UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 18-20859-CIV-ALTONAGA/Goodman

CAPORICCI U.S.A. CORP.,

Plaintiff,

v.

PRADA S.p.A., *et al.*,

Defendants.
_____/

ORDER

THIS CAUSE came before the Court on Defendants, Prada S.p.A and GNP Pelli di Pezzoli Gian Andrea's Joint Motion to Compel Arbitration . . . [ECF No. 37], filed April 10, 2018. Plaintiff, Caporicci U.S.A. Corporation, filed a Response [ECF No. 46] on April 30, 2018. Defendants request an order compelling Plaintiff to submit this dispute to arbitration under the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the "Convention"). The Convention is a treaty requiring courts of a signatory country to give effect to commercial arbitration agreements in international contracts between private parties. *See Scherk v. Alberto-Culver Co.*, 417 U.S. 506, 520 n.15 (1974).

The United States adopted and implemented the Convention in Chapter 2 of the Federal Arbitration Act ("FAA"), 9 U.S.C. sections 201 to 208. *See id.* "The goal of the Convention, and the principal purpose underlying American adoption and implementation of it, was to encourage the recognition and enforcement of commercial arbitration agreements in international contracts and to unify the standards by which agreements to arbitrate are observed . . . ." *Bautista v. Star Cruises*, 396 F.3d 1289, 1299 (11th Cir. 2005) (alteration added; emphasis omitted) (quoting *Scherk*, 417 U.S. at 520 n.15). Where an international contract provides for

arbitration, disputes related to that contract must be arbitrated rather than litigated in court. *See Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614, 629–31 (1985).

"Further, a district court must be mindful that the Convention Act generally establishes a strong presumption in favor of arbitration of international commercial disputes." *Escobar v. Celebration Cruise Operator, Inc.*, 805 F.3d 1279, 1286 (11th Cir. 2015) (internal quotation marks and citation omitted). Because the presumption in favor of arbitration "applies with special force in the field of international commerce," *Mitsubishi*, 473 U.S. at 631, the Court must enforce international arbitration clauses even if "a different resolution would be reached in a purely domestic setting" under the FAA. *Escobar*, 805 F.3d at 1286 (internal quotation marks and citation omitted).

When faced with a motion to compel arbitration under the Convention, the Court conducts "a very limited inquiry." *Id.* at 1285 (internal quotation marks omitted) (quoting *Bautista*, 396 F.3d at 1294). The Eleventh Circuit has held "the Convention *requires* that a motion to compel arbitration must be granted so long as (1) the four jurisdictional prerequisites are met and (2) no available affirmative defense under the Convention applies." *Suazo v. NCL (Bahamas), Ltd.*, 822 F.3d 543, 546 (11th Cir. 2016) (emphasis in original; internal quotation marks and citations omitted).

The four jurisdictional prerequisites to enforcement of an international arbitration agreement under the Convention are "(1) the agreement is in writing within the meaning of the [] Convention; (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 (alterations added; internal quotation marks and other

citation omitted omitted) (quoting *Bautista*, 396 F.3d at 1294–95 & n.7). At the motion-to-compel stage, "the only affirmative defense to arbitration is a defense that demonstrates the arbitration agreement is 'null and void, inoperative or incapable of performance.'" *Id*. at 1288 (footnote call number and citations omitted).

Defendants argue this dispute satisfies the four jurisdictional prerequisites and is subject to arbitration under the Convention because:

> The Purchase Agreement containing the arbitration clause is in writing, arises out of a commercial relationship, and provides for arbitration in Italy, a signatory nation. Prada is not an American citizen, as it is an Italian corporation with its principal place of business in Italy. Caporicci has raised no affirmative defense in this litigation or in its Statement of Defense filed in the ongoing arbitration proceeding in Milan.

(Mot. 8–9). In its Response, Plaintiff entirely fails to address the four jurisdictional prerequisites under the Convention. (*See generally* Resp.). Indeed, the word "Convention" does not appear at all in Plaintiff's Response, and none of the cases it cites addresses the standard for compelling international arbitration under the Convention. (*See generally id.*).

Instead, relying almost exclusively on Florida state-court cases, Plaintiff argues (1) the Purchase Agreement does not apply to the allegations of this case, and thus the claims as alleged in the Complaint are not subject to the Agreement's arbitration clause; (2) GNP Pelli and Donald Farms are not parties to the Purchase Agreement, and therefore the claims against them are not subject to arbitration; and (3) Defendants waived their right to arbitration by filing removal papers in federal court. (*See id*. 3–4; 8).

Because Plaintiff's arguments do not (1) contest Defendants' assertion the four jurisdictional factors are met; or (2) show the arbitration agreement is null and void, the Court must grant Defendants' motion to compel arbitration. *See Suazo*, 822 F.3d at 546 ("[T]he Convention *requires* that a motion to compel arbitration must be granted so long as (1) the four

jurisdictional prerequisites are met and (2) no available affirmative defense under the Convention applies." (emphasis in original; alteration added; citations omitted)).

