IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

VALUEPART, INC.,	)	
	)	
Plaintiff,	)	No. 14-cv-03004
	)	
v.	)	Judge Amy J. St. Eve
	)	
RICHARD M. FARQUHAR,	)	
	)	
Defendant.	)	

ORDER

Plaintiff ValuePart, Inc. ("VPI") has moved the Court for the issuance of letters rogatory pursuant to Federal Rule of Civil Procedure 28(b), 28 U.S.C. § 1781(b), and the Hague Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters (the "Hague Convention"). (R.37). VPI seeks to obtain oral testimony from two non-party witnesses located in Italy. Defendant objects to this request. (R.39). Specifically, Defendant notes that the Court stayed this action pending arbitration. Under applicable arbitration rules, Defendant argues, neither an arbitrator nor a federal court has the power to compel non-parties to give pre-hearing oral testimony. For the reasons discussed below, the Court denies VPI's motion.

ANALYSIS

On September 29, 2014, the Court granted Defendant's motion to compel arbitration pursuant to the Federal Arbitration Act, 9 U.S.C. § 1, *et seq* ("FAA"). (R.20). The Court found that the parties' written agreement contained a valid arbitration clause, requiring the parties to arbitrate before the American Arbitration Association. (*Id.*). Accordingly, the Court stayed these proceedings pursuant to Section 3 of the FAA. *See* 9 U.S.C. § 3 (providing that if an agreement is governed by a valid arbitration provision, the court "shall on application of one of the parties stay the trial of the action until such arbitration has been had in accordance with the terms of the agreement"). VPI now requests the Court's assistance in obtaining discovery for use in the arbitration.

Courts have recognized "the concept of arbitration as a more efficient and cost-effective mechanism for the resolution of disputes than formal litigation." *Matria Healthcare, LLC v. Duthie*, 584 F. Supp. 2d 1078, 1082 (N.D. Ill. 2008). This concept contemplates limited discovery. *See, e.g.*, *Nat'l Broad. Co. v. Bear Stearns & Co.*, 165 F.3d 184, 190-91 (2d Cir. 1999) ("The popularity of arbitration rests in considerable part on its asserted efficiency and cost-effectiveness—characteristics said to be at odds with full-scale litigation in the courts, and especially at odds with the broad-ranging discovery made possible by the Federal Rules of Civil Procedure"). Accordingly, the FAA limits the scope of permissible non-party discovery in

private arbitration proceedings. *See id.* at 187 ("the Federal Arbitration Act . . . is the exclusive means for obtaining evidence from non-parties in connection with private arbitration proceedings").

Specifically, Section 7 of the FAA provides that arbitrators "may summon in writing any person to attend *before them* or any of them as a witness" and, "upon petition to the United States district court for the district in which such arbitrators, or a majority of them, are sitting may compel the attendance of such person or persons *before said arbitrator or arbitrators*." (emphasis added). As VPI recognizes, Section 7 unambiguously authorizes an arbitrator to compel a non-party to give testimony before the arbitrator. *See Alliance Healthcare Servs., Inc. v. Argonaut Private Equity, LLC*, 804 F. Supp. 2d 808, 811 (N.D. Ill. 2011). This authority is inapposite, however, because VPI does not seek to compel the Italian citizens to give testimony at the arbitration hearing, or otherwise before the arbitrator.[1] Rather, VPI seeks to compel *pre-hearing* non-party discovery in Italy. Section 7 does not, on its face, authorize this relief. In accord with other courts in this district, the Court interprets Section 7 to mean that neither an arbitrator nor a federal court can compel a non-party to give pre-hearing oral testimony, as VPI seeks here. *See Matria*, 584 F. Supp. 2d at 1083 ("neither the text nor the history of § 7 of the FAA supports Matria's argument that a non-party to an arbitration can be compelled to participate in discovery without his consent").

Thus, even assuming that the Court has retained jurisdiction despite the arbitration stay,[2] the FAA does not authorize the requested relief. Contrary to VPI's suggestion, moreover, a party who has agreed to arbitrate his dispute may not circumvent the FAA by requesting judicial assistance under the Hague Convention. While federal law authorizes this Court to submit letters rogatory on behalf of a party, here VPI is an arbitration claimant seeking evidence not otherwise authorized by the FAA. The Court declines to award this relief. *See, e.g.*, *In re Babcock Borsig AG*, 583 F. Supp. 2d 233, 239 (D. Mass. 2008) (expressing "concern that if [33 U.S.C. § 1782(a)] were read to include private arbitral bodies, the statute might conflict with the Federal Arbitration Act ('FAA'), which provides much more restricted discovery options in the context of domestic arbitration actions"). The Court further notes that it compelled arbitration 18 months ago, and this motion—filed late in the arbitration discovery process—will further delay arbitration proceedings because the "[e]xecution of letters rogatory may take a year or more." *See generally* U.S. Department of State Circular on the Preparation of Letters Rogatory, *available at* https://travel.state.gov/content/travel/en/legal-considerations/judicial/obtaining-evidence/preparation-letters-rogatory.html. The issuance of letters rogatory now would

---

[1] Even if the Court construes VPI's request as seeking to depose the non-party witnesses before the arbitrator in Italy, VPI offers no authority indicating that the Hague Convention allows an arbitrator to attend the examination.

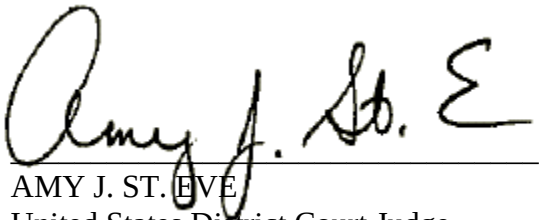
[2] It is not clear that the Court has jurisdiction to grant any discovery relief, in light of the stay. VPI's efforts to demonstrate that courts involve themselves "in litigation management despite an [FAA § 3] stay" are unavailing. (R.42, Reply Br. at 2-4). None of VPI's cited cases concern discovery orders. Indeed, VPI ignores a key principle of private arbitration -- limited discovery. Its argument that the issuance of letters rogatory "could enhance the arbitration process" is not sufficient to invoke the Court's authority here.

undermine the concept of private arbitration as an efficient means of resolving disputes. *See CIGNA HealthCare of St. Louis, Inc. v. Kaiser*, 294 F.3d 849, 854 (7th Cir. 2002) (recognizing the FAA as encouraging "efficient and speedy dispute resolution").

CONCLUSION

For the foregoing reasons, the Court denies VPI's motion.

Dated: March 29, 2016



AMY J. ST. EVE
United States District Court Judge