IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

No. C 16-5344 CW

CPB CONTRACTORS PTY LIMITED,

Plaintiff,

v.

CHEVRON CORPORATION, et al.,

Defendants.

_____/

ORDER DENYING PLAINTIFF'S MOTION TO REMAND AND GRANTING DEFENDANTS' MOTION TO STAY

Plaintiff CPB Contractors Pty Limited has filed a motion to remand this case to state court. Defendants Chevron Corporation, Chevron U.S.A. Holdings, Inc., Chevron U.S.A., Inc., Chevron Investments, Inc., Chevron Overseas Company, and Chevron Australia Petroleum Company oppose the motion and move to stay this action pending the resolution of binding arbitration between Plaintiff and another Chevron entity, Chevron Australia, which is not a party to this case.[1] Plaintiff opposes Defendants' motion. Having considered the parties' papers and oral argument, the Court

[1] Although Defendants title their document as a motion to stay and to compel arbitration, they do not seek to compel arbitration of the claims against them. Accordingly, the Court refers to the motion as a motion to stay.

DENIES Plaintiff's motion to remand and GRANTS Defendants' motion to stay.[2]

BACKGROUND

Plaintiff is a contractor that, as part of the Saipem Leighton Consortium (SLC), was awarded a contract to design and construct the Gorgon Jetty, a 1.3 mile jetty for a liquefied natural gas project off the coast of Australia. The Jetty Contract became effective November 10, 2009. The owner of the jetty project is a joint venture consisting of Chevron Australia and others. Plaintiff alleges that Chevron Australia is a partially-owned subsidiary of Defendant Chevron Corporation. The Jetty Contract contains a mandatory dispute resolution provision which requires that disputes be referred to direct negotiations between the parties, followed by an optional reference to a dispute board, and then binding arbitration.

On May 2, 2012, the parties to the contract signed a one page "Gorgon Jetty Team Charter," which states:

> The Gorgon Jetty Team will create and maintain an open, trusting, honest and cooperative culture to work with integrity as ONE TEAM to "do what we say we will do." Further, we commit to the following behaviours:
>
> The Health and Safety of our collective workforce is our core value.

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[2] Plaintiff has filed objections to evidence submitted with Defendants' reply in support of their motion to stay. In fact, Plaintiff objects to a certain analysis of Western Australian law. Defendants have filed a motion for leave to file a response to that objection. However, the Court finds that principles of Australian law are not relevant to its decision on these motions. Accordingly, Plaintiff's objection is overruled and Defendants' motion for leave to respond to the objection is DENIED as MOOT. Docket No. 57.

> We will deliver our project to the quality required in a timely manner.
>
> We will support the workforce with robust leadership, timely decision making and detailed planning to safely and efficiently deliver the Gorgon Jetty in a manner that our entire team can be proud of.
>
> We will work in an environment of learning where everyone has a voice and all views are respected.
>
> We will work as ONE TEAM to solve problems and make decisions necessary to establish the best construction results with a win-win perspective while protecting the environment of Barrow Island. Once a decision is reached, we will speak with one voice.
>
> We will demonstrate a CAN-DO approach to deliver the Gorgon Jetty for Chevron.
>
> We commit to assessing our alignment with these values, principles and behaviours regularly, implementing improvement opportunities, and reporting our progress to the sponsors and our team.

Docket No. 10-3, Ex. D. Plaintiff alleges that Defendants signed the Jetty Charter.

On June 8, 2012, the parties to the Jetty Contract executed a contract amendment entitled "Deed of Settlement and Release." The Deed of Settlement provided that it

> is intended to provide a clean sweep resolution of absolutely all possible claims by Contractor in respect of the Contract up to and including the Settlement Date. The adjustments to the Contract Price, Agreement Schedule and Time(s) for Completion set out in this Deed are, and are intended always to remain, Contractor's sole remedies against Owner Group and Company Group in respect of all such matters.

Docket No. 10-5 at 1.

