UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 16-81719-CIV-MIDDLEBROOKS

INTERNAVES DE MEXICO s.a. de C.V.,

Plaintiff,

v.

ANDROMEDA STEAMSHIP CORPORATION, AMERICAN NAVIGATION, INC., PEGASUS LINES, LTD. S.A., PANAMA, and JAMES KARATHANOS,

Defendants.
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ORDER DENYING DEFENDANTS' EMERGENCY MOTION FOR STAY PENDING APPEAL

THIS CAUSE comes before the Court upon Defendants Andromeda Steamship Corporation, American Navigation, Inc., Pegasus Lines, Ltd. S.A., Panama, and James Karathanos' (collectively, "Defendants") Emergency Motion for Stay Pending Appeal ("Motion"), filed on May 30, 2017. (DE 45). Plaintiff Internaves De Mexico s.a. de C.V. ("Plaintiff") filed a Response in opposition on June 2, 2017 (DE 47), to which Defendants replied on June 5, 2017 (DE 48). For the reasons stated below, the Motion is denied.

This action stems from a dispute over a shipping contract. The Parties entered into a Charter Party which required that any disputes under the contract would be resolved by arbitration. On January 13, 2017, Defendants filed a Motion to Compel Arbitration in London, England ("Motion to Compel"). (DE 20). On March 28, 2017, the Court issued an order granting in part and denying in part the Motion to Compel. (DE 35). The Motion to Compel was granted insofar as the Parties were directed to arbitrate but denied insofar as Defendants

sought to hold arbitration in London. The Court reasoned that the Charter Party was ambiguous as to where arbitration was to be held, since different clauses named either London or New York as the site. Further, the clauses meant to resolve discrepancies between contract provisions themselves contradicted each other. The Court found that when presented which an arbitration clause that fails to adequately specify a place of arbitration, a district court only has the power to compel arbitration in its own district. The Parties were therefore ordered to submit their dispute arbitration proceedings in Miami, Florida under the auspices of the American Arbitration Association ("AAA"). (DE 37). Subsequently, Defendants appealed the Court's March 28, 2017 Order to the Eleventh Circuit. (DE 39). While Defendants' appeal was pending, Plaintiff initiated arbitration proceedings before the AAA pursuant to the Court's order. (DE 45 at 3). On May 26, 2017, the arbitral tribunal declined to halt proceedings pending Defendants' appeal. (*Id.* & Ex. A). Defendants then brought the instant Motion.

In the Motion, Defendants request that the Court stay its order compelling arbitration pending its appeal to the Eleventh Circuit. They argue that they have satisfied the four factors identified in *Hilton v. Braunskill*, 481 U.S. 770 (1987), for staying an order pending an appeal, as permitted by Fed. R. Civ. P. 62(c). *Hilton*, 481 U.S. at 776. Utilizing the same standard, Plaintiff responds that Defendants have failed to prove that a stay is warranted. I agree with Plaintiff.

Rule 62 provides that a court may suspend an order granting an injunction while an appeal of that order is pending. Fed. R. Civ. P. 62(c). The Eleventh Circuit has cautioned that exercise of this authority should be reserved for "exceptional" circumstances. *Garcia-Mir v. Meese*, 781 F.2d 1450, 1453 (11th Cir. 1986). The enjoining court considers the following four factors in deciding whether to suspend an injunction: "(1) whether the stay applicant has made a

strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies." *Hilton*, 481 U.S. at 776.

The first factor is "ordinarily" the "most important." *Garcia-Mir*, 781 F.2d at 1453. Defendants argue that they are likely to succeed on the merits because the Charter Party at issues clearly provides for arbitration in London. But this statement does nothing more than recapitulate the argument Defendants advanced in their Motion to Compel. It does not challenge the Court's reasoning that there is a tension between Defendants' championed clause and the clause in which similar language has been struck through. In their Reply, Defendants point to language from the Court's Order observing that the Eleventh Circuit has not appeared to address how to resolve ambiguity in the arbitration forum. But just because the question is one of first impression, does not mean that Defendants are likely to succeed. Accordingly, Defendants fail to satisfy the first factor.

Defendants argue that the second factor is fulfilled in that they "will be prejudiced if ordered to arbitrate while the appeal is pending because the forum and law are threshold issues that inevitably impact the handling and disposition." (DE 45 at 6). In addition, Defendants claim that by engaging in arbitration while simultaneously pursuing an appeal, they will suffer through duplicative proceedings, which are "ineffective and potentially harmful to both parties." (*Id.*).[1] Both of these claims are conclusory. They do not identify any concrete harm that will

[1] To support its position, Defendants cite to *Blinco v. Green Tree Servicing, LLC*, 366 F.3d 1249 (11th Cir. 2004), where the Eleventh Circuit held that a district court should, upon a party's motion, stay a non-frivolous appeal of an order *denying* a motion to compel arbitration. *Blinco*, 366 F.3d at 1251. The Court there did note that multiple proceedings cut against the aims of arbitration to reduce the "high costs and time involved in judicial dispute resolution." *Id.* But

befall Defendants outside of a courtroom. As Plaintiff notes, prejudice does not exist merely by virtue of the party opposing arbitration having to expend additional time and money to arbitrate. *United Paperworkers International, Local No. 395 v. ITT Rayonier, Inc.*, 752 F. Supp. 427, 431 (M.D. Fla. 1990). Indeed, the Seventh Circuit colorfully characterizes litigants who seek stays of arbitration on this basis as "whistling in the dark." *Chicago Paper Handlers' & Electrotypers' Local 2 v. Chicago Tribune Co.*, 779 F.2d 13, 16 (7th Cir. 1985). Therefore, the prejudice factor is not satisfied.

It is not likely that Plaintiff will be substantially injured by granting a stay. Defendants acknowledge that Plaintiff would face the inconvenience of a delay in the arbitration proceedings. Plaintiff adds that a stay will make it more expensive to recover the funds it seeks, though it does not explain how. Just as Defendants' expenditure of additional time and money does not constitute genuine prejudice, so too does the same prospect for Plaintiff not count as substantial harm. Nonetheless, success on this prong alone is not enough for Defendants to carry their burden.

Finally, Defendants argue that public policy mandates a stay because multiple proceedings on the same matter are disapproved. First, the two proceedings are not on the same matter as one deals with the threshold issue of the correct arbitration forum and the other confronts the merits of the case. Second, while it may be true that multiple proceedings are sub-optimal, Defendants cite no authority for the proposition that this fact amounts to a public policy consideration. Were it against public policy to compel arbitration while a dissatisfied party

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the facts here are distinguishable. The *Blinco* Court was concerned about district courts moving forward to adjudicate controversies that did not belong in that forum. Here, the Court divested itself of jurisdiction by compelling arbitration (as Defendants actually sought) and no further activity will take place in this forum, even if Defendants succeed on appeal. Only the place of arbitration will change.

pursues an appeal, the Federal Rules would have made a stay automatic and not, as discussed above, an exceptional remedy. The fourth factor weighs against Defendants.

For the foregoing reasons, Defendants have failed to show they are entitled to the exceptional remedy of a stay of arbitration. It is hereby **ORDERED** and **ADJUDGED** that Defendants Andromeda Steamship Corporation, American Navigation, Inc., Pegasus Lines, Ltd. S.A., Panama, and James Karathanos' Emergency Motion for Stay Pending Appeal (DE 45) is **DENIED**.

DONE AND ORDERED in Chambers at West Palm Beach, Florida this 8 day of June, 2017.

DONALD M. MIDDLEBROOKS
UNITED STATES DISTRICT JUDGE

cc: All Counsel of Record