UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION
CASE NO.: 18-CV-20908-DPG

MIAMI-DADE COUNTY,
a political subdivision of the State of Florida, et al.,

Plaintiffs,

v.

MIAMI MARLINS, L.P., et al.,

Defendants.
_____/

PLAINTIFFS MIAMI-DADE COUNTY AND CITY OF MIAMI'S MOTION TO REMAND ACTION TO STATE COURT

Creative though it is, the Defendants' attempt to remove this case, under the guise of it being governed by the New York Convention on the Recognition of and Enforcement of Foreign Arbitral Awards (the "Convention"), is unavailing. The Defendants, Miami Marlins, L.P. ("Loria Marlins") and Marlins TeamCo, LLC's ("Jeter Marlins") (collectively, the "Marlins"), are essentially "state-court losers complaining of injuries caused by state-court judgments … and inviting district court review and rejection of those judgments."[1]

That the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County (the "State Court") has taken a dim view of the Marlins' likelihood of success is no basis for federal court jurisdiction. Nor is the Convention, which could apply only if, at the time the arbitration agreement was made, it was made within the legal framework of another country by virtue of one of the parties being a foreign citizen. That is clearly not the case here.

[1] *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 US 280 (2005). The Court used this language in defining the contours of the modern *Rooker-Feldman* doctrine, the spirit of which applies here.

This is the most local of disputes, involving a locally-negotiated contract made between local parties under local law and requiring local performance. Yet, the Marlins argue that, although the contract and its arbitration clause were not subject to the Convention when made, the Miami-based Jeter Marlins' recent assumption of the contract somehow transformed it into one now governed by the Convention. The sole basis for this claim is that ***one*** of the members of a parent company of a parent company of the Jeter Marlins is a British Virgin Islands ("BVI") company. As a result, the argument goes, because a thrice-removed corporate parent of the Jeter Marlins is allegedly a foreign citizen, the entire dispute morphs from a quintessentially local dispute to an international dispute. The Marlins' position is not only illogical, it utterly lacks legal support.

Additionally, while the Jeter Marlins have selectively revealed only the alleged citizenship of one of its members, they have tellingly failed to inform the Court about the citizenship of all of its other members. The obvious reason is that, even under the Marlins' theory that federal jurisdiction under the Convention works like diversity jurisdiction – a theory itself legally incorrect – if even one of the Jeter Marlins' members is a United States citizen, then the Jeter Marlins is a United States citizen. And with that revelation, remand of this local dispute is required.

The Marlins' Notice of Removal also fails to mention that the State Court declared inoperable the very arbitration clause that they rely upon to confer jurisdiction, meaning that, as a threshold matter, there is no valid agreement to arbitrate currently in effect.

Thus, as set out more fully below, Plaintiffs Miami-Dade County (the "County") and the City of Miami ("City") respectfully move to remand this action back to the State Court, pursuant to 28 U.S.C. 1447(c).

I. BACKGROUND

The Marlins sought to remove this action only after suffering a significant defeat in State Court. This action arose out of a Non-Relocation Agreement (the "Agreement") executed in 2009 between the Loria Marlins, on the one hand, and the County and the City, on the other, in conjunction with the County and City's half-billion-dollar funding of a stadium and parking garages for the Marlins Major League Baseball franchise (the "Team"). *See* Ex. 1 to D.E. 1. The Agreement entitled the County and the City to certain proceeds of the Loria Marlins' sale of the Team (the "Equity Payment"), and required the Marlins to, as promptly as practicable following the sale, provide a detailed calculation of the Equity Payment performed by independent accountants. *Id.* at § 6.

Had the Marlins complied with this condition, then calculation-related disputes would have been subject to a 60-day work-out period, after which each of the parties could have commenced arbitration to resolve calculation-related disputes. *Id.* All other disputes, however, could be brought by the County and the City in "any court of competent jurisdiction":

> ***In the event of any breach of or misrepresentation in this Agreement by the Team*** [i.e., the Loria Marlins and its assigns and successors] . . . the County and the City shall have the right (i) to institute any and all proceedings … and one or more actions to seek and obtain a temporary restraining order, together with such other temporary, preliminary and permanent injunctive or other equitable relief, from ***any court of competent jurisdiction capable of issuing or granting such relief***….

Id., at § 5.4 (emphasis added).

