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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Epicenter Loss Recovery LLC,

10 Plaintiff,

11 v.

12 Burford Capital Limited, et al.,

13 Defendants.
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No. CV-18-03300-PHX-DJH

ORDER

15 This matter concerns the parties' arbitration proceedings at the London Court of
16 International Arbitration ("LCIA"). In accordance with the Court's January 14, 2019,
17 Order (Doc. 48), Defendants Burford Capital Ltd. and Ganymede Investments Ltd.
18 ("Defendants") filed a Motion to Dismiss on August 21, 2023, on the grounds that all of
19 Plaintiff's claims have been arbitrated. (Doc. 88). The Motion is contested by Plaintiff.¹
20 The Court must decide whether it has jurisdiction over Plaintiff's disputes arising out of
21 the LCIA arbitration proceedings. The Court finds that neither the LCIA Arbitration
22 Rules (the "LCIA Rules") nor the Federal Arbitration Act, 9 U.S.C. § 1 *et seq.* ("FAA"),
23 provides it with authority to review or modify foreign arbitration awards. This action
24 should be dismissed.

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28 ¹ The matter is fully briefed. Plaintiff filed a Response (Doc. 89) and Defendants filed a Reply (Doc. 90).

1 **I. Background²**

2 **A. The Parties' Arbitration Provision**

3 On April 22, 2013, Defendants and Plaintiff Epicenter Loss Recovery LLC's
4 ("Plaintiff") entered into a Subordination and Intercreditor Agreement (Doc. 1-8), which
5 included the following arbitration provision:

6 Any dispute, controversy or claim arising out of or in connection with this
7 Agreement shall (to the exclusion of any other forum) be referred to and
8 finally resolved by arbitration under the Arbitration Rules of The London
9 Court of International Arbitration ("LCIA"). Subordinated Creditor and
10 Company each expressly agrees that its agreement to arbitrate, and any
11 resulting award, falls under the United Nations Convention on the
12 Recognition and Enforcement of Foreign Arbitral Awards, and section 202,
13 and Chapter 2, of the Federal Arbitration Act, and agrees that this
14 Agreement has a reasonable relation to a foreign state. . . . The seat, or legal
15 place, of arbitration shall be London, England, and all proceedings shall
16 occur there.

14 (*Id.* at 43). Plaintiff filed suit against Defendants for breach of good faith, tortious
15 interference, and alter ego notwithstanding the arbitration provision. (*See generally*
16 Doc. 1).³

17 In its January 14, 2019, Order the Court made the following findings on the
18 arbitration provision: (1) the LCIA Rules govern the parties' arbitration matters,
19 (Doc. 48 at 8); (2) the FAA incorporates the Convention on the Recognition and
20 Enforcement of the Foreign Arbitral Awards, 9 U.S.C. § 201 *et seq.* (the "Convention on
21 Foreign Arbitral Awards" or "Convention"), and provides the Court with the authority to
22 enforce arbitration outside of this district,⁴ (*id.* at 7–8 n.7); and (3) Defendants are

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24 ² The Court incorporates the background section of its January 14, 2019, Order (Doc. 48
at 2–3).

25 ³ Plaintiff initially filed this suit in Maricopa County Superior Court and Defendants
26 subsequently removed it. (Doc. 5 at 11)

27 ⁴ The Court gave the following background on the Convention:

28 [The parties'] arbitration provision provides that it 'falls under the United
Nations Convention on the Recognition and Enforcement of Foreign
Arbitral Awards' (codified as 9 U.S.C. § 201 *et seq.*) also known as the

1 entitled to enforce the arbitration provision (*id.* at 9–11). The Court accordingly
2 compelled the parties to arbitrate Plaintiff’s claims and stayed the action under § 3 of the
3 FAA “until such arbitration has been had.” (*Id.* at 11 quoting 9 U.S.C. § 3). The parties
4 commenced arbitration proceedings at the LCIA, which concluded on February 1, 2023.
5 (Doc. 81).

6 **B. The Arbitration Proceedings at the LCIA**

7 On April 24, 2023, the LCIA issued a “Final Partial Award” (Doc. 88-1) that
8 dismissed all of Plaintiff’s claims. (*Id.* at ¶ 715). The Final Partial Award stated that a
9 supplemental award would be forthcoming on account of Defendants’ entitlement “to an
10 anti-suit injunction with respect to the claims subject to this arbitration[.]” (*Id.* at ¶¶ 701–
11 02). On June 1, 2023, the LCIA issued a memorandum of corrections to the First Partial
12 Award. (Doc. 93-1 at ¶ 1).

13 In a series of status reports submitted to the Court, the parties disagreed as to
14 whether or not the case should be dismissed in light of the awards issued by the LCIA.
15 (Docs. 82; 83; 84; 86). The Court therefore ordered the parties to file a stipulation to
16 dismiss or, alternatively, permitted Defendants to file a motion to dismiss. (Doc. 85).

