UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 18-20859-CIV-ALTONAGA/Goodman

CAPORICCI U.S.A. CORP.,

Plaintiff,

v.

PRADA S.p.A., *et al.*,

Defendants.
_____/

ORDER

THIS CAUSE came before the Court on Defendant, Prada S.p.A.'s ("Prada['s]") Petition for Recognition, Confirmation and Enforcement of Foreign Arbitral Award [ECF No. 60] ("Petition"). In response to Defendant's request the Court confirm and enforce a foreign arbitral award, Plaintiff, Caporicci U.S.A. Corp. ("Caporicci"), filed a Motion to Stay Confirmation Pending the Outcome of this Case [ECF No. 63] ("Motion to Stay"); to which Prada filed an Opposition [ECF No. 67] ("Opposition"). Caporicci then filed a Reply and Renewed Motion to Stay Confirmation Pending the Outcome of this Case [ECF No. 74] ("Reply"), to which Defendant filed a Supplemental Memorandum in Opposition to Caporicci's Motion to Stay Enforcement of Arbitration Award [ECF No. 79] ("Supplemental Memorandum"). The Court has carefully considered the parties' submissions, the record, and applicable law.

I. BACKGROUND

Plaintiff, Caporicci, works in what it terms the "alligator industry." (Opposition to Motion to Compel Arbitration [ECF No. 46] 2). Caporicci has spent years developing business relationships with various alligator growers in Louisiana, Georgia, and Florida to facilitate sales of alligators to different tanneries. (*See id.*). In this capacity, Caporicci formed relationships with

each of the Defendants. Caporicci alleges Defendants, Prada and GNP Pelli, began developing a relationship to develop an inventory of quality alligator hides beginning in 2013. (*See* Compl. [ECF No. 1-2] 11). Caporicci states it reached an agreement with Prada and GNP Pelli in 2014, whereby Caporicci would locate growers of quality alligator hides and facilitate shipment of the hides to GNP Pelli. (*See id.* 12). Defendant, Donald Farms, is an alligator farm that provided alligator hides to Caporicci, for export to GNP Pelli in Italy. (*See id.*).

In 2015, Prada entered into an agreement with Caporicci to purchase 15,000 alligator eggs and hatchlings (the "Purchase Agreement"). (*See* Prada and GNP Pelli's Joint Motion to Compel Arbitration and Stay Proceedings [ECF No. 37] 4). The Purchase Agreement contained an arbitration provision requiring the parties arbitrate any disputes arising out of or in connection with the agreement. (*See id*. 5). After a dispute between the parties, Prada commenced arbitration proceedings against Caporicci in Milan, Italy on December 1, 2017. (*See id*. 6). The same day, Caporicci filed this action in state court in Miami, Florida. (*See id*.).

After removing the action (*see* Notice of Removal [ECF No. 1]), Prada and GNP Pelli filed the referenced Joint Motion to Compel Arbitration. Caporicci opposed arbitration, arguing its allegations in this lawsuit supported separate and distinct claims arising from separate facts unrelated to the Purchase Agreement it entered with Prada. (*See* Opp. to Mot. to Compel 5–7). Caporicci also argued arbitration was inappropriate because certain Defendants were not signatories to the arbitration agreement. (*See id*. 9–10). Caporicci did not prevail in its position.

On May 7, 2018, the Court entered an Order [ECF No. 47] granting Prada and GNP Pelli's Joint Motion to Compel Arbitration. The Court found "[Caporicci's] claims relate to agreements it entered to fulfill its contract with Prada, as well as its agreement with Prada itself." (Order 4 (alteration added)). "Had [Caporicci] not entered into its agreement with Prada, none of the events

underlying its claims would have come to pass." (*Id*. (alteration added)). The Court further stated, "[Caporicci's] claims against the non-signatories factually relate to the interpretation and performance" of the Purchase Agreement and are "inextricably intertwined with its claims against Prada." (*Id*. 4–5 (alteration added; internal quotation marks and citation omitted)). For these reasons, the undersigned found "*all claims must be submitted to arbitration*." (*Id*. 5 (emphasis added)). All counts of the Complaint were referred to arbitration before the Chamber of National and International Arbitration in Milan, and this action was closed. (*See id*. 6).

