IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO

Court of Appeals of New Mexico
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Mark Reynolds

Opinion Number: _____

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No. A-1-CA-41863

TODD LOPEZ, Personal Representative of the Estate of Jose Ochoa, Deceased; JACQUELINE GARCIA, Individually and as next friend of K.O. and D.O.,

Plaintiffs-Appellants,

v.

BUFFALO THUNDER DEVELOPEMENT AUTHORITY; BUFFALO THUNDER INC.; POJOAQUE GAMING, INC., and PUEBLO OF POJOAQUE GAMING COMMISSION,

Defendants-Appellees

and

HILTON SANTA FE BUFFALO THUNDER a/k/a BUFFALO THUNDER RESORT AND CASINO a/k/a BUFFALO THUNDER CASINO; HILTON MANAGEMENT, LLC; HILTON SANTA FE HOTELS CORPORATION a/k/a HILTON HOTELS CORPORATION; HILTON DOMESTIC OPERATIONS COMPANY; and HILTON SYSTEM SOLUTIONS, LLC,

Defendants.

APPEAL FROM THE DISTRICT COURT OF SANTA FE COUNTY
Bryan Biedscheid, District Court Judge

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OPINION

YOHALEM, Judge.

{1} Plaintiffs[1] brought a wrongful death suit against Pueblo of Pojoaque tribal entities (the Pueblo) in New Mexico state district court alleging that the negligence of the Pueblo led to the death by drowning of Decedent at the Buffalo Thunder Resort and Casino (the Casino). Plaintiffs sued the Pueblo in state district court, under state tort law, pursuant to the limited waiver of sovereign immunity in Section 8(A) of the Pueblo's Tribal-State Class III Gaming Compact (the Compact). In January 2024, three months after Plaintiffs filed their lawsuit, our Supreme Court decided *Sipp v. Buffalo Thunder, Inc.*, 2024-NMSC-005, 546 P.3d 1266, which held that Section 8(A)'s limited waiver of sovereign immunity for casino visitors' personal injury claims had ended upon the happening of the qualifying event—the entry of a final order in a federal court case—pursuant to the express terms of Section 8(A)'s termination clause. Plaintiffs responded to the decision in *Sipp* by filing a motion to compel arbitration in their pending personal injury suit in state court, arguing that even if *Sipp* required the district court to dismiss their underlying tort claims, the Compact's termination clause did not apply to arbitration and the district court, therefore, retained subject matter jurisdiction to compel arbitration. The

[1]Plaintiffs are Todd Lopez, personal representative of the estate of Jose Ochoa (Decedent), and Jacqueline Garcia, individually and as next friend of K.O. and D.O., Decedent's children.

district court concluded it lacked subject matter jurisdiction to take any action, including compelling arbitration, and dismissed, stating that the district court lacked subject matter jurisdiction over the Pueblo under the terms of the Compact, "and therefore [a state court has] no authority to order [the Pueblo] into binding arbitration." We agree and affirm.

BACKGROUND

The Indian Gaming Regulatory Act

{2} In *California v. Cabazon Band of Mission Indians*, 480 U.S. 202, 207 (1987), *superseded by statute on other grounds as stated in Michigan v. Bay Mills Indian Cmty.*, 572 U.S. 782, 783 (2014), the United States Supreme Court held that states may not regulate gaming activity on Indian land without Congressional authority. *See also Navajo Nation v. Dalley*, 896 F.3d 1196, 1204 (10th Cir. 2018) ("It is axiomatic that absent clear congressional authorization, state courts lack jurisdiction to hear cases against Native Americans arising from conduct in Indian country."). In response, Congress enacted the Indian Gaming Regulatory Act (IGRA), 25 U.S.C. §§ 2701 to 2721, as a "framework for states and Indian tribes to cooperate in regulating on-reservation tribal gaming." *Sipp*, 2024-NMSC-005, ¶ 4. "Under IGRA, a tribal-state gaming compact is required for an Indian tribe to have a Class III gaming facility, and the statute prescribes the matters that are permissible subjects

of gaming-compact negotiations between tribes and states." *Id.* (internal quotation marks and citation omitted).

