not absolute; a contract may form binding obligations that modifies the general rule, as parties are free to negotiate and assign freight liability and payment obligations however they like.[13]

A contract for the carriage of goods by ocean, binds the Parties that negotiated it.[14] Specifically, the BOL defines the relationships of the parties: the consignor – the company arranging shipment; the consignee – the company which is owed delivery; and the carrier – a company that carries the goods.[15] Consignees are considered third-party beneficiaries to BOLs.[16] A BOL can bind a consignee as a third-party beneficiary to the BOL, but only with the consignee's consent.[17] A third-party beneficiary can demonstrate consent by: (1) filing suit; (2) its

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1991), *cert denied,* 502 US 862 (1991); *States Marine Int'l, Inc v Seattle-First Nat'l Bank,* 524 F2d 245, 247-49 (CA 9, 1975); *see also Capitol Transp, Inc v United States,* 612 F2d 1312, 1319-21 & n 10 (CA 1, 1979) (holding that the BOL is not the only evidence as to the identity of the consignee).

[11] *Louisville*, 265 US at 67.

[12] *Id*. See also *CSX Transp, Inc v Meserole St Recycling,* 618 F Supp 2d at 766 ("As a general rule, the shipper-consignor is primarily liable for all charges associated with the shipment of cargo, including demurrage.") (citing *Southern Pacific Transp Co*, 456 US at 343.).

[13] *Id*. See also *Milos Prod Tanker Corp v Valero Mktg & Supply Co*, 117 F4th 1153, 1159 (CA 9, 2024), cert den 145 S Ct 1903 (2025).

[14] *Ingram Barge Co, LLC v Zen-Noh Grain Corp*, 3 F4th 275, 279 (CA 6, 2021)

[15] *Id.* at 278.

[16] *Id*. at 277.

[17] See *Dynamic Worldwide Logistics, Inc v Exclusive Expressions, LLC*, 77 F Supp 3d 364, 373-75 (SDNY, 2015) ("[A] party is not bound to the terms of a bill of lading unless the party consents to be bound. Although intended third-party beneficiaries may enforce contract terms in their favor, the mere fact that a party is a beneficiary does not create contractual obligations for that beneficiary. Contractual obligations cannot be imposed on an intended beneficiary absent a showing that the third-party manifested acceptance to be bound or the existence of an agency relationship with one of the contracting parties. The mere fact that a party is a consignee or third-party beneficiary is insufficient to warrant a finding that [the party] was bound by the terms contained in the bills of lading."). See also *Kawasaki Kisen Kaisha, Ltd v Plano Molding Co*, 696 F3d 647, 655 (CA 7, 2012); *Pac Coast Fruit Dist v Pennsylvania R Co,* 217 F2d 273, 275 (CA 9, 1954) ("There is no doubt that the mere designation of a party as consignee in a bill-of-lading, without more, is insufficient to entail liability for the payment of freight charges."); *Stein Hall & Co v SS Concordia Viking,* 494 F2d 287, 291 (CA 2, 1974) ("a party is not bound to the terms of a bill of lading unless the party consents to be bound").

course of conduct; or (3) accepting through its agent.[18] Therefore, consignee liability does not rest solely on a direct contract with the carrier. Instead, the act of accepting goods can, by law, bind the consignee to cover the charges if the consignor defaults.[19] Similarly, a party can subject itself to liability regarding freight costs, without being named as a party on the BOL, by explicit promises and/or a course of conduct independent of the BOL.[20] Notably, general maritime law does not make the bills of lading the exclusive means of creating liability for freight charges. To ascertain what contract was entered by the Nova and Yang Ming first we look primarily to the BOLs, - and taking into account it operates as both a receipt and a contract.[21]

Review of the two import BOLs at issue in this case, illustrate that Nova is listed as the "consignee" on both. But Nova cannot be bound by terms simply by being unilaterally named on a BOL, as the law requires more – minimally, Nova's consent to the terms thereof. Assessing whether Nova consented, the Court first notes that Nova "neither filed a lawsuit under the bill" nor "attempted to benefit from its terms."[22] As to its course of conduct, Nova did not acquiesce to the BOLs for the return trips to the US demanded by CBP. Yang Ming's BOL Terms and Conditions begin by stating, "[i]n accepting this Bill, the Merchant agrees to be bound by all the stipulations, exceptions, terms and conditions on the face and back hereof …" Yet, Nova never expressly consented to Yang Ming's import BOLs. Nor did Nova consent to the import BOLs by receiving and accepting the goods, as the shipments at issue were <u>not</u> delivered to Nova – they were delivered

[18] *Ingram Barge,* 3 F4th at 277-79 (Ingram attempted to bind Zen-Noh as a consignee, despite Zen-Noh's classification on most bills as a notify party, not consignee. The Court found that Zen-Noh did not consent in any of these ways and affirmed the lower court's dismissal of the case.).
[19] See *Pittsburgh, C C & St L Ry Co v Fink*, 250 US 577, 590 (1919).
[20] *EIMSKIP v Atlantic Fish Market, Inc,* 417 F3d 72, 76 (CA 1, 2005).
[21] See *Louisville & Nashville RR Co v Central Iron & Coal Co,* 265 US 59, 67 (1924).
[22] *Kawasaki,* 696 F.3d at 655.

to the contracted destination and then seized by CBP.[23] Nova did not actually receive, or accept, the shipments. Furthermore, Nova expressly rejected its obligation to pay the freight charges incurred pursuant to the import BOLs. Yang Ming emailed Nova to notify them of the actions taken by CBP, and advised Nova it was responsible for "any and all charges associated with these [return] shipments."[24] Yevgeniy Epshteyn, President of Nova, emailed Jack Nelson, the General Agent for Yang Ming, advising him in no unclear terms, that Nova is prepared to pay $10,357 in outstanding export shipment charges (BOL #s W160422164, W160422722, W135514968), but that it "does not guarantee payment of Yang Ming's charges for the return of containers at CBP's direction."[25] In sum, Nova did not consent to its inclusion as the "consignee" on the respective import BOLs, did not acquiesce or agree to pay the CBP-related BOLs, expressly rejected paying the freight for the CBP import trips, and most importantly, did not physically receive or formally accept the shipments, as they were never delivered to Nova subsequence to CBP seizure.

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[23] See *CSX Transp Co v Novolog Bucks Co*, 502 F3d 247, 254-57, 262 (CA 3, 2007) (The Court found the recipients of freight who were named as consignees on BOLs without its authorization or authority are still subject to liability for demurrage charges arising after they accept delivery. The Court explained that an entity named on a bill of lading as the sole consignee, without any designations clearly indicating any other role, is presumptively liable for demurrage fees on the shipment to which that bill of lading refers. " A party may rebut that presumption by showing that it never accepted delivery of the shipment …"); *Illinois Cent RR Co v South Tec Dev Warehouse, Inc,* 337 F3d 813, 820-22 (CA 7, 2009) ("being listed by third parties as a consignee on some bills of lading is not alone enough to make [a warehouseman] a legal consignee liable" for freight and related charges; but a consignee becomes a party to the transportation contract, and is therefore bound by it, upon accepting the freight); *Ingram,* 3 F4th 275, 279 (CA 6, 2021) (Ingram, a carrier, issued the BOLs at issue, defining the relationships of the parties involved in the transportation of grain shipments purchased by Zen-Noh. The BOLs required agreement with Ingram's "Terms," which included a forum selection clause. After receiving invoices from Ingram, Zen-Noh reached out, expressly advising Ingram that it was not liable for the invoiced charges. It is undisputed that Zen-Noh received the grain shipments and paid for freight and demurrage charges – penalties relating to delayed loading/unloading of goods. Ingram only filed suit when Zen-Noh refused to pay for "unrelated expenses" Ingram incurred "en route for fleeting, wharfage, and shifting." Ingram instead attempts to bind Zen-Noh as a consignee, despite Zen-Noh's classification on most BOLs was a notify party. The Court reiterated that "Consignees are considered third-party beneficiaries to BOLs" and "a bill can bind them, but only with their consent." The Sixth Circuit affirmed the dismissal of the suit. Even if Zen-Noh was treated as a consignee, it did not file suit, it did not acquiesce to carrier's revised terms over a long period, and it did not have agency relationship with seller. In sum, Zen-Noh did not consent to Ingram's contractual terms and is not bound to the contract's forum selection clause.).

[24] Motion, Exhibit E.

[25] *Id*.

Federal law defines a consignee as "the person named in a bill of lading as the person to whom the goods are to be delivered." 49 U.S. Code § 80101.[26] Michigan law defines a "consignee" as the "person named in a bill of lading to which or to whose order the bill promises delivery." MCL § 440.7102. Nova does not appear to meet the statutory definitions of "consignee," given the return shipments were mandated and directed by CBP, and said shipments were delivered and accepted by CBP.

While the BOL terms are paramount, consignee liability does not rest solely on a direct contract with the carrier. Instead, the act of accepting goods can, by law, bind the consignee to cover freight related charges if the consignor defaults. In this case, while Nova is listed as the sole consignee on both of the import BOLs, there is no evidence of express consent to the two specific bills or the terms therein, and contrarily, there is email correspondence from Nova explicitly disclaiming liability for all freight charges associated with the import BOLs. Yet, there is a long-standing relationship between the parties, an overarching service agreement, and a history of BOLs contractually executed by and between Nova and Yang Ming.

In light of the foregoing, the Court finds summary dismissal on this issue improper at this juncture, because the factual record is not sufficiently developed to establish, inter alia, what specific BOLs are relevant, in dispute, and/or being relied upon by the Plaintiff.[27] Given that consignee liability in these types of cases can be established in several other, fact-specific ways, other than the conventional inclusion of a party's name on the respective contract, the Court must

[26] See also *Norfolk Southern Ry Co v Groves*, 586 F3d 1273, 1276 (CA 11, 2009) ("A consignee is '[o]ne to whom goods are consigned.'" Black's Law Dictionary 327 (8th ed 2004). The Federal Bills of Lading Act and Norfolk's Tariff define consignee in a consistent manner. See 49 USC § 80101(1) (1994) ("'consignee' means the person named in a bill of lading as the person to whom the goods are to be delivered"); Tariff NS 6004–B, Item 200(6) (2000) ("The party to whom a shipment is consigned or the party entitled to receive the shipment.").

[27] There are discrepancies between Yang Ming's asserted freight costs for the respective BOLs as set forth in its Response compared to the dollar amounts set forth in the actual BOLs.

be dealt a much more developed record so it can perform a detailed review of all relevant facts and information. Discovery will be useful to uncover needed situational context and details regarding the parties' actions, communications and intent as it pertains to the import of the CBP-flagged shipments.[28] In addition, the parties have not fully briefed the issue of consignee liability in maritime law or undertaken a comprehensive review of all relevant caselaw on this issue, to provide the court with a detailed view of the legal landscape on this issue, what jurisdictions have adjudicated this exact issue, and their specific holdings, so the Court can appropriately apply instructive guidance, given the incongruent melange of caselaw on maritime consignee liability for freight costs.

For the reasons stated above, summary dismissal on the issue of Nova's alleged "consignee" status pursuant to MCR 2.116(C)(8) is not appropriate at this juncture.

IV. NOVA'S MOTION TO DISMISS UNDER MCR 2.116(C)(7)

A. Arguments

Nova argues as an alternative to dismissal that the action should be dismissed and thereafter arbitrated pursuant to a binding arbitration provision in Yang Ming's Service Contract with Nova – an agreement Yang Ming failed to mention in its Complaint, that requires annual renewal thereof by Yang Ming. The standard terms and conditions contained in Yang Ming's own Service Contract require that "any and all disputes, claims, and contest arising out or in connection with any provision hereunder shall be resolved and adjudicated by arbitration proceedings pursuant to the rules applicable under the Society of Maritime Arbitrators for shortened arbitration."[29]

[28] Generally, a grant of summary disposition is premature before discovery on a disputed issue is complete. See *Mackey v Dep't of Corrections*, 205 Mich App 330, 333 (1994).
[29] Plaintiff's Response, Exhibit A, p 12.

Yang Ming argues that the BOL constitutes the definitive contract between the shipper, Nova, and the carrier, itself – and Michigan law establishes that BOL terms are binding and cannot be modified through parol evidence, in the absence of fraud or mistake. The respective BOL Terms and Conditions contain no arbitration provision, and Nova cannot compel arbitration through alleged external agreements or understandings. Also, Nova incorrectly contends the arbitration clause in the Service Contract applies to disputes "arising out or in connection with any provision hereunder." However, Yang Ming's claims arise from the specific BOLs issued for the return shipments, not from the general Service Contract, as the BOLs are separate contractual instruments that govern the specific transportation services provided.[30]

B. The Law

Dismissal is appropriate under MCR 2.116(C)(7) when there is "an agreement to arbitrate or to litigate in a different forum." *Barshaw v Allegheny Performance Plastics, LLC,* 334 Mich App 741 (2020). "The existence of an arbitration agreement and the enforceability of its terms are judicial questions for the court, not the arbitrators." *Ferndale v Florence Cement Co*, 269 Mich App 452, 458 (2006). Under the Michigan Uniform Arbitration Act, "[t]he court shall decide whether an agreement to arbitrate exists or a controversy is subject to an agreement to arbitrate." MCL 691.1686(2).

[30] Yang Ming provides a handful of "block" style citations, providing no explanatory parentheticals or relevance whatsoever of the Case, or a specific pincite to advise opposing counsel and this Court what specific principle, part, or holding of judicial opinion it is drawing support from. "Trial Courts are not the research assistants of the litigants; the parties have a duty to fully present legal arguments for its resolution of their dispute." *Walters v Nadell*, 481 Mich 377, 388 (2008). A party "may not merely announce his position and leave it to this Court to discover and rationalize the basis for his claims . . . nor may he give issues cursory treatment with little or no citation of supporting authority." *Houghton v Keller,* 256 Mich App 336, 339-340 (2003). See also *Mitcham v City of Detroit*, 355 Mich 182, 203 (1959) ("It is not enough for an appellant in his brief simply to announce a position or assert an error and then leave it up to this Court to discover and rationalize the basis for his claims, or unravel and rationalize the basis for his arguments, and then search for authority either to sustain or reject his position"); *Wilson v Taylor*, 457 Mich 232, 243 (1998) ("A mere statement without authority is insufficient to bring an issue before this Court").

"Arbitration is a matter of contract." *Altobelli v Hartmann,* 499 Mich 284, 295 (2016). "[A] valid agreement must exist for arbitration to be binding." *Florence Cement Co*, 269 Mich App at 460. A three-prong test applies to determine whether an issue is subject to arbitration: "1) is there an arbitration agreement in a contract between the parties; 2) is the disputed issue in its face or arguably within the contract's arbitration clause; and 3) is the dispute expressly exempted from arbitration by the terms of the contract." *In re Nestorovski Estate*, 283 Mich App 177, 202 (2009).

Because arbitration is a matter of contract, when considering an arbitration agreement, courts apply the same legal principles that govern contract interpretation. *Altobelli,* 499 Mich at 295. The intent of the parties to the arbitration agreement is determined by the "language of the agreement according to its plain and ordinary meaning." *Id*. When deciding whether a dispute is subject to arbitration, this Court "must avoid analyzing the substantive merits of the dispute." *Id.* at 296, citing *Kaleva-Norman-Dickson Sch Dist No 6 v Kaleva-Norman-Dickson Sch Teachers' Ass'n*, 393 Mich 583, 594-595 (1975).

Michigan courts have consistently reasoned that "our Legislature and our courts have strongly endorsed arbitration as an inexpensive and expeditious alternative to litigation." *Rembert v Ryan's Fam Steak Houses, Inc*, 235 Mich App 118, 133 (1999). It "is clearly the public policy of this state" as evidenced by the Michigan Uniform Arbitration Act and jurisprudence, "to encourage arbitration as one method of dispute resolution." *Hendrickson v Moghissi*, 158 Mich 290, 298 (1987). See also *Lichon v Morse*, 507 Mich 424, 437 (2021). Arbitration is favored and the burden is on the party seeking to avoid an arbitration agreement, not on the party seeking to enforce arbitration. *Altobelli*, 499 Mich at 295. As a result, "any doubts about the arbitrability of an issue should be resolved in favor of arbitration." *DeCaminada v Coopers & Lybrand, LLP,* 232 Mich App 492, 496 (1998); *Nestorovski Estate*, 283 Mich App at 203.

C. Analysis

As an initial matter, regarding part one of the three-part test for ascertaining the arbitrability of a particular issue, the Parties do not dispute that the overarching Service Contract[31] governing their relationship contains an arbitration clause. Section 18 of the Agreement, titled "Arbitration; Choice of Law and Venue," provides,

> Except for claims relating to loss or damage to cargo which are exclusively governed by the terms and conditions contained in Carrier's Bill of lading, the parties agree that any and all disputes, claims and contest arising out or in connection with any provision hereunder shall be resolved and adjudicated by arbitration proceedings pursuant to the rules applicable under the Society of Maritime Arbitrators for shortened arbitration. Such arbitration shall take place in New York, USA. The parties hereby expressly agreed to the application of law of the State of New York and to submit to the personal jurisdiction and venue of the U.S. District Court for the Southern District of New York in connection with any claim or lawsuit filed to enforce any decision or award of the arbitrator.[32]

The plain language clearly indicates the Parties to the contract agreed to arbitrate "any and all disputes, claims and contest arising out or in connection with any provision" in the Service Agreement, except for cargo loss or damage claims. Thus, the Court finds under MCL 691.1686(2) that provision is a mandatory arbitration clause.

Having determined the Service Agreement has a mandatory arbitration clause, the next issue, part two of the three-part test, is determining which parties and claims the arbitration clause applies to. See *Florence*, 269 Mich App at 460. The only parties to the contract are Yang Ming and Nova. To answer whether the Service Agreement arbitration clause governs Yang Ming's claim in this case, we look first to the words of the Agreement. See *Lichon,* 507 Mich at 438. Section 18 of the Service Agreement applies to "any and all disputes, claims, and contest arising

[31] The Service Contract is reviewed and renewed by the parties annually.
[32] Defendant's Motion, Exhibit B.

out of or in connection with any provision" of the Agreement. Thus, the Service Agreement arbitration provision limits its scope from the outset to disputes and claims "arising out of" or "in connection" with the Agreement's provisions. To "arise" is defined as "to originate" from, "to stem" from, and "to result from." Black's Law Dictionary (12th ed. 2024). Therefore, the arbitration provision applies to any dispute or claim originating from, stemming from or resulting from the Parties' Service Agreement. Yang Ming's Complaint alleges a single claim for Breach of Contract for unpaid invoices relating to the return shipments to the US, as mandated by CBP. Thus, the Complaint stems from the Parties' dealings and actions under their negotiated and duly executed Service Agreement. The Service Agreement provides specific terms regarding remittance of ocean freight payments, payment instructions, disputes of invoices, rates, etc. While Yang Ming's claim pertains to specific BOLs, it still arises out of the Parties' business relationship, as set forth in the Service Agreement. The Court finds that Yang Ming's claim against Nova cannot be maintained without reference to the Service Agreement and the contractual relationship established by such. See *Lichon*, 507 Mich at 440.[33]

Lastly, the three-part test requires the Court to determine if a dispute is expressly exempted from the arbitration provision set forth in the Service Agreement. See *Florence,* 269 Mich App at 460. The arbitration provision of the Service Agreement expressly states that "any and all" disputes and claims arising out of or in connection with the Service Agreement provisions are subject to arbitration, "except for claims relating to loss or damage to cargo" – which are exclusively governed by the Carrier's Bill of Lading Terms and Conditions.[34] This statement automatically

[33] When making the threshold determination of whether a claim is subject to an arbitration agreement, the courts are to analyze whether the action could be maintained without reference to the contract or relationship at issue. *Lichon*, 507 Mich at 440.

[34] Yang Ming's Bill of Lading Terms & Conditions does not require arbitration, and instead provides, "Any action by the Carrier to enforce any provision of this Bill may be brought before any court of competent jurisdiction at the option of the Carrier."

excludes a claim or dispute from arbitration if it is for cargo loss or damage. Yang Ming's Complaint does not plead "loss or damage" to cargo. The Complaint contains one count for breach of contract based on Nova's alleged refusal to pay an "amount due and owing to PLAINTIFF for freight services and demurrage."[35] On its face, the Complaint is a dispute centered on alleged liability for freight and demurrage charges – topics unequivocally covered by the Parties' Service Agreement, and the included agreement to arbitrate.

As a result, based on a plain reading of the arbitration clause contained in the Service Agreement, and resolving any doubts about the arbitrability in favor of arbitration, *DeCaminada,* 232 Mich App at 500, the Court finds that 1) there is an arbitration agreement in a contract between the Parties; 2) that the disputed issue is on its face or arguably within the contract's arbitration clause; and 3) the dispute is not expressly exempted from arbitration by the terms of the contract. Where the parties to an action have agreed in writing to submit their disputes to arbitration, the arbitration provision is binding." *Mitchell v Dahlberg*, 215 Mich App 718, 725 (1996).

For the reasons stated above, the Court finds that summary disposition is granted pursuant to MCR 2.116(C)(7).

V. Conclusion

Because the Parties' Service Agreement is valid and binding and contains an arbitration provision that governs this dispute, this matter is appropriately resolved through the dispute-resolution process contained in said Agreement. As a result, Defendant's motion is GRANTED, and the case is dismissed.

[35] Complaint, ¶ 14.

ORDER

For the above stated reasons Defendant's Motion for Summary Disposition is GRANTED, and the case is dismissed. The Plaintiff shall submit its claim to mandatory arbitration with the Society of Maritime Arbitrators, if it chooses.

This is a final Order and closes the case.

/s/Victoria A. Valentine

HON. VICTORIA A. VALENTINE
BUSINESS COURT JUDGE

Dated: 4/15/26