IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

G&K SERVICES LUG, LLC, Petitioner/Counter-Respondent,	:	
v.	:	Case No. 3:16-cv-180
		JUDGE WALTER H. RICE
TALENT CREATION, LTD., Respondent/Counter-Petitioner.	:	

ORDER SUSTAINING MOTION TO CONFIRM ARBITRATION AWARD OF RESPONDENT/COUNTER-PETITIONER TALENT CREATION, LTD. (DOC. #10) AND OVERRULING PETITION TO VACATE ARBITRATION AWARD OF PETITIONER/COUNTER-RESPONDENT G&K SERVICES LUG, LLC (DOC. #1); JUDGMENT SHALL ENTER IN FAVOR OF TALENT CREATION AND AGAINST LUG; TERMINATION ENTRY

Petitioner/Counter-Respondent G&K Services LUG, LLC ("LUG"), based in Minnesota, and Respondent/Counter-Petitioner Talent Creation, Ltd. ("Talent Creation" or "TC"), based in the People's Republic of China, participated in binding arbitration regarding LUG's alleged breaches of the parties' International Supply Agreement ("Agreement"). Doc. #14-3. The arbitrator issued a Final Award ("Award") in favor of TC and against LUG. Doc. #14-2. LUG has filed a Petition to Vacate Arbitration Award ("Petition"), Doc. #1, while TC has filed a Motion to Confirm Arbitration Award ("Motion"). Doc. #10. This Court has jurisdiction pursuant to 9 U.S.C. § 203 and 28 U.S.C. § 1332. For the reasons set forth below, LUG's Petition is OVERRULED, and TC's Motion is SUSTAINED.

I. FACTUAL BACKGROUND AND PROCEDURAL HISTORY

In or about the year 2000, TC and Lion Apparel, Inc. ("Lion"), a company based in Dayton, Ohio, entered into a business relationship, under which TC manufactured garments for Lion, which resold the apparel commercially in the United States. TC also provided supply chain management services to Lion. Doc. #14-2, ¶¶ 1-3, PAGEID #131-32; Doc. #14-3, PAGEID #146. In 2004, Lion and TC entered into the Agreement, which was governed by Ohio law. Doc. #1, ¶ 6, PAGEID #2; Doc. #14-2, ¶¶ 3, 5, PAGEID #132; Doc. #14-3, § 28(a), PAGEID #155. The Agreement contained non-compete and non-solicitation provisions, Doc. #14-3, § 14(a, b), PAGEID #149-50, and was to be in effect until December 31, 2010, although either party could terminate the Agreement before that date by providing at least twelve months written notice to the other party of its intent do so. *Id.*, §§ 22(e), 24(a), PAGEID #154. Further, the Agreement contained a Covenant of Cooperation ("Covenant"), which required a terminating party to minimize any loss that the other party might incur as a result of termination and the winding down of their business relationship. *Id.*, § 13(a), PAGEID #149. Finally, the Agreement provided that "any controversy or claim arising out of or relating to this Agreement[] shall be determined by arbitration." *Id.*, § 29(a), PAGEID #155.

LUG later acquired Lion and assumed the latter's obligations under the Agreement. Doc. #1, ¶ 7, PAGEID #2. During much of the time that the Agreement was in effect, Mark Luo ("Luo") was the TC employee responsible for TC's relationship with Lion and then with LUG. Doc. #14-2, ¶ 16, PAGEID #134. However, in 2009, Luo, supposedly at LUG's urging, left TC and formed a company that directly competed with

TC's supply chain management and garment manufacturing businesses. Several TC employees subsequently left to join Luo's new company. *Id.*, ¶ 17. LUG moved "between $4 million and $5 million worth of business" to Luo's new company "that would have [otherwise] gone to Talent Creation." *Id.*, ¶ 21, PAGEID #135.

In May 2010, LUG notified TC that it intended to terminate the Agreement, effective immediately. Doc. #14-2, ¶¶ 26-27, PAGEID #136. In response to LUG's notice of intent, TC "requested compensation of over $1.3 million for goods delivered, work-in-process, stranded inventory and other outstanding issues." *Id.*, ¶ 27. Negotiations over TC's compensation request continued for several years, until December 2013, when "LUG's attorney wrote to Talent Creation's attorney that LUG did not intend to pay for the raw material." *Id.*, ¶ 34, PAGEID #138. "LUG sold its business, with the exception of any liability for the raw material inventory, . . . on December 31, 2013." *Id.*, ¶ 35.