Arbitration ensued, but unfortunately did not seemingly put to rest the issues this suit raised. Upon completing the arbitration, Prada and Caporicci each requested the Court reopen the case (*see generally* Prada's Motion to Lift the Stay [ECF No. 52]; Caporicci's Response to Prada's Motion to Lift the Stay [ECF No. 57]); which the Court granted (*see* April 4, 2019 Order [ECF No. 59]). The next day, Prada filed the present Petition; to which Caporicci filed in apparent response its Motion to Stay.

The parties' present dispute pits Prada's request for confirmation of the final arbitral award ("Final Award") in its favor against Caporicci's request the Court not do that, but rather allow Caporicci to proceed with the Complaint's claims against the other Defendants – claims it did not pursue in arbitration. Prada explains it has fully arbitrated its dispute with Caporicci and now seeks enforcement of the Final Award issued by the Tribunal. (*See* Pet. 3). Prada argues all requirements for confirmation of the award have been met and the Court should affirm the Final Award in accordance with 9 U.S.C. section 207. (*See id*. 6–8).

In its Motion to Stay, Caporicci acknowledges "it has a responsibility to Prada arising out of the Arbitration Award," but insists the Final Award should be stayed while it litigates its claims in this action, which it describes as "separate and distinct" from the claims arbitrated. (Mot. to

Stay ¶ 10). According to Caporicci, Defendants, GNP Pelli and Donald Farms never "sought to join in the Milan Arbitration," and so Caporicci's claims against them were not arbitrated. (*Id*. ¶ 8). Caporicci states a stay is justified on several grounds: its claims against GNP Pelli and Donald Farms are separate and distinct from the claims resolved in the Milan Arbitration; GNP Pelli and Donald Farms are not signatories to the arbitration agreement and so were not compelled to participate in the Milan Arbitration; GNP Pelli and Donald Farms did not pursue arbitration; and Caporicci's recovery in this action may be a setoff against the amounts recoverable by Prada in the Milan Arbitration's Final Award. (*See id*. ¶ 10).

Prada argues enforcement of the Arbitral Award is mandatory, as Caporicci fails to raise any recognized defense allowing the Court to stay enforcement of the Final Award. (*See* Opp. 2–6). Prada states Caporicci cannot pursue any substantive claims in this case because Caporicci's claims against all Defendants were referred to arbitration, the claims are intertwined, and it was Caporicci's obligation to pursue its claims in the arbitration proceeding. (*See id*. 7–10). Finally, Prada insists the law of the case doctrine precludes Caporicci from trying to litigate the claims previously referred to arbitration. (*See id.* 8). The Court examines some of these competing arguments below.

II. ANALYSIS

A. Applicable Law

In 1970, Congress incorporated the New York Convention into chapter 2 of the Federal Arbitration Act ("FAA"), "which governs the enforcement of arbitration agreements, and of arbitral awards made pursuant to such agreements, in federal and state courts." *Industrial Risk Insurers v. M.A.N. Gutehoffnungshutte GmbH*, 141 F.3d 1434, 1440 (11th Cir. 1998) (citing *Allied-Bruce Terminix Cos., Inc. v. Dobson*, 513 U.S. 265, 269–73 (1995)). The terms of the FAA

mandate the New York Convention "shall be enforced in United States courts . . . ." 9 U.S.C. § 201 (ellipses added). To enforce an arbitration award, "any party to the arbitration may apply . . . for an order confirming the award as against any other party to the arbitration[, and t]he Court shall confirm the award unless it finds one of the grounds for refusal or deferral of recognition or enforcement . . . specified in the [New York] Convention." *Id.* § 207 (alterations added).

The New York Convention places the burden on the party asking the court to refuse enforcement to prove one of the defenses listed in Article V. *See* New York Convention, art. V(1); *Industrial Risk Insurers*, 141 F.3d at 1441–42 (citing *Imperial Ethiopian Gov't v. Baruch-Foster Corp.*, 535 F.2d 334, 335–36 & 336 (5th Cir. 1976) ("The burden of proof is on the party defending against enforcement.") (other citation omitted)). Because there is a strong public policy in favor of international arbitration, and confirmation of an arbitration award should be a summary proceeding, that burden is onerous, with "the showing required to avoid summary confirmance [] high." *Yusuf Ahmed Alghanim & Sons, W.L.L. v. Toys "R" Us, Inc.*, 126 F.3d 15, 23 (2d Cir. 1997) (alteration added; internal quotation marks and citation omitted).

