UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.: 2:21-cv-08764-SB-KS	Date: January 14, 2022

Title: *Brands United Ltd. v. Universal Studios Licensing LLC et al.*

Present: The Honorable	**STANLEY BLUMENFELD, JR., U.S. District Judge**
Jennifer Graciano Deputy Clerk	N/A Court Reporter
Attorney(s) Present for Plaintiff(s): None Appearing	Attorney(s) Present for Defendant(s): None Appearing

Proceedings: ORDER DENYING PETITION TO VACATE ARBITRATION AWARD [Dkt. No. 1-1]

Petitioner Brands United, Ltd. (Brands) entered into licensing agreements with Respondents Universal Studios Licensing, LLC and Universal Studios Limited (together, Universal) to use Universal's intellectual property on merchandise sold in China and Hong Kong. After failing to pay the fees it acknowledged it owed, Brands eventually stopped responding to Universal's communications. Universal initiated arbitration proceedings, in which Brands did not participate, and obtained an arbitration award for approximately $3 million. After a court in Hong Kong entered an order to enforce the award, Brands filed a petition to vacate the award in California state court. Dkt. No. 1-1 (Petition).[1] Universal removed the action under the Federal Arbitration Act (FAA), and the Court set the petition to vacate, which is now fully briefed, for a hearing on January 21, 2022. After reviewing the parties' submissions, the Court finds this

[1] The Petition and some of the other filings in this case incorrectly identify Brands as respondent and Universal as petitioners.

matter suitable for decision without oral argument and vacates the January 21, 2022 hearing. Fed. R. Civ. P. 78; L.R. 7-15. Because Brands has not shown any valid basis for vacating the award, its petition is **DENIED**.

I. BACKGROUND

Brands entered into four licensing agreements with Universal—one with Universal Studios Licensing, LLC in 2016 and three with Universal Studios Limited in 2017—to license intellectual property from popular movies owned by Universal for use in marketing specified merchandise and food products. *See* Dkt. No. 10-1 at 2 (description of contracts in Final Award). Brands did not pay the licensing fees it owed, and in November 2017, Universal began communicating with Brands CEO and Director Stanley Yeung in an effort to obtain payment. Dkt. No. 13 ¶ 20 (Decl. of Richard Li). Over the next two years, Universal communicated extensively with Yeung, including multiple email and text exchanges, phone calls, and in-person meetings. *Id.* Brands repeatedly promised to pay the amounts owed but failed to do so each time. *Id.* ¶ 21. On June 27, 2019, Yeung signed an Acknowledgment Letter on behalf of Brands (1) acknowledging that Brands had not made any of the payments owed under the contracts and that it owed Universal $1,670,000[2] under the licensing agreements; (2) agreeing to a payment plan; and (3) confirming that Universal would be entitled to the rights and remedies of the licensing agreements if Brands failed to make the required payments. Dkt. No. 10-2.

The licensing agreements provide that disputes shall be resolved by binding arbitration in Los Angeles, California, administered by the Judicial Arbitration and Mediation Service (JAMS). *E.g.*, Dkt. No. 10-5 at 34. After Brands failed to make the payments required by the payment plan, Universal initiated an arbitration proceeding with JAMS. Universal served its arbitration demand on Brands by DHL Express Worldwide to the Hong Kong address provided by Brands, and it was received and signed for by "S Lau" on August 26, 2020. Dkt. No. 10-3 (Proof of Service). From September 2020 through June 2021, JAMS and Universal also sent more than 30 additional items to Brands, either by email to Yeung or by both email and U.S. Mail or FedEx to the Hong Kong address. Dkt. No. 10-7. Brands did not acknowledge or respond to the arbitration demand or any of the subsequent communication from JAMS or Universal, nor did it appear in the arbitration or

[2] The Acknowledgment Letter also identified $6,000 owed to DreamWorks Animation UK Limited, for a total of $1,676,000.

participate in the final hearing, which was conducted by videoconference on April 14, 2021. Dkt. No. 10 ¶¶ 9, 11 (Decl. of Alexander Su).

The arbitrator issued a final decision on June 2, 2021. Dkt. No. 10-1. The arbitrator found that Brands had been properly served by courier service and email in compliance with the contracts and yet failed to appear in the arbitration or otherwise respond to communications from JAMS or Universal. *Id.* ¶¶ 15–16. The arbitrator determined that Brands had breached the contracts and owed a total of $2,160,000 to Universal under the licensing agreements. *Id.* ¶ 53. The arbitrator also imposed an award of interest, fees, and costs. *Id.* ¶¶ 75–80.

After receiving an August 27, 2021 order from a Hong Kong court enforcing the arbitration award, Brands retained counsel in California and filed a petition to vacate the award. Dkt. No. 1-1. Although Brands does not deny that it had actual notice of the arbitration proceeding,[3] it argues that it was not properly served and that the entire arbitration process was an improper ex parte proceeding. Universal responded and removed the petition, which is now fully briefed. Dkt. Nos. 1, 9, 17. The parties agreed that the petition to vacate is the sole issue in this case and that there was no need for discovery or other pretrial proceedings. Dkt. No. 14. Accordingly, the Court vacated the mandatory scheduling conference and set the petition to vacate for hearing. Dkt. No. 15.