Pursuant to the rules set forth by the International Centre for Dispute Resolution ("ICDR"), TC filed an arbitration claim in May 2015, asserting that LUG had breached the Agreement. Doc. #14, PAGEID #111; Doc. #14-3, §14(b), PAGEID #150. LUG moved to dismiss TC's claim, arguing that it was barred by the statute of limitations set forth in Ohio's Uniform Commercial Code ("UCC"), Ohio Rev. Code § 1302.98, and the equitable doctrine of laches. Doc. #14-4, ¶ 1, PAGEID #171. On November 2, 2015, the arbitrator overruled LUG's motion to dismiss, concluding that "there [we]re substantial disputed facts concerning . . . the applicability of the Ohio statute of limitations . . . [and] the argument of laches. Final decision on these issues is reserved for determination after the evidentiary hearing." *Id.*, ¶ 3.

During the hearing, TC purported to raise a claim that LUG, by allegedly assisting Luo in forming his company, had violated the Agreement's non-compete clause. Doc. #14-2, ¶ 46, PAGEID #141; Doc. #14-3, § 14(a), PAGEID #149-50. LUG and TC submitted additional briefing to the arbitrator after the hearing, addressing, among other issues, TC's claim for breach of the non-compete clause. Doc. #14-5, 14-6, 14-7. On April 11, 2016, the arbitrator issued the Award, finding that LUG had breached both the non-compete and non-solicitation provisions of the Agreement, and awarded to TC liquidated damages of $150,000 and $400,000, respectively, for those breaches. Doc. #14-2, ¶¶ 53-54, 57, PAGEID # 143, 144; Doc. #14-3, § 14(a, b, c), PAGEID #149-50. Further, the arbitrator awarded $783,720.35 to TC—the cost of purchasing and storing raw uniform material from the time LUG terminated the agreement in May 2010, until LUG informed TC in December 2013, that it would not pay for that material. Doc. #14-2, ¶¶ 49-51, 57, PAGEID #141-42, 144.

On May 9, 2016, LUG filed its Petition, requesting "that this Court issue an Order vacating an arbitration award, or alternatively modifying that award." Doc. #1, PAGEID #1 (citing 9 U.S.C. §§ 10-11, 201). On June 28, 2016, TC filed a Motion to confirm the Award. Doc. #10, PAGEID #77 (citing 9 U.S.C. § 207).

II. LEGAL STANDARDS

The Convention on the Recognition and Enforcement of Foreign Arbitral Awards ("Convention" or "New York Convention") provides the framework under which District Courts must enforce and review arbitration awards when, as here, "one of the parties to the arbitration is domiciled or has its principal business outside the United States."

Indus. Risk Ins. v. M.A.N. Gutehoffnungshutte, 141 F.3d 1434, 1441 (11th Cir. 1998); *see also* 9 U.S.C. § 202 (Convention governs unless award "aris[es] out of a [business] relationship entirely between citizens of the United States").

> Within three years after an arbitral award falling under the Convention is made, any party to the arbitration may apply to any court having jurisdiction under this chapter for an order confirming the award against any other party to the arbitration. The court shall confirm the award unless it finds one of the grounds for refusal or deferral of recognition or enforcement of the award specified in the said Convention.

9 U.S.C. § 207 (emphasis added).

Article V of the Convention provides seven grounds for vacatur or modification. U.N. CONF. ON INT'L COMMERCIAL ARB., CONVENTION ON THE RECOGNITION AND ENFORCEMENT OF FOREIGN ARBITRAL AWARDS, Art. V. Further, the Court may also vacate or modify the Award pursuant to one or more of the grounds for vacatur or modification set forth in the Federal Arbitration Act ("FAA"), 9 U.S.C. § 1 *et seq*. *See* CONVENTION, Art. V(1)(e) ("Recognition and enforcement of the award may be refused" if the award "has been set aside or suspended by a competent authority of the country in which, or under the law of which, that award was made."). One such ground for vacatur is at issue in this case: "where the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made." 9 U.S.C. § 10(a)(4). Moreover, "[w]here the arbitrators have awarded upon a matter not submitted to them," an award may be modified "so as to . . . promote justice between the parties." 9 U.S.C. § 11(b).