The Compact's Waiver of Immunity, the Termination Clause, and *Sipp*

{3} The Pueblo and the State of New Mexico entered into the governing Compact in 2005 and then again in 2017. *Id.* Section 8 of the Compact is entitled, "Protection of Visitors." The Pueblo agrees in Subsection (A) of Section 8 to "a limited waiver of its immunity from suit and agrees to proceed either in binding arbitration proceedings or in Tribal, State, or other court of competent jurisdiction at the visitor's election, with respect to claims for bodily injury or property damage proximately caused by the conduct of the Gaming Enterprise." The termination clause in Section 8(A), which follows immediately upon the waiver of immunity, states in full as follows:

> For purposes of this Section, any such claim may be brought in state district court, including claims arising on tribal land, unless it is finally determined by a state or federal court that the IGRA does not permit the shifting of jurisdiction over visitors' personal injury suits to state court.

{4} Our Supreme Court construed the termination clause in its decision in *Sipp* to provide that *any* state or federal court's final determination that IGRA does not permit a tribe to shift jurisdiction to state court for a visitor's personal injury suit is the "qualifying event" that triggers the termination of both the Pueblo's contractual duty to waive sovereign immunity and to allow jurisdiction-shifting to state courts. *See* 2024-NMSC-005, ¶¶ 23, 25. *Sipp* held that the entry of final judgments in two

federal cases, *Dalley* and *Pueblo of Santa Ana v. Nash*, 972 F. Supp.2d 1254 (D. N.M. 2013), "qualified under the plain language of Section 8(A) of the Compact [as a final determination by a federal court] to terminate jurisdiction-shifting of personal injury tort claims to state court." *Sipp*, 2024-NMSC-005, ¶ 29. The Court, therefore, concluded that dismissal with prejudice of Sipp's personal injury tort claim against the tribe was required. *Id.*

{5} The Court expressly based its decision in *Sipp* on the terms of the Compact, and did not find it necessary to decide whether *Nash* and *Dalley* correctly decided that IGRA prohibited a tribe from waiving its sovereign immunity for some or all of casino visitor's tort claims. *Sipp*, 2024-NMSC-005, ¶ 21. The Court concluded that the state and the tribe had unambiguously agreed that jurisdiction-shifting to state court would end upon entry of a final judgment by *any federal court* and that the decisions in *Nash* and *Dalley* each qualified as the triggering event agreed to in the Compact. *See Sipp*, 2024-NMSC-005, ¶ 29 ("*Nash* and *Dalley* qualified under the plain language of Section 8(A) of the Compact to terminate jurisdiction shifting of personal-injury tort claims to state court."). In other words, contract law and construction of Section 8(A) of the Compact under the principles of contract law alone supports our Supreme Court's decision that "state courts do not possess subject matter jurisdiction to hear [a casino visitor's personal injury] claim."

The Proceedings in State Court

{6} Plaintiffs filed their original complaint in state district court on October 2, 2023. Defendants included a number of Pueblo entities protected by tribal sovereign immunity, which as previously noted, this opinion refers to collectively as "the Pueblo."[2]

{7} Relying on the waiver of sovereign immunity in Section 8 of the Compact, Plaintiffs pleaded claims in negligence, premises liability, and wrongful death against the Pueblo, claiming the Compact waived the Pueblo's sovereign immunity for Plaintiffs' personal injury claims arising from Decedent's drowning death on or near Casino premises. The complaint reported in its statement of parties, jurisdiction and venue, that Plaintiffs had made a timely demand for arbitration to the Pueblo, and alleged that "the demands for arbitration were ignored." The complaint did not ask the district court to compel arbitration; instead, Plaintiffs sought a jury trial.

{8} The Pueblo filed a motion to dismiss for lack of subject matter jurisdiction, arguing that Decedent's drowning had no causal relationship with the Pueblo's gaming activities and that the Pueblo's general immunity from suit in state court for injuries occurring on tribal land required dismissal. Plaintiffs responded claiming that Decedent was a visitor to the Casino and that his death was sufficiently related

[2]The claims against other nontribal Defendants were not dismissed. They are not relevant to this appeal.

to tribal gaming to come within Section 8(A)'s waiver of sovereign immunity, citing to this Court's decision in *Sipp v. Buffalo Thunder, Inc.*, 2022-NMCA-015, 505 P.3d 897, *rev'd*, 2024-NMSC-005. This decision had not yet been reversed by our Supreme Court and the Section 8(A) waiver therefore remained in effect at that time. In their reply, the Pueblo anticipated the reversal of this Court's opinion in *Sipp*, arguing that this Court had reached the wrong result.