II. LEGAL STANDARD

Under the FAA, review of an arbitration award is "extremely limited," *A.G. Edwards & Sons, Inc. v. McCollough*, 967 F.2d 1401, 1403 (9th Cir. 1992), and a court "may vacate an arbitrator's decision 'only in very unusual circumstances,'" *Oxford Health Plans LLC v. Sutter*, 569 U.S. 564, 568 (2013) (quoting *First Options of Chi., Inc. v. Kaplan*, 514 U.S. 938, 942 (1995)). Section 10(a) of the FAA provides that court may vacate an award only:

[3] Brands asserts in its reply brief that "whether Brands even had actual notice of these proceedings is irrelevant" but that "Universal has completely failed to even provide any evidence that Stanley Yeung ever signed for [or] otherwise sufficiently received a physical copy of the documents at issue." Dkt. No. 17 at 8. As the party seeking the extraordinary relief of vacating an arbitration award, Brands has the burden of showing a basis for vacatur. If Yeung lacked actual notice of the arbitration proceeding, he could easily have so testified in his declaration, and the absence of any positive assertion that Brands lacked notice is telling.

(1) where the award was procured by corruption, fraud, or undue means;

(2) where there was evident partiality or corruption in the arbitrators, or either of them;

(3) where the arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; or of any other misbehavior by which the rights of any party have been prejudiced; or

(4) where the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made.

9 U.S.C. § 10(a). These grounds for vacatur are exclusive. *Hall St. Assocs., L.L.C. v. Mattel, Inc.*, 552 U.S. 576, 584 (2008).

III. ANALYSIS

Brands does not dispute that its conflict with Universal was properly subject to arbitration under the terms of the licensing agreements. Its sole argument for vacatur is that the arbitration award was "procured by corruption, fraud, or undue means" under 9 U.S.C. § 10(a)(1) because the proceedings were conducted without Brands's participation and Brands was not properly served under the Hague Convention.

Brands relies on California cases holding that "[i]mproper ex parte communications between an arbitrator and a litigant can serve as a basis for a corruption, fraud or other undue means finding" and argues that the entire arbitration proceeding must be vacated as an improper ex parte proceeding. *Comerica Bank v. Howsam*, 208 Cal. App. 4th 790, 825, (2012); *accord Baker Marquart LLP v. Kantor*, 22 Cal. App. 5th 729, 739 (2018). Even assuming these cases apply the relevant standard,[4] they both discussed ex parte communications

[4] "The [California Arbitration Act (CAA)] and the FAA provide different grounds for vacatur of an arbitration award." *Johnson v. Gruma Corp.*, 614 F.3d 1062, 1065 (9th Cir. 2010). Although both statutes provide for vacatur where "the award was procured by corruption, fraud or other undue means," vacatur is mandatory under the CAA and permissive under the FAA. *Id.* at 1065–66. The parties do not

between one party and an arbitrator in an arbitration in which the opposing parties both participated. In *Comerica*, the court affirmed denial of vacatur where the defendants withdrew from the arbitration prematurely. 208 Cal. App. 4th at 826. In *Baker*, the court held that vacatur of an award was required where one side submitted a confidential brief to the arbitrator, which the opposing side did not receive until after the conclusion of the arbitration, and which raised claims and issues that were referenced in the award. 22 Cal. App. 5th at 740. Neither case addressed a scenario where, as here, a party simply declined to participate in the arbitration. Even assuming that such a default proceeding is properly characterized as ex parte, there is nothing *improper* about proceeding in the absence of a party that declines to participate, and Brands cites no authority to suggest that vacatur is permitted, much less required, under these circumstances. *Cf. A/S Ganger Rolf v. Zeeland Transp., Ltd.*, 191 F. Supp. 359, 363 (S.D.N.Y. 1961) ("[A defaulting party] may not complain that it has not been heard on the merits before the arbitrators since it waived the right to do so granted to it by the arbitration agreement by which it bound itself.").

Brands's argument that the arbitration award was procured by "undue means" might be somewhat more plausible if Brands had lacked notice of the arbitration proceeding, but it makes no such argument here. Brands argues that it relocated in December 2018 to offices at 5/F Floor, The Mills, 45 Pak Tin Par Street in Hong Kong (The Mills); that it relocated again in June 2021; that its workers substantially worked from home from March 2020 through June 2021 due to the COVID-19 pandemic; and that The Mills was a shared workspace in which there was no secretary and no system in place to notify parties about mail received. Dkt. No. 1-3 ¶¶ 10–11.[5] But The Mills is the location to which the arbitration documents were sent by courier, all during the time when Brands contends its office was located at The Mills, and Brands does not assert that it did not receive

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address the differences between the CAA and the FAA, which may not be material here. *See Pac. Reinsurance Mgmt. Corp. v. Ohio Reinsurance Corp.*, 935 F.2d 1019, 1025 (9th Cir. 1991) ("*Ex parte* evidence to an arbitration panel that disadvantages any of the parties in their rights to submit and rebut evidence violates the parties' rights and is grounds for vacation of an arbitration award." (citing FAA)).