The Convention and the FAA underscore the strong public policy favoring arbitration and enforcement of awards. *See Cooper v. MRM Inv. Co.*, 367 F.3d 493, 498 (6th Cir. 2004) ("[t]he FAA expresses a strong public policy favoring arbitration of a

wide class of disputes."); *Parsons & Whittemore Overseas Co., Inc. v. Societe Generale de L'Industrie du Papier (RAKTA)*, 508 F.2d 969, 973 (2d Cir. 1974) (grounds for vacating an award are given "narrow reading" so as to comport with "[t]he general pro-enforcement bias informing the Convention"). Accordingly, "review of an arbitration award is 'one of the narrowest standards of judicial review in all of American jurisprudence.'" *Tennessee Valley Auth. v. Tennessee Valley Trades & Labor Council*, 184 F.3d 510, 514-15 (6th Cir. 1999) (quoting *Lattimer-Stevens Co. v. United Steelworkers, AFL-CIO, Dist. 27, Sub-Dist. 5*, 913 F.2d 1166, 1169 (6th Cir. 1990)). "[A]s long as the arbitrator is even arguably construing or applying the contract and acting within the scope of his authority, that a court is convinced he committed serious error does not suffice to overturn his decision." *Id.* at 515 (quoting *United Paperworkers Int'l Union, AFL-CIO v. Misco, Inc.*, 484 U.S. 29, 38, 108 S.Ct. 364, 98 L.Ed.2d 286 (1987)).

III. ANALYSIS

A. Arbitrator did not Exceed Scope of Powers in Awarding Damages for Breach of Article 14(a)

LUG argues that "[t]here was nothing in Talent Creation's Notice of Arbitration that suggested Talent Creation would later allege a violation of Article 14(a) and seek to recover liquidated damages." Doc. #15, PAGEID #309 (citing Doc. #14-3, §§ 14(a), PAGEID #150). Rather, LUG claims, TC raised the Article 14(a) claim for the first time in its post-hearing brief, without obtaining LUG's consent to arbitrate the issue and without amending or supplementing its initial arbitration notice. *Id.* LUG argues that, because the International Rules of Arbitration require "a description of the claim and the

facts supporting it" before it can be the subject of binding arbitration, and because TC never provided any description of its Article 14(a) claim, that claim was not properly before the arbitrator; consequently, LUG argues, the arbitrator could not award damages on that claim. *Id.*, PAGEID #308-09 (quoting Int'l Arb. R. art. II(3)(e); citing 9 U.S.C. §§ 10(a)(4), 11(b); CONVENTION, art. V(1)(c); *Klepper v. Osborne*, No. 89-6050, 902 F.2d 33 (TABLE), 1990 WL 61115, at *3 (6th Cir. May 8, 1990); *Champion Int'l Corp. v. United Paperworkers Int'l Union*, 779 F.2d 328, 334-35 (6th Cir. 1985)).

TC argues that, for several reasons, its Article 14(a) claim was properly within the scope of arbitration, and that the arbitrator acted within her powers in adjudicating the claim. Doc. #16, PAGEID #348. First, TC claims, the scope of what the parties agreed to arbitrate was defined by the Agreement, not any rule or other document. *Id.*, PAGEID #349-50 (citing Restatement (Third) of the U.S. Law of International Commercial Arbitration, § 5-10, cmt. d; *RAKTA*, 508 F.2d at 976)). As Article 29(a) gives an arbitrator jurisdiction over "any claim or controversy arising out of or relating to the Agreement," *id.*, PAGEID #351 (quoting Doc. #14-3, § 29(a), PAGEID #155), TC argues that its Article 14(a) claim could be properly considered by the arbitrator, irrespective of when TC actually raised the claim. *Id.*, PAGEID #349 (citing Doc. #15, PAGEID #311). Second, the determination of "how and when the parties could raise particular claims . . . was a matter of arbitral procedure." *Id.*, PAGEID #351. Thus, even if the arbitrator had erred in allowing TC to raise the claim during or after the hearing, such an error is procedural, and not grounds for vacatur or modification. *Id.*, PAGEID #350 (citing *ANR Coal Co. v. Congentrix of N. Carolina, Inc.*, 173 F.3d 493,

499 (4th Cir. 1999); *Ministry of Defense of the Islamic Republic of Iran v. Gould, Inc.*, 969 F.2d 764, 771 (9th Cir. 1992)).

