UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 15-23737-MC-LENARD/GOODMAN

SEQUIP PARTICIPAÇÕES S.A.,

Petitioner,

v.

PAULO ROBERTO FRANCO MARINHO,

Respondent.
_____/

ORDER GRANTING PETITION TO CONFIRM ARBITRATION AWARD (D.E. 1)

THIS CAUSE is before the Court on Petitioner Sequip Participaçôes S.A.'s ("Sequip") Petition to Confirm Arbitration Award, filed October 6, 2015. ("Petition," D.E. 1.) Respondent Paulo Roberto Franco Marinho ("Marinho") filed a Response on October 31, 2018. ("Response," D.E. 103.) Upon review of the Petition, Response, and the record, the Court finds as follows.

I. Background

On July 1, 1997, Marinho, a Brazilian citizen, and Sequip, a Brazilian company, entered into a contract ("Agreement") whereby Sequip agreed to pay Marinho 20% of any dividends arising out of the sale of shares of Indústria Verolme Ishibrás, a company in which Sequip was the majority shareholder, unless it was sold to a company wholly-owned by Sequip's parent company. (Pet. ¶ 9.) Pursuant to the Agreement, all disputes

arising from the Agreement were to be resolved by arbitration in Rio de Janeiro. (Id. ¶ 12.)

A dispute arose between Sequip and Marinho when Marinho challenged some of Sequip's operations and administrative acts, which allegedly deprived Marinho of receiving remuneration under the Agreement. (Id. ¶ 10.) On August 25, 2010, the Parties agreed upon and executed the "Terms of Reference" that would govern the arbitration. (Id. ¶ 15.) Pursuant to Article 14.1 of the Terms of Reference, the losing party would bear all costs and expenses related to the proceedings, including the administrative fee, arbitrators' fees, and attorneys' fees and costs. (Id.)

In September 2011, the Brazilian Arbitral Tribunal held a three-day hearing on Marinho's claims, during which both Parties, through counsel, presented witnesses, documentary evidence, opening statements, and closing arguments. (Id. ¶ 19.) On June 15, 2012, the Parties submitted post-hearing briefs. (Id. ¶ 20.)

On October 9, 2012, the Arbitral Tribunal issued a unanimous Final Award rejecting all of Marinho's claims and ordering Marinho to "bear all the costs and expenses of arbitration," including reimbursing Sequip for amounts paid in advance to the arbitrators. (Id. ¶¶ 22-24.) Sequip's costs and expenses in the Brazilian arbitration, comprised of administrative and arbitrators' fees, totaled R$ 417,500.00[1] (US$ 158,046.00). (Id. ¶ 25.) The Arbitral Tribunal also awarded Sequip attorneys' fees and costs in the amount of R$ 1,000,000.00 (US$ 378,554). (Id. ¶ 26.)

[1] Brazilian Real.

According to Sequip, Marinho never satisfied the arbitration award. (Ex Parte Mot. for Prejudgment Writ of Attachment (D.E. 6) at 3.) Sequip initiated an investigation which revealed that Marinho had secreted his Brazilian assets in offshore bank accounts in Florida and the Cayman Islands, and had absconded to Florida. (Id.)

Sequip instituted an enforcement action against Mr. Marinho in Brazil and sought several writs of attachment. (Ramos Decl. ¶ 6.) Although the Brazilian courts granted Sequip's requests for enforcement and attachment, Marinho had already hidden his assets in Brazil and Sequip was unable to collect on the award. (Id.)

On October 6, 2015, Sequip filed the instant Petition to Confirm Arbitration Award under Chapter 3 of the Federal Arbitration Act ("FAA"), 9 U.S.C. §§ 301-307. (D.E. 1 ¶ 3.) On October 8, 2015, Sequip filed an Ex Parte Motion for a Prejudgment Writ of Attachment alleging that Marinho owned real and personal property in Florida.[2] (D.E. 6.)

On October 17, 2016, Sequip served Marinho.[3] (See D.E. 33.) On November 10, 2016, Marinho filed a Motion to Dismiss for Lack of Personal Jurisdiction. (D.E. 35.)