{9} Our Supreme Court decided *Sipp* on January 16, 2024, reversing this Court's decision and holding, as already described, that the termination clause in Section 8(A) of the Compact unambiguously had been triggered by two federal court decisions, *Nash* and *Dalley*, and that the Pueblo's waiver of sovereign immunity and consent to jurisdiction-shifting to state court for gaming-related personal injury claims was no longer effective. *Sipp*, 2024-NMSC-005, ¶ 29. Having concluded that the state district court no longer had subject matter jurisdiction over gaming-related personal injury claims, our Supreme Court ordered the plaintiff's tort suit dismissed. *Id.*

{10} Plaintiffs in this case responded to our Supreme Court's *Sipp* decision by filing a motion to compel arbitration. Their motion to compel arbitration acknowledged that the law had changed and that the district court no longer had subject matter jurisdiction over the Pueblo for the litigation of personal injury tort claims. Plaintiffs argued, however, that the district court retained subject matter

jurisdiction under the terms of the Compact to enforce the Pueblo's agreement in Section 8 of the Compact "to proceed . . . in binding arbitration . . . at the visitor's election." Relying on the demand for arbitration they had previously submitted to the Pueblo and mentioned in their personal injury complaint in district court, Plaintiffs asked the district court to compel arbitration before dismissing their tort claims for lack of jurisdiction. The Pueblo responded stating that "[s]o long as [the Pueblo is] the target of Plaintiffs' tort claim and the present motion, . . . *Sipp* holds that [the district court] has no authority to entertain much less endorse Plaintiffs' motion."

{11} Following a hearing, the district court denied Plaintiffs' motion to compel arbitration, concluding that, pursuant to *Sipp*, the district court "lacks jurisdiction over the [Pueblo] in this case, and therefore has no authority to order [the Pueblo] into binding arbitration." The district court, in a separate order, granted the Pueblo's motion to dismiss all claims against the Pueblo for lack of subject matter jurisdiction. Plaintiffs appeal only the denial of their motion to compel arbitration.

DISCUSSION

{12} Plaintiffs argue on appeal that even after our Supreme Court's opinion in *Sipp*, New Mexico state courts retain subject matter jurisdiction under the terms of the Compact to compel arbitration of a casino visitor's personal injury tort claims. Although their argument is far from clear, we understand Plaintiffs to claim that (1)

unlike the Pueblo's waiver of sovereign immunity and consent to jurisdiction-shifting for personal injury tort *litigation* brought by a visitor to a tribal casino who suffers a gaming-related injury, where they concede the Pueblo's waiver of immunity is dependent on IGRA, a tribe is separately authorized to consent to arbitration without Congressional approval under the principles of law stated in the United States Supreme Court's opinion in *C & L Enterprises, Inc. v. Citizen Band Potawatomi Indian Tribe of Oklahoma*, 532 U.S. 411 (2001); and (2) Section 8 of the Compact, by its plain and unambiguous language, includes a separate waiver of immunity and agreement to jurisdiction-shifting by the Pueblo solely for binding arbitration, which is not subject to the termination clause in Section 8(A) of the Compact. Plaintiffs claim that this separate and severable agreement to binding arbitration found in Subsections 8(C), (D), (E) and (G) of Section 8 of the Compact continues in effect after *Sipp*.

{13} We are not persuaded either that the Pueblo has authority under *C & L Enterprises* to waive sovereign immunity for arbitration of casino visitors' personal injury tort claims without permission from Congress in IGRA, or that Section 8 of the Compact unambiguously includes a separate waiver of the Pueblo's sovereign immunity for arbitration. We therefore affirm the district court's dismissal for lack of subject matter jurisdiction. We explain our decision, addressing each of Plaintiffs' arguments in turn.