Third, TC argues, whether LUG consented to arbitrate the Article 14(a) claim is irrelevant, as the cases cited by LUG addressed whether Federal Rule of Civil Procedure 15—which does not apply to arbitration—allowed for amendment of pleadings by consent, and LUG cites no caselaw suggesting that TC was obligated under the ICDR to show consent to amendment. Doc. #16, PAGEID #352. Finally, TC argues, it presented evidence unique to the Article 14(a) claim at the evidentiary hearing, and because LUG responded to TC's claim and supporting evidence in its post-hearing briefing, it cannot reasonably claim that it was prejudiced by adjudication of that claim. *Id.*, PAGEID #353-54 (citing Doc. #14-2, ¶ 53, PAGEID #143; 14-6; 14-7).

As LUG and TC had agreed that any dispute arising out of the Agreement was subject to arbitration, Doc. #14-3, § 29, PAGEID #155, and the dispute regarding Article 14(a) fell squarely within the Agreement's subject matter, the arbitrator did not exceed her powers by considering TC's claim. Moreover, deference to an arbitrator's decision is particularly appropriate with respect to procedural matters, as this Court is not governed by, or even necessarily familiar with, ICDR Rules. Thus, the Court will not consider whether she violated those rules in adjudicating the claim. *ANR Coal*, 173 F.3d at 499; *Gould*, 969 F.2d at 771. LUG's Petition with respect to the Article 14(a) claim is overruled, and TC's Motion as to that claim is sustained.

B. Arbitrator did not Exceed Powers in Rejecting Laches Defense

As discussed above, LUG originally moved to dismiss TC's arbitration claim via the doctrine of laches. Doc. #14-4, PAGEID #171. LUG noted that TC unreasonably delayed, by waiting more than seventeen months after LUG informed TC that it would not pay TC for the unused raw material to file its arbitration notice, and that LUG would be unduly prejudiced if TC were allowed to proceed with its claims. Doc. #15, PAGEID #316. The arbitrator, finding "substantial disputed facts concerning . . . the argument of laches," reserved final decision on LUG's laches defense until "after the evidentiary hearing." Doc. #14-4, ¶ 3, PAGEID #171. LUG claims that the above statement constituted a promise by the arbitrator to make specific findings of fact and conclusions of law as to its laches defense. Doc. #15, PAGEID #317 n.6 (citing Doc. #14-4). However, in the Award, the arbitrator made no finding of fact or conclusion of law with respect to that defense. Doc. #14-2. LUG argues that "the arbitrator exceeded her authority by failing to provide an explanation for why she ignored LUG's laches defense," and her "refusal to apply the doctrine of laches to dismiss Talent Creation's claims amount[ed] to a manifest disregard of Ohio law." Doc. #15, PAGEID #317.

As discussed by the parties, Doc. #16, PAGEID #354; Doc. #19, PAGEID #406 (citations omitted), it is an open question in the Sixth Circuit as to whether "manifest disregard"— when "(1) the applicable legal principle is clearly defined and not subject to reasonable debate; and (2) the arbitrator refused to heed that legal principle," resulting in a decision that "fl[ies] in the face of clearly established precedent," *Coffee Beanery, Ltd. v. WW, L.L.C.*, No. 07-1830, 300 F. App'x 415, 418 (6th Cir. 2008) (quoting *Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Jaros*, 70 F.3d 418, 421 (6th Cir. 1995))—is still a

valid ground for refusing to confirm an arbitration award. However, the Court need not resolve that question, because the arbitrator's rejection of LUG's laches defense did not constitute manifest disregard. Under Ohio law, the doctrine of laches has the following elements: "(1) unreasonable delay or lapse of time in asserting a right, (2) absence of an excuse for such delay, (3) knowledge, actual or constructive, of the injury or wrong, and (4) prejudice to the other party." *U.S. Playing Card Co. v. The Bicycle Club*, 119 Ohio App. 3d 597, 603, 695 N.E.2d 1197 (1st Dist. 1997). "Whether laches should bar an action is a fact-sensitive determination," and appellate courts "review the trial court's application of the doctrine of laches for an abuse of discretion." *Gordon v. Reid*, 2d Dist. Montgomery No. 25507, 2013-Ohio-3649, ¶ 17 (citations omitted). As the arbitrator's decision on the issue is entitled to even greater deference, it must be upheld unless LUG shows, at the very least that the decision was "unreasonable, arbitrary or unconscionable." *Id*. (quoting *State v. Adams*, 62 Ohio St. 2d 151, 157, 404 N.E.2d 144 (1980)).