Article V of the New York Convention states seven grounds that may justify a refusal to enforce an arbitral award. *See* New York Convention, art. V;[1] *Industrial Risk Insurers*, 141 F.3d

[1] Article V provides:

> 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:
>
> (a) The parties to the agreement . . . 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
>
> (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

at 1441 n.8, 1441–42. In addition to the defenses listed in Article V, which provide the Court with grounds to refuse to enforce an arbitration award, Article VI of the New York Convention allows the Court to grant a stay in limited circumstances. Under Article VI:

> If an application for the setting aside or suspension of the award has been made to a competent authority . . . the authority before which the award is sought to be relied upon may, if it considers it proper, adjourn the decision on the enforcement of the award and may also, on the application of the party claiming enforcement of the award, order the other party to give suitable security.

New York Convention, art. VI (alteration added).

B. The Parties' Arguments Considered

At the outset, the Court observes Caporicci "does not contest confirmation and does not seek to vacate the [Final Award]." (Reply 5 (alteration added)). Caporicci's argument is that "it is equitable to stay enforcement of the confirmation and resolve the remaining issues herein."

> (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
>
> (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
>
> (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.
>
> 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:
>
> (a) The subject matter of the difference is not capable of settlement by arbitration under the law of that country; or
>
> (b) The recognition or enforcement of the award would be contrary to the public policy of that country.

Id. V(1)–(2) (alteration added).

(Mot. to Stay 7). This argument is predicated on the assumption Caporicci may now litigate claims it did not assert against GNP Pelli and Donald Farms in the Milan Arbitration. (*See* Mot. to Stay 6–8; Reply 8–10). Caporicci does not support its equitable stay argument with any citations to the New York Convention or Eleventh Circuit case law.[2] In any event, the Court does not reach the equitable stay argument, as Caporicci has no claims remaining in this action.

Caporicci repeatedly asserts its claims against GNP Pelli and Donald Farms are "separate and distinct" from the claims arbitrated against Prada. (Mot. to Stay 3; Reply 4). And Caporicci states its legal remedies against GNP Pelli and Donald Farms "are in *this* action." (Reply 4 (emphasis in original)). Not so. In the May 7, 2018 Order, the Court plainly determined Caporicci's claims against GNP Pelli and Donald Farms "are inextricably intertwined with its claims against Prada . . . Thus, *all claims must be submitted to arbitration*." (Order 4–5 (alterations and emphasis added)). The Court could not have been more clear in ordering "[a]ll counts in the Complaint . . . referred to arbitration before the Chamber of National and International Arbitration in Milan." (*Id*. 6 (alterations added)).

Prada correctly notes the Court's Order is the law of the case. (*See* Opp. 8). "As most commonly defined, the [law of the case] doctrine posits that when a court decides upon a rule of law, that decision should continue to govern the same issues in subsequent stages in the same case." *Gundotra v. U.S. Dep't of I.R.S.*, No. 00-7065, 2004 WL 2827965, at *3 (S.D. Fla. Oct. 14, 2004) (alteration added) (quoting *Arizona v. California*, 460 U.S. 605, 618 (1983)). The doctrine "promotes the finality and efficiency of the judicial process by protecting against the agitation of

[2] Caporicci relies on *Hewlett-Packard Co., Inc. v. Berg*, 61 F.3d 101 (1st Cir. 1995), where the district court "ha[d] the power to issue a stay [of an arbitral award] in the peculiar circumstances of th[at] case." *Id.* at 105 (alterations added). The peculiar circumstances of *Berg* are not present here, for reasons Prada elaborates on in its briefing in opposition to the Motion to Stay, and which the Court does not repeat but simply notes it agrees with. (*See* Opposition 4–5).

settled issues." *Id*. (internal quotation marks and citation omitted). The law of the case may be revisited only "when (1) new and substantially different evidence emerges at a subsequent trial; (2) controlling authority has been rendered that is contrary to the previous decision; or (3) the earlier ruling was clearly erroneous and would work a manifest injustice if implemented." *Klay v. All Defendants*, 389 F.3d 1191, 1198 (11th Cir. 2004) (citation omitted). None of these three conditions is met here: the first two are inapplicable; and the third requires – in addition to a showing of "manifest injustice" – a finding the Order compelling arbitration was "clearly erroneous," which no party has suggested.

Tellingly, Caporicci does not address the law-of-the-case doctrine in its briefing. (*See generally* Mot. to Stay; Reply). It appears many of Caporicci's arguments seem to ignore the Court's Order entirely. For example, Caporicci cites multiple cases in support of its position that "[w]hen different parties are involved in an action and there are arbitrable claims as to one party, it is proper to proceed with the non-arbitrable claims against the non-arbitrating party." (Reply 9–10). Yet, Caporicci fails to identify any non-arbitrable claims. The Court already ruled all claims in the Complaint "must be submitted to arbitration." (Order 5). Given the Court's Order, Caporicci does not have any non-arbitrable claims remaining in this action.

The Court is not persuaded by the argument it was not Caporicci's "obligation to raise the issue[s]" in arbitration. (Reply 6 (alteration added)). Plaintiff states it was not up to Caporicci to prove its claims against GNP Pelli and Donald Farms "do not arise out of the Agreement under arbitration . . . ." (*Id*. 7 (alteration added)). According to Caporicci, somehow GNP Pelli's and Donald Farms' failures "to intervene in the Arbitration amount[] to a waiver" of their right to arbitrate Caporicci's claims against them. (*Id*. 6 (alteration added)). In support of this position, Caporicci provides a statement by Italian lawyer, Edoardo Artese, who represented Caporicci in

the Milan Arbitration.[3] (*See* Artese Statement [ECF No. 74-1]). Artese states the Arbitration Rules of the Milan Chamber of Arbitration make Caporicci's claims against GNP Pelli and Donald Farms optional and relieve Caporicci of any obligation to assert the claims. (*See id*. 3).

But Artese's opinion does not resurrect Caporicci's claims in this action. Whether Caporicci *could* arbitrate its claims against Prada without asserting its claims against GNP Pelli and Donald Farms is of no moment. Certainly, Caporicci was not *required* to assert any claims against GNP Pelli, Donald Farms, or any other entity. Yet, if it wished to prevail on its claims against GNP Pelli and Donald Farms, the undersigned made clear any claims Caporicci intended to pursue in this action "must be submitted to arbitration." (Order 5).

Prada correctly notes "Caporicci has no one to blame but itself for its failure to assert all of its claims in the arbitration, as it was ordered to do." (Supp. Memorandum 6). Curiously, Caporicci states "[n]either GNP Pelli nor Donald Farms sought to join in the Milan Arbitration." (Mot. to Stay 3). To suggest, as Caporicci does, that Defendants GNP Pelli and Donald Farms were required to intervene in the arbitration is to require defendants to proactively appear in arbitration to which they are not parties in order to assert defenses to claims that have not even been made against them in the arbitration proceeding. Caporicci's position is novel indeed.

As Caporicci has no claims remaining in this action, all that is left is for the Court to confirm the Final Award. "[T]he confirmation of an arbitration award is a summary proceeding that merely makes what is already a final arbitration award a judgment of the court." *Toys "R" Us, Inc*., 126 F.3d at 23 (quotation marks and citation omitted; alteration in original). The Final Award in favor of Prada "must be confirmed unless [Caporicci] can successfully assert one of the

[3] Prada argues the Artese Statement is inadmissible and should not be considered. (*See* Supp. Memorandum 4). The Court does not address this argument because the Artese Statement is immaterial to the undersigned's decision.

seven defenses against enforcement of the award enumerated in Article V of the New York Convention." *Industrial Risk Insurers*, 141 F.3d at 1441 (alteration added; citations and footnote call number omitted). Caporicci does not assert any defenses against enforcement of the Final Award and "does not contest confirmation of Prada's Award . . . ." (Reply 2 (alteration added)). Given these circumstances, the Court is obligated to confirm the Final Award. *See* New York Convention, art. V(1)(d).

III. CONCLUSION

For the foregoing reasons, it is

ORDERED AND ADJUDGED that Defendant, Prada S.p.A.'s Petition for Recognition, Confirmation and Enforcement of Foreign Arbitral Award **[ECF No. 60]** is **GRANTED**. Plaintiff, Caporicci U.S.A. Corp.'s Motion to Stay Confirmation Pending the Outcome of this Case **[ECF No. 63]** is **DENIED**. Final judgment will be entered by separate order. The Clerk is directed to mark this case **CLOSED**.

DONE AND ORDERED in Miami, Florida, this 30th day of July, 2019.

Cecilia M. Altonaga

CECILIA M. ALTONAGA
UNITED STATES DISTRICT JUDGE

cc: counsel of record