

ENTERED

January 25, 2018

David J. Bradley, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

YPF S.A., *et al*,

Petitioners,

VS.

APACHE OVERSEAS, INC., *et al*,

Respondents.

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CIVIL ACTION NO. 4:17-CV-178

ORDER

Pending before the Court is Petitioners YPF S.A. and YPF Europe B.V.’s (together, “YPF”) Emergency Motion to Stay Arbitration, or in the alternative to Enjoin Arbitration (Doc. 29). Having considered the motion, response, reply, and sur-reply, the Court denies the motion.

On April 21, 2016, Petitioner YPF and Respondents Apache Overseas Inc. and Apache International Finance II S.A.R.L. (together, “Apache”) submitted a dispute to KPMG for arbitration. KPMG rendered an Award in favor of YPF, and YPF filed a motion for the Court to confirm that Award. Based on the highly deferential standard of review used by courts to review arbitration awards under the Federal Arbitration Act, the Court confirmed the Award. Apache appealed that ruling to the Fifth Circuit. The appeal is currently pending.

Meanwhile, Apache disputes the process used by KPMG to arrive at the Award and has initiated an ICC arbitration proceeding against KPMG pursuant to the terms of the Engagement Letter signed by Apache and KPMG. YPF wishes to stay the ICC arbitration proceeding until the federal litigation is finalized. Alternatively, YPF requests that the Court enjoin Apache from proceeding with the ICC arbitration until the federal litigation is finalized.

A federal court may stay an arbitration only in “exceptional circumstances.” *Tai Ping Ins. Co. v. M/V Warschau*, 731 F.2d 1141, 1144 (5th Cir. 1984); *Dahiya v. Talmidge Intern., Ltd.*,

371 F.3d 207, 216 (5th Cir. 2004) (“[O]nly the most exceptional circumstances will justify any action ... that serves to impede arbitration of an arbitrable dispute.”); *see also Int’l Bancshares Corp. v. Lopez*, 2014 WL 12599517, at *2 (S.D. Tex. Sept. 2, 2014). The Federal Arbitration Act exists in part to ensure that courts cannot undermine contractual agreements to arbitrate disputes. *Southland Corp. v. Keating*, 465 U.S. 1, 13 (1984).

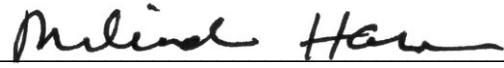
YPF is concerned that the results of the ICC arbitration may undermine the Court’s Confirmation because KPMG has insisted to the Secretariat of the ICC that YPF is a required party to the arbitration. However, this situation, though complex, does not call for a complete stay of Apache’s proceeding against KPMG; it is possible for the dispute between Apache and KPMG to be resolved without undermining the Court’s Judgment regarding YPF in this action. Indeed, Apache maintains that the ICC arbitration proceeding is separate from the federal litigation and can exist simultaneously and accordance with it. Should the ICC arbitration result in an outcome that does undermine court orders, the Federal Arbitration Act authorizes a federal court to set aside an arbitral award “where the arbitrators exceeded their powers.” Federal Arbitration Act § 10(a)(4).

The Court finds that Apache has a contractual right to arbitrate its dispute with KPMG, and it is not appropriate for the Court to interfere with that right by issuing a stay or an injunction at this time. The current circumstances do not rise to the level of exceptionality required for the Court to take the extraordinary step of staying or enjoining the arbitration proceeding which Apache has a contractual right to bring against KPMG.

Accordingly, it is hereby

ORDERED that Petitioner YPF's motion (Doc. 29) is DENIED.

SIGNED at Houston, Texas, this 25th day of January, 2018.

A handwritten signature in black ink, appearing to read "Melinda Harmon", written over a horizontal line.

MELINDA HARMON
UNITED STATES DISTRICT JUDGE