LUG falls well short of meeting that heavy burden. The Order contained no promise to provide specific findings of fact or conclusions of law as to LUG's laches defense. Rather, it simply stated that "[f]inal decision . . . is reserved for determination after the evidentiary hearing." Doc. #14-4, PAGEID #171. Moreover, by issuing the Award in favor of TC, the arbitrator implicitly rejected LUG's defense, and thus made the promised decision. The fact that she did not expressly address the laches defense is immaterial; an arbitrator need not explain her resolution of every question of law, and any failure to do so is not grounds for vacatur or modification. *See Dawahare v. Spencer*, 210 F.3d 666, 669 (6th Cir. 2000) (citing *Jaros*, 70 F.3d at 421) ("[a]rbitrators

are not required to explain their decisions. If they choose not to do so, it is all but impossible to determine whether they acted with manifest disregard for the law.").

Accordingly, the only question before the Court is whether the arbitrator blatantly disregarded Ohio law on laches. The arbitrator found that TC's delay in seeking arbitration had been done in reliance upon LUG's representation to TC that LUG would pay for unused raw material. Doc. #16, PAGEID #358 (citing Doc. #14-2, ¶ 45, PAGEID # 140-41). As there is at least some evidence that TC's delay in filing its claims was excusable, *U.S. Playing Card Co.*, 119 Ohio App. 3d at 603, the arbitrator's rejection of LUG's laches defense was not "unreasonable, arbitrary or unconscionable." *Gordon*, 2013-Ohio-3649, ¶ 17. Accordingly, LUG's Motion is overruled as to that defense.

C. Arbitrator did not Manifestly Disregard Ohio Law in Rejecting LUG's Statute of Limitations Defense

1. Factual Background

LUG argues that the statute of limitations in Ohio's UCC barred all of TC's claims, and that the arbitrator manifestly disregarded Ohio law in rejecting LUG's statute of limitations defense and awarding damages. Doc. #15, PAGEID #312. Specifically, LUG notes that the UCC's statute of limitations requires that a claim be brought within four years of a cause of action accruing, *id.* (quoting Ohio Rev. Code § 1302.98(A)), and, "[u]nder Ohio law, 'a cause of action for breach of contract accrues when the breach occurs.'" *Id.*, PAGEID #313 (quoting *Dudek v. Thomas & Thomas Attorneys & Counselors at Law, LLC*, 702 F. Supp. 2d 826, 839 (N.D. Ohio 2010)). LUG argues that the cause of action for breach of the non-solicitation provision, Article 14(b), accrued no later than August 2009, when TC became aware that Luo had formed a competing

company. *Id.*, PAGEID #313 (citing Doc. #14-2, ¶¶ 17, 19, 41, 47, PAGEID #134-35, 139, 141). As the statute of limitations on the Article 14(b) claim would have expired in August 2013, LUG contends, TC's failure to file its notice of arbitration until May 2015, meant that claim was time-barred.

As to TC's Article 13(a), 14(a) and 16(d) claims, Doc. #14-2, ¶¶ 36-37, 42, PAGEID #138, 140, LUG argues that, because it terminated the Agreement in May 2010, it could not have breached Articles 13(a), 14(a) and 16(d) any later than that time—a point which, LUG claims, TC conceded in its post-hearing brief. Doc. #15, PAGEID #314 (quoting Doc. #14-5, PAGEID #211). Thus, LUG argues, the statute of limitations for those claims ran no later than May 2014, approximately one year before TC filed its notice of arbitration, and TC's remaining claims were time-barred. *Id.*, PAGEID #314.