Nevertheless, the Court will briefly address Plaintiff's three arguments. Plaintiff's arbitration agreement with Prada states "all disputes arising out of or in connection with this Agreement shall be finally settled under the Rules of the Chamber of National and International Arbitration of Milan . . . ." (Letter of Intent [ECF No. 37-3] ¶ 11 (alteration added)). The arbitration agreement is contained within a contract between Plaintiff and Prada for the purchase of alligator hatchlings and eggs. (*See generally id.*).

Plaintiff's claims relate to agreements it entered to fulfill its contract with Prada, as well as its agreement with Prada itself. (*See generally* Complaint [ECF No. 1-2]). Had Plaintiff not entered into its agreement with Prada, none of the events underlying its claims would have come to pass. Mindful that as a matter of federal law, "any doubts concerning the scope of arbitral issues should be resolved in favor of arbitration," the Court finds Plaintiff's claims against each Defendant clearly relate to its agreement with Prada and thus fall under the Convention. *See Martinez v. Carnival Corp.*, 744 F.3d 1240, 1246 (11th Cir. 2014) (internal quotation marks and citation omitted) (granting motion to compel arbitration where parties agreed to arbitrate "any and all disputes arising out of or in connection with this Agreement").

Plaintiff's second argument is without merit because "each of these defendants — whether or not a signatory to the [] Agreement — can invoke the arbitration clause in [] light of their close relationship to the parties to the agreement." *Olsher Metals Corp. v. Olsher*, No. 03-12184, 2004 WL 5394012, at *3 (11th Cir. Jan. 26, 2004) (alterations added; citation omitted). Plaintiff's claims against the non-signatories "factually relate to the interpretation and performance of the [] [a]greement," and are inextricably intertwined with its claims against

Prada. *Id*. (alterations added; internal quotation marks omitted); *see also Escobal v. Celebration Cruise Operator, Inc.*, 482 F. App'x 475, 476 (11th Cir. 2012). Thus, all claims must be submitted to arbitration.

Plaintiff's third argument also fails. The Convention Act allows removal of a case for the purpose of arbitration "at any time before the trial thereof." 9 U.S.C. § 205. Defendants removed this action before trial for the express purpose of compelling arbitration under the Convention. (*See* Notice of Removal [ECF No. 1] ¶ 10).

A party only waives arbitration if it "substantially participates in litigation to a point inconsistent with an intent to arbitrate and this participation results in prejudice to the opposing party." *Morewitz v. W. of Eng. Ship Owners Mut. Prot. & Indem. Ass'n (Luxembourg)*, 62 F.3d 1356, 1366 (11th Cir. 1995) (citing *Price v. Drexel Burnham Lambert, Inc.*, 791 F.2d 1156, 1158 (5th Cir. 1986)). Even if Defendants *had* participated in state court litigation, the liberal standard under the Convention allows Defendants to remove to federal court "at any time before the trial" to compel arbitration. 9 U.S.C. § 205.

Defendants have asserted their right to arbitration consistently since removing the case. (*See generally* Notice of Removal; Motion to Compel Arbitration [ECF No. 25]; Answers [ECF Nos. 29 to 31]). Plaintiff's assertion Defendants waived arbitration "by filing removal papers, answers and other papers herein" (Resp. 8), does not show Defendants *substantially* participated in litigation to a point inconsistent with the intent to arbitrate. *See Dockeray v. Carnival Corp.*, 724 F. Supp. 2d 1216, 1223 (S.D. Fla. 2010) (compelling arbitration even though Defendant "filed an answer and affirmative defenses and a motion for an extension of time"). Furthermore, Plaintiff has not asserted it was prejudiced, and its waiver argument fails on that ground alone. *See id.*

Because Defendants have satisfied the four jurisdictional prerequisites under the Convention, and because Plaintiff has not raised any applicable affirmative defense under the Convention, Defendants' Motion must be granted. *See Bautista*, 396 F.3d at 1294.

Accordingly, it is

ORDERED AND ADJUDGED that the Motion **[ECF No. 37]** is **GRANTED**. All counts in the Complaint **[ECF No. 1-2]** are referred to arbitration before the Chamber of National and International Arbitration in Milan. The case is **STAYED** to allow the parties to arbitrate Plaintiff's claims. The Clerk is directed to administratively **CLOSE** this case, and all pending motions are **DENIED AS MOOT**.

DONE AND ORDERED in Miami, Florida, this 7th day of May, 2018.

Cecilia M. Altonaga

CECILIA M. ALTONAGA
UNITED STATES DISTRICT JUDGE

cc: counsel of record