UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No.: 2:22-cv-01014-FWS-AGR Date: July 12, 2022
Title: Fantastic Films International, LLC v. Screen Media Ventures, LLC *et al.*

Present: **HONORABLE FRED W. SLAUGHTER, UNITED STATES DISTRICT JUDGE**

Melissa H. Kunig	N/A
Deputy Clerk	Court Reporter
Attorneys Present for Plaintiff:	Attorneys Present for Defendant:
Not Present	Not Present

PROCEEDINGS: ORDER GRANTING DEFENDANT'S MOTION TO COMPEL ARBITRATION AND STAY PROCEEDINGS [27]

Before the court is Defendant Screen Media Ventures, LLC's ("Defendant") Motion to Compel Arbitration and to Stay this Action ("Motion" or "Mot."). (Dkt. 27.) On June 9, 2022, Plaintiff Fantastic Films International, LLC ("Plaintiff") filed an Opposition ("Opp.") to the Motion. (Dkt. 30.) On June 10, 2022, Defendant filed a Notice of Errata attaching a corrected version of the Motion.[1] (Dkt. 31, Exh. A.) On June 16, 2022, Defendant filed a Reply ("Reply"). (Dkt. 32.)

The court finds this matter appropriate for resolution without oral argument. *See* Fed. R. Civ. P. 78(b) ("By rule or order, the court may provide for submitting and determining motions on briefs, without oral hearings."); L.R. 7-15 (authorizing courts to "dispense with oral argument on any motion except where an oral hearing is required by statute"). Based on the state of the record, as applied to the applicable law, the court **GRANTS** the Motion.

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[1] The court notes that the record citations in this Order refer to the corrected version of the Motion filed at Dkt. 31, Exh. A.

I. Background

A. Summary of the Complaint's Allegations

On February 14, 2022, Plaintiff filed a Complaint (the "Complaint" or "Compl.") asserting claims for relief against Defendant for copyright infringement under 17 U.S.C. §§ 101, *et seq*., and vicarious and/or contributory copyright infringement. (*See generally*, Compl.) Plaintiff "is a film financing, distribution, and production company, with a primary focus of acting as a sales agent by distributing independent films domestically and abroad." (Compl. ¶ 10.) Defendant is "an international distributor of television series and films, licensing content through theatrical, home video, pay-per-view, free, cable and pay television, and subscription and advertising video-on-demand platforms." (*Id.* ¶ 12.)

The Complaint alleges the suit arises from Defendant's "continued exploitation of three films after its license agreements with [Plaintiff] expired." (*Id.* ¶ 9.) There are three films at issue in the Complaint: (1) the film "*Sam Steele and the Junior Detective Agency*" ("*Sam Steele*"); (2) the film "*Spirit of the Forest*"; and (3) the film "*The Last Kung Fu Monk*." (*Id.* ¶¶ 13-28.) Plaintiff entered into exclusive worldwide representation agreements with the producers of the movies. (*Id.* ¶¶ 15, 21, 26.) Plaintiff also entered into license agreements with Defendant to distribute each of the films, with each agreement having a term of seven (7) years. (*Id.* ¶¶ 17, 23, 28.)

The parties entered into a license agreement for *Sam Steele* and *Spirit of the Forest* on March 18, 2010. (*See* Mot., Declaration of David Fannon ("Fannon Decl."), Exh. 1.) The parties entered into a license agreement for *The Last Kung Fu Monk* on February 22, 2011. (Fannon Decl., Exh. 2.) The agreements' seven-year terms begin on the date that the DVD for each film is commercially released. (Fannon Decl., Exhs. 1 & 2.) Plaintiff alleges each of these license agreements have now expired. (Compl. ¶¶ 17, 23, 28.) The license agreement for *Sam Steele* expired on January 4, 2018 (Compl. ¶ 17; Opp. at 1); the agreement for *Spirit of the Forest* on September 14, 2017 (Compl. ¶ 23; Opp. at 1); and the agreement for *The Last Kung Fu Monk* on July 5, 2018 (Compl. ¶ 28, Opp. at 1).