In the Award, the arbitrator noted that "[t]he Agreement's initial term was to expire on December 31, 2010, but either party could terminate the Agreement 'with or without cause upon giving the other party twelve (12) month's [*sic*] written notice.' Upon receipt of such notice, 'the parties shall wind down the relationship under this Agreement in accordance with the Covenant of Cooperation." Doc. #14-2, ¶ 39, PAGEID #139 (quoting Doc. #14-3, § 22(e), PAGEID #154). However, the arbitrator found that "LUG's termination of [the] Agreement was not a breach of contract[,] as the Agreement provides for termination [prior to the expiration of the Agreement]. Rather, LUG's breaches of the Agreement occurred when it notified Talent Creation in December 2013[,] that it would not pay for the raw material." *Id.*, ¶ 45, PAGEID #140. Further, "[i]nasmuch as LUG continued to do business with Mr. Luo's new company until

LUG was sold in December 2013, these breaches were of a continuing nature." *Id.*, ¶ 48, PAGEID #141. Thus, the arbitrator concluded, TC's cause of action did not accrue until December 2013, and TC's notice of arbitration was not untimely. *Id.*, ¶ 45, PAGEID #140.

2. Ohio Law on Statutes of Limitations in Arbitration is Unsettled

In its Motion, TC cites *NCR Corp. v. CBS Liquor Control, Inc.*, for the proposition that statutes of limitations do not apply to, and thus cannot operate to bar, an arbitration action. Doc. #14, PAGEID #123 (citing 874 F. Supp. 168, 172 (S.D. Ohio 1993) (Merz, Mag. J.), *modified on other grounds by* 1993 WL 767119 (S.D. Ohio Dec. 24, 1993) (Merz, Mag. J.), *affirmed by* 43 F.3d 1076 (6th Cir. 1995)). However, "that *NCR Corp.* [holding] is not a clearly defined legal principle. *NCR Corp.* has not been treated as controlling law by any other Court. In addition, [other courts] have indicated that a statute of limitations, albeit a federal one, would be applicable in arbitration." *Berkley v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, No. 1:06-cv-606, 2008 WL 755875, at *4 (S.D. Ohio Mar. 19, 2008) (Barrett, J.) (citing *Jaros*, 70 F.3d at 421 (6th Cir. 1995); *First Family Fin. Servs., Inc. v. Mollett*, No. 04-282-DLB, 2006 WL 695258, at *8 (E.D. Ky. Mar. 17, 2006)). Moreover, LUG does not cite—and the Court is unaware of—any case in which a court applied an Ohio statute of limitations in vacating or modifying an arbitration award. As the law regarding the applicability of statute of limitations is unsettled, the arbitrator's decision to reject LUG's defense could not have violated "clearly established precedent," *Jaros*, 70 F.3d at 421, and the rejection was not in manifest disregard of Ohio law. LUG's Petition fails for that reason alone.

3. Rejection of Statute of Limitations Defense not Manifest Disregard of Ohio Law

Even if the statute of limitations were to apply, TC argues that, for two reasons, the arbitrator's conclusion that LUG's breaches were of a continuing nature was not in manifest disregard of Ohio law. First, it argues that two sections of the Agreement provide support for the arbitrator's reasoning: (1) Article 22(e), which required the parties to "wind down the relationship under the Agreement in accordance with the Covenant"; and (2) Article 13(a), the Covenant, which requires the parties to cooperate "to minimize at termination the amount of finished goods, work in process and raw materials." Doc. #14-3, §§ 13(a), 22(e), PAGEID #149, 154. TC claims that, after termination, LUG placed orders with Luo's company "that LUG had previously placed with Talent Creation, thus increasing rather than minimizing the 'cost and loss to' Talent Creation occasioned by termination," in violation of Article 13(a). Doc. #16, PAGEID #357 (emphasis in original).

Second, LUG "repeatedly assured Talent Creation that it would pay for the raw material, or at least some of it, acknowledging that it had such an obligation, . . . while promising it would give new business to Talent Creation." Doc. #14, PAGEID #126 (quoting Doc. #14-2, ¶ 45, PAGEID #140-41). In so doing, TC argues, LUG continued to violate Articles 13(a) and 22(e) as late as December 2013, when it informed TC that it would not pay for any of the raw material that TC had stored as inventory. Doc. #14-2, ¶ 34, PAGEID #138. Thus, the arbitrator's conclusion that LUG's breaches of the Agreement were continuous, *id.*, ¶ 48, PAGEID #141, was not clearly erroneous, and because TC filed its claim within four years of December 2013, the arbitrator's rejection of LUG's statute of limitations defense was not in manifest disregard of the law.