Plaintiff alleges that Chevron Australia and other members of the joint venture repeatedly wrongfully rejected Plaintiff's change order requests and requests for adjustments to the contract price for work that the joint venture requested Plaintiff to

perform. Plaintiff further alleges on information and belief that Defendants in this case in bad faith instructed Chevron Australia and other members of the joint venture to take these actions.

On August 19, 2016, Plaintiff filed the instant action in Contra Costa County Superior Court, asserting two state-law claims, intentional interference with the Jetty Contract and breach of the Jetty Charter. On September 19, 2016, Defendants filed a joint notice of removal to this Court. On September 20, 2016, non-party Chevron Australia initiated arbitration in Australia in accordance with the requirements of the Jetty Contract. Defendants have filed a motion to stay or, in the alternative, to dismiss Plaintiff's claims. Plaintiff has filed a motion to remand.

DISCUSSION

I. Motion to Remand

Defendants' notice of removal alleged that removal is proper because

> (1) Plaintiff is a party to an agreement that includes an arbitration provision that falls under the Convention on the Recognition and Enforcement of Foreign Arbitral Awards ("New York Convention" or "Convention") (see 9 USC § 202) and (2) the subject matter of the litigation relates to the arbitration agreement (see 9 USC § 205).

Docket No. 1 at 2. Defendants further alleged that "the Court also has Diversity Jurisdiction under 28 U.S.C. § 1332(a)(2) as Plaintiff is a 'subject of a foreign state' and Defendants are citizens of California." Id. at 9 n.3.

Plaintiff moves to remand this case to state court, arguing that removal was improper under the New York Convention cited and,

even if removal was proper, the Court lacks subject matter jurisdiction over its claims.

A. Removal Jurisdiction

Title 9 U.S.C. § 205 provides that federal courts have removal jurisdiction "[w]here the subject matter of an action or proceeding pending in a State court relates to an arbitration agreement or award falling under the Convention." The Ninth Circuit has held that "whenever an arbitration agreement falling under the Convention could conceivably affect the outcome of the plaintiff's case, the agreement 'relates to' the plaintiff's suit." Infuturia Global Ltd. v. Sequus Pharmaceuticals, Inc., 631 F.3d 1133, 1138 (9th Cir. 2011) (quoting Beiser v. Weyler, 284 F.3d 665, 699 (5th Cir. 2002)) (emphasis in original).

Defendants argue that both of Plaintiff's claims against them are related to the ongoing arbitration of Plaintiff's dispute with Chevron Australia. As Defendants note, Plaintiff's description of the nature of the action is that

> the Chevron U.S. Defendants in bad faith instructed their Australian subsidiary, Chevron Australia Pty Limited ("Chevron Australia"), and other contracting parties to repeatedly and wrongfully reject Plaintiff's fully-supported "Change Order Requests," or Plaintiff's requests for adjustments to the contract price for additional work specifically requested by the project owner and/or its agent that was not within the scope of work for the project.

Complaint ¶ 2. Indeed, the 423 paragraph complaint consists primarily of alleged actions by non-parties Chevron Australia and other members of the joint venture that Plaintiff alleges constituted breaches of the Jetty Contract. Each section describing such conduct is followed by a paragraph alleging, "On

information and belief, the Chevron U.S. Defendants in bad faith instructed and directed Chevron Australia and the other members of Chevron JV" to take those actions. See, e.g., Complaint ¶¶ 52, 66, 86, 89, 110, 153, 182.

Accordingly, Defendants argue that Plaintiff's claims against them stand or fall on whether Chevron Australia and the other members of the joint venture actually breached the Jetty Contract. Plaintiff does not dispute that the same alleged breaches by Chevron Australia and the members of the joint venture are at issue here and in the Australian arbitration, nor does it dispute that the arbitration agreement in the Jetty Contract falls under the Convention. Instead, it argues that there is no removal jurisdiction because this case does not "relate to" the arbitration agreement. First Plaintiff argues that there is no removal jurisdiction because Defendants are not parties to the arbitration agreement and are not seeking to have the claims against them determined in the arbitration. Plaintiff further argues that, under California law, a claim for tortious interference with contract does not require a breach of contract. Accordingly, Plaintiff disputes Defendants' contention that the arbitration, if it determines that there was no breach of contract, will moot Plaintiff's claims against them. Both of these arguments fail.