Plaintiff alleges that after entering into the license agreements, its relationship with Defendant began to deteriorate because Defendant failed to timely provide quarterly usage statements, pay invoices, and respond to emails. (Compl. ¶ 29.) Plaintiff alleges it later discovered that each of the films remained available for purchase and rent on various websites after the respective license agreements had already expired. (*Id.* ¶¶ 31-45.) Plaintiff alleges it does not know if the films continue to be exploited by Defendant, or whether Defendant's accounting reports for the films are accurate. (*Id.* ¶ 48.)

B. Arbitration Agreement

The license agreements for the three films share identical arbitration clauses. In relevant part, the agreements provide:

> This Agreement shall be interpreted in accordance with the laws of the State of California, applicable to agreements executed and to be wholly performed therein. Any controversy or claim arising out of or in relation to this Agreement or the validity, construction or performance of this Agreement, or the breach thereof, shall be resolved by arbitration in accordance with the rules of the IFTA under its jurisdiction in California before a single arbitrator familiar with entertainment law. The parties shall have the right to engage in pre-hearing discovery in connection with such arbitration proceedings. The parties agree hereto that they will abide by and perform any award rendered in any arbitration conducted pursuant hereto, that any court having jurisdiction thereof may issue a judgment based upon such award and that the prevailing party in such arbitration and/or confirmation proceeding shall be entitled to recover all of its attorney's fees and expenses. The arbitration will be held in Los Angeles, California and any award shall be final, binding, and non-appealable. The Parties agree to accept service of process in accordance with the IFTA Rules.

(Fannon Decl., Exhs. 1 & 2.)

II. Legal Standard

A. Motion to Compel Arbitration

Under the Federal Arbitration Act, 9 U.S.C. §§ 1, *et seq*. (the "FAA"), "[a] written provision in any . . . contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract . . . shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract." 9 U.S.C. § 2. The FAA reflects both a "liberal federal policy favoring arbitration" and the "fundamental principle that arbitration is a matter of contract." *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 339 (2011) (citation omitted). Yet, because "arbitration is a matter of contract . . . a party cannot be required to submit to arbitration any dispute which he has not agreed so to submit." *United Steelworkers of Am. v. Warrior & Gulf Nav. Co*., 363 U.S. 574, 582 (1960). "The FAA thereby places arbitration agreements on an equal footing with other contracts . . . and requires courts to enforce them according to their terms." *Rent-A-Ctr., W., Inc. v. Jackson*, 561 U.S. 63, 67 (2010). The FAA "leaves no place for the exercise of discretion by a district court, but instead mandates that district courts shall direct the parties to proceed to arbitration on issues as to which an arbitration agreement has been signed." *Dean Witter Reynolds, Inc. v. Byrd*, 470 U.S. 213, 218 (1985).

"The standard for demonstrating arbitrability is not high." *Simula, Inc. v. Autoliv, Inc*., 175 F.3d 716, 719 (9th Cir. 1999). "Because the FAA mandates that district courts shall direct the parties to proceed to arbitration on issues as to which an arbitration agreement has been signed, the FAA limits courts' involvement to determining (1) whether a valid agreement to arbitrate exists and, if it does, (2) whether the agreement encompasses the dispute at issue." *Cox v. Ocean View Hotel Corp*., 533 F.3d 1114, 1119 (9th Cir. 2008) (citation and internal quotation marks omitted); *see also Brennan v. Opus Bank*, 796 F.3d 1125, 1130 (9th Cir. 2015) ("Generally, in deciding whether to compel arbitration, a court must determine two 'gateway' issues: (1) whether there is an agreement to arbitrate between the parties; and (2) whether the agreement covers the dispute.").

"To evaluate the validity of an arbitration agreement, federal courts should apply ordinary state-law principles that govern the formation of contracts." *Ingle v. Cir. City Stores, Inc*., 328 F.3d 1165, 1170 (9th Cir. 2003) (citation and internal quotation marks omitted); *see also Mundi v. Union Sec. Life Ins. Co*., 555 F.3d 1042, 1044 (9th Cir. 2009) (citation and internal quotation marks omitted) ("In determining whether parties have agreed to arbitrate a dispute, we apply general state-law principles of contract interpretation, while giving due regard to the federal policy in favor of arbitration by resolving ambiguities as to the scope of arbitration in favor of arbitration.").