On October 2, 2017, the Loria Marlins sold the Team to the Jeter Marlins for a reported $1.2 billion (having purchased the Team for less than $160 million). As part of the sale, the Loria Marlins assigned all of their rights, obligations, and liabilities under the Agreement to the Jeter Marlins pursuant to an Assumption Agreement. *See* Ex. 3 to D.E. 1. Apparently, the Jeter Marlins

caused the Loria Marlins to provide the required detailed calculations and make the Equity Payment. *See* D.E. 1 at ¶ 12.

On February 1, 2018, the County received from the Marlins' accountants a "calculation" that was anything but compliant with what the Agreement called for. *See* Ex. 4 to D.E. 1, at Ex. C. Not only was it not "detailed," but it was prepared by accountants who expressly disclaimed any independence in arriving at their claim of a ***negative*** balance owed to the County and the City. *Id.*

On February 16, 2018, the County filed suit against the Marlins in State Court for violations of the Miami-Dade County False Claims Act and the Florida Deceptive and Unfair Trade Practices Act, as well as claims breach of contract and of the implied covenant of good faith and fair dealing ***solely against the Jeter Marlins*** for failing to pay the Equity Payment and provide "as promptly as practicable following any applicable sale," a "detailed calculation" performed by "independent accountants," including "any other calculations. . . used to determine the amount payable" as required by the Agreement.[2] *Id.* at ¶¶ 41-47. Additionally, the County sought declaratory and permanent injunctive relief against the Marlins, to have the State Court declare, among other things, (i) that the Marlins materially breached their obligations to promptly provide the contractually-required detailed calculation performed by independent accountants, which was a condition precedent to any right to arbitration; and (ii) that the material breach of that requirement rendered the arbitration provision in [§ 6 of the Agreement] inoperable. *Id.* at ¶¶16-17.

With the Complaint, the County also moved for a Preliminary Injunction. *See* Ex. 5 to D.E. 1. Following a February 22, 2018 evidentiary hearing, the State Court granted the injunction,

[2] These counts for breach of contract and breach of the implied covenant of good faith and fair dealing were not, and could not be, brought against the Loria Marlins, who were no longer parties to the Agreement following the sale of the Team.

ruling that the arbitration provision was inoperable because the Marlins breached their precedent obligations under the arbitration provision ("Injunction"). *See* Ex. 8 to D.E. 1; *see also* Tr. of February 22, 2018 State Court hearing ("Tr.") at 77-78, a copy of which is attached as **Exhibit A**.

Specifically, the State Court found:

> The contract gives specific details as to how that equity payment is to be calculated… but the important part of the relocation or Non-Relocation Agreement pertains to Section 6 where the team shall, and the word is "shall," cause an independent accountant to provide the County and the City with reasonably detailed calculations . . . .
>
> My review of the Grant Thornton disclosure is that, number one, this disclosure is not or was not provided by an independent accountant…
>
> Two, the County and City were not provided reasonably detailed calculations to permit them to do a meaningful review or to comply with their contractual obligations to provide a reasonably detailed objection. ***The failure of the seller to abide by the contract terms regarding the accountant being independent and the detail on the finances result in the agreement being inoperable*** at this juncture in terms of the County's responsibilities to act within 30 and 60 days. And, therefore, I toll/enjoin the parties to this agreement from the responsibilities due within 30 to 60 days.

Tr. 76-78 (emphasis added). Further, in granting the Injunction, the State Court ruled that the County was likely to succeed on its claim that the Jeter Marlins had breached the Agreement and that the arbitration provision thus had not been, and could not be, triggered:

> So the likelihood of success on the merits is simply ***a review of the contract shows that they would be successful in their claim that they did not have sufficient information… I find that there is a likelihood of irreparable harm, number one, if the County is forced to come to the arbitration table without the documents necessary before the discovery period for them to assert their claim in arbitration. There is no guarantee of what discovery would be allowed at arbitration…***
>
> And so plainly what I'm saying is that ***I find that the 30 and 60 day period for the County to articulate a reasonably detailed objection is inoperable*** at this juncture.

Id. at 78-80.

At the hearing, the State Court also ordered the Marlins to provide the County and the City with all of the documents and calculations necessary to determine and confirm the Equity Payment amount. *Id.* at 88-89. The Marlins instead brazenly continued to flout their obligations under the contract and to the State Court,[3] even to the point of this bizarre claim that the Agreement, amongst local parties on matters of only local import, is subject to international law designed to enforce international arbitration agreements. As described more fully below, it is not.

