United States District Court
for the
Southern District of Florida

Key Motors Ltd., Plaintiff,	)	
	)	
v.	)	
	)	Civil Action No. 16-23657-Civ-Scola
Hyundai Motor Company,	)	
Defendant.	)	
	)	

Order Granting Motion to Compel Arbitration,
Staying Case, and Denying Other Requested Relief

Defendant Hyundai Motor Company removed this commercial dispute from state court pursuant to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the "Convention"), and its implementing legislation, 9 U.S.C. §§ 201-208 ("the Convention Act"). (Notice, ECF No. 1.) Hyundai then immediately filed its Motion to Compel Arbitration and Stay Action ("Motion to Compel"). (ECF No. 4.) The Plaintiff, Key Motors Ltd., responded in opposition (Resp., ECF No. 13), and Hyundai replied (Reply, ECF No. 19). Key Motors strongly opposes this Court's jurisdiction and referral to arbitration. Asserting that opposition, Key Motors filed a Motion to Remand and for Attorney's Fees and Costs ("Motion to Remand") (ECF No. 16) and a Motion to Conduct Limited Arbitration-Related Discovery (Motion for Discovery") (ECF No. 20). Hyundai responded to the Motion to Remand. (Resp., ECF No. 21.) Hyundai has not yet responded to the Motion for Discovery.

After reviewing all the pending motions, the responses, the reply, and the law, for the reasons stated below the Court **grants** the motion to compel arbitration **(ECF No. 4)**, **stays** the proceedings in this action, **denies** remand to state court **(ECF No. 16)**, **denies** Key Motors's request for attorneys' fees **(ECF No. 16)**, and **denies** permission to conduct limited discovery **(ECF No. 20)**.

1. Factual Background

Key Motors's state-court Complaint alleges six contractual claims arising out of a purported oral agreement commencing in 1999, when "Hyundai appointed Key Motors . . . [as] the exclusive distributor for light and medium weight commercial vehicles" in Jamaica. (Compl. ¶ 9, ECF No. 1-3.) On January 1, 2013, Key Motors and Hyundai entered into a written distributorship agreement (the "Agreement"). (ECF No. 1-2.) As one might imagine given the procedural history, the Agreement contains an arbitration

clause: "All disputes, controversies or differences, out of, or in relation to, or in connection with this Agreement and all amendments thereto, including any question regarding its existence, validity or termination, shall be finally resolved by arbitration under the auspices of the Korean Commercial Arbitration Board . . . ." (Agreement ¶ 18.00(2), ECF No. 1-2.)

The Agreement appointed Key Motors as Jamaica's non-exclusive distributor of Hyundai's Products. (Agreement ¶ 2.01, ECF No. 1-2.) The term Hyundai's Products includes Hyundai Vehicles, specifically, "[p]assenger cars and 1 ton range commercial vehicles . . . ." (Agreement ¶¶ 1.03–1.04, ECF No. 1-2.) Of particular relevance here, the Agreement provides: "All business transaction between [Hyundai] and [Key Motors] till the 31st of December 2012 shall be applied in accordance with this Agreement." (Agreement ¶ 2.02, ECF No. 1-2); and "Except otherwise provided in this Agreement, this Agreement shall constitute the only and entire agreement between the Parties with respect to the subject matters contemplated herein and supersede all prior oral or written agreements, understandings or arrangements between the Parties relating thereto." (Agreement ¶ 20.06, ECF No. 1-2).

Hyundai argues that the Agreement governs the parties' dispute and, as such, the arbitration clause applies. (Mot. to Compel at 2, ECF No. 4.) Key Motors, of course, argues that the oral agreement governs the parties' dispute and, as such, no arbitration clause exists under which the parties must resolve the dispute. (Mot. to Remand at 1–2, ECF No. 16.) But these proposed frameworks inadequately resolve the legal quandary before the Court. Distilling all of the parties' arguments in the several motions and responses produces two interconnected threshold questions: whether an arbitration agreement that is governed by the Convention exists; and, if so, whether that agreement relates to the subject matter of the complaint.

2. Legal Analysis.

The Court recognizes that on a motion to compel arbitration—in spite of the extensive substantive arguments presented in the motions before the Court—it must conduct only a "very limited inquiry." *Escobar v. Celebration Cruise Operator, Inc.*, 805 F.3d 1279, 1285 (11th Cir. 2015), *cert. denied,* 136 S. Ct. 1158 (2016) (internal quotations and citation omitted). The subsequently filed motion to remand does not expand this Court's inquiry. *See Koda v. Carnival Corp.*, No. CIV. 06-21088, 2007 WL 1752410 (S.D. Fla. Mar. 30, 2007) (Hoeveler, J.) (denying plaintiff's motion to remand in part because court's limited inquiry under the Convention Act required the court to grant defendant's motion to compel arbitration).