I. The Pueblo Did Not Have Authority Independent of IGRA to Waive Sovereign Immunity and Consent to State Court Jurisdiction

{14} Plaintiffs argue that the Pueblo has separate authority, independent of congressional authorization in IGRA to waive their sovereign immunity and consent to jurisdiction-shifting to state court to compel arbitration of casino visitors' tort claims. As already noted, Plaintiffs' argument for a separate waiver of sovereign immunity and a separate tribal agreement to jurisdiction-shifting to state court rests almost exclusively on Plaintiffs' construction of the United States Supreme Court's decision in *C & L Enterprises*, 532 U.S. 411.

{15} In *C & L Enterprises*, a tribe entered into a construction contract with a private contractor to install a roof on a building owned by the tribe, which was located on nontribal land in the State of Oklahoma. *See* 532 U.S. at 414. In the construction contract, the tribe consented to binding arbitration to resolve disputes arising under the contract and agreed that the contract would be "governed by the law of the place where the [p]roject is located," in other words, by Oklahoma state law. *Id.* at 415 (internal quotation marks omitted). The United States Supreme Court held that the tribe's consent to binding arbitration and its agreement in the contract's choice-of-law provision to apply Oklahoma law together amounted to an effective waiver of sovereign immunity by the tribe and consent to jurisdiction in the Oklahoma state courts to compel arbitration and enforce the arbitration agreement. The Court found that, in light of the tribe's agreement, the state district court had subject matter

jurisdiction under Oklahoma's version of the Uniform Arbitration Act. *Id.* at 419-20.

{16} Plaintiffs rely on *C & L Enterprises* to support their contention that the Pueblo has independent authority to agree to arbitration of casino visitors' tort claims without Congressional permission from IGRA. Plaintiffs argue that our Supreme Court held, in its decision in *Doe v. Santa Clara Pueblo*, 2007-NMSC-008, 141 N.M. 269, 154 P.3d 644, that a tribe was authorized to waive sovereign immunity for arbitration of casino visitors' tort claims and that no permission under IGRA was required.[3] Plaintiffs are mistaken.

{17} *Doe*, in fact, affirmatively rejects the very argument Plaintiffs urge this Court to accept. *See Doe*, 2007-NMSC-008, ¶¶ 28-29. Contrary to Plaintiffs' argument, our Supreme Court's decision in *Doe* distinguishes the off-reservation building contract in *C & L Enterprises* from the tribal-state negotiation of a gaming compact under the authority of IGRA, a federal statute, and concludes that a tribe does not have independent authority under *C & L Enterprises* when a federal statute is involved. Where the contract at issue is a tribal-state gaming compact, IGRA must

[3]Plaintiffs argue that, in the absence of an applicable termination clause, our Supreme Court's decision in *Doe* continues to be the guiding law in New Mexico. *Doe* holds, contrary to *Nash* and *Dalley* that IGRA permits states and tribes to negotiate sovereign immunity and jurisdiction-shifting for personal injury actions in state-tribal gaming compacts. We assume, without deciding that *Doe* remains the governing law in New Mexico.

authorize the tribe's waiver of sovereign immunity and jurisdiction-shifting. *See Doe*, 2007-NMSC-008, ¶ 45 (recognizing that Congress must authorize "tribes to contract for jurisdiction shifting, if they wish[], as part of a much larger, global settlement of complex issues that [are] necessary to make tribal gaming work).

{18} Importantly, *Doe* reaches this conclusion *after* directly considering whether the *C &* L *Enterprises* line of cases applies in the context of a gaming compact. In *Doe*, our Supreme Court concludes that *C & L Enterprises* does not apply to tribal-state gaming compacts. *See Doe*, 2007-NMSC-008, ¶ 28 (identifying two separate lines of authority—the *C & L Enterprises* line, where there is no federal statute, and the *Kennerly*[4] line, where there is a controlling federal statute, and concluding that "[o]ur case seems to fit somewhere in between"); *see also id.* ¶ 29 (deciding that the Court must "look beyond the language of the Compact to determine if IGRA *authorizes* the [tribes] to shift jurisdiction over personal injury suits to state court").

