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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

THE ERECTION COMPANY, INC., a
Washington corporation,

Plaintiff - Appellant,

v.

W&W STEEL, LLC, a Delaware limited
liability company,

Defendant - Appellee.

No. 11-35949

D.C. No. 3:11-cv-00805-JE

MEMORANDUM*

Appeal from the United States District Court
for the District of Oregon
John Jelderks, Magistrate Judge, Presiding

Argued and Submitted March 7, 2013
Portland, Oregon

Before: TASHIMA, CLIFTON, and BEA, Circuit Judges.

The Erection Company (TEC) appeals the district court's denial of its petition to compel arbitration and grant of W&W Steel's (W&W) motion for partial summary judgment. The Federal Arbitration Act authorizes an appeal from

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

an order denying a petition to compel arbitration, 9 U.S.C. § 16(a)(1)(C), and the district court certified its partial summary judgment as a final judgment, *see* Fed. R. Civ. P. 54(b). We therefore have jurisdiction under 28 U.S.C. § 1291, and we affirm.

1. TEC's argument that the parties entered into a contract which contained an arbitration clause fails. W&W unequivocally expressed in its January 28, 2011, Letter of Intent that it intended to be bound only when a written subcontract was signed by both parties. No such written subcontract was ever signed by both parties. Nonetheless, TEC argues that the parties entered into a binding contract through their email communications on April 6, 2011. There was no contract formed on April 6, 2011 because there was no meeting of the minds on a set of terms. *See Phillips v. Johnson*, 514 P.2d 1337, 1343 (Or. 1973) (“[B]efore there can be a valid contract there must be a meeting of the minds as to all of its terms. . . .”). Because the parties did not enter into a contract which provided for disputes to be resolved through arbitration, the district court did not err in denying TEC's petition to compel arbitration.

2. TEC has not raised a triable issue of material fact as to whether the parties formed a contract through their words and conduct prior to the April 6,

2011 negotiations. The district court therefore did not err in granting summary judgment to W&W on TEC's breach of contract claim.

AFFIRMED.