[5] Brands requests that the Court take judicial notice of several news reports involving work-from-home orders in Hong Kong during the pandemic. Dkt. No. 1-2. These news articles have no bearing on the Court's analysis, and the request is **DENIED** as moot.

any (much less all) of the documents. Dkt. No. 10-7. Indeed, Yeung testifies that even after the arbitration had concluded and Brands had relocated from The Mills, he received within a week the August 27, 2021 letter from the Hong Kong court that was delivered to The Mills. Dkt. No. 1-3 ¶ 13. Moreover, in addition to the mailed documents, dozens of emails were sent to Yeung—at the same email address he used to communicate with Universal until he stopped responding—in connection with the arbitration. Brands does not assert that Yeung did not receive these emails. And while Yeung testifies that his primary language is Cantonese and he does not generally understand legal phrases in English, he also acknowledges that he can write in English, and he executed documents on behalf of Brand, including the June 27, 2019 Acknowledgment Letter, that were written in English. *Id.* ¶ 6. Thus, nothing in the record suggests that Brands lacked notice of the arbitration such that the arbitrator should not have proceeded in its absence when Brands declined to participate.

Instead, Brands argues that it was not properly served in compliance with the Hague Convention, and that "[f]ailure to comply with the [Hague] Convention renders the service void, even if the defendant has actual notice of the lawsuit." *Lebel v. Mai*, 210 Cal. App. 4th 1154, 1160–61 (2012). Brands wholly fails to address the arbitrator's finding that Brands was properly served and the legal standard Brands would have to satisfy to establish entitlement to vacatur of the award if the arbitrator was wrong. Nor does Brands provide any analysis to explain the requirements of the Hague Convention or to support its conclusory assertion that Universal's service did not comply with the Convention. But even assuming the service did not satisfy the Hague Convention and the Court may properly reconsider the arbitrator's finding, Brands's argument nevertheless fails because Brands agreed in the licensing agreements to service of "[a]ny notices or other communication required or permitted to be given" by email and mail. *See* Dkt. No. 10-4 ¶ 35. Brands also agreed that disputes would be resolved by binding arbitration administered by JAMS "and conducted in accordance with its comprehensive arbitration rules then in effect." *Id.* ¶ 28(a). Brands does not dispute that the documents sent to it by JAMS and Universal in connection with the arbitration were served in compliance with JAMS rules and the parties' agreement.

The Supreme Court of California recently reversed a decision declining to confirm an arbitration award under strikingly similar circumstances. *Rockefeller Tech. Invs. (Asia) VII v. Changzhou SinoType Tech. Co.*, 9 Cal. 5th 125, *cert. denied*, 141 S. Ct. 374 (2020). In *Rockefeller*, an American company, Rockefeller, sought arbitration against a Chinese company, SinoType, and sent arbitration

materials to SinoType by both email and Federal Express to the address in China listed on the contract document. SinoType neither responded nor appeared, and the arbitrator issued an award in favor of Rockefeller. After Rockefeller obtained a default judgment confirming the award, SinoType appeared and argued that it had not received actual notice of the proceedings and that Rockefeller's failure to comply with the Hague Convention rendered the judgment confirming the arbitration award void. The Supreme Court rejected this argument, holding that the parties had contracted to submit to arbitration with JAMS and to waive formal service of process under California law. *Id.* at 143–44. Because formal service was not required, the court concluded that "'this case does not present an occasion to transmit a judicial document for service abroad within the meaning of Article 1' of the Hague Service Convention," and the Hague Convention did not apply. *Id.* at 145 (quoting *Volkswagenwerk Aktiengesellschaft v. Schlunk*, 486 U.S. 694, 707–08 (1988)); *see also id.* at 146 ("Requiring formal service abroad under California law where sophisticated business entities have agreed to arbitration and a specified method of notification and document delivery would undermine the benefits arbitration provides.").

Brands argues conclusorily that *Rockefeller* is "inapposite" because there is no evidence that it involved COVID-19 shutdowns. But Brands cites no authority suggesting that Hong Kong's COVID-19 precautions have any legal bearing on this case, particularly since (unlike the Chinese company in *Rockefeller*), Brands does not claim that it lacked actual notice of the arbitration proceeding. Nor has Brands identified any other basis for distinguishing *Rockefeller*. Accordingly, his reliance on the Hague Convention is unavailing.

For all these reasons, Brands has not shown that the arbitration award was "procured by corruption, fraud, or undue means" so as to be subject to vacatur under 9 U.S.C. § 10(a)(1). Having chosen to ignore the arbitration proceeding, Brands is not entitled now to vacate the award based on its non-participation.

IV. CONCLUSION

Because Brands has not established any lawful basis for vacating the arbitration award, its Petition is **DENIED** and this action is **CLOSED**.

A final judgment will be entered separately.