**UNITED STATED DISTRICT COURT**
**SOUTHERN DISTRICT OF FLORIDA**

**CASE NO. 20-82357-CIV-SMITH**

NOBLE PRESTIGE LIMITED,

Petitioner,

v.

PAUL HORN, *et al.*,

Respondents.
_____/

**ORDER**

This cause is before the Court on the Petition to Confirm and Enforce International Arbitration Awards ("Petition") [DE 1], filed by Petitioner, Noble Prestige Limited ("Noble");[1] the Response filed by Respondents Paul Horn ("Horn") and Craig Thomas Galle ("Galle") [DE 46]; and the Reply filed by Noble [DE 60]. For the reasons set forth below, the Petition is **GRANTED**.

## I. PETITION

The Court has previously provided the factual background of this matter. (*See* Mar. 31, 2022 Order [DE 44].) In pertinent part, Noble seeks confirmation of and the entry of judgment on three international arbitration awards rendered against Respondents Horn and Galle by an arbitration tribunal appointed by the Hong Kong International Arbitration Center ("HKIAC Tribunal" or "Tribunal"). The three international arbitration awards are: (1) the "Interim Award on Preliminary Issue," dated March 29, 2019, against Galle; (2) the "Partial Award on Costs Relating to the Interim Award on the Preliminary Issue," dated July 31, 2019, against Galle; and

[1] Petitioner also sought a temporary restraining order, which the Court previously granted. (*See* Apr. 1, 2022 Order [DE 45].) Respondents successfully appealed the Court's ruling, and the Eleventh Circuit vacated the Order. Accordingly, the only remaining issue is whether to confirm and enforce the Arbitral Awards against Horn and Galle.

(3) the "Final Award," dated May 14, 2020, against Horn (collectively, the "Arbitral Awards"). Noble seeks confirmation of the Arbitral Awards under the Convention on the Recognition and Enforcement of Foreign Arbitral Awards of June 10, 1958, 21 U.S.T. 2517, 330 U.N.T.S. 38, commonly known as the New York Convention ("Convention"). The Convention is implemented in the United States pursuant to Chapter 2 of the Federal Arbitration Act ("FAA"). 9 U.S.C. § 201, *et seq*. Respondents oppose confirmation and enforcement of the Arbitral Awards.

## II. LEGAL STANDARD

To obtain recognition and enforcement of an arbitration award under the Convention, at the time of the application, a petitioner must provide: (1) the duly authenticated original award or a duly certified copy thereof; and (2) the arbitration agreement or a duly certified copy thereof. Convention, art. IV, 1. As to these requirements, the Eleventh Circuit explains that "the party seeking confirmation of an award falling under the Convention *must* meet article IV's prerequisites to establish the district court's subject matter jurisdiction to confirm the award." *Czarina, LLC v. W.F. Poe Syndicate*, 358 F.3d 1286, 1292 (11th Cir. 2004) (emphasis added). Notably, "once the proponent of the award meets his article IV jurisdictional burden of providing a certified copy of the award and the arbitration agreement, he establishes a prima facie case for confirmation of the award." *Id.* at 1292 n.3 (citation omitted).

Thereafter, the opponent to the confirmation action can overcome this presumption by invoking one of seven defenses listed in Article V of the Convention. *Id.* (citing Article V of the Convention); *see Cvoro v. Carnival Corp*., 941 F.3d 487, 495 (11th Cir. 2019) (explaining that upon an application for confirmation, "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'" (alteration in original; citations omitted)).

Here, Respondents seek to invoke six of the seven defenses, including:

> (1) the parties to the agreement referred to in article II were, under the law applicable to them, under some incapacity, or the said agreement is not valid under the law to which the parties have subjected it; (2) the party against whom the award is invoked was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present his case; (3) the composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties; (4) the award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration; (5) the subject matter of the difference is not capable of settlement by arbitration under the law of that country; and (6) recognition of the award would be contrary to public policy.

*See* Convention, art. V. Importantly, "[t]he party defending against the enforcement of an arbitral award bears the burden of proof." *Lindo v. NCL (Bahamas), Ltd.*, 652 F.3d 1257, 1263 (11th Cir. 2011) (alteration added; citation omitted).

Further, "when reviewing an arbitration award, '[c]onfirmation under the Convention is a summary proceeding in nature, which is not intended to involve complex factual determinations, other than a determination of the limited statutory conditions for confirmations or grounds for refusal to confirm.'" *Chelsea Football Club Ltd. v. Mutu*, 849 F. Supp. 2d 1341, 1344 (S.D. Fla. 2012) (alteration in original; citing *Zeiler v. Deitsch,* 500 F.3d 157, 169 (2d Cir. 2007)).