At the outset, the Court must address the first threshold question and determine if an arbitration agreement governed by the Convention exists. *Escobar*, 805 F.3d at 1285. If so, the Court must compel arbitration, unless it finds that an affirmative defense applies.[1] *Id.*; *see also Standard Bent Glass Corp. v. Glassrobots Oy*, 333 F.3d 440, 449 (3d Cir. 2003). Next, the Court must ensure that removal remains proper by addressing the second threshold question. This is so because a defendant may remove a state-court action pursuant to the Convention Act "[w]here the subject matter of an action . . . pending in a State court relates to an arbitration agreement . . . falling under the Convention . . . ." 9 U.S.C. § 205.

A. Does an arbitration agreement governed by the Convention exist?

Analysis of the first component—the arbitration agreement—goes to whether this Court must compel arbitration. The Convention Act governs an arbitration agreement if four jurisdictional requirements are met: "(1) the agreement is in writing within the meaning of the . . . Convention;[2] (2) the agreement provides for arbitration in the territory of a signatory of the . . . Convention; (3) the agreement arises out of a legal relationship, whether contractual or not, which is considered commercial; and (4) one of the parties to the agreement is not an American citizen. *Escobar*, 805 F.3d at 1285 (internal quotations and citations omitted); *see also* 9 U.S.C. § 202.

Here, the Agreement is in writing and provides for arbitration in Korea, a signatory of the Convention. The Agreement arises out of a commercial and contractual relationship between Hyundai and Key Motors. Finally, neither party is a citizen of the United States. Thus, the Agreement clearly constitutes an arbitration agreement governed by the Convention.

Key Motors does not dispute this finding, but instead asserts that the Court must look to the oral agreement at issue in its state-court Complaint. (Resp. to Mot. to Compel at 4, ECF No. 13.) Key Motors argues that the oral agreement can never fulfill the four jurisdictional requirements because it is not in writing. (*Id.*; Mot. to Remand at 8–9.) But this assertion bears no relevance to the first threshold inquiry—whether an arbitration agreement that

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[1] At this stage, only one affirmative defense applies: if the Court "finds that the said agreement is null and void, inoperative or incapable of being performed," then nothing requires the Court to compel arbitration. Convention on the Recognition and Enforcement of Foreign Arbitral Awards art. II cl. 3, June 10, 1958, 21 U.S.T. 2517. Key Motors has not contested the validity of the Agreement. (Resp. to Mot. to Compel at 5, ECF No. 13.)

[2] "The term 'agreement in writing' shall include an arbitral clause in a contract . . . ." Convention on the Recognition and Enforcement of Foreign Arbitral Awards art. II cl. 2, June 10, 1958, 21 U.S.T. 2517.

is governed by the Convention exits. The mere existence of the purported *oral* agreement does not negate the existence of the *written* Agreement. Here, the Court answers the first threshold question in the affirmative, and thus referral to arbitration is mandatory.

B. Does the Agreement relate to the subject matter of the Complaint?

Analysis of the second inquiry guides the Court in determining whether removal is proper and, thus, whether remand is improper. The Convention Act accords an exceptionally broad removal right: "Where the subject matter of an action . . . pending in a State court relates to an arbitration agreement . . . falling under the Convention, the defendant . . . may, at any time before the trial thereof, remove such action or proceeding to the district court of the United States . . . ." 9 U.S.C. § 205; *see also Reid v. Doe Run Resources, Corp.*, 701 F.3d 840, 843 (8th Cir. 2012) ("The removal right in § 205 is 'substantially broader' than that in the general removal statute.") (internal citation omitted).

The Eleventh Circuit has not interpreted the term "relates to" as used in § 205. However, the Fifth, Eighth and Ninth Circuits have given this term an expansive definition. *Beiser v. Weyler*, 284 F.3d 665, 669 (5th Cir. 2002) ("[W]henever an arbitration agreement falling under the Convention could *conceivably* affect the outcome of the plaintiff's case, the agreement 'relates to' to the plaintiff's suit."); *Infuturia Glob. Ltd. v. Sequus Pharm., Inc.*, 631 F.3d 1133, 1138 (9th Cir. 2011) ("The phrase 'relates to' is plainly broad, and has been interpreted to convey sweeping removal jurisdiction in analogous statutes."); *Reid v. Doe Run Res. Corp.*, 701 F.3d 840, 844 (8th Cir. 2012) (same); *see also Pysarenko v. Carnival Corp.*, No. 14-20010-CIV, 2014 WL 1745048, at *7 (S.D. Fla. Apr. 30, 2014) (Moreno, J.), *aff'd,* 581 F. App'x 844 (11th Cir. 2014), *cert. denied,* 135 S. Ct. 2378, 192 L. Ed. 2d 164 (2015) ("The better view is one recently expressed by the Fifth Circuit, that 'the district court will have jurisdiction under § 205 over just about any suit in which a defendant contends that an arbitration clause falling under the Convention provides a defense.'" (citing *Beiser*, 284 F.3d at 669)).