{19} Our Supreme Court in *Doe*, therefore, directly rejects the very argument made by Plaintiffs in this appeal. We reject it as well. We do not agree with Plaintiffs that there are two separate sources that authorize tribes to waive sovereign immunity—one for *litigation* of casino visitors' tort suits and one for *arbitration* of casino visitors' tort suits.

[4]*See Kennerly v. Dist. Ct.*, 400 U.S. 423 (1971).

II. The Pueblo Agreed to a Single, Unified Waiver of Sovereign Immunity and Jurisdiction-Shifting for Casino Visitors' Personal Injury Claims

{20} We next address Plaintiffs' contract interpretation argument—that by a plain reading of the Compact, there are two distinct waivers of immunity and consent to state court jurisdiction: one for litigation to resolve the underlying tort claim in court and one for arbitration, followed by a state court judgment.[5] Gaming compacts are treated as contracts between the State of New Mexico and the Pueblo. *See Mendoza v. Isleta Resort & Casino*, 2020-NMSC-006, ¶ 28, 460 P.3d 467; *Gallegos v. Pueblo of Tesuque*, 2002-NMSC-012, ¶ 30, 132 N.M. 207, 46 P.3d 668 ("Tribal-state gaming compacts are agreements, not legislation, and are interpreted as contracts." (internal quotation marks and citation omitted)). "Contract interpretation is a matter of law that we review de novo." *Sipp*, 2024-NMSC-005, ¶ 15 (internal quotation marks and citation omitted). "In reviewing an appeal from an order granting or denying a motion to dismiss for lack of jurisdiction, the determination of whether jurisdiction exists is a question of law which an appellate court reviews de novo." *Gallegos*, 2002-NMSC-012, ¶ 6 (concluding that subject matter jurisdiction is

[5] We understand Plaintiffs to argue that, even if the Pueblo's waiver of sovereign immunity for arbitration of visitors' tort claims is not separately authorized under *C & L Enterprises* and *Doe*, the Pueblo nonetheless separately agreed to arbitration in Subsections (C), (D), (E), and (G) of Section 8, and those subsections are not subject to the termination clause in Section 8(A).

reviewed de novo when it concerns the validity of an assertion of sovereign immunity by a tribe).

A. Governing Law on Contract Interpretation

{21} Waivers of tribal sovereign immunity "cannot be implied but must be unequivocally expressed." *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 58 (1978) (internal quotation marks and citation omitted). When construing a contract, "[w]e consider the documents as a whole to determine how they should be interpreted." *Campbell v. Millennium Ventures, LLC*, 2002-NMCA-101, ¶ 15, 132 N.M. 733, 55 P.3d 429; *see Smith v. Tinley*, 1984-NMSC-011, ¶ 4, 100 N.M. 663, 674 P.2d 1123 ("In construing the terms of a written agreement, the document is considered as a whole with each part accorded significance and meaning according to its place in the agreement."). "The purpose, meaning and intent of the parties to a contract is to be deduced from the language employed by them; and where such language is not ambiguous, it is conclusive." *ConocoPhillips Co. v. Lyons*, 2013-NMSC-009, ¶ 23, 299 P.3d 844 (internal quotation marks and citation omitted). A term is ambiguous only when it is "reasonably and fairly susceptible to different constructions." *Id.* (alteration, internal quotation marks, and citation omitted). If we determine the contract is unambiguous, "the words of the contract are to be given their ordinary and usual meaning," and our analysis ends. *Id.* (internal quotation marks and citation omitted).

B. The Unambiguous Language of Section 8 of the Compact Does Not Support the Creation of Two Distinct Waivers of Immunity—One for Litigation and Another for Arbitration of Visitors' Personal Injury Tort Claims

{22} As a matter of contract interpretation, Plaintiffs claim that Subsections (C), (D), (E), and (G) of Section 8 separately waive sovereign immunity and consent to jurisdiction-shifting to state court to compel arbitration of casino visitors' personal injury tort claims. They argue that this separate waiver of sovereign immunity and consent to state court jurisdiction was not affected by the triggering of the termination clause in Section 8(A). In other words, Plaintiffs claim that *Sipp* left intact the Pueblo's consent to state court jurisdiction to compel and enforce arbitration awards for casino visitors' tort claims, based on the negotiated terms of Section 8 of the Compact. We do not agree.

