

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

COGNAC FERRAND S.A.S.,

Petitioner and  
Cross-Respondent,

-v-

MYSTIQUE BRANDS LLC,

Respondent and  
Cross-Petitioner.

20 Civ. 5933 (PAE)

ORDER

PAUL A. ENGELMAYER, District Judge:

On January 4, 2021, Cognac Ferrand (“Ferrand”) moved for a preliminary injunction preventing Mystique Brands LLC (“Mystique”) from effectuating any seizure of Ferrand’s assets in France pending the resolution of the parties’ motions to confirm or vacate the arbitral award at issue here. Dkts. 31–35. That day, the Court set a briefing schedule on Ferrand’s application, requiring a response from Mystique by January 15, 2021. Dkt. 36. On January 6, 2021, Ferrand notified the Court that, since its application for a preliminary injunction, French authorities served on it an “order for seizure and sale of goods” authorizing those authorities to seize Ferrand’s property unless it pays the full amount of the arbitral award at issue in this case. *See* Dkt. 40 (“Bernstein Decl.”) ¶¶ 3–4; Dkt. 42 (“Berteaux Decl.”) ¶¶ 4–5. Accordingly, Ferrand now also seeks an emergency temporary restraining order (“TRO”) preventing Mystique from moving forward with its enforcement of the arbitral award in France. *See* Dkt. 39.

To justify a TRO, a movant must show: (1) irreparable harm absent injunctive relief; (2) either a likelihood of success on the merits, or a serious question going to the merits to make them a fair ground for trial, with a balance of hardships tipping decidedly in the plaintiff’s

favor; and (3) that the public's interest favors granting an injunction. *See Metro. Taxicab Bd. of Trade v. City of New York*, 615 F.3d 152, 156 (2d Cir. 2010) (citation omitted); *Software AG, Inc. v. Consist Software Solutions, Inc.*, 323 F. App'x 11, 12 (2d Cir. 2009) (summary order) (party seeking anti-suit injunction must meet the "ordinary test for a preliminary injunction") *see also Andino v. Fischer*, 555 F. Supp. 2d 418, 419 (S.D.N.Y. 2008) ("It is well established that in this Circuit the standard for an entry of a TRO is the same as for a preliminary injunction.").

The Court denies Ferrand's application for a TRO because Ferrand has not shown a "serious question going to the merits," the minimal merits showing necessary to support a TRO. The relevant merits issue in this case concerns an arbitral award of attorneys' fees and costs, as to which the parties have filed cross-petitions to vacate (Ferrand) and to confirm (Mystique). In seeking to vacate (and in opposing confirmation of) that award, Ferrand argues that the arbitrator exceeded her authority, manifestly disregarded the parties' agreement, and failed to render a final and definite award. Prompted by Ferrand's January 4 application for a preliminary injunction, the Court has now carefully reviewed the parties' respective submissions on this issue.

The Court will set out its considered assessment on this point in full in a decision that it expects to issue shortly, which will resolve both the underlying petitions (as to which briefing is complete) and Ferrand's application for a preliminary injunction (as to which Mystique's brief in opposition remains to be filed). But on the basis of its review to date, the Court cannot find a serious question going to the merits. In brief for now, the Court notes that review of an arbitral award is "severely limited." *Willemijn Houdstermaatschappij, BV v. Standard Microsystems Corp.*, 103 F.3d 9, 12 (2d Cir. 1997). To succeed in vacating that award, Ferrand must meet a "heavy burden of showing that the award falls within a very narrow set of circumstances delineated by statute and case law." *Duferco Int'l Steel Trading v. T. Klaveness Shipping A/S*,

333 F.3d 383, 388 (2d Cir. 2003); *see Anthony v. Affiliated Computer Servs., Inc.*, 621 F. App'x 49, 50–51 (2d Cir. 2015) (Second Circuit has “consistently accorded [§ 10(a)(4)] the narrowest of readings”); *Duferco*, 333 F.3d at 390 (award will only be set aside for manifest disregard in “exceedingly rare instances”). Absent such circumstances, “a court must grant an order to confirm an arbitration.” *Herrenknecht Corp. v. Best Rd. Boring*, No. 06 Civ. 5106 (JFK), 2007 WL 1149122, at \*2 (S.D.N.Y. Apr. 16, 2007).

The Court’s assessment at this point is that, given these stringent legal standards, this is not a close case. Ferrand has not identified grounds that would support vacatur of the arbitral award, in whole or in part. The Court’s present expectation, therefore, is that its forthcoming decision, which will set out its reasoning in detail, will confirm the award and deny Ferrand’s petition. It therefore follows that, as to Ferrand’s instant application for a TRO, Ferrand has not met its burden of showing, at a minimum, a serious question going to the merits of its claims. Accordingly, even assuming *arguendo* that the other standards for a TRO were met—*i.e.*, that Mystique’s actions in France to collect upon the award would work irreparable harm on Ferrand and that the balance of hardships and public interest tip sufficiently in Ferrand’s favor—the issuance of a TRO would be legally unsupportable.<sup>1</sup>

### CONCLUSION

For the foregoing reasons, Ferrand’s application for a TRO is denied. The Clerk of Court is respectfully directed to terminate the motion pending at docket 39.

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<sup>1</sup> To be sure, Mystique’s decision to take actions in France with respect to assets of Ferrand while its petition to confirm the underlying award was *sub judice* in this Court, absent a basis to conclude that it would otherwise be unable to collect upon the award if confirmed, can be fairly criticized as presumptuous. These actions predictably led to Ferrand’s application for emergency relief. That, however, does not bear on the merits, or lack thereof, of Ferrand’s challenge to the award.

For avoidance of doubt, the briefing schedule governing Ferrand's application for a preliminary injunction remains in place. The Court does not authorize any additional submissions, whether as to the preliminary injunction application, the underlying petitions, or Mystique's requests for sanctions.

SO ORDERED.

  
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PAUL A. ENGELMAYER  
United States District Judge

Dated: January 7, 2021  
New York, New York