Key Motors asserts that the subject matter of its Complaint relates to "trade between the parties in 'light and medium weight commercial vehicles.'" (Mot. for Discovery at 3, ECF No. 20.) Key Motors further asserts that the Agreement "relates solely to 'passenger vehicles' and one ton range commercial vehicles." (*Id.*; Agreement ¶ 1.04, ECF No. 1-2.) Thus, according to Key Motors, the subject matter of the Complaint—namely, "light and medium weight commercial vehicles"—bears no relation to the Agreement. But Key Motors focuses too narrowly on the definition of "Vehicles" in the Agreement, instead of interpreting the Agreement as a whole. *See Feaz v. Wells Fargo Bank, N.A.*, 745

F.3d 1098, 1104 (11th Cir. 2014) ("Traditional contract-interpretation principles make contract interpretation a question of law, decided by reading the words of a contract in the context of the entire contract and construing the contract to effectuate the parties' intent.).

Aside from defining "Vehicles," the Agreement also governs "[a]ll business transaction between [Hyundai] and [Key Motors] till the 31st of December 2012 . . . ." (Agreement ¶ 2.02, ECF No. 1-2.) Because the effective date of the Agreement was January 1, 2013, this provision must encompass any business transactions existing between the parties before the Agreement, possibly including the transactions allegedly governed by the oral agreement. Moreover, the Agreement "shall constitute the only and entire agreement between the Parties with respect to the subject matters contemplated herein and supersede all prior oral or written agreements, understandings or arrangements between the Parties relating thereto." (Agreement ¶ 20.06, ECF No. 1-2). A possibility exists, then, that the Agreement subsumes or replaces the purported oral agreement.

Key Motors insists that the "subject matters contemplated herein" mentioned in the Agreement "unequivocally involve[s] only business transactions involving" passenger vehicles and one ton range commercial vehicles. (Mot. to Remand at 11, ECF No. 16.) However, this phrase—"subject matters contemplated herein"—when taken "in the context of the entire contract[,]"*Feaz*, 745 F.3d at 1104, could refer broadly to the distribution of Hyundai vehicles by Key Motors, as opposed to referring narrowly to passenger vehicles and one-ton range commercial vehicles. Under the broader interpretation, the Agreement clearly *relates to* the subject matter of Key Motors's Complaint.

The Court cannot delve any deeper into contractual interpretation given the "very limited inquiry" at this stage of the proceedings. *See Escobar*, 805 F.3d at 1285. To do so would improperly "combine the jurisdictional and merits inquiry into a single stage." *Beiser*, 284 F.3d at 671. Thus, the Court does not decide whether the purported oral agreement exists, whether it merged with the Agreement, whether it was replaced by the Agreement, or even whether it exclusively controls the specific dispute between the parties.

The Court instead recognizes that the Agreement "could *conceivably* affect the outcome of" Key Motors's Complaint and the parties' dispute regarding the distribution of Hyundai vehicles. *See Beiser*, 284 F.3d at 669. In other words, the Court answers the second threshold question in the affirmative. Thus, removal is proper, and remand is improper.

3. Other Relief

Key Motors also requests attorneys' fees and costs. (Mot. to Remand at 16, ECF No. 16.) The Court is not remanding the case, and therefore the statute does not support an award of attorneys' fees and costs to Key Motors. 28 U.S.C. § 1447(c) ("An order remanding the case may require payment of just costs and any actual expenses, including attorney fees, incurred as a result of the removal.").

Finally, Key Motors claims it is entitled to conduct limited arbitration-related discovery in order to challenge the factual allegations that arose in the several motions and responses. (Mot. for Discovery at 4, ECF No. 20.) However, as noted above, the Court's inquiry remains limited to jurisdictional matters. *Beiser*, 284 F.3d at 671. The factual allegations asserted by both parties concern the merits of the case and require a more detailed interpretation of the Agreement. Such an inquiry exceeds the Court's purview.

4. Conclusion

Accordingly, the Court **grants** the Defendant's Motion to Compel Arbitration and Stay Action. (ECF No. 7.) The Court **denies** the Plaintiff's Motion to Remand and for Attorney's Fees and Costs (ECF No. 16) and **denies** the Plaintiff's Motion to Conduct Limited Arbitration-Related Discovery (ECF No. 20). All proceedings in this action are **stayed** pending finalization of the arbitral proceedings. The Clerk is directed to **administratively close** this case and any other pending motions are **denied as moot.**

Done and ordered, at Miami, Florida, on October 31, 2016.

Robert N. Scola, Jr.
United States District Judge