

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

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MIAMI-DADE COUNTY and THE CITY OF	:
MIAMI,	:
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Plaintiffs,	:
	:
-against-	:
	:
MIAMI MARLINS, L.P. and MARLINS	:
TEAMCO LLC,	:
	:
Defendants.	:
	:
	:
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Civil Action No. \_\_\_\_\_ ( )

**NOTICE OF REMOVAL**

Defendants Miami Marlins, L.P. and Marlins Teamco LLC hereby remove this action to this Court pursuant to 9 U.S.C. § 205 on the ground that the action relates to an arbitration agreement falling under the Convention on the Recognition and Enforcement of Foreign Arbitral Awards of June 10, 1958 (the “New York Convention”).

**Facts Relevant to Removal**

**The Parties**

1. Defendant Miami Marlins, L.P. (the “Partnership”) is a Delaware limited partnership. Until October 2, 2017, the Partnership owned the Miami Marlins baseball club (the “Team”).

2. Defendant Marlins Teamco LLC (“Marlins Teamco,” and collectively with the Partnership, the “Defendants”) is a limited liability company formed under the laws of Delaware. Marlins Teamco purchased the Team from the Partnership on October 2, 2017.

- a. The sole member of Marlins Teamco is Marlins Funding LLC.
- b. The sole member of Marlins Funding LLC is Marlins Holdings LLC.

c. The membership of Marlins Holdings LLC includes Abernue Ltd., a corporation organized under the laws of the British Virgin Islands with its principal place of business in the British Virgin Islands.

3. Plaintiff Miami-Dade County (the “County”) is a political subdivision of the State of Florida.

4. Plaintiff City of Miami (the “City”) is a political subdivision of the State of Florida.

#### The Agreements

5. On April 15, 2009, the Partnership, the County, and the City entered into a series of contracts to develop a new baseball stadium in the City, including a Non-Relocation Agreement under which the Partnership agreed to keep the Team in the City. A true and correct copy of the Non-Relocation Agreement is attached as **Exhibit 1**.

6. Section 6 of the Non-Relocation Agreement—titled “Payment Upon Sale of Team” (“Section 6”)—provides a formula for determining how much money, if any, the Partnership must pay the County and City upon a sale of substantially all of the Partnership’s assets (the “County / City Equity Payment”). It also provides a process—culminating in arbitration—that the parties must follow if they fail to agree upon the amount of the County / City Equity Payment.

7. Section 6 provides:

The Team shall cause its independent accountants to provide the County and City a reasonably detailed calculation of the County/City Equity Payment (on a combined basis) under this Section 6, including a detailed calculation showing the assumed value, Net Proceeds and any other calculations the Team used to determine the amount payable, as promptly as practicable following any applicable sale.

If the County or City do not provide a notice of objection within thirty (30) days after receiving the accountant's calculation, such calculation shall be final and binding and payment of any amount due shall be made not later than thirty (30) days after the expiration of such period. If the County or City does provide a notice of objection, it shall specify in reasonable detail the basis for its objections.

The objecting Government Party and the Team shall then seek to resolve any disagreements between them within the succeeding period of sixty (60) days. If the objecting Government Party and the Team are unable to resolve the dispute within such sixty (60) day period, each of them shall have the right to commence arbitration in accordance with the Operating Agreement.<sup>1</sup> If the arbitrator shall enter a final, nonappealable order requiring payment from the Team under this Section 6, the Team shall pay such amount within thirty (30) days thereafter.

8. By the terms of Section 6, after the Partnership provides its calculation of the County / City Equity Payment, the County and City have 30 days to lodge an objection. If an objection is made, the parties have a period of 60 days to try to resolve their dispute. If the parties are unable to resolve their dispute within 60 days, they can proceed to arbitration.

9. The Non-Relocation Agreement further states that any contractual disputes not brought in arbitration shall be subject to the "exclusive jurisdiction of [the] United States District Court of the Southern District of Florida." Exhibit 1 § 10.

#### The Sale of the Team

10. On October 2, 2017, the Partnership sold the Team to Marlins Teamco.

11. As part of the sale and as contemplated by the Non-Relocation Agreement, Marlins Teamco assumed all of the obligations of the Partnership under the Non-Relocation

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<sup>1</sup> A true and correct copy of the Operating Agreement is attached as **Exhibit 2**. The arbitration provision is set forth in Article XVIII of the Operating Agreement.

Agreement (the “Assumption Agreement”). A true and correct copy of the Assumption Agreement is attached as **Exhibit 3**.<sup>2</sup>

12. The Partnership nevertheless agreed with Marlins Teamco that it would undertake to provide the calculations required under Section 6 of the Non-Relocation Agreement and would make any County / City Equity Payment owed under that section.

#### The Current Dispute

13. On January 31, 2018, the Partnership, on behalf of itself and Marlins Teamco, provided the County and City with a reasonably detailed calculation of the County / City Equity Payment owed under Section 6 of the Non-Relocation Agreement (the “Detailed Calculation”). The Detailed Calculation concluded that no payment was owed pursuant to the parties’ contractual formula and provided the reasoning and calculations to support that conclusion.

