UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

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CIVIL MINUTES - GENERAL

Case No.	2:23-cv-05942-RGK-PD	Date	January 5, 2024
Title	***Anhui Light Industries International Co., Ltd. v. Dream Express Inc.***		

Present: The Honorable	R. GARY KLAUSNER, UNITED STATES DISTRICT JUDGE	
Joseph Remigio	Not Reported	N/A
Deputy Clerk	Court Reporter / Recorder	Tape No.
Attorneys Present for Petitioner:	Attorneys Present for Respondent:	
Not Present	Not Present	

Proceedings: **(IN CHAMBERS) Order Re: Petition to Confirm Arbitration Award [DE 1]**

I. INTRODUCTION

On July 21, 2023, Anhui Light Industries International Co., Ltd. ("Petitioner") filed a Petition to confirm an arbitration award issued on September 30, 2022, by the China International Economic and Trade Arbitration Commission ("CIETAC") against Dream Express Inc. ("Respondent"). (ECF No. 1.) On November 2, 2023, Respondent filed an Opposition. (ECF No. 30.) On November 8, 2023, Petitioner filed a Reply. (ECF No. 36.) For the following reasons, the Court **DENIES** the Petition.

II. FACTUAL BACKGROUND

The following facts are alleged in the Petition, unless otherwise noted:

Petitioner is a Chinese corporation located in the People's Republic of China. Between October 2019 and July 2020, Petitioner entered into four contracts (the "Contracts") to sell over 130,000 pairs of men's shorts and pants to a buyer named "Dream Express Inc." A person named "Hank Fred" purported to represent the buyer in negotiating the Contracts with Petitioner over email. The Contracts list two addresses for the buyer: a primary address in Edison, New Jersey, and a secondary address in Pomona, California. The Contracts also include an arbitration clause requiring all disputes arising from the Contracts to be submitted to the CIETAC for binding arbitration.

Pursuant to the Contracts, Petitioner delivered the goods and invoiced the buyer for $840,453.47. The buyer made several payments totaling around $300,000, before completely cutting off contact with Petitioner in October 2020. (Pet., Ex. D at 9, ECF No. 1-5.)

On December 10, 2020, Petitioner's credit insurance company, Sinosure, served a formal notice to Respondent to collect the unpaid balance on the Contracts. (Li Decl., Ex. 1 at 6, ECF No. 32-2.)[1] In its reply, Respondent notified Sinosure that Respondent (1) has been in the scrap metal business since 2001; (2) has never engaged in the garment business; (3) has never communicated or contracted with Petitioner; (4) does not know of anyone named "Hank Fred," who had purportedly acted on behalf of Respondent in negotiating the Contracts; (5) does not have any business locations in New Jersey, and (6) has never received any goods, invoices, or bills of lading related to the Contracts. (Li Decl., Ex. 2 at 8–9, ECF No. 32-2.) Sinosure ultimately determined that Petitioner's claims were fraudulent and dropped its collection efforts against Respondent. (Li Decl., Ex. 3 at 27, ECF No. 32-2.)

On September 1, 2021, Petitioner commenced arbitration against Respondent before the CIETAC, seeking to collect the outstanding balance on the Contracts. During the arbitration, Respondent largely made the same arguments it previously made to Sinosure. On September 30, 2022, CIETAC issued a decision in Petitioner's favor, awarding Petitioner $541,326.90 for unpaid goods under the Contracts, plus interests, attorneys' fees, and costs.

III. JUDICIAL STANDARD

Pursuant to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards ("New York Convention"), a party may petition a district court to confirm a foreign arbitral award. 9 U.S.C. § 207. Under the New York Convention, a district court's review of a foreign arbitral award is limited, such that a "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." *Id.*

One such ground for refusal of recognition or enforcement of a foreign arbitral award is that the "subject matter of the difference is not capable of settlement by arbitration under the law of that country [in which enforcement is sought]." N.Y. Convention art. V(2)(a). The burden of proof for establishing the ground is on the party opposing confirmation of the award. *Ministry of Def. of the Islamic Republic of Iran v. Gould, Inc.*, 969 F.2d 764, 770 (9th Cir. 1992) (*citing La Societe Nationale Pour La Recherche v. Shaheen Nat. Res. Co.*, 585 F. Supp. 57, 61 (S.D.N.Y. 1983)).

IV. DISCUSSION

Petitioner seeks confirmation, pursuant to the New York Convention, of CIETAC's arbitral award against Respondent. In opposition, Respondent argues that, among other things, the underlying dispute is not capable of settlement by arbitration because Respondent was never a counterparty to the Contracts. Respondent is correct in that "arbitration is strictly a matter of consent and requires an

[1] Respondent improperly compiled several exhibits into a single attachment in contravention of the Court's Standing Order. As a result, any pincites to Respondent's exhibits shall refer to page numbers within the entire docket entry, not the individual exhibits themselves.

agreement to arbitrate." *Al-Qarqani v. Chevron Corp.*, 8 F.4th 1018, 1024 (9th Cir. 2021). Without such an agreement between the parties, the dispute is not arbitrable under United States law, and the award is unenforceable. *Id.* As the party seeking nonenforcement, Respondent bears the burden of proof.