II. ARGUMENT

A. FEDERAL COURTS ARE COURTS OF LIMITED JURISDICTION.

Federal courts are courts of limited jurisdiction. *Monroe v. Continental Tire the Americas, LLC*, 807 F. Supp. 2d 1129, 1131 (M.D. Fla. 2011). "The removing party bears the burden of establishing jurisdiction and 'the burden is a heavy one.'" *Miller v. R.J. Reynolds Tobacco Co., Inc.*, 502 F. Supp. 2d 1265, 1268 (S.D. Fla. 2007) (citing *Pacheco de Perez v. AT & T Co.*, 139 F.3d 1368 (11th Cir. 1998)).

B. THE CONVENTION DOES NOT CONFER FEDERAL COURT JURISDICTION OVER THIS ACTION.

Defendants seeking removal under the Convention to enforce an arbitration agreement must establish that (1) the arbitration clause at issue "falls under the Convention" pursuant to 9 U.S.C. § 202; and (2) the state court litigation "relates to" the arbitration clause for the purposes of 9 U.S.C. § 205. *See, e.g., Acosta v. Master Main. & Const., Inc.,* 452 F.3d 373, 376 (5th Cir.

[3] The Marlins' recent claim, in their Motion to Dissolve the Injunction [D.E. 10], that they have either complied or changed the circumstances by offering the Grant Thornton work papers changes nothing. The Grant Thornton work papers are just one small portion of the documents needed to determine how the Marlins can claim with a straight face that they lost $140 million on the $1.2 billion sale of a team that had been valued at $250 million in 2008.

2006). In turn, to show that an agreement "falls under" the Convention pursuant to § 202, removing bear the burden of satisfying four prerequisites:

1) there is a written agreement to arbitrate;

2) the agreement provides for arbitration in the territory of a signatory of the Convention;

3) the agreement arises out of a commercial legal relationship; and,

4) a party to the agreement is not an American citizen.

See, e.g., *Azavedo v. Royal Caribbean Cruises, Ltd.*, 4 F. Supp. 3d 1357, 1359 (S.D. Fla. 2014) (*citing Bautista v. Star Cruises,* 396 F.3d 1289, 1294 (11th Cir. 2005)).

Here, the Marlins are unable to establish the first or fourth factors listed above. The failure to establish either of them would be sufficient to require this action to be remanded to State Court.

First, at the time of removal, there existed no enforceable written agreement to arbitrate. Prior to removal, the State Court had enjoined the operability of the arbitration clause in the Agreement. In light of the State Court injunction, the Marlins have sought removal based solely on an inoperable agreement. Furthermore, because the Convention's limited grant of jurisdiction does not extend to dissolving injunctions, this Court lacks jurisdiction to hear the only motion it is empowered to hear in this case by the Convention, i.e., a motion to compel arbitration.

Second, the Marlins are unable to show that a party to the Agreement is not an American citizen. At the time the Agreement was made, all of the parties to the Agreement were undisputedly U.S. citizens. That is the only relevant inquiry for this Court. Regardless, the Marlins' baseless attempt to argue the international nature of the parent of the parent of the parent of an assignee to the Agreement (i.e., the Jeter Marlins) also fails because courts examining jurisdiction under the Convention have refused to look at the citizenship of non-contracting

corporate parents and have refused to hold that a change in citizenship of one of the parties after the fact, through assignment or otherwise, could transform the nature of the arbitration agreement.

Third, even if the Court looked at the citizenship of the Jeter Marlins' corporate parents, if even one of those corporate parents is a U.S. citizen, then the Jeter Marlins is still a U.S. citizen.

The Marlins' failure to meet the jurisdictional prerequisites for this Court's review under the Convention requires this matter to be remanded to State Court.[4] So do the interests of justice.

1. **Because of the Injunction, the Marlins Cannot Meet Their Burden to Show a Valid Written Agreement at the Time of Removal.**

Here, at the time of removal, the State Court had already specifically found the arbitration clause in the Agreement to be inoperable:

> ***The failure of the seller to abide by the contract terms regarding the accountant being independent and the detail on the finances result in the agreement being inoperable*** at this juncture in terms of the County's responsibilities to act within 30 and 60 days. And, therefore, I toll/enjoin the parties to this agreement from the responsibilities due within 30 to 60 days.

