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.
_____/

ORDER GRANTING DEFENDANTS' MOTION TO STAY PROCEEDINGS PENDING RESOLUTION OF THEIR MOTION TO COMPEL ARBITRATION

THIS CAUSE comes before the Court upon Defendants Andromeda Steamship Corporation, American Navigation, Inc., Pegasus Lines, Ltd. S.A., Panama, and James Karathanos's (collectively, "Defendants") Motion to Stay Proceedings Pending Resolution of their Motion to Compel Arbitration, or Alternatively, Motion to Dismiss ("Motion"), filed on January 19, 2017. (DE 22). Plaintiff Internaves de Mexico s.a. de C.V. ("Internaves") filed a Response in opposition on February 2, 2017 (DE 27), to which Defendants replied on February 9, 2017 (DE 29). For the reasons stated below, the Motion is granted.

BACKGROUND

Internaves filed a Complaint against Defendants on October 12, 2016 (DE 1), alleging breach of contract, conversion, and fraud (*id.* at ¶¶ 9-36) stemming from a contract to transport an electrical transformer from Brazil to Mexico (*id.* at ¶ 6). On January 13, 2017, Defendants filed a Motion to Compel Arbitration or, in the alternative, Motion to Dismiss ("Motion to

Compel"), in which they contend that the relationship between the Parties is governed by a contract that provides for arbitration of all disputes in London, England and under English law. (DE 20). In the instant Motion, Defendants argue that a stay pending the Court's ruling on the Motion to Compel is appropriate because the underlying motion may, due to of the scope of the relief requested, dispose of the entire case, whereas Defendants would incur unnecessary expenses were discovery to proceed in the interim. (DE 22 at 4-5). Internaves responds that it would be prejudiced by a halt on discovery because it is seeking information from a bank that would be necessary no matter what tribunal hears this case, but over which an arbitrator (unlike the Court) would not have subpoena power. Moreover, Internaves claims that the Federal Rules of Civil Procedure permit a district court to oversee discovery that may ultimately be used in a foreign or international tribunal.

LEGAL STANDARD

District courts hold "broad discretion to stay discovery pending decision on a dispositive motion." *Panola Land Buyers Ass'n v. Shuman*, 762 F.2d 1550, 1560 (11th Cir. 1985). The standard for staying discovery pending a dispositive motion is found in *Chudasama v. Mazda Motor Corp.*, 123 F.3d 1353 (11th Cir. 1997). There, the Eleventh Circuit observed that "any legally unsupported claim that would unduly enlarge the scope of discovery should be eliminated before the discovery stage, if possible." *Id.* at 1368. However, when the sufficiency of a claim "turns on findings of fact," some discovery may be required before resolution of the dispositive motion. *Id.* at 1367; *RMS Titanic v. Kingsmen Creatives*, 579 F. App'x. 779, 791 (11th Cir. 2014); *Panola*, 762 F.2d at 1560 (finding it an abuse of a magistrate judge's discretion to stay all discovery when plaintiff was not "afforded a sufficient opportunity to develop a factual base" for some claims targeted in the dispositive motion). The Eleventh Circuit has not ruled on whether a

motion to compel arbitration is case-dispositive. *Amat v. Rey Pizza Corp.* __ F. Supp. 3d __, 2016 WL 4702371, at *2 (S.D. Fla. Aug. 31, 2016). But I find that the contractual questions raised by a motion to compel arbitration are sufficiently analogous to the dispositive issues raised by a motion to dismiss – insofar as the result in either might lead the court to refuse to adjudicate the case on the merits – that the former is controlled by *Chudasama*. *Cf. Jackson v. Cintas Corp.*, 425 F.3d 1313, 1318 (11th Cir. 2005) (district court did not abuse discretion in denying party's request to proceed to discovery where it "failed to show how the discovery would have any impact on the enforceability of the arbitration clause.").

DISCUSSION

Defendants' invocation of judicial economy has merit. In *Chudasama*, the Eleventh Circuit stressed that "unnecessary costs to the litigants and to the court system can be avoided" if the district court dismisses "nonmeritorious claim[s] before discovery has begun." *Chudasama*, 123 F.3d at 1368. It would be a waste of time and expense to require the Parties to exchange documents and interrogatories and depose witnesses when the Court may very well determine that the contract requires an arbitrator to resolve the dispute. Were that the outcome, the arbitrator and the Parties might agree to dispense with or limit formal discovery, thereby rendering some or all discovery conducted in this forum moot. District courts in this Circuit have, under similar circumstances, granted motions to stay pending a motion to compel arbitration. *See, e.g.*, *In re Managed Care Litigation*, No. 00-1334-MD, 2001 WL 664391, at *3 (S.D. Fla. June 12, 2001) (Moreno, J.); *Harrell's LLC v. Agrium Advanced (U.S.) Tech., Inc.*, No. 8:10-1499-T-33AEP, 2011 WL 1596007, at *2 (M.D. Fla. Apr. 27, 2011); *O.N. Equity Sales Co. v. Merkel*, No. 2:07-531-FtM-29DNF, 2008 WL 380573, at *1 (M.D. Feb. 11, 2008).