"To require arbitration, [Plaintiff's] factual allegations need only 'touch matters' covered by the contract containing the arbitration clause and all doubts are to be resolved in favor of arbitrability." *See Simula, Inc*., 175 F.3d at 721. "If the response is affirmative on both [elements], then the Act requires the court to enforce the arbitration agreement in accordance with its terms." *Chiron Corp. v. Ortho Diagnostic Sys., Inc*., 207 F.3d 1126, 1130 (9th Cir. 2000).

III. Discussion

As a preliminary matter, Plaintiff argues the court should strike the Motion for failure to include a table of contents and authorities because such an omission violates the Central District of California's Local Rules and the court's Standing Order. (Opp. at 2.) Defendant represents that such an omission was inadvertent and apologizes to the court for the error. (Reply at 3-4.) Defendant has since re-filed a corrected Motion that includes a table of contents and authorities. (*See* Dkt. 31, Exh. A.) Given that Defendant has already remedied the issue, the court declines to strike the Motion. Accordingly, the court addresses the merits of the Motion below.

A. The Effect of Expiration on the Arbitration Provisions

The first question before the court is "whether a valid agreement to arbitrate exists." *Cox*, 533 F.3d at 1119. In this case, there is no dispute between the parties regarding the existence of the license agreements for the three films at issue. (*See* Mot. at 1 (noting that "the

parties' License Agreements regarding the subject Films contains a broad and extensive arbitration clause"); Opp. at 4 (Plaintiff stating that it "does not dispute that a valid arbitration provision existed within the long-expired Agreements").) Accordingly, the court observes that the question presented at the first step of the analysis is whether the arbitration provision at issue terminated with the expiration of the underlying license agreements.

Defendant argues that arbitration should be compelled because the Supreme Court and Ninth Circuit have previously enforced arbitration provisions in expired agreements, and Plaintiff's copyright infringement allegations reference Defendant's purported exploitation of the films after the agreements expired, or in other words, post-expiration conduct. (*See* Mot. at 8-13; Reply at 4-5). Plaintiff maintains that the arbitration provisions terminated with the expiration of the license agreements, per *Litton Fin. Printing Div., a Div. of Litton Bus. Sys., Inc. v. N.L.R.B.*, 501 U.S. 190 (1991) ("*Litton*").[2] (Opp. at 4-6.)

In *Litton*, which is not an FAA case, the Supreme Court held that it "presume[s] as a matter of contract interpretation that the parties did not intend a pivotal dispute resolution provision to terminate for all purposes upon the expiration of the agreement." *Litton*, 501 U.S. at 208. This presumption can be "negated expressly or by clear implication." *Id.* at 204 (citation omitted). Where a contract contains an "unlimited arbitration clause," "[i]t follows that if a dispute arises under the contract here in question, it is subject to arbitration even in the postcontract period." *Id*. at 205. In *Litton*, the Supreme Court identified three scenarios in which arbitration may be compelled after the expiration of a contract: (1) "where it involves facts and occurrences that arose before expiration;" (2) "where an action taken after expiration infringes a right that accrued or vested under the agreement;" or (3) "where, under normal principles of contract interpretation, the disputed contractual right survives expiration of the remainder of the agreement." *Id.* at 206.

[2] Although *Litton* involved an employment dispute not covered by the FAA, the court notes that the standard set forth in *Litton* has been applied in FAA cases. *See, e.g., QAD Inc. v. St. Jude Med., LLC*, 2019 WL 8810352, at *3 (N.D. Cal. July 8, 2019); *Gravestone Ent. LLC v. Maxim Media Mktg. Inc.*, 2019 WL 3578471, at *2-3 (D. Ariz. Aug. 6, 2019); *Jocson v. Diamond Resorts Int'l Club, Inc.*, 2019 WL 10854465, at *6 (C.D. Cal. Mar. 28, 2019).

Based on the record before the court and the law as applied to the applicable facts, the court finds that all three scenarios sufficiently apply here, such that the arbitration clauses survived the expiration of the license agreements.

