IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

AL RAHA GROUP FOR TECHNICAL SERVICES, Petitioner, v. PKL SERVICES, INC., Respondent.	:	CIVIL ACTION NO. 1:18-cv-04194-AT

ORDER

Petitioner, Al Raha Group ("RGTS"), is a Saudi Arabian corporation with its principal place of business in Riyadh, Saudi Arabia. Respondent, PKL Services, Inc. ("PKL"), is an American corporation with its principal place of business in Poway, California. On September 4, 2018, Petitioner filed a "Petition to Confirm Arbitration Award and Motion for Expedited Procedures" [doc. 1] which was later converted into a motion for preliminary injunction [doc. 7]. Defendant filed a motion to dismiss for lack of subject-matter jurisdiction [doc. 22], arguing that the arbitration award in question was only an interim award, and the Court only has jurisdiction over final awards.

For the reasons below, the Court hereby GRANTS Defendant's motion to dismiss for lack of subject-matter jurisdiction.

I. Standard of Review

"In 1925, Congress enacted the [Federal Arbitration Act ("FAA"), 9 U.S.C. Sections 1 *et seq*.] [ ] '[t]o overcome judicial resistance to arbitration,' and to declare a 'national policy favoring arbitration' of claims that parties contract to settle in that manner." *Burch v. P.J. Cheese, Inc.*, 861 F.3d 1338, 1345 (11th Cir. 2017) (quoting *Buckeye Check Cashing, Inc. v. Cardegna*, 546 U.S. 440, 443 (2006) and *Preston v. Ferrer*, 552 U.S. 346, 353 (2008) (alteration in original)). The Eleventh Circuit has stated that the "[t]hree sections of the FAA play particularly important roles in achieving that purpose." *Burch*, 861 F.3d at 1345. For instance, 9 U.S.C. § 2 provides that arbitration agreements in contracts "involving commerce" are "valid, irrevocable, and enforceable." *Burch*, 861 F.3d at 1345 (quoting 9 U.S.C. § 2). Section 3 "directs courts to stay their proceedings in any case raising a dispute on an issue referable to arbitration[.]" *Burch*, 861 F.3d at 1345 (quoting *Shearson/Am. Exp., Inc. v. McMahon*, 482 U.S. 220, 226, 107 S. Ct. 2332, 2337, 96 L. Ed. 2d 185 (1987) (quoting 9 U.S.C. § 4)). Further, section 4 "authorizes a federal district court to issue an order compelling arbitration if there has been a 'failure, neglect, or refusal' to comply with [an] arbitration agreement." *Id*. Lastly, the Eleventh Circuit reflects a policy favoring arbitration when it describes arbitral review standard as "among the narrowest known to the law." *Schatt v. Aventura Limousine & Transportation Serv., Inc.*, 603 F. App'x 881, 887 (11th Cir. 2015) (quoting *Del Casal v. Eastern Airlines, Inc.,* 634 F.2d 295, 298 (5th Cir. 1981)).

Arbitral awards arising out of commercial transactions are governed by the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the "New York Convention"), unless the award arises out of a relationship existing entirely between citizens of the United States. 9 U.S.C. § 202. The New York Convention states:

> Within 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. Where an arbitral award under the New York Convention has been made, the district court must 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.* But, although district courts have original jurisdiction over any "action or proceeding falling under the Convention" (9 U.S.C. § 203), they "lack authority to confirm arbitral awards that are not final awards." *Banco de Seguros del Estado v. Mut. Marine Offices, Inc.*, 230 F. Supp. 2d 362, 367–68 (S.D.N.Y. 2002) (citing *Metallgesellschaft A.G. v. M/V Capitan Constante,* 790 F.2d 280, 283 (2d Cir. 1986)). An award is considered final "if it resolves the rights and obligations of the parties definitively enough to preclude the need for further adjudication with respect to the issue submitted to arbitration." *Ecopetrol S.A. v. Offshore Expl. & Prod. LLC*, 46 F. Supp. 3d 327, 336 (S.D.N.Y. 2014) (citing *Rocket*

Jewelry Box, Inc. v. Noble Gift Packaging, 157 F.3d 174, 176 (2d Cir. 1998) (per curiam)). An interim ruling from an arbitrator is not a final award if it "does not purport to resolve finally the issues submitted to [the arbitrators]." *Banco de Seguros del Estado v. Mut. Marine Offices, Inc.*, 230 F. Supp. 2d 362, 368 (S.D.N.Y. 2002) (citing *E.B. Michaels v. Mariforum Shipping, S.A.,* 624 F.2d 411, 414 (2d Cir. 1980)); *see also* 9 U.S.C. § 10(a)(4). An interim ruling may be considered sufficiently final if it "finally and definitely disposes of a separate independent claim" even if "it does not dispose of all the claims that were submitted to arbitration." *Banco de Seguros del Estado v. Mut. Marine Offices, Inc.*, 230 F. Supp. 2d 362, 368 (S.D.N.Y. 2002) (quoting *Metallgesellschaft A.G. v. M/V Capitan Constante,* 790 F.2d 280, 283 (2d Cir.1986)).