Defendants might also be prejudiced by participating in discovery. As Defendants note in Reply, the Eleventh Circuit has held that one factor in determining whether a party waives its right to arbitration is the extent to which "a party seeking arbitration substantially participates in litigation to a point inconsistent with an intent to arbitrate." *Citibank, N.A. v. Stok & Assoc., P.A.*, 387 F. App'x 921, 924 (11th Cir. 2010) (citation omitted). Exchanging information through discovery can certainly be viewed as a substantial participation in a federal action. Although the pending Motion to Compel likely insulates Defendants from any such finding, they should not be put in the position of needing to be uncooperative with Internaves in order to preserve their asserted rights.

Internaves complains that suspending discovery will prevent it from obtaining bank documents that it suspects will shed light on the financial relationship between Defendants. But Internaves misconceives the scope of discovery at this stage. When the Court's threshold task is to determine the enforceability of an arbitration clause, discovery should be limited to that question. *See Cintas Corp.*, 425 F.3d at 1318. Internaves has not offered evidence that any insight into the financial relationship between Defendants will shed light on the arbitration clause's enforceability. It merely implies that the sought-after documents may allow it to pierce the corporate veil and reveal the corporate entities to be alter egos of Defendant Karathanos. Internaves also stresses that it would seek this information no matter the tribunal that heard this dispute. That effort goes to the merits, and does not affect my ruling. Moreover, if it is the case that Internaves agreed to submit all disputes under the contract to arbitration, then there is no injustice in the prospect of discovery governed by the arbitrator's more limited subpoena power. *COMSAT Corp. v. Nat'l Science Found.*, 190 F.3d 269, 275 (4th Cir. 1999) (arbitrator's subpoena powers circumscribed by those enumerated in FAA). Arbitration requires the parties'

mutual consent, *AT & T Tech., Inc. v. Communication Workers of America*, 475 U.S. 643, 648 (1986) (citation omitted), and so an agreement to arbitrate necessarily evinces a signatory's willingness to be bound by the arbitration forum's rules.[1]

Internaves also suggests, citing to Eleventh Circuit precedent, that federal statute allows district courts to order discovery even when the merits proceeding will take place before a foreign or international tribunal. *See Application of Consorcio Ecuatoriano de Telecomucicaciones S.A. v. JAS Forwarding (USA), Inc.*, 747 F.3d 1262 (11th Cir. 2014). But *Consorcio Ecuatoriano* does not stand for the proposition that Internaves would impute to it. That case dealt with the construction of 28 U.S.C. § 1782, which grants district courts the authority to order third persons residing in their districts to testify or produce documents "for use in a proceeding a foreign or international tribunal." 28 U.S.C. § 1782(a); *see also Intel Corp. v. Advanced Micro Devices, Inc.*, 542 U.S. 241, 259 (2004) (holding that "adjudicative proceedings" need not be "pending" or "imminent", but could be merely "within reasonable contemplation" to qualify). It is true that *Consorcio Ecuatoriano* involved discovery for use in an arbitration being litigated before a foreign body. *Consorcio Ecuatoriano*, 747 F.3d at 1266. But the Eleventh Circuit expressly declined to decide whether an arbitration constituted a "proceeding" under Section 1782, instead ruling on alternative grounds. *Id.* at 1270 & n.4.[2] And even if Section 1782 could be construed to cover arbitration, there is reason to doubt that it could be exercised in order to facilitate conventional discovery – by the very court that was considering

---

[1] Internaves challenges whether the clause in the contract that purports to call for arbitration in London is valid. This argument is relevant only to the question of arbitrability and is more appropriately reserved for argument on the Motion to Compel Arbitration.

[2] Indeed, the opinion superseded an earlier decision that had reached this question. *In re Consorcio Ecuatoriano de Telecomucicaciones S.A. v. JAS Forwarding (USA), Inc.*, 685 F.3d 987, 996-998 (11th Cir. 2012). The later version removed the predecessor's language on arbitration entirely.

whether to compel arbitration. As a result, I find that a stay in discovery is warranted under the circumstances.

Accordingly, it **ORDERED** and **ADJUDGED** that Defendants Andromeda Steamship Corporation, American Navigation, Inc., Pegasus Lines, Ltd. S.A., Panama, and James Karathanos's Motion to Stay Proceedings Pending Resolution of their Motion to Compel Arbitration, or Alternatively, Motion to Dismiss (DE 22) is **GRANTED**. Discovery is hereby **STAYED** pending the Court's ruling on Defendants' Motion to Compel Arbitration, or Alternatively, Motion to Dismiss (DE 20).

DONE AND ORDERED in Chambers, at West Palm Beach, Florida, this 24 day of February, 2017.

DONALD M. MIDDLEBROOKS
UNITED STATES DISTRICT JUDGE

cc: All Counsel of Record