First, the court finds that arbitration may be compelled here after the expiration of the agreements because the dispute involves licenses granted before the expiration of the agreements. Per the Complaint, the agreement for *Sam Steele* was valid from March 18, 2010, to January 4, 2018; the agreement for *Spirit of the Forest* from March 18, 2010, to September 14, 2017; and the agreement for *The Last Kung Fu Monk* from February 22, 2011, to July 5, 2018. (Compl. ¶¶ 17, 23, 28.) Based on the Complaint's allegations, the court finds that the licenses were granted well before the expiration of the agreements in 2017 and 2018. (*Id.*) Accordingly, the dispute, at least in part, "involves facts and occurrences that arose before expiration." *Litton*, 501 U.S. at 206.

In similar cases involving copyright infringement claims asserted after the expiration of related license agreements, federal courts in the Ninth Circuit have held that such claims "involve[ ] facts and occurrences that arose before expiration." *See, e.g.*, *QAD Inc.*, 2019 WL 8810352, at *3 ("First, this case involves the license granted in 1995, well before the expiration of the License Agreement in 2015."); *Gravestone Ent. LLC*, 2019 WL 3578471, at *2-3 ("[Plaintiff] asserts copyright infringement claims dealing with the same two films for which the parties entered the licensing agreements. While [plaintiff] correctly contends that its copyrights to the films arose before the parties entered the agreement, the claims it brings now 'involve[ ] facts and occurrences that arose before [the agreements'] expiration . . . . The infringement claims will undoubtedly include the licensing agreements, and therefore facts and occurrences that happened before expiration.").

Second, the court finds that arbitration may be compelled here after the expiration of the agreements because Defendant's alleged "action taken after expiration infringes a right that accrued or vested under the agreement." *Litton*, 501 U.S. at 206. In this case, the license agreements purportedly set forth Defendant's permitted uses of the films during the term of the agreements, as well as the restricted uses after expiration of the agreements. (*See generally*

Compl.) *See also QAD Inc.*, 2019 WL 8810352, at *3 ("[T]his case includes allegations about post-expiration conduct—SJM's merger into Abbott—and the effect of that conduct, if any, on the license granted under the License Agreement.").

Third, the court finds that arbitration may be compelled after the expiration of the agreements because "under normal principles of contract interpretation, the disputed contractual right survives expiration of the remainder of the agreement." *Litton*, 501 U.S. at 206. Here, the arbitration provision provides that, "[a]ny controversy or claim arising out of or in relation to this Agreement or the validity, construction or performance of this Agreement, or the breach thereof, shall be resolved by arbitration in accordance with the rules of the IFTA under its jurisdiction in California before a single arbitrator familiar with entertainment law." (Fannon Decl., Exhs. 1 & 2.) The court observes that the agreement does not include a provision indicating that the parties intended the arbitration clause to terminate with the license agreements. (*Id.*)

Under *Litton*, where a contract does not specifically state the effect of termination on a dispute resolution provision, the presumption is "as a matter of contract interpretation that the parties did not intend a pivotal dispute resolution provision to terminate for all purposes upon the expiration of the agreement." *Litton*, 501 U.S. at 208. To the extent there is any ambiguity in the license agreements, such ambiguity is to be resolved in favor of arbitrability. *See Simula, Inc.*, 175 F.3d at 721 ("To require arbitration, [Plaintiff's] factual allegations need only 'touch matters' covered by the contract containing the arbitration clause and all doubts are to be resolved in favor of arbitrability."); *Nolde Bros. v. Loc. No. 358, Bakery & Confectionery Workers Union, AFL-CIO*, 430 U.S. 243, 255 (1977) ("Consequently, the parties' failure to exclude from arbitrability contract disputes arising after termination, far from manifesting an intent to have arbitration obligations cease with the agreement, affords a basis for concluding that they intended to arbitrate all grievances arising out of the contractual relationship. In short, where the dispute is over a provision of the expired agreement, the presumptions favoring arbitrability must be negated expressly or by clear implication."); *Optimum Prods. v. Home Box Off.*, 839 F. App'x 75, 77 (9th Cir. 2020) ("An arbitration clause can still bind the parties, even if the parties fully performed the contract years ago.").

