IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MISSOURI WESTERN DIVISION

HAARSLEV HOLDING, S.A.R.L.,	)	
	)	
Plainitff,	)	
	)	
v.	)	Case No. 4:19-CV-00343-BCW
	)	
CLAUS OESTERGAARD NIELSEN,	)	
	)	
Defendant.	)	

ORDER

Before the Court is Plaintiff Haarslev Holding, S.A.R.L.'s Motion for Judgment on the Pleadings and, in the alternative, Motion for Entry of the Court's Order Confirming the Foreign Arbitral Award Against Claus Oestargaard Nielsen. (Doc. #74). The Court, being duly advised of the premises, grants the Motion to Confirm the Arbitral Award.

BACKGROUND

On December 20, 2018, the Danish Institute of Arbitration issued a Final Award ("the Award") following arbitration between Plaintiff Haarslev Holding, S.A.R.L. ("Haarslev International") and Defendant Claus Oestergaard Nielsen. The Award validated non-compete provisions in two agreements executed between Haarslev International and Nielsen – the Shareholder's Agreement ("SA") and the Management Shareholders' Agreement ("MSA") – and found Nielsen had violated terms of the agreements.

On May 2, 2019, Haarslev International filed this action seeking confirmation of the Award pursuant to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards of

June 10, 1958 (the "New York Convention") and the Federal Arbitration Act, 9 U.S.C. §§ 201-208 (the "FAA").

On March 4, 2022, the Court dismissed Defendant Haarslev Invest ApS for lack of personal jurisdiction. (Doc. #71). Thereafter, Defendant Nielsen filed his Answer, asserting affirmative defenses against confirmation of the Award including (1) the Award is contrary to Missouri public policy; (2) the Award is subject to "invalidity proceedings" in Denmark; (3) Plaintiff waived the arbitration provision now relied upon; (4) the Court lacks personal jurisdiction over all parties to the Award; and (5) all necessary parties are not parties to this action. (Doc. #73).

In the instant motion, Plaintiff seeks confirmation of the Award. Defendant opposes confirmation of the award on the grounds asserted in his Answer.

LEGAL STANDARD

Chapter 2 of the Federal Arbitration Act (the "FAA") codifies the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, commonly known as the New York Convention. 9 U.S.C. §§ 201-208; Scherk v. Alberto., 417 U.S. 506, 520 n. 15 (1974) ("[t]he goal of the Convention . . . [is] to encourage . . . enforcement of commercial arbitration agreements in international contracts"). The FAA provides

> [w]ithin three years after an arbitral award falling under the Convention is made, any party to the arbitration may apply to any court having jurisdiction under this chapter for an order confirming the award as against any other party to the arbitration. The court shall confirm the award unless it finds one of the grounds for refusal or deferral of recognition or enforcement of the award specified in the said Convention."

9 U.S.C. § 207.

"A district court must confirm the arbitral award unless a party 'successfully assert[s] one of the seven defenses against enforcement of the award enumerated in Article V of the New York Convention." Top Jet Enter.'s Ltd. V. Skyblueocean Ltd., No. 21-00096, 2021 WL 5546458, at *2

(W.D. Mo. Aug. 31, 2021) (citing Indus. Risk Insurers v. M.A.N. Gutehoffnungshutte GmbH, 141 F.3d 1434, 1441 (11th Cir. 1998)). As such, "[t]he party resisting confirmation . . . bears the heavy burden of establishing that one of the grounds for denying confirmation in Article V applies." Tetronics (Int'l) Ltd. v. BlueOak Ark. LLC, No. 4:20CV00530 SWW, 2020 WL 5520917 at *3 (E.D. Ark. Sept. 14, 2020) (citing Gold Reserve Inc. v. Bolivarian Republic of Venez., 146 F. Supp. 3d 112, 120 (D.D.C. 2015) (internal citations omitted)).

ANALYSIS

Plaintiff argues the New York Convention compels the Court to confirm the Award, as Defendant has not demonstrated any grounds upon which the Court could refuse to recognize the Award. In opposition, Defendant argues the Court should not confirm the Award because (1) the Award is contrary to public policy, and (2) the Award is not binding yet or has otherwise been set aside or suspended. Accordingly, the only issue for the Court is whether Defendant has established that a grounds for refusal under Article V applies. If there are no grounds for refusal, the Court must confirm the Award pursuant to the New York Convention and FAA 9 U.S.C. § 207.

A. Defendant has not established the Award is contrary to public policy.

"[T]he Convention's public policy defense should be construed narrowly." Parsons & Whittemore Overseas Co. v. Societe Generale De L'Industrie Du Papier (RAKTA), 508 F.2d 969, 974 (2d Cir. 1974). The public policy defense thus only applies when confirmation or enforcement of a foreign arbitration award 'would violate the forum state's most basic notions of morality and justice." Ministry of Def. & Support for the Armed Forces of the Islamic Republic of Iran v. Cubic Def. Sys., Inc., 665 F.3d 1091 (9th Cir. 2011).

Here, Defendant has not shown that the Award is contrary to public policy such that it "would violate [Missouri's] most basic notions of morality and justice." Id. Defendant argues the

Award is contrary to public policy because it upheld a non-compete provision that could potentially remain in effect forever, and Missouri law holds that non-compete agreements must be limited in temporal scope such that a perpetual non-compete agreement is against public policy. Defendant states the non-compete provision has now been in effect for six years and cites AEE-EMF, Inc. v. Passmore, 906 S.W.2d 714, 724 (Mo. Ct. App. 1995), in which the court found a five-year restriction on competition was greater than necessary and reduced the restriction to three years.

Under Missouri law, "[n]on-compete agreements are typically enforceable so long as they are reasonable." Healthcare Servs. of the Ozarks, Inc. v. Copeland, 19 S.W.3d 604, 610 (Mo. 2006). "In practical terms, a non-compete agreement is reasonable if it is no more restrictive than is necessary to protect the legitimate interests of the employer." Id. (citation omitted). "Non-compete agreements are enforceable to the extent they can be narrowly tailored geographically and temporally." Id.

In this case, Defendant does not identify precisely which terms of the SA and MSA restrictive covenants, or which findings in the Award, are contrary to public policy. Nor does Defendant offer any evidence from which the Court might determine that the restrictive covenants in the SA and MSA are more restrictive than necessary such that the agreements and the Award are contrary to Missouri's public policy. The Court therefore finds Defendant has not met his burden of establishing the public policy defense applies to confirmation of the Award.

B. Defendant has not established the existence of any other grounds for refusal under Article V.

Although Defendant lists out the grounds for refusal enumerated in Article V in his Answer, his response to the instant motion provides no substance in support for any of the defenses he asserts other than the public policy defense. Defendant states only that the Award "is subject to

invalidity proceedings, as well as waiver, and lack of personal jurisdiction/all necessary parties." The Court has determined Defendant is subject to the Court's personal jurisdiction. (Doc. #71). Furthermore, Defendant's summary assertions, without any accompanying allegations or arguments, are insufficient to meet Defendant's burden of demonstrating the applicability of any grounds of refusal.

Finding there are no grounds for refusal of confirmation of the Award, the Court grants Plaintiff's motion and confirms the December 20, 2018, Final Award. Top Jet Enter.'s Ltd., 2021 WL 5546458, at *2. Accordingly, it is hereby

ORDERED Plaintiff's motion to confirm arbitration award (Doc. #74) is GRANTED.

IT IS SO ORDERED.

Date: November 4, 2022

/s/ Brian C. Wimes
JUDGE BRIAN C. WIMES
UNITED STATES DISTRICT COURT