## III. DISCUSSION

Noble seeks confirmation of the Arbitral Awards, and Respondents oppose the relief sought. Accordingly, the Court will first determine whether Noble has met its article IV's jurisdictional prerequisites to confirm the Arbitral Awards. Next, the Court will address Respondents' opposition against confirmation of the Arbitral Awards.

### A. Prima Facie Case for Confirmation of the Arbitral Awards.

Noble has complied with article IV's jurisdictional prerequisites to confirm the Arbitral Awards. First, Noble has attached to its Petition the duly certified copies of (1) the "Interim Award

on Preliminary Issue," dated March 29, 2019, against Galle; (2) the "Partial Award on Costs Relating to the Interim Award on the Preliminary Issue," dated July 31, 2019, against Galle; and (3) the "Final Award," dated May 14, 2020, against Horn. (*See* DE 1-1.) Second, Noble has attached the duly certified copy of the signed "Loan Facility Agreement" between Horn and Noble, dated December 19, 2011, which contains the parties' arbitration agreement, requiring arbitration of disputes before the HKIAC.[2] (*See* DE 1-1.) Accordingly, Noble has established its prima facie case for confirmation of the Arbitral Awards, and the burden shifts to Respondents to establish the invalidity of the Arbitral Awards on one of the grounds specified in Article V. *See Czarina,* 358 F.3d at 1292 n.3 (internal citations omitted).

**B. Defenses in Opposition to the Confirmation of the Arbitral Awards.**

Respondents oppose confirmation of the Arbitral Awards and raise multiple defenses under Article V of the Convention. Noble responds with several arguments, but the Court finds one to be dispositive, namely, Noble's argument that the three-month statute of limitation found in Chapter 1 of the FAA precludes Respondents from opposing the Petition to confirm the Arbitral Awards. *See* 9 U.S.C. § 12. Thus, before the Court can address the merits of the defenses, the Court must determine whether the defenses are time-barred under Chapter 1's three-month time limitation.

As a preliminary matter, arbitrations may be either domestic or non-domestic. Chapter 1 of the FAA applies to domestic arbitrations, and Chapter 2 of the FAA applies to non-domestic arbitrations or when one of the parties to the arbitration is domiciled or has its principal place of

[2] The Court notes that there is not an arbitration agreement between Noble and Galle. Notwithstanding, the Court previously held that the absence of a written agreement is not fatal because the issue turns on the parties' consent. (*See* Mar. 31, 2022 Order [DE 44] at 10.) As previously discussed, Galle admits that he voluntarily participated in the arbitration proceedings (albeit in his capacity as conservator for Horn), and he does not cite to authority which stands for the proposition that, under Hong Kong law, the law that governs the arbitration, a representative may not be subject to the adverse arbitration awards entered against him.

business outside of the United States. *See Bamberger Rosenheim, Ltd., (Israel) v. OA Dev., Inc., (United States)*, 862 F.3d 1284, 1287 (11th Cir. 2017). Under Chapter 1 of the FAA, a party has three months from when an arbitration award is filed or delivered to serve "notice of a motion to vacate, modify, or correct an award." 9 U.S.C. § 12. Thus, under Chapter 1 of the FAA, when a party fails to provide notice or move to vacate, modify, or correct an arbitration award within three months, the party is barred from later raising defenses in opposition to confirmation of an arbitral award. *See Cullen v. Paine, Webber, Jackson & Curtis, Inc*., 863 F.2d 851, 854 (11th Cir. 1989) (finding that a party who did not move to vacate an arbitral award within the limitations period could not raise defenses in opposition to a confirmation petition). The issue before the Court is whether the holding in *Cullen* extends to foreign arbitral awards under Chapter 2 of the FAA, which is silent as to when a party must assert defenses to a confirmation petition.

Other courts in this District that have addressed this issue have applied Chapter 1's three-month time limitation to Chapter 2 actions. *See, e.g.*, *Inversiones y Procesadora Tropical Inprotsa, S.A. v. Del Monte Int'l GmbH*, No. 16-24275-CIV, 2017 WL 1737648, at *7 (S.D. Fla. May 2, 2017); *Commodities & Mins. Enter. Ltd. v. CVG Ferrominera Orinoco, C.A.*, No. 19-CV-25217, 2021 WL 6276214, at *2 (S.D. Fla. Dec. 2, 2021); *Grupo Unidos por el Canal, S.A. v. Autoridad del Canal de Panama*, No. CV 17-23996-CIV, 2018 WL 3059649, at *6 (S.D. Fla. June 20, 2018). In these decisions, the courts have found the party's failure to move for vacatur within the three-month limitation period bars him from later raising defenses in opposition to a confirmation petition.

In particular, the Court finds *Grupo Unidos por el Canal, S.A.* to be instructive. There, the petitioners raised the same argument as Respondents here—that Chapter 1 of the FAA does not apply to the confirmation proceedings under Chapter 2 of the FAA. *See Grupo Unidos por el Canal*, 2018 WL 3059649, at *6. In rejecting this, the court noted that, Chapter 2 of the FAA

contains a residual clause that states, "Chapter 1 applies to actions and proceedings brought under this chapter to the extent that chapter is not in conflict with this chapter or the Convention as ratified by the United States." *Id.* (referencing 9 U.S.C. § 208). As such, the court found that it could, through the residual clause and to the extent that the two do not conflict, apply Chapter 1's three-month limitation to Chapter 2 of the FAA. *Id.* (alteration added; citing *Gonsalvez v. Celebrity Cruises, Inc.*, 750 F3d 1195, 1197 (11th Cir. 2013)). Consequently, because the petitioner had not sought vacatur of the arbitration award within the three-month limitation period, the petitioner was barred from raising defenses in opposition to the motion to confirm. *Id*. The court reasoned, "allow[ing] a party barred from seeking vacatur to back-door the very same barred arguments in opposition to a motion to confirm, essentially provid[es] the party two bites at the apple." *Id.* (alterations added). The Court agrees with this rationale.

Utilizing Chapter 1 of the FAA as a gap-filler for Chapter 2 of the FAA is not a novel concept. Indeed, the Eleventh Circuit has done so for other matters in the past. *See, e.g.*, *Corporacion AIC, SA v. Hidroelectrica Santa Rita S.A.*, 66 F.4th 876, 890 (11th Cir. 2023) (borrowing from Chapter 1 of the FAA to determine the grounds that can be asserted to vacate an arbitral award governed by the Convention where the United States is the primary jurisdiction); *Gonsalvez*, 750 F.3d at 1197 (borrowing from Chapter 1 of the FAA to determine the applicable statute of limitations for an action to vacate an arbitration award under the Convention). Additionally, decisions from outside this Circuit also lend support for this position. *See Garmin Wurzburg GmbH v. Auto. Imagineering & Mfg., LLC*, No. 3:14-CV-02006, 2015 WL 4491231, at *4 n.3 (N.D. Ind. July 23, 2015) (citing to *Gonsalvez* to find that Chapter 1's three-month limitation period applies to Chapter 2 of the FAA through the residual clause of Chapter 2 of the FAA); *Traf Intercontinental Elektronik-Handels GmbH v. Sonocine, Inc.*, No. 3:17-CV-00672, 2019 WL 918987, at *3–4 (D. Nev. Feb. 25, 2019) (finding that a party that failed to move to vacate a

Convention arbitration award within the three months was barred from raising any defenses to the enforcement of the award).

Here, the record indicates that the Tribunal filed the "Interim Award on Preliminary Issue," against Galle on March 29, 2019, and the "Partial Award on Costs Relating to the Interim Award on the Preliminary Issue," against Galle on July 31, 2019. (*See* DE 1-1.) Likewise, the Tribunal filed the "Final Award" against Horn on May 14, 2020. (*See* DE 1-1.) However, Respondents provide no evidence that they served notice or moved to vacate, modify, or correct the Arbitral Awards, within three months of the filing or delivery of the Arbitral Awards, as required by 9 U.S.C. § 12. Accordingly, because Respondents did not serve "notice of a motion to vacate, modify, or correct" the Arbitral Awards within the three-month limitations period prescribed by § 12, the Respondents are barred from raising defenses in opposition to the Petition to confirm the Arbitral Awards.

As the Court has already determined, Noble has met its article IV jurisdictional burden of providing certified copies of the Arbitral Awards and the arbitration agreement to establish a prima facie case for confirmation of the Arbitral Awards. As a result, Noble's request for confirmation of the Arbitral Awards is granted.[3]

Accordingly, it is

**ORDERED** that:

1. The Petition **[DE 1]** is **GRANTED.**
2. All pending motions not otherwise ruled upon are **DENIED as moot**.

[3] While the Court does not address the merits of Respondents' defenses, the Court notes that "an arbitrator's result may be wrong; it may appear unsupported; it may appear poorly reasoned; it may appear foolish. Yet, it may not be subject to court interference." *Chelsea Football Club Ltd. v. Mutu*, 849 F. Supp. 2d 1341, 1344 (S.D. Fla. 2012) (internal quotations and citation omitted) (quoting *Delta Air Lines v. Air Line Pilots Ass'n, Int'l*, 861 F.2d 665, 670 (11th Cir. 1988)).

3. By **April 5, 2024**, Noble shall file revised proposed final judgments that are consistent with the Court's findings in this Order, and the proposed final judgments shall reflect updated computations through the date the proposed judgments are submitted. The Court will enter the final judgments in separate orders.

**DONE and ORDERED** in Fort Lauderdale, Florida, this 3rd day of April, 2024.

**RODNEY SMITH**
**UNITED STATES DISTRICT JUDGE**

cc: counsel of record