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[2] Specifically, Sequip alleged that: (1) Marinho is the registered owner of a Rolls Royce "Ghost" sports car valued at $296,000.00; (2) the address associated with the sports car is owned by North Challenge Inc., which Sequip believes is one of Marinho's shell companies designed to hide his assets; (3) North Challenge Inc. was incorporated in Florida two months after the Final Award by the Arbitral Tribunal, and that same month purchased Unit 5391K at 5391 Fisher Island for $4,250,000.00 with a $2,535,000.00 mortgage; (4) the sole shareholder of North Challenge Inc. is North Challenge Corp. BVI, and Marinho's wife is the sole director of both companies; and (5) at the time Sequip filed the Motion for Prejudgment Writ of Attachment, the 5391 Condo was listed for sale at $13,800,000.00. (Id. at 4-5.)

[3] According to Sequip's Ex Parte Motion to Reopen Case and for Service by Other Means Under Rule 4(f)(3), Sequip attempted to serve Marinho twenty-six times, but Marinho actively and successfully evaded service. (D.E. 31 at 1.) Therefore, the Court permitted Sequip

On December 5, 2016, Sequip filed an Unopposed Motion for Jurisdictional Discovery, (D.E. 38), which the Court granted on December 6, 2016, (D.E. 40). After the close of jurisdictional discovery, Sequip filed a response to the Motion to Dismiss with several exhibits establishing that Marinho has substantial contacts with Florida. (D.E. 84, 85.)

On October 16, 2018, the Court denied Marinho's Motion to Dismiss for Lack of Personal Jurisdiction, concluding that Marinho was subject to general jurisdiction in Florida pursuant to Section 48.193(2), Florida Statutes. (D.E. 99.) It found that Marinho's contacts with Florida are "so 'continuous and systematic' as to render [him] essentially at home in" Florida, (id. at 16 (citing Daimler AG v. Bauman, 571 U.S. 117, 139 (2014))), and that exercising personal jurisdiction over him in Florida "does not offend 'traditional notions of fair play and substantial justice.'" Mut. Serv. Ins. Co. v. Frit Indus., Inc., 358 F.3d 1312, 1319 (11th Cir. 2004) (quoting Int'l Shoe Co. v. Washington, 326 U.S. 310, 316 (1945)).

The Court's Order directed Marinho to show cause, if any, why the Petition to Confirm Arbitration Award should not be granted pursuant to 9 U.S.C. § 207. (Id. at 17.) On October 31, 2018, Marinho filed his Response to the Petition. (D.E. 103.)

II. Legal Standard

Because both Parties to the arbitration agreement are citizens of Brazil, which is a signatory of the Inter-American Convention on International Commercial Arbitration (opened for signature Jan. 30, 1975) ("Inter-American Convention" or "Panama

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to perfect service under Rule 4(f)(3) by sending the necessary documentation to Marinho's residence in Brazil, and by emailing the necessary documentation to Marinho and his attorney in Brazil. (D.E. 32.)

Convention"), this case is governed by Chapter 3 of the FAA.[4] 9 U.S.C. § 305(1) ("If a majority of the parties to the arbitration agreement are citizens of a State or States that have ratified or acceded to the Inter-American Convention and are member States of the Organization of American States, the Inter-American Convention shall apply.") "Confirmation of an arbitration award under the Panama Convention is a summary proceeding." Empresa de Telecommunicaciones de Bogota S.A. E.S.P. v. Mercury Telco Grp., Inc., 670 F Supp. 2d 1357, 1361 (S.D. Fla. 2009) (citing Am. Life Ins. Co. v. Parra, 269 F. Supp. 2d 519, 524 (D. Del. 2003)). "Confirmation is governed by 9 U.S.C. § 207, which provides that confirmation is mandatory "unless . . . [a court] finds one of the grounds for refusal or deferral of recognition or enforcement of the award specified in the . . . Convention." Id. (quoting 9 U.S.C. § 207).

In an action to confirm a foreign arbitral award, the initial burden is on the party applying for recognition to establish jurisdiction by supplying: (1) "[t]he duly authenticated original award or a duly certified copy thereof"; and (2) the original written

[4] "With respect to enforcement matters and interpretation, the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, . . . (effective for the United States on Dec. 29, 1970), reprinted in 9 U.S.C. §§ 201-208, and the Panama Convention are substantially identical." EGI-VSR, LLC v. Coderch Mitjans, Civil Action No. 15-20098-Civ-Scola, 2018 WL 2465345, at *2 n.1 (S.D. Fla. June 1, 2018). "Thus the case law interpreting provisions of the New York Convention are largely applicable to the Panama Convention and vice versa." Id. (citing Corporacion Mexicana de Mantenimiento Integral, S. de R.L. de C.V. v. Pemex-Exploracion y Produccion, 962 F. Supp. 2d 642, 653 (S.D.N.Y. 2013), aff'd, 832 F.3d 92 (2d Cir. 2016) ("The Panama Convention and . . . the [ ]New York Convention[ ] are largely similar, and so precedents under one are generally applicable to the other.") (citing Productos Mercantiles E Industriales, S.A. v. Faberge USA, Inc., 23 F.3d 41, 45 (2d Cir. 1994)) ("The legislative history of the [Panama] Convention's implementing statute . . . clearly demonstrates that Congress intended the [Panama] Convention to reach the same results as those reached under the New York Convention" such that "courts in the United States would achieve a general uniformity of results under the two conventions.")).

agreement to arbitrate (or a duly certified copy thereof). Czarina, L.L.C. v. W.F. Poe Syndicate, 358 F.3d 1286, 1291 (11th Cir. 2004) (quoting Convention art. IV, sec. 1). "Once the proponent of the award meets his article IV jurisdictional burden of providing a certified copy of the award and the arbitration agreement, he establishes a prima facie case for confirmation of the award." Id. at 1292 n.3. "That is, the award is presumed to be confirmable." Id. "The defendant to the confirmation action can overcome this presumption only by making one of the showings enumerated in the Convention." Id. (citing Convention, art. V). Under Article V of the Convention, there are seven enumerated showings:

> 1. Recognition and enforcement of the award may be refused, at the request of the party against whom it is invoked, only if that party furnishes to the competent authority where the recognition and enforcement is sought, proof that:
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> (a) The parties to the agreement referred to in article II were, under the law applicable to them, under some incapacity, or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made; or
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> (b) The party against whom the award is invoked was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present his case; or
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> (c) The award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be recognized and enforced; or
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> (d) The composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties, or, failing such

> agreement, was not in accordance with the law of the country where the arbitration took place; or
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> (e) The award has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the country in which, or under the law of which, that award was made.
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> 2. Recognition and enforcement of an arbitral award may also be refused if the competent authority in the country where recognition and enforcement is sought finds that:
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> (a) The subject matter of the difference is not capable of settlement by arbitration under the law of that country; or
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> (b) The recognition or enforcement of the award would be contrary to the public policy of that country.

Convention, art. V, available at http://newyorkconvention1958.org.

III. Discussion

Sequip argues that the Court should confirm the Award because "none of the grounds for refusal or deferral of the Final Award set forth in Article V of the Inter-American Convention or Article V of the New York Convention apply." (Pet. ¶ 29.) In his Response, Marinho argues only that this Court lacks the authority to confirm the Final Award because it lacks personal jurisdiction over him. (Resp. ¶¶ 3, 5-7, 27-29.)

As an initial matter, the Court finds that Sequip satisfied the jurisdictional prerequisites by supplying the Court with both: (1) the authenticated original award, (D.E. 1-3), and a duly certified English translation thereof, (D.E. 1-4); and (2) the original written agreement to arbitrate and a duly certified English translation thereof, (D.E. 1-5). Thus, Sequip has established a prima facie case for confirmation of the award—that is, the award is presumed to be confirmable. Czarina, 358 F.3d at 1292 n.3.

The Court further finds that Marinho failed to overcome this presumption by making one of the showings for refusal or deferral enumerated in the Convention. Although he argues that the Court lacks the authority to confirm the Final Award because it lacks personal jurisdiction over him, the Court has already found that Marinho is subject to general jurisdiction under Florida's long-arm statute, Fla. Stat. 48.193(2). (Order at 16.)

Because the Court has found no grounds upon which to refuse to recognize or enforce the arbitration Award, the Court must confirm the Award. 9 U.S.C. §§ 207, 302.

IV. Conclusion

Accordingly, it is **ORDERED AND ADJUDGED** that:

1. The Petition to Confirm Arbitration Award (D.E. 1) is **GRANTED**;

2. All pending motions are **DENIED AS MOOT**; and

3. This case is now **CLOSED**.

DONE AND ORDERED in Chambers at Miami, Florida this 19th day of November, 2018.

JOAN A. LENARD
UNITED STATES DISTRICT JUDGE