{23} Section 8(A), by unambiguous language, states that "the purpose of this Section" is to "assure that [visitors] who suffer bodily injury or property damage proximately caused by the conduct of the Gaming Enterprise have an effective remedy for obtaining fair and just compensation." After stating this overarching policy, Section 8(A) summarizes the terms that the Pueblo agrees to in Section 8, stating:

> To that end, *in this Section, and subject to its terms*, the [Pueblo] agrees to carry insurance that covers such injury or loss, agrees to a limited waiver of its immunity from suit, and agrees to proceed either in binding arbitration proceedings or in Tribal, State or other court of competent jurisdiction at the visitor's election, with respect to claims

> for bodily injury or property damages proximately caused by the conduct of the Gaming Enterprise.

{24} Section 8(A) concludes with the termination clause:

> *For purposes of this Section*, any such claim may be brought in state district court, including claims arising on tribal land, unless it is finally determined by a state or federal court that the IGRA does not permit the shifting of jurisdiction over visitors' personal injury suit to state court.

{25} Plaintiffs' construction of Subsection 8(A), separating the Pueblo's waiver of immunity in Subsection (A) of Section 8 from the remaining Subsections of Section 8, ignores entirely the plain language of Subsection (A), which defines the waiver of sovereign immunity and jurisdiction-shifting to state court as applying "*with respect to claims for bodily injury or property damages proximately caused by the conduct of the Gaming Enterprise*." The termination clause itself states in plain language that the Pueblo's waiver applies to "*any such claim* [that] may be brought in state district court, *including claims arising on tribal land*."

{26} This language does not support the division of casino visitors' personal injury claims between those tort claims the visitor chooses to litigate in state court and those tort claims that the visitor chooses to refer to arbitration for fact-finding and conclusions of law, while relying on jurisdiction-shifting to state court to compel arbitration and to enter judgment on their tort claim. Both routes require waiver by the Pueblo of its sovereign immunity and consent to jurisdiction-shifting to state

court, and, as set forth above, both depend upon IGRA granting the Pueblo authority for these waivers of its sovereign immunity for visitors' tort claims.

{27} Plaintiffs' argument also ignores Section 8(A)'s twice repeated explicit statement specifying that both the waiver of sovereign immunity and the contingent termination clause that are the central part of Subsection (A) of Section 8 are adopted "[f]or purposes of this Section," and that the Pueblo's waiver is "subject to the terms" of "this Section." We agree with the Pueblo that the words "this Section," unambiguously refer to Section 8 as a whole, and include within the scope of the waiver and the termination clause the subsections of Section 8 Plaintiffs attempt to treat as a separate waiver for arbitration. Contrary to Plaintiffs' argument, each of the Subsections of Section 8 address a topic with respect to casino visitors' *claims for bodily injury or property damage*, that are relevant regardless of whether a visitor chooses arbitration under the jurisdiction of the state court or litigation in state court. Subsection (B) of Section 8 addresses insurance coverage for claims of bodily injury or property damage. Subsection (C) of Section 8 imposes a uniform three-year limitation period for the filing of any claim, whether the claim is filed in tribal or state court, or initiated by filing a demand for arbitration. Subsection (D) of Section 8 provides that the law of the forum—state court or tribal court—chosen by the visitor will apply to any claim. Where the visitor proceeds by demand for arbitration, the choice of law depends on the visitor's selection of tribal or state court for

compelling, entering judgment, and enforcing the arbitration award. Subsection (E) of Section 8 requires a written choice of a state or tribal forum by any visitor bringing a tort claim against the Pueblo, whether that claim is arbitrated or litigated. Only Subsection (G) singles out arbitration, doing so in order to adopt procedures for selecting arbitrators and for conducting arbitration proceedings, matters that must be addressed in any agreement offering a choice of arbitration. Subsection (G) specifically notes the application of Section 8(A)'s waiver of sovereign immunity and consent to jurisdiction-shifting when state court is selected by the visitor to compel and enforce the arbitration award.