17 On August 21, 2023, Defendants filed their Motion to Dismiss, arguing this matter
18 should be terminated because the LCIA’s Final Partial Award resolved Plaintiff’s claims,
19 and any other supplemental awards would not impact the outcome of litigation because
20 they related entirely to Defendants’ counterclaims. (*See generally* Doc. 88).

21 On August 23, 2023, Plaintiff requested the LCIA to “lift all confidentiality
22 provisions and terminate and void the arbitration due to undisclosed conflicts and bias.”

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24 New York Arbitration Convention. *Innospec Ltd. v. Ethyl Corp.*, 2014 WL
25 5460413, at *3 (E.D. Va. Oct. 27, 2014). The New York Arbitration
26 Convention applies to agreements that fall under § 2 of the FAA in which at
27 least one party is foreign and grants jurisdiction to the district courts for
28 actions or proceedings involving such agreements. *see* 9 U.S.C. §§ 202,
203. A district court “may direct that arbitration be held in accordance with
the agreement at any place therein provided for, whether that place is within
or without the United States.” *Id.* § 206. Over 150 nations have signed on to
the Convention, including the United States and the United Kingdom.

(Doc. 48 at 7–8 n.7).

1 (Doc. 89 at 2). Plaintiff sent its request to the LCIA via email (*id.* at 15–17),

2 On December 11, 2023, the LCIA issued its Final Award (Doc. 93-1).⁵ The Final
3 Award incorporated the terms of the Final Partial Award and subsequent correcting
4 memorandum (Doc. 93-1 at ¶ 1), ordered an anti-suit injunction against Plaintiff
5 (*id.* at ¶ 143), and ordered Plaintiff to pay certain compensation and costs to Defendants
6 (*id.* at ¶¶ 144–147).

7 **II. Defendants’ Motion to Dismiss (Doc. 88)**

8 The parties disagree whether this matter should be dismissed in light of the status
9 of the arbitration proceedings. Plaintiff contends his pending request that the LCIA “void
10 the arbitration due to undisclosed conflicts and bias” prevents the arbitration proceedings
11 from concluding, and the Court should continue to stay proceedings in this matter until
12 the LCIA rules on his request. (Doc. 89 at 2). Plaintiff further maintains the Court
13 should avoid dismissing this matter to preserve Plaintiff’s rights “in the event the
14 arbitration is deemed void or invalid.” (*Id.*)⁶

15 Defendants argue the Court should dismiss this action because the LCIA has
16 issued its Final Award resolving Plaintiff’s claims and so arbitration “has been had”
17 under § 3 of the FAA. (Doc. 88 at 3 quoting 9 U.S.C. § 3). As to Plaintiff’s efforts to
18 void the arbitration proceedings, Defendants represent that Plaintiff must submit any such
19 challenge to the English courts. (Doc. 90 at 2). Defendants contend this Court does not
20 have jurisdiction to hear such a challenge because it is required to defer to the arbitral
21 tribunal under the Convention on Foreign Arbitral Awards. (Doc. 90 at 3).

22 So, the issue before this Court is whether Plaintiff’s challenge to the validity of the
23 LCIA awards establishes this Court’s continued jurisdiction over this matter. The Court

24 ⁵ Defendants alerted the Court of the Final Award through their Response to Plaintiff’s
25 Status Report (Doc. 93).

26 ⁶ When Plaintiff filed its Response to Defendants’ Motion to Dismiss on
27 September 5, 2023, the LCIA had yet to issue its outstanding supplemental award.
28 (*See generally* Doc. 89). Plaintiff thus argued the outstanding award prevented the
arbitration from meeting the “has been had” standard that would support dismissal. (Doc.
89 at 2). However, the LCIA has since issued its Final Award on December 11, 2023.
(*See generally* Doc. 95-1). The Court therefore finds Plaintiff’s argument is moot in this
respect.

1 agrees with Defendants that this matter should be dismissed because neither the LCIA
2 Rules nor the FAA provides the Court with the necessary jurisdiction over disputes
3 arising out of the international arbitration proceedings.

4 **A. The Court Cannot Review Arbitration Awards by the LCIA under the**
5 **LCIA Rules**

6 First, the Court agrees with Defendants that any challenge by Plaintiff to the
7 arbitration proceedings must be submitted to the English courts. The LCIA Rules do not
8 provide the parties with any right to appeal the decisions made throughout the course of
9 arbitration to this Court. LCIA Rule 26.8 states the following:

10 Every [LCIA] award (including reasons for such award) shall be final and
11 binding on the parties. The parties undertake to carry out any award
12 immediately and without any delay (subject only to Article 27); and the
13 parties also waive irrevocably their right to any form of appeal, review or
14 recourse to any state court or other legal authority, insofar as such waiver
shall not be prohibited under any applicable law.

15 LCIA Rule 26.8. Similarly, LCIA Rule 29.2 reiterates that “the parties shall be taken to
16 have waived any right of appeal or review in respect of any determination and decision of
17 the LCIA Court to any state court or other legal authority.” LCIA Rule 29.2.