The Ninth Circuit has specifically held that there is no requirement that the removing party be a party to the qualifying arbitration agreement. In Infuturia, the Ninth Circuit affirmed a district court's denial of a motion to remand in a case in which the defendant, who was not a party to the arbitration agreement

removed the case pursuant to § 205 after asserting "the affirmative defense of collateral estoppel, arguing that [the issues raised in the case] had already been resolved against [the plaintiff]]" in an Israeli arbitration. 631 F.3d at 1136. Here, Defendants cannot raise a collateral estoppel defense because the Australian arbitration is not complete. However, Infuturia is still instructive. In response to the plaintiff's argument that privity of contract was a prerequisite to removal jurisdiction, the panel cited the broad language in Beiser and "decline[d] to add any prerequisites to removal jurisdiction not expressed in the language of the statute." Id. at 1139. Although Defendants cannot raise an affirmative defense of collateral estoppel at this time, the outcome of the Australian arbitration regarding the propriety of Chevron Australia's rejection of Plaintiff's change order requests and requests for adjustments to the project cost "could conceivably affect the outcome of plaintiff's" claims that Defendants tortiously interfered with the Jetty Contract and breached the Jetty Charter. Id. at 1138 (quoting Beiser, 284 F.3d at 669).

Plaintiff further argues that, under California law, non-mutual collateral estoppel does not apply to arbitration awards. Even assuming this is true, and Plaintiff were not estopped from making its claims against Defendants, a finding that Chevron Australia's actions did not constitute a breach of the Jetty Contract could still have some impact on Defendants' defense to Plaintiff's claims. Similarly, Plaintiff's argument that California law allows for a tortious interference of contract

claim, even in the absence of an actual breach of contract, does not undermine the fact that a decision against Plaintiff in the Australian arbitration could affect its claims against Defendants here. The Court finds that it has removal jurisdiction under 9 U.S.C. § 205.

B. Subject Matter Jurisdiction

Plaintiff next argues that this Court lacks subject matter jurisdiction. Defendants counter that the Court has diversity jurisdiction as well as subject matter jurisdiction under 9 U.S.C. § 203. District courts have original jurisdiction over all civil actions "where the matter in controversy exceeds the sum or value of $75,000, exclusive of interest and costs, and is between . . . citizens of different States." 28 U.S.C. § 1332(a). When federal subject matter jurisdiction is predicated on diversity of citizenship, complete diversity must exist between the opposing parties. Owen Equip. & Erection Co. v. Kroger, 437 U.S. 365, 373-74 (1978). Here, Plaintiff does not dispute that complete diversity exists. Instead, it argues that Defendants are citizens of California and are therefore precluded from removing this case under 28 U.S.C. 1441(b)(2), which provides that an action may not be removed based on diversity jurisdiction "if any of the parties in interest properly joined and served as defendants is a citizen of the State in which such action is brought." However, in Infuturia, the Ninth Circuit held that "the forum defendant rule and the requirement for diversity at the time of removal are statutory requirements imposed by the general removal statute, 28 U.S.C. § 1441, not jurisdictional requirements." 631 F.3d at 1137

(citing Lively v. Wild Oats Markets, Inc., 456 F.3d 933, 939 (9th Cir. 2006)). The panel concluded that, where removal is "effectuated under 9 U.S.C. § 205, the traditional diversity removal provisions of 28 U.S.C. § 1441 do not apply." Id.

Accordingly, the Court finds that it has subject matter jurisdiction based on diversity of citizenship. The Court need not decide whether jurisdiction exists under § 203.