{28} We do not see any language in Section 8, and Plaintiffs point to none, which divides or distinguishes the Pueblo's agreement to a limited waiver of its sovereign immunity, to jurisdiction-shifting to state court, and to application of state law *for visitors' personal injury tort claims* on the basis of the visitors' choice of *litigation* versus *arbitration*. We, therefore, agree with the Pueblo that Section 8 of the Compact unambiguously provides a single waiver of tribal sovereign immunity, consent to jurisdiction-shifting, and application of state tort law if a state forum is chosen. This single waiver is subject to Section 8(A)'s termination clause and to *Sipp*.

C. The Principles of Contract Construction Regarding Surplusage and Severance Do Not Apply to Divide Section 8 of the Compact

{29} Plaintiffs also argue that treating Section 8 as a single, unitary waiver of the Pueblo's sovereign immunity for personal injury claims violates the principle of contract interpretation that "every word or phrase must be given meaning and significance according to its importance in the context of the whole contract," and no word should be treated as superfluous. *See Mayfield Smithson Enters. v. Com-Quip, Inc.*, 1995-NMSC-034, ¶ 14, 120 N.M. 9, 896 P.2d 1156.

{30} Plaintiffs misunderstand this principle of contract construction. A provision of a contract is not considered superfluous because it may at some point be subject to termination based on an agreed-upon termination clause. All of Section 8 was fully operative until the occurrence of the qualifying or triggering event terminated the contractual duty of the Pueblo to waive its sovereign immunity. Termination clauses are valid and enforceable contract provisions, if agreed to by the parties. *See Sipp*, 2024-NMSC-005, ¶ 20 n.4 ("'If under the terms of the contract the occurrence of an event is to terminate an obligor's duty of immediate performance or one to pay damages for breach, that duty is discharged if the event occurs.'" (alteration omitted) (quoting Restatement (Second) of Contracts § 230 (1981)). Although a contractual duty is discharged after a period of time pursuant to a termination clause, no provision of the Compact is rendered a nullity by the termination provision. All of the subsections of Section 8, including any that address state court jurisdiction to

compel arbitration of casino visitors' personal injury claims, played an important role until, by the terms of the Compact itself, these provisions were no longer effective.

{31} Plaintiffs next argue that the Compact's severability provision, Section 19, should be applied to save what Plaintiffs continue to argue are separate tribal waivers and consent to jurisdiction-shifting solely for arbitration in Subsections (C), (D), (E), and (G). The boilerplate severability clause in Section 19 of the Compact provides simply that "[s]hould any provision of this Compact be found to be invalid or unenforceable by any court such determination shall have no effect upon the validity or enforceability of any other portion of this Compact." Because we have concluded that Section 8 includes a single, integrated waiver of sovereign immunity and consent to jurisdiction-shifting, which was terminated as a whole by Section 8(A)'s termination clause, no application of the Compact's severability clause would preserve the Pueblo's waiver for arbitration of casino visitors' tort claims.

{32} Plaintiffs also extend their severance argument beyond Section 19 of the Compact, arguing that the principles of law stated in the United States Supreme Court's decision in *Rent-A-Center, W., Inc. v. Jackson*, 561 U.S. 63, 70 (2010), that an arbitration provision is severable from the remainder of the contract, should apply here. *Rent-A-Center* holds that a delegation clause authorizing an arbitrator to decide the enforceability of the arbitration agreement may be considered separately from a

clause allowing arbitration of the substance of employment disputes arising between the parties. *See id.* at 68-70. We do not agree for the reasons already discussed that the Compact contains "multiple arbitration provisions," only one of which was extinguished by *Sipp.* Therefore, the severance authorized by *Rent-A-Center* is also inapplicable here.

CONCLUSION

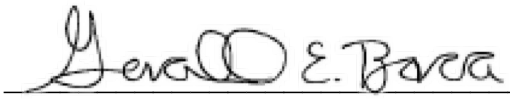
{33} For the reasons stated, we affirm the district court's dismissal of Plaintiffs' motion to compel arbitration for lack of subject matter jurisdiction.

{34} **IT IS SO ORDERED.**

JANE B. YOHALEM, Judge

WE CONCUR:

SHAMMARA H. HENDERSON, Judge



GERALD E. BACA, Judge