LUG counters that the arbitrator's application of the continuing violations doctrine has no basis in Ohio law. Doc. #17, PAGEID #372-73. In support, LUG argues that, under Ohio law, "a continuing violation is occasioned by continual unlawful acts, not continual ill effects from an original violation." *Id.*, PAGEID #373 n.2 (quoting *State ex rel. Nickoli v. Erie Metroparks*, 124 Ohio St.3d 449, 2010-Ohio-606, 923 N.E.2d 588, ¶ 32). Moreover, LUG argues that, even assuming *arguendo* that it had breached Articles 13(a) or 22(e) as recently as December 2013, any such breach was beyond the scope of the Award. Doc. #19, PAGEID #409. Rather, the Award focused on LUG's alleged breaches of Articles 14(a) and 14(b); as LUG's duties under those sub-articles ended when it terminated the contract in May 2010, the statute of limitations for TC's claims expired in May 2014. *Id.*, PAGEID #410-11 (quoting Ohio Rev. Code § 1302.01(13) ("[o]n 'termination' all obligations which are still executory on both sides are discharged but any right based on prior breach or performance survives.")).

As discussed above, the arbitrator acted within her powers in adjudicating any and all disputes arising out of the Agreement, including any breach of Articles 13(a) or 22(e), regardless of whether allegations of breach were included in the notice of arbitration. Also, the Court notes that the Agreement was to "continue in effect up to and including December 31, 2010," Doc. #14-3, § 24(a), PAGEID #154, and required the parties, if they wished to terminate before that date, to provide at least twelve months written notice. *Id.*, § 22(e). As LUG did not notify TC of its intent to terminate until May 2010, the Agreement was in effect until at least December 31, 2010. Moreover, the Agreement required the parties to "wind down the relationship under this Agreement in accordance with the Covenant of Cooperation . . . ." *Id.* Thus, even after

December 31, 2010, the parties continued to have obligations to each other under the Agreement. *Id.*, § 13(a), PAGEID #149. Further, as the Covenant required LUG to minimize the cost and loss to TC as a result of its termination, *id.*, the arbitrator's conclusion that LUG, by doing business with Luo's company, rather than TC, between May 2010, and December 2013, had breached that continuing obligation, Doc. #14-2, ¶ 45, PAGEID #140-41, was not unreasonable or arbitrary.

Finally, LUG's obligations under Article 14(b), the non-solicitation clause, continued "for twenty four (24) months . . . following the termination or expiration of this Agreement," Doc. #14-3, § 14(b), PAGEID #150—that is, until December 31, 2012. While LUG argues that it could not have violated the non-solicitation clause after Luo left TC, Doc. #15, PAGEID #314, the arbitrator found that LUG "encouraged . . . other employees to terminate their employment with Talent Creation." Doc. #14-2, ¶ 47, PAGEID #147. As the Award does not list any dates on which other employees left TC, it is plausible to conclude that some of those employees were enticed to leave on or after June 1, 2011—*i.e.*, less than four years prior to TC commencing the arbitration action. Doc. #14, PAGEID #111. Given the strong pro-enforcement biases of the Convention and FAA, such plausibility is sufficient to uphold the Award.

In sum, even if the statute of limitations applies to TC's claims, it is not clear that the arbitrator failed to apply the statute properly. Thus, LUG has fallen short of its burden to show that the arbitrator rejected the defense in manifest disregard of Ohio law. LUG's Petition is overruled, and TC's Motion is sustained, as to the above argument.

IV. CONCLUSION

For the foregoing reasons, the Motion of Talent Creation, Ltd. to Confirm Arbitration Award, Doc. #10, is SUSTAINED, and G&K Services LUG, LLC's Petition to Vacate Arbitration Award, Doc. #1, is OVERRULED. LUG's requests for oral argument, Doc. #15, PAGEID #303; Doc. #17, PAGEID #363; Doc. #19, PAGEID #398, are overruled. Judgment shall enter in favor of TC and against LUG pursuant to the Award.

The captioned case is hereby ordered terminated upon the docket records of the United States District Court for the Southern District of Ohio, Western Division, at Dayton.

Date: February 23, 2017

WALTER H. RICE
UNITED STATES DISTRICT JUDGE