Because the Court finds that it has removal jurisdiction under 9 U.S.C. § 205 and subject matter jurisdiction based on diversity of citizenship, it denies Plaintiff's motion to remand.

II. Motion to Stay

Defendants have filed a motion pursuant to 9 U.S.C. § 3 to stay the case against them pending the resolution of the arbitration between Plaintiff and Chevron Australia. Section 3 provides,

> 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 upon 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.

9 U.S.C. § 3. Defendants argue that the Jetty Contract is a valid agreement to arbitrate and this case involves Chevron Australia's alleged breach of that agreement, which is an issue referable to arbitration. Plaintiff counters that Defendants in this case cannot enforce the arbitration agreement and, therefore, there are

no issues referable to arbitration in this case. However, the statute does not require that the claims in the instant suit be referable to arbitration. Rather, it requires that an "issue involved in [the] suit" be referable to arbitration. Id.

The Ninth Circuit has not addressed whether § 3 applies where the moving party is not a signatory to the arbitration agreement. However, the Fifth Circuit has held that § 3 allows a court to stay claims against a non-signatory based on an arbitration agreement where "litigation of the claims against the nonsignatory [] would have adversely affected the signatory's right to arbitration." Hill v. GE Power Systems, Inc., 282 F.3d 343, 347 (5th Cir. 2002) (citing Subway Equipment Leasing Corp. v. Forte, 169 F.3d 324, 329 (5th Cir. 1999)). The Fifth Circuit has also stayed claims against a "nonsignatory corporation whose potential liability arose from and was inseparable from the claims against its owner, who did sign an arbitration agreement." Id. (citing Harvey v. Joyce, 199 F.3d 790, 795 (5th Cir. 2000).

The Fifth Circuit noted that Subway was the first case in which it applied § 3 to a nonsignatory, but held that such application was consistent with its longstanding rule that "if a suit against a nonsignatory is based upon the same operative facts and is inherently inseparable from the claims against a signatory, the trial court has the discretion to grant a stay if the suit would undermine the arbitration proceedings and thwart the federal policy in favor of arbitration." Id. (citing Sam Reisfeld & Son Import Co. v. S.A. Eteco, 530 F.2d 679, 681 (5th Cir. 1976)). The Ninth Circuit has similarly held that a district court has the

discretion to stay claims "if it finds that course advisable in view of their interdependence with claims properly referred to arbitration." Lake Communications, Inc. v. ICC Corp., 783 F.2d 1473, 1477 (9th Cir. 1984) (citing Moses Cone Memorial Hospital v. Mercury Construction Corp., 460 U.S. 1, 20 n.23 (1983)). As in Hill and the cases cited therein, the claims in this case are based on the same operative facts as Plaintiff's claims that are currently being arbitrated against Chevron Australia. Accordingly, the Court finds that § 3 applies to the claims in this case.

Plaintiff again raises its arguments that the Australian arbitration will have no preclusive effect on its claims against Defendants here and that, even if no breach of contract by Chevron Australia is found, Defendants may still be liable for tortious interference with contract. However, the application of § 3 to this case is not based on Defendants' ability to base their defense on the arbitration award. Instead, it is based on the possibility that proceeding with this case will interfere with Chevron Australia's right to have the claims against it decided in arbitration.

Accordingly, the Court grants Defendants' motion to stay this case pending the resolution of the Australian arbitration.

CONCLUSION

For the foregoing reasons, the Court DENIES Plaintiff's motion to remand (Docket No. 47) and GRANTS Defendants' motion to stay this case pending the resolution of the Australian arbitration. This order administratively terminates this action until the arbitration is complete. Nothing in this order shall be

considered a dismissal or disposition of this case. The parties are directed to file a notice with this Court within seven days of the resolution of the arbitration.

IT IS SO ORDERED.

Dated: January 17, 2017

CLAUDIA WILKEN
United States District Judge