18 Should Plaintiff wish to “void the arbitration due to undisclosed conflicts and
19 bias” (Doc. 89 at 2), Plaintiff must follow the appropriate procedures under the LCIA
20 Rules.⁷ So, Plaintiff cannot seek recourse from this Court because the Court does not
21 have jurisdiction to entertain any such challenges to or appeals of the LCIA’s awards.
22 *See* LCIA Rules 26.8; 29.2.

23 **B. The Court Cannot Review Arbitration Awards by the LCIA under the**
24 **FAA**

25 Furthermore, the FAA no longer provides the Court with jurisdiction over this
26 matter. The parties’ arbitration proceedings are governed by the FAA provisions that
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28 ⁷ *See e.g.* Article 10 Revocation and Challenges of the LCIA Rules *and* Article 27
“Correction of Award(s) and Additional Award(s)” of the LCIA Rules.

1 incorporate the Convention on Foreign Arbitral Awards. (See Docs. 1-8 at 43; 48 at 7–8
2 n.7). The parties do not provide, and the Court is unaware of, any case in the Ninth
3 Circuit with a similar fact pattern. However, the Court finds Second Circuit caselaw
4 insightful:

5 Under the [] Convention, the country in which an arbitral award is rendered
6 is said to have primary jurisdiction over the arbitration award. The state
7 with primary jurisdiction is free to set aside or modify an award in
8 accordance with its domestic arbitral law and its full panoply of express and
9 implied grounds for relief. All other signatory states are secondary
10 jurisdictions, and these states may decide only whether to enforce the
11 arbitral award. In essence, the Convention allows for a single-step process
12 for reducing a foreign arbitral award to a domestic judgment. This process
13 occurs in a summary proceeding that merely makes what is already a final
14 arbitration award a judgment of the court.

15 *Esso Expl. & Prod. Nigeria Ltd. v. Nigerian Nat’l Petroleum Corp.*, 40 F.4th 56, 747 (2d
16 Cir. 2022) (internal quotations and citations omitted). As applied to the present matter,
17 the United Kingdom has primary jurisdiction over the LCIA awards, and this district may
18 only decide whether to enforce the LCIA awards under its secondary jurisdiction. Other
19 circuit courts follow similar principles, and this Court will follow suit. See *Gulf Petro*
20 *Trading Co., Inc. v. Nigerian Nat. Petroleum Corp.*, 512 F.3d 742 (5th Cir. 2008) (“[A]
21 United States court sitting in secondary jurisdiction lacks subject matter jurisdiction over
22 claims seeking to vacate, set aside, or modify a foreign arbitral award.”); see also
23 *Corporacion AIC, SA v. Hidroelectrica Santa Rita S.A.*, 66 F.4th 876 (11th Cir. 2023)
24 (explaining that, under the Convention, “[c]ourts in secondary jurisdictions can only
25 decide whether to recognize and enforce an arbitral award”).

26 This conclusion is also consistent with the text of the FAA. The FAA provides
27 district courts with the authority to *enforce* international arbitrations arising under the
28 Convention—that is, district courts may (a) “direct that arbitration be held in accordance
with the agreement at any place therein provided for, whether that place is within or
without the United States”, 9 U.S.C. § 206; and (b) confirm foreign arbitral awards
against any party to the arbitration, *id.* § 207. Unlike domestic arbitral awards, the FAA

1 is silent as to whether district courts have the authority to modify or otherwise vacate a
2 foreign arbitral award. *Cf. id.* §§ 10–12.

3 Plaintiff cites to *Cherry v. Wertheim Schroder & Co., Inc.* to argue that this Court
4 should continue to stay this matter “if the arbitration proceedings are somehow legally
5 deficient, so that the matter may return to the Court for review.” (Doc. 89 at 2 citing 868
6 F. Supp. 830, 836 (D.S.C. 1994)). But *Cherry* concerns domestic arbitration proceedings
7 and does not arise under the FAA provisions that incorporate the Convention. Apart
8 from compelling arbitration outside of the United States, the only other mode of
9 jurisdiction provided by the FAA is for the Court to enforce foreign arbitral awards.
10 *See* 9 U.S.C. §§ 206–07. And Defendants have made clear that they do not seek
11 enforcement of the LCIA awards at this time. (Doc. 90 at 3). Therefore, the Court does
12 not have jurisdiction to hear any other disputes arising out of the parties’ arbitration
13 proceedings at the LCIA.

14 Accordingly,

15 **IT IS ORDERED** that Defendants Burford Capital Ltd. and Ganymede
16 Investments Ltd.’s Motion to Dismiss (Doc. 88) is **GRANTED**. The Clerk of Court is
17 kindly directed to **dismiss with prejudice** all of Plaintiff Epicenter Loss Recovery LLC’s
18 claims against Defendants and terminate this matter.

19 Dated this 9th day of January, 2024.

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23 Honorable Diane J. Humetewa
24 United States District Judge
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