Accordingly, based on the state of the record, as applied to the applicable law, the court concludes that a valid agreement to arbitrate exists.

B. Scope of the Arbitration Provisions

The second question before the court is "whether the agreement encompasses the dispute at issue." *Cox*, 533 F.3d at 1119. As described above, the express terms of the arbitration provisions state that, "[a]ny controversy or claim arising out of or in relation to this Agreement or the validity, construction or performance of this Agreement, or the breach thereof, shall be resolved by arbitration in accordance with the rules of the IFTA under its jurisdiction in California before a single arbitrator familiar with entertainment law." (Fannon Decl., Exhs. 1 & 2.)

The Ninth Circuit has held that where an arbitration clause includes language such as "arising in connection with," such clauses are interpreted broadly. *See Simula, Inc*., 175 F.3d at 721 ("Every court that has construed the phrase 'arising in connection with' in an arbitration clause has interpreted that language broadly."); *Chiron Corp*., 207 F.3d at 1131 ("The parties' arbitration clause is broad and far reaching: 'Any dispute, controversy or claim arising out of or relating to the validity, construction, enforceability or performance of this Agreement shall be settled by binding Alternate Dispute Resolution ('ADR') in the manner described below.'"). An arbitration provision that includes such language is interpreted to mean that arbitration should reach "every dispute between the parties having a significant relationship to the contract and all disputes having their origin or genesis in the contract." *Simula, Inc*., 175 F.3d at 721.

As with the arbitration provisions at issue in *Simula, Inc*. and *Chiron Corp*., the court finds that the arbitration provisions in this case are "broad and far reaching" because they refer "[a]ny controversy or claim arising out of or in relation to this Agreement or the validity, construction or performance of this Agreement, or the breach thereof" to mandatory arbitration. (Fannon Decl., Exhs. 1 & 2.)

Additionally, the court finds that the Complaint's factual allegations sufficiently meet the minimum threshold by "touch[ing] matters" covered by the license agreement requiring

arbitration. *Simula, Inc.*, 175 F.3d at 721. Plaintiff alleges that Defendant infringed its copyrights by continuing to distribute the films after the license agreements expired. (Compl. ¶¶ 29-48.) The agreements thus determine the limits of Defendant's legal distribution of the films and when the purported infringement began. (*Id.*) The court is not persuaded by Plaintiff's arguments that its infringement claims are unrelated to the license agreement (see Opp. at 6-9). Accordingly, the court finds that the Complaint sufficiently "touch[es] matters" covered by the license agreements, and the arbitration provisions thus "encompass[s] the dispute at issue." *Cox*, 533 F.3d at 1119.

Accordingly, based on the state of the record, as applied to the applicable law, the court finds that the agreement to arbitrate encompasses Plaintiff's copyright infringement claims and **GRANTS** the Motion.

C. Defendant's Request for Stay

Defendant requests that the court stay the action pending the resolution of the arbitration as required by 9 U.S.C. § 3. (Mot. at 15; Reply at 10.) The court agrees. Where a court has found affirmatively on both elements, "the Act requires the court to enforce the arbitration agreement in accordance with its terms." *Chiron Corp.*, 207 F.3d at 1130.

Under 9 U.S.C. § 3, if a court finds that an issue is referrable to arbitration under an agreement, the court must stay the action until the resolution of the arbitration:

> If any suit or proceeding be brought in any of the courts of the United States upon any issue referable to arbitration under an agreement in writing for such arbitration, the court in which such suit is pending, upon being satisfied that the issue involved in such suit or proceeding is referable to arbitration under such an agreement, 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, providing the applicant for the stay is not in default in proceeding with such arbitration.

Id.

Therefore, based on the record, as applied to the applicable law, the court **GRANTS** the request for a stay pending the resolution of the arbitration.

IV. Disposition

For the reasons set forth above, the court **GRANTS** the Motion and **ORDERS** the action stayed until the completion of an arbitration in accordance with the terms of the license agreements. The court **ORDERS** the parties to file a joint report every ninety (90) days regarding the status of the arbitration process.

The Clerk shall serve this minute order on the parties.

Initials of Deputy Clerk: mku