Tr. 76-78 (emphasis added). Further, in granting the Injunction, the State Court also ruled that the County was likely to succeed on its claim that the Jeter Marlins had breached the Agreement and that the arbitration provision in the Agreement thus had not been – and could not be – triggered:

> I find that there is a likelihood of irreparable harm, number one, if the County is forced to come to the arbitration table without the documents necessary before the discovery period for them to assert their claim in arbitration. There is no guarantee of what discovery would be allowed at arbitration…

[4] In their Notice of Removal, the Marlins also point out that the Agreement provides that contractual disputes shall be subject to the "exclusive jurisdiction of [the] United States District Court of the Southern District of Florida." D.E. 1, ¶ 9. While true, the Agreement, in the section entitled "Actual Damages," also provides that "any and all proceedings or claims permitted by law or equity" may be brought in "any court of competent jurisdiction." Ex. 1 to D.E. 1 at § 5.4. Thus, there is no doubt this action was properly brought in State Court. Additionally, it is black-letter law that parties cannot contractually confer subject-matter jurisdiction upon federal courts. *See, e.g., Ins. Corp. of Ireland, Ltd. v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 702 (1982) ("no action of the parties can confer subject-matter jurisdiction upon a federal court").

> And so plainly what I'm saying is that ***I find that the 30 and 60 day period for the County to articulate a reasonably detailed objection is inoperable*** at this juncture.

Id. at 78-80 (emphasis added).

The subsequent removal of this action does not disturb the Injunction or the finding that the arbitration clause is invalid. Indeed, injunctions issued by a state court prior to removal remain "in full force and effect until dissolved or modified by the district court." 28 U.S.C. § 1450. Such pre-removal orders are treated as if the federal court issued them. *Johnston v. Tampa Sports Auth.*, 530 F.3d 1320, 1324 (11th Cir. 2008).[5] Furthermore, for the Convention to apply, there must be a valid agreement in writing between the parties to arbitrate the dispute in question. *See Bautista,* 286 F. Supp. 2d at 1362. The removing party "has the burden of proving ... the existence of an agreement in writing within the meaning of the Convention to arbitrate the dispute at issue." *Azevedo*, at *5.

Therefore, at the time the Marlins sought removal of this action pursuant to the Convention, the arbitration clause on which they purported to rely for jurisdiction was inoperable, and thus could not provide a proper basis for removal. Indeed, a court within this district recently found that, even where a valid agreement to arbitrate had previously existed, if one no longer existed at the time of the removal, the court was deprived of jurisdiction under the Convention. *See B & B Jewelry, Inc. v. Pandora Jewelry LLC*, 247 F. Supp. 3d 1283, 1286 (S.D. Fla. 2017).

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[5] It is true that § 1450 grants a district court continuing jurisdiction over a preliminary injunction, and, in the exercise of that jurisdiction, authorizes the court to make equitable modifications to the injunction. On any motion to dissolve a preliminary injunction, however, the movant must show a change in circumstances that justifies the relief requested. *CWI, Inc. v. LDRV Holdings Corp.*, 8:13-CV-93-T-35MAP, 2013 WL 12123229, at *2 (M.D. Fla. Oct. 16, 2013) *citing Hodge v. Dep't of Hous. & Urban Dev., Hous. Div., Dade County, Fla.*, 862 F.2d 859, 861–62 (11th Cir. 1989) and *Gooch v. Life Investors Ins. Co. of Am.*, 672 F.3d 402, 414–15 (6th Cir. 2012).

In *Pandora Jewelry*, the court found that the "case should be remanded because Defendants failed to meet their burden in proving the first jurisdictional element, that is, a 'valid agreement in writing within meaning of the Convention.' It is undisputed that the Agreements expired, by their own express terms, on August 1, 2015. The Agreements specifically provide that the terms, which include the arbitration provisions, can only be extended in writing." *Id.*, at 1287. Here, similarly, while there was previously a narrowly-written arbitration agreement between the parties, the Injunction made it inoperable, thus depriving this Court of jurisdiction under the Convention. Even now, the continuing inoperability of this arbitration clause deprives this Court of subject-matter jurisdiction and requires the immediate remand of this action.

