UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF FLORIDA
Miami Division

Case Number: 16-23894-CIV-MARTINEZ-GOODMAN

DEL MONTE INTERNATIONAL, GMBH,

Plaintiff,

vs.

TICOFRUT S.A.,

Defendant.
_____/

ORDER DENYING MOTION TO REMAND

THIS CAUSE came before the Court upon Plaintiff's Motion to Remand and for the Award of Attorneys' Fees, Costs, Expenses and Damages (the "Motion") [ECF No. 15]. The Court has considered the Motion, Defendant's response [ECF No. 34], Plaintiff's reply [ECF No. 48], the Notice of Removal [ECF No. 1], and the pertinent portions of the record, and is otherwise fully advised in the premises. For the reasons set forth below, the Motion is denied.

I. Background

Plaintiff and non-party Inversiones y Procesadora Tropical, S.A. ("INPROTSA") entered into an agreement dated May 9, 2001 (the "Agreement"). Pursuant to the Agreement, INPROTSA agreed to sell MD-2 pineapples to Plaintiff. The Agreement provided that, upon its termination, INPROTSA was required to comply with two restrictive covenants: (a) destroy or return to Plaintiff all of the MD-2 pineapple plants; and (b) refrain from selling any MD-2 pineapples to anyone other than Plaintiff.

After the Agreement terminated on December 15, 2013, INPROTSA breached the restrictive covenants by (a) refusing to destroy or return to Plaintiff the MD-2 pineapples and plants, and (b) selling MD-2 pineapples to Plaintiff's competitors. As a result of INPROTSA's breach of the Agreement, Plaintiff filed an arbitration action in Miami, Florida in March 2014,

with the International Chamber of Commerce ("ICC"), Case No. 20097/RD, pursuant to the arbitration clause in the Agreement and asserted claims against INPROTSA for money damages, specific performance, and permanent injunctive relief.

On June 10, 2016, the arbitral tribunal issued an award (the "Arbitral Award"), finding that: (i) certain clauses of the Agreement "are valid and enforceable under their own terms;" (ii) INPROTSA is obligated under the Agreement to return or destroy 93% of certain vegetative materials that had originated from MD-2 pineapple seeds provided to it by Plaintiff; (iii) INPROTSA is permanently enjoined from selling produce originating from those seeds to third parties until it has complied with that obligation, except INPROTSA may sell 7% of its produce to third-parties; and (iv) INPROTSA is required to pay Plaintiff $26,133,000.00 in damages plus interest, costs, and fees.

In its Complaint, Plaintiff asserts five claims against Defendant: (a) tortious interference (Count I); (b) aiding and abetting INPROTSA's breach of the Agreement (Count II); (c) aiding and abetting INPROTSA's breach of the permanent injunction contained in the Arbitral Award (Count III); (d) conspiring with INPROTSA to violate the permanent injunction in the Arbitral Award (Count IV); and (e) conspiring with INPROTSA to breach the Agreement (Count V).

II. Discussion

Plaintiff argues that this case should be remanded, because the Court lacks subject matter jurisdiction under 9 U.S.C. § 203 and removal jurisdiction under 9 U.S.C. § 205. *See Albaniabeg Ambient Sh.p.k. v. Enel S.p.A.*, 169 F. Supp. 3d 523, 528 (S.D.N.Y. 2016) ("[C]ourts in this District treat Section 205 as a removal statute that does not confer subject matter jurisdiction. In making a determination as to subject matter jurisdiction, courts look to Section 203."). Defendant asserts that this case should not be remanded, because Section 205 has been satisfied and such section confers subject matter jurisdiction. The Court will first address whether removal was proper under Section 205, and then whether the Court has subject matter jurisdiction under Section 203.

Under Section 205, a party may remove an action to federal court if the subject matter of the action relates to an arbitral award under The Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the "Convention"). The Eleventh Circuit has not interpreted the term "relates to" in such section. *See Key Motors Ltd. v. Hyundai Motor Co.*, 2016 WL 7364756, at *3 (S.D. Fla. Oct. 31, 2016). The Fifth, Eighth, and Ninth Circuits have given this term an expansive definition. *See 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). Recently, the Fifth Circuit noted that "relates to" means "has some connection, has some relation, or has some reference to." *Stemcor USA Inc. v. Cia Siderurgica do Para Cosipar*, No. 16-30984, 2017 WL 3821785, at *2 (5th Cir. Sept. 1, 2017) (internal quotation marks omitted).

Here, the action is removable under Section 205 because Plaintiff's claims against Defendant relate to the Arbitral Award. Plaintiff alleges generally that because of INPROTSA's breaches of the Agreement, Plaintiff sought arbitration with the ICC. The arbitral tribunal issued the Arbitral Award interpreting the Agreement, applying it to the facts of the dispute, enforcing certain of its provisions by an order of specific performance, and enjoining INPROTSA from selling ninety-three percent of its MD-2 pineapples to third-parties. Plaintiff alleges that it informed Defendant that it was violating prohibitions of the Agreement and the Arbitral Award's permanent injunction. Plaintiff realleges these points in each count against Defendant. Furthermore, Plaintiff clarifies that its rights under the Agreement have been "ratified and confirmed" by the Arbitral Award, or otherwise that the Arbitral Award gives rise to Plaintiff's claims against Defendant, thus relating its claims to the Arbitral Award in every count.

With respect to Section 203, federal courts have jurisdiction to hear actions seeking to enforce an award falling under the Convention. *See Vaden v. Discover Bank*, 556 U.S. 49, 59 n.9 (2009). The first step for determining subject matter jurisdiction is deciding whether the award falls under the Convention. *See Stemcor*, 2017 WL 3821785, at *2. The next step is to ask whether the action or proceeding falls under the Convention. *See id.* The Convention's removal statute offers guidance on what "falling under" means because generally, the removal jurisdiction of the federal district courts extends to cases over which they have original jurisdiction. *See id.* Section 205 allows for removal whenever the subject matter of an action or proceeding pending in a State court relates to an award falling under the Convention. *See id.* As discussed above, "relates to" means "has some connection, has some relation, or "has some reference to." *Id.* ("And reading 'falling under' to mean 'relates to' makes sense grammatically.") "Fall" means "to come within the limits, scope, or jurisdiction of something." *Id.* Accordingly, the second step of the jurisdictional question is asking whether the "action or proceeding" "relates to" a covered arbitration award. *Id.*

Here, the Court has subject matter jurisdiction under Section 203, because the Arbitral Award falls under the Convention and the dispute between the parties relates to that Arbitral Award. After careful consideration, it is hereby:

ORDERED AND ADJUDGED that Plaintiff's Motion to Remand and for the Award of Attorneys' Fees, Costs, Expenses and Damages [ECF No. 15] is **DENIED**.

DONE AND ORDERED in Chambers at Miami, Florida, this 27 day of September, 2017.

JOSE E. MARTINEZ
UNITED STATES DISTRICT JUDGE

Copies provided to:
Magistrate Judge Goodman
All Counsel of Record