14. Rather than object to the Detailed Calculation as contemplated by the Non-Relocation Agreement or request additional information, on February 16, 2018, the County commenced this action against Defendants in the Circuit Court of the 11th Judicial Circuit in and for Miami-Dade County, Florida. In its Complaint, the County alleged that the Detailed Calculation was incorrect and insufficiently supported. The Complaint asserted claims for (i) violation of the False Claims Act, Sec. 21-258 Miami-Dade County Code; (ii) violation of the Florida Deceptive and Unfair Trade Practices Act (“FDUTPA”), Fla. Stat. Ann. §§ 501.204 *et seq.*; (iii) breach of contract; and (iv) breach of the implied covenant of good faith and fair

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<sup>2</sup> Section 14 of the Non-Relocation Agreement states that the Partnership may assign its obligations to anyone who acquires the Team provided that the acquirer unconditionally assumes all of the obligations in a writing reasonably satisfactory to the County and City and also assumes obligations under other agreements related to the construction of the new stadium. There is no dispute that the assignment to Marlins Teamco was valid.

dealing. On the same day that it filed the Complaint, the County filed an emergency motion for a preliminary injunction.

15. On February 20, 2018, the City filed an emergency motion to intervene.

16. On February 21, 2018, the Partnership opposed the County's motion for a preliminary injunction and requested that the state court stay the action pending arbitration as required under the Non-Relocation Agreement.

17. On February 22, 2018, the state court granted the City's motion to intervene, granted the County's motion for a preliminary injunction in part, and denied the Partnership's motion to stay the case.

18. On March 2, 2018, the City filed a Complaint in Intervention that is substantially similar to the County's Complaint.

#### **Statutory Basis for Removal**

19. Removal is permitted under 9 U.S.C. § 205 if the "subject matter of an action or proceeding pending in a State court relates to an arbitration agreement or award falling under the [New York] Convention." This action relates to the arbitration agreement in Section 6 of the Non-Relocation Agreement, and that arbitration agreement falls under the New York Convention. Accordingly, the case is removable under 9 U.S.C. § 205.

20. Whether an agreement falls under the New York Convention is determined by 9 U.S.C. § 202:

An arbitration agreement or arbitral award arising out of a legal relationship, whether contractual or not, which is considered as commercial, including a transaction, contract, or agreement described in section 2 of this title, falls under the Convention. An agreement or award arising out of such a relationship which is entirely between citizens of the United States shall be deemed not to fall under the Convention unless that relationship involves property located abroad, envisages performance or enforcement abroad, or has some other reasonable relation with one or

more foreign states. For the purpose of this section a corporation is a citizen of the United States if it is incorporated or has its principal place of business in the United States.

21. In other words, an agreement to arbitrate falls under the New York Convention if: “(1) there is an agreement in writing [to arbitrate]; (2) the agreement provides for arbitration in the territory of a signatory of the Convention; (3) the agreement arises out of a legal relationship, whether contractual or not, which is considered commercial; and (4) a party to the agreement is not an American citizen, or [] the commercial relationship has some reasonable relation with one or more foreign states.” *Bautista v. Star Cruises*, 396 F.3d 1289, 1294–95 n.7 (11th Cir. 2005) (internal quotation marks and citations omitted).

22. The Non-Relocation Agreement meets the four jurisdictional prerequisites of 9 U.S.C. § 202 and thus falls under the New York Convention.

- a. First, Section 6 of the Non-Relocation Agreement provides for “arbitration in accordance with the Operating Agreement” in connection with any dispute concerning the County / City Equity Payment process, and the Operating Agreement includes a detailed procedure for conducting arbitration. The Non-Relocation Agreement thus includes an agreement in writing to arbitrate.
- b. Second, the arbitration must take place in the United States, which is a party to the New York Convention. (Ex. 1 § 6; Ex. 2 § 18.1(f)).
- c. Third, the Non-Relocation Agreement arises out of a commercial legal relationship among the Partnership, Marlins Teamco, the County, and the City.

d. Finally, the Non-Relocation Agreement is not “entirely between citizens of the United States.” 9 U.S.C. § 202. By virtue of the Assumption Agreement, Marlins Teamco is a party to the Non-Relocation Agreement. As a limited liability company, Marlins Teamco’s citizenship is determined by the citizenship of its members. *See, e.g., Rolling Greens MHP, L.P. v. Comcast SCH Holdings L.L.C.*, 374 F.3d 1020, 1022 (11th Cir. 2004) (“[A] limited liability company is a citizen of any state of which a member of the company is a citizen.”); *see also Americold Realty Trust v. Conagra Foods, Inc.*, 136 S. Ct. 1012, 1014 (2016) (“While humans and corporations can assert their own citizenship, other entities take the citizenship of their members.”). One of the members of Marlins Teamco is a corporation incorporated in the British Virgin Islands with its principal place of business in the British Virgin Islands. Accordingly, Marlins Teamco is a citizen of the British Virgin Islands for purposes of 9 U.S.C. § 202.

23. This Court has subject-matter jurisdiction over this action because it falls under the New York Convention. 9 U.S.C. § 203.

24. Removal under 9 U.S.C. § 205 is timely because no trial has begun in this action.

25. This Court is a proper venue for removal under 9 U.S.C. § 205 because the action was pending in state court in Miami-Dade County, Florida.

#### **Additional Removal Procedure**

26. Copies of the Complaint and all other pleadings, process, and orders in this action are attached as **Exhibits 4–17**.

27. Promptly after the filing of this notice, Defendants will give written notice hereof to the County and the City and will file a copy of this notice with the state court.

WHEREFORE, Defendants respectfully request that the action until now pending in the Circuit Court of the 11<sup>th</sup> Judicial District in and for Miami-Dade County, Florida, be removed to the United States District Court for the Southern District of Florida and that the Court issue such orders and process as are necessary to preserve its jurisdiction over this action.

Dated: March 9, 2018

Respectfully submitted,

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