Reinforcing this Court's lack of jurisdiction under the Convention is the fact that the Eleventh Circuit Court of Appeals has identified two, ***and only two***, bases for federal question jurisdiction under the Convention – neither of which apply in the instant case: confirmation of an arbitration award and a motion to compel arbitration. Specifically, the Eleventh Circuit Court of Appeals has held:

> The FAA [Article 2 of the Federal Arbitration Act ("FAA")] provides ***two causes of action in federal district court for enforcing arbitration agreements falling under the Convention***: an action to compel arbitration pursuant to an arbitration agreement falling under the Convention, 9 U.S.C. § 206, and an action to confirm an arbitration award made pursuant to an agreement falling under the Convention, 9 U.S.C. § 207.

Czarina, L.L.C. v. W.F. Poe Syndicate, 358 F.3d 1286, 1290-91 (11th Cir. 2004) (emphasis added); *see also Lindo v. NCL (Bahamas), Ltd.*, 652 F.3d 1257, 1262–63 (11th Cir. 2011) ("To implement the Convention, Chapter 2 of the FAA provides two causes of action in federal court for a party seeking to enforce arbitration agreements covered by the Convention: (1) an action to ***compel arbitration*** in accord with the terms of the agreement, 9 U.S.C. § 206, and (2) at a later stage, an

action to ***confirm an arbitral award*** made pursuant to an arbitration agreement, 9 U.S.C. § 207") (emphasis added).

Recognizing this limitation on federal jurisdiction, other courts in this district have dismissed cases for lack of subject-matter jurisdiction under the Convention where neither an action to compel arbitration nor to confirm an award appears. "As its name suggests, the [Convention] explicitly regulates only two types of proceedings – (1) for an order confirming an arbitration award (9 U.S.C. § 207), and (2) for an order compelling arbitration pursuant to an arbitration agreement (9 U.S.C. § 206)." *Ingaseosas Int'l Co. v. Aconcagua Investing, Ltd.*, No. 09-23078-Civ, 2011 WL 500042, at *3 (S.D. Fla. Feb. 10, 2011) (Huck, J.) (holding that the [Convention] did not give the federal district courts original jurisdiction to hear a motion to vacate an arbitral award); *see also Gonsalvez v. Celebrity Cruises, Inc.*, 935 F. Supp. 2d 1325, 1328-1329 (S.D. Fla. 2013) (Lenard, J.) ("Many courts, including this one, have thus found that the Convention does not even authorize actions to vacate arbitration awards").

Here, the Injunction declaring inoperable the arbitration clause in the Agreement means that a motion to compel arbitration would not be ripe – and could not even be considered – until and unless the Injunction is dissolved or reconsidered. Defendants have conceded this point by filing their Motion to Dissolve Preliminary Injunction. *See* D.E. 12.

But the plain language of the Convention and binding precedent make clear that, because the narrow jurisdiction the Convention conveys to federal courts is limited to considering motions to compel arbitration or confirm arbitral awards, this Court is without jurisdiction to entertain the Marlins' request to dissolve the Injunction. *See Czarina*, 358 F.3d at 1290-91; *Lindo*, 652 F.3d at 1262–63. Without the power to dissolve the Injunction, which renders inoperable the arbitration

clause, neither could this Court entertain the Marlins' Motion to Compel Arbitration. Instead, the Marlins' remedies regarding this Injunction and the Agreement lie in State Court.[6]

2. <u>The Marlins Have Failed to Satisfy Their Burden to Demonstrate That a Party to the Agreement is Not an American Citizen.</u>

Under the Convention, defendants must establish the criteria contained in 9 U.S.C. § 202 for the removal of a state court action. The Marlins have misread this statute. As quoted by the Marlins, 9 U.S.C. § 202 indeed provides that:

> 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.

9 U.S.C. § 202 (emphasis added).

To meet the requirements of the Convention, an agreement must either involve an award made in a country other than where enforcement is sought or it must involve an award "not considered as domestic." The Eleventh Circuit Court of Appeals has defined "not…domestic" to mean an agreement "made within the legal framework of another country" or between parties "domiciled or having their principal place of business outside the enforcing jurisdiction":

> [A]rbitration agreements and awards "not considered as domestic" in the United States are those agreements and awards … ***made within the legal framework of another country***, **e.g., pronounced in accordance with foreign law** ***or involving parties domiciled or having their principal place of business outside the enforcing jurisdiction***.