A. Independent Judicial Review of Arbitrability

As a threshold issue, the parties dispute whether the Court can independently determine the issue of arbitrability or must defer to the arbitrator's explicit finding that the dispute is arbitrable. The law is clear on this point: "Courts should not assume that the parties agreed to arbitrate arbitrability unless there is 'clear and unmistakable' evidence that they did so." *First Options of Chi., Inc. v. Kaplan*, 514 U.S. 938, 944 (1995) (internal citation and alternations omitted). Thus, unless Respondent had clearly agreed to have an arbitrator decide arbitrability, the issue is for independent judicial review. *Freaner v. Valle*, 966 F. Supp. 2d 1068, 1079 (S.D. Cal. 2013).

The record shows that Respondent did not agree to have the arbitrator determine arbitrability. Respondent has denied entering into the Contracts every step of the way, from the initial insurance investigation by Sinosure, to the arbitration proceedings before the CIETAC, to the instant action before this Court. *See Three Valleys Mun. Water Dist. v. E.F. Hutton & Co.*, 925 F.2d 1136, 1140–41 (9th Cir. 1991) ("[A] party who contests the making of a contract containing an arbitration provision cannot be compelled to arbitrate the threshold issue of the existence of an agreement to arbitrate. Only a court can make that decision."). The fact that Respondent argued the issue of arbitrability to the CIETAC arbitrator does not constitute an assent to have the arbitrator decide this gateway issue. *First Options*, 514 U.S. at 946. Accordingly, the Court need not defer to the arbitrator's decision and may decide for itself whether the dispute is arbitrable.

B. Arbitrability of the Underlying Dispute

Respondent argues that Petitioner's claims against it are not arbitrable because it had never entered into the Contracts; instead, an unknown third party had misappropriated Respondent's identity and defrauded Petitioner out of hundreds of thousands of dollars of merchandise. On the other hand, Petitioner argues that (1) Respondent's assertions are not credible, (2) the evidence shows a possibility that Respondent had indeed entered into the contracts, and (3) the extensive and complex factual dispute was resolved in arbitration and should not be relitigated in this proceeding.

Considering the totality of the evidence, the Court agrees with Respondent. First, Respondent is in the business of buying and selling scrap metal, not consumer apparel. (Tsai Decl. ¶ 4, ECF No. 32-1.) It makes little sense that Respondent would suddenly and for no discernable business reason purchase over 130,000 pairs of men's shorts and pants. Second, the Contracts, and related invoices and bills of lading, identify an address in Edison, New Jersey as Respondent's primary address. (*See generally*, Scala Decl., Ex. A, ECF No. 34-1.) But Respondent is located in Pomona, California, and has never

operated in any other location. (Li Decl., Ex. 2 at 11–12, ECF No. 32-2; Tsai Decl. ¶ 2.) Third, the Contracts arose entirely out of negotiations between Petitioner and a person named "Hank Fred," who purported to be Respondent's representative. (*See generally*, Scala Decl., Ex. A, ECF No. 34-1.) Yet, Respondent denies ever hiring, or even knowing, anyone with this name. (Li Decl., Ex. 2 at 8, ECF No. 32-2.) Respondent is solely owned and operated by Charles Tsai, who is also Respondent's only employee. (Tsai Decl. ¶ 3.) There is no evidence that Tsai authorized or ratified the Contracts. Fourth, before breaching the Contracts, the buyer paid approximately $300,000 to Petitioner, including (1) $273,000 from "L+J Garment Inc"; (2) 150,000 Chinese Yuan (approximately $21,070) from "Yunsheng"; and (3) $4,698 from "DREAM EXPRESS, INC." (Pet., Ex. D at 9, ECF No. 1-5.) The first two payers are completely unrelated to Respondent; the third payer, while sharing Respondent's name, used a New York address and a bank account in JP Morgan Chase, which is not Respondent's banking institution. (*Id.* at 14.) Finally, after undertaking an investigation, Petitioner's own insurance company determined that Petitioner's claims were fraudulent. (Li Decl., Ex. 2 at 27, ECF No. 32-2.)

Having found that Respondent was not a counterparty to the Contracts, the Court determines that the underlying dispute between the parties is not arbitrable. Accordingly, the Court **DENIES** the Petition to confirm the arbitration award.

C. Subject Matter Jurisdiction

As a final matter, the Court will briefly address Respondent's alternative argument that the Court lacks subject matter jurisdiction over the instant action because Petitioner failed to comply with procedures outlined in Article IV of the New York Convention. The Ninth Circuit has ruled that any challenge to an arbitral award on the grounds of nonconformity to the Convention's requirements is not a jurisdictional challenge, but a challenge on the merits. *Al-Qarqani*, 8 F.4th at 1025. Regardless of whether Petitioner satisfied Article IV of the Convention, the Court has subject matter jurisdiction under the FAA, which expressly grants district courts jurisdiction over any "action or proceeding falling under the [New York] Convention." 9 U.S.C. § 203. The Court construes Respondent's argument as an alternate merit-based challenge. Because the Court has already denied the Petition on the nonarbitrability ground, the Court need not, and for that reason will not, discuss any alternative merit-based arguments raised by Respondent.

V. CONCLUSION

For the foregoing reasons, the Court **DENIES** the Petition to confirm a foreign arbitration award.

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CENTRAL DISTRICT OF CALIFORNIA

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IT IS SO ORDERED.

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