Subject-matter jurisdiction is the statutorily-conferred power of the court to hear a class of cases. *In re Trusted Net Media Holdings, LLC*, 550 F.3d 1035, 1044 (11th Cir. 2008). Federal courts have limited subject-matter jurisdiction. *Morrison v. Allstate Indem. Co.*, 228 F.3d 1255, 1260-61 (11th Cir. 2000). Motions to dismiss for lack of subject-matter jurisdiction are considered under Rule 12(b)(1) of the Federal Rules of Civil Procedure. *Scarfo v. Ginsberg*, 175 F.3d 957, 961 (11th Cir. 1999). A party may bring a challenge to the court's subject-matter jurisdiction at any time. *Arbaugh v. Y&H Corp.*, 546 U.S. 500, 506 (2006); *see also Morrison*, 228 F.3d at 1261 ("[A] federal court must inquire *sua sponte* into the issue [of subject-matter jurisdiction] whenever it appears that jurisdiction may be lacking."); Fed. R. Civ. P. 12(h)(3) ("If the court determines at any time that it lacks

subject-matter jurisdiction, the court must dismiss the action."). Parties cannot waive the subject-matter jurisdiction requirement. *Latin American Property & Casualty Ins. Co. v. Hi–Lift Marina, Inc.,* 887 F.2d 1477, 1479 (11th Cir. 1989).

II. Analysis

Though an interim award may at times be considered final, such that a district court may then "confirm" the award, that is not the case at hand.[1]

The decision of the Emergency Arbitrator, titled "Interim Emergency Award," is not a final arbitral award, because it did not finally and definitely dispose of any independent claim. (Doc. 1-1 at 1). This was made unambiguously clear by the Emergency Arbitrator herself in her "Disposition of Request to Clarify Interim Emergency Award." (Doc. 9-1 at 4–7). In that disposition, she clarified that the "intent" of the Interim Emergency Award "was to prevent the termination . . . of the contract between the parties pending constitution of the full arbitral tribunal that will be appointed to hear the case on the merits." (Doc. 9-1 at 5). The award is—on its face and in its substance—an interim award only meant to pause the

[1] The Eleventh Circuit has not ruled on the specific issue in the instant case, but has held in similar controversies that "the FAA allows review of final arbitral awards only, but not of interim or partial rulings." *Schatt v. Aventura Limousine & Transportation Serv., Inc.*, 603 F. App'x 881, 887 (11th Cir. 2015) (finding that district court did not have subject-matter jurisdiction over interim ruling). Other Circuits observe the same limitation on jurisdiction over interim arbitral awards, but go on to define certain interim awards of equitable relief as sufficiently "final" for purposes of subject-matter jurisdiction. *See, e.g., Zeiler v. Deitsch*, 500 F.3d 157, 169 (2d Cir. 2007) (awards that have "finally and conclusively disposed of a separate and independent claim … may be confirmed although [they do] not dispose of all the claims that were submitted to arbitration."); *Pac. Reinsurance Mgmt. Corp. v. Ohio Reinsurance Corp.*, 935 F.2d 1019, 1023 (9th Cir. 1991) (temporary orders calculated to preserve assets or performance may be final orders that can be confirmed and enforced by district courts); *Island Creek Coal Sales Co. v. Gainesville,* 729 F.2d 1046, 1049 (6th Cir. 1984) (temporary equitable relief is final for purposes of subject-matter jurisdiction where it disposes of a "separate, discrete, independent, severable" issue).

crumbling relationship between the parties until such time as the full arbitration tribunal could be convened. Though PKL ignored the clear holding of the Emergency Arbitrator and functionally terminated the contract with RGTS, the award itself was still an interim placeholder that did not purport to resolve finally any of the issues submitted to arbitration. Because the Emergency Arbitrator provided only an interim award, this Court does not have subject-matter jurisdiction over this case.[2]

Accordingly, Defendant's motion to dismiss for lack of subject-matter jurisdiction [doc. 22] is **GRANTED**. Lacking subject-matter jurisdiction, the Court is precluded from reviewing any other motions in the case. Petitioner's motion for preliminary injunction [doc. 7], motion to consolidate cases [doc. 8], and Respondent's motion for leave to file sur-reply [doc. 18], motion to disqualify attorney [doc. 20], and motion for hearing [doc. 21] are all **DENIED** without prejudice.

[2] The Court recognizes that the Emergency Arbitrator sought to preserve the status quo of the parties' contractual relationship and that the interim order contained an equitable relief dimension. The Court thus understands the basis of the Plaintiff's request for a preliminary injunction, though it concludes that it lacks subject-matter jurisdiction over the contractual dispute to address the Plaintiff's motion. Accordingly, it is up to the arbitration panel to untangle and address the particular circumstances of the parties' disputes.

The Clerk of the Court is directed to close the case.

IT IS SO ORDERED this 5th day of September, 2019.

AMY TOTENBERG
UNITED STATES DISTRICT JUDGE