[6] Additionally, because the Convention allows removal of state court actions involving arbitration agreements at any time before trial, 9 U.S.C. § 205, the Marlins could have sought review of the Injunction in state court prior to seeking removal of this action.

Indus. Risk Ins. v. M.A.N. Gutehoffnungshutte GmbH, 141 F.3d 1434, 1440–41 (11th Cir. 1998) (emphasis added). Here, the Agreement was clearly not made within the legal framework of another country. The Agreement was negotiated in Miami-Dade County, requires performance in Miami-Dade County, and involves only Florida law.

Since they cannot show that the Agreement was made within the legal framework of another country, the Marlins' sole basis for seeking removal of this action is that the purported arbitration agreement is "not entirely between citizens of the United States.'" D.E. 1, ¶ 22(d). As the Marlins admit, the Agreement will not fall under the Convention if it "***is entirely between citizens of the United States***…" 9 U.S.C. § 202; *See* D.E. 1, ¶ 20.

a. The Parties' Citizenship Status at the Time the Agreement Was Made Controls.

Since the Marlins cannot show that the Agreement was made within the legal framework of another country, they instead argue that, because one of the parents of the parent of the parent of the Jeter Marlins is a BVI company, the Agreement somehow magically transformed from a purely domestic agreement to an international one. This transformation, according to the Marlins, occurred by virtue of the Jeter Marlins' assumption of the Loria Marlins' obligations under the Agreement over 8 years after the Agreement was made. But this assumption is irrelevant: it is the status of the parties and the applicable legal framework ***at the time the Agreement was made*** that is dispositive. *See Indus. Risk Insurers*, 141 F.3d at 1441 ("arbitration agreements and awards 'not considered as domestic' in the United States are those agreements and awards which are subject to the Convention not because [they were] made abroad, but because [they were] ***made within the legal framework of another country***") (emphasis added).

Indeed, in *Skordilis v. Celebrity Cruises, Inc.,* No. 08-22934-CIV, 2009 WL 129383, at *2 (S.D. Fla. Jan. 16, 2009), the defendant removed the case to federal court pursuant to the

Convention and sought to compel arbitration under its employment contract with the plaintiff, who was a Greek citizen at the time the contract was executed. In *Skordilis*, Plaintiff sought to have the case remanded to state court because, since executing the employment contract, he had become a U.S. citizen. *Id.* at *1. Judge Moreno denied the motion to remand, confirming that, for purposes of establishing or defeating jurisdiction under the Convention, the relevant inquiry is the citizenship of the parties at the time the agreement is made. *Id.,* at *2. Judge Moreno could find no authority that a party may alter the nature of an agreement as either foreign or domestic by changing citizenship of one of the parties after the agreement was made:

> Plaintiff was a ***Greek citizen in 2006 when he entered into the employment contract*** with Defendant. ***It was only after the filing of this lawsuit that Plaintiff received U.S. citizenship***, on April 11, 2008. Plaintiff cites to no case, nor could the Court find any precedent, for the proposition that the non-citizenship prerequisite is not met where a party to the agreement later becomes a U.S. citizen.

Id.

Additionally, where an assignee of an international arbitral award has sought to confirm the award in federal court under the Convention, courts have also looked to the citizenship of the original parties at the time the agreement was made to determine federal jurisdiction. *See Global Distressed Alpha Fund I, LP v. Red Flour Mills Co, Ltd.,* 725 F. Supp. 2d 198, 203 (D.D.C. 2010). In *Global Distressed,* an assignee to two international arbitral awards named Global Distressed sought to enforce these awards against Red Sea Flour Mills Company, Ltd. The rights to these awards were assigned to Global Distressed by a Swiss company named SASEA Holding. *Id.* at 199-200. In ruling that it had jurisdiction under the Convention, the district court looked to the citizenship of the original parties to the agreement when it was made. *Id.* at 203.

This common-sense proposition is buttressed by general contract and assignment principals. An assignee of rights under a contract can acquire no greater rights than the assignor

had. *Nova Inform. Sys., Inc. v. Greenwich Ins. Co.,* 365 F.3d 996, 1004 (11th Cir. 2004). To allow the Jeter Marlins to avail itself of a body of substantive law that the Loria Marlins were not entitled to rely on would run counter to this fundamental principle of contract law.[7] It would also undermine the very fabric of a contract, which is meant to protect commercial parties by setting out obligations and expectations. A party to a contract cannot unilaterally change the governing law without the other party's assent. This would be manifestly unfair, and violates common sense.

b. Even if the Citizenship of the Jeter Marlins were Relevant, the Jeter Marlins LLC is a US Citizen.

Because they cannot establish the international citizenship of the original parties to the Agreement, the Marlins instead attempt to use sleight-of-hand to focus this Court's attention on the citizenship of the assignee Jeter Marlins. Even this attempt fails.

The entirety of the Marlins' argument is as follows: "By virtue of the Assumption Agreement, [the Jeter Marlins] is a party to the [Agreement]. As a limited liability company, [the Jeter Marlins's] citizenship is determined by the citizenship of its members." *See* D.E. 1 ¶ 22(d). In an earlier paragraph in the Notice of Removal, the Marlins stated that one of the parents (Abernue, Ltd.) of the parent (Marlins Holdings, LLC) of the parent (Marlins Funding, LLC) of the Jeter Marlins is a "corporation organized under the laws of the British Virgin Islands with its principal place of business in the British Virgin Islands." *Id.* ¶ 2.

[7] The Convention constitutes a different body of law, one that restricts various state law defenses applicable to state law-governed arbitration agreements. *See, e.g., Indus. Risk*, 141 F.3d 1434, 1440 and n.8 (11th Cir. 1998) (observing that "The [Convention's] enumeration of defenses against enforcement is exclusive" and "[t]he Convention must be enforced according to its terms over all prior inconsistent rules of law.").

According to the Marlins, this craftily-plead section regarding a foreign corporate parent thrice removed is sufficient to establish the foreign citizenship of the Jeter Marlins.[8] The Marlins' purpose for attempting to make this tenuous connection is clear: they are state-court losers seeking to avoid the natural and legal consequences of the State Court's order against them.

The Marlins' position regarding the citizenship of the Jeter Marlins assumes, without citation to authority, that the citizenship test for LLCs under the Convention is the same as that under diversity jurisdiction pursuant to 9 U.S.C. § 1332. Unfortunately for the Marlins, when examining citizenship for Convention purposes, courts have refused to look to the citizenship of non-contracting corporate parents – even LLCs – to determine the citizenship of a party. Instead, courts have looked to the principal place of business and the state of formation of the LLC. *See*, *e.g.*, *Venture Glob. Eng'g, LLC v. Satyam Computer Servs., Ltd.*, 233 F. App'x 517, 519 (6th Cir. 2007) (In an action to enforce an arbitration award under the Convention, the court did not analyze the citizenship of each member of the plaintiff LLC; rather, the court simply notes that plaintiff "is a company based in Fraser, Michigan"); *Variblend Dual Dispensing Sys., LLC v. Seidel GmbH & Co., KG,* 970 F. Supp. 2d 157, 160 (S.D.N.Y. 2013) (The court, in granting a motion to compel arbitration under the Convention, did not set forth the citizenship of each member of the plaintiff LLC but instead noted that the plaintiff "is a Delaware limited liability company with its principal place of business in Montvale, New Jersey").

Indeed, courts have rebuffed the sort of maneuvering the Marlins are engaged in – namely, attempting to establish jurisdiction under the Convention by pointing to the citizenship of a non-

[8] In its Disclosure Statement filed pursuant to Rule 7.1 of the Federal Rules of Civil Procedure, the Jeter Marlins identified itself solely as a wholly-owned subsidiary of Marlins Funding LLC. Both the Jeter Marlins and Marlins Funding LLC are Delaware LLCs. Thus, it appears that the Jeter Marlins only claim to be citizens of BVI for purposes of its strained jurisdictional argument.

contracting parent or subsidiary. In *Colorado Mills LLC v. Sunrich, LLC,* No. CIV.A 10-CV-00673-CMA, 2010 WL 1413173 (D. Colo. Apr. 2, 2010), Plaintiff, a Colorado LLC, sued Defendant, Sunrich, LLC, a Minnesota LLC, in Colorado state court. *Id.*, at *1. Sunrich, LLC subsequently sought removal under the Convention, claiming that the agreement qualified as an international agreement because its sole member was a Canadian corporation. The district court rejected this claim, using a rationale that equally applies here:

> Sunrich . . . assum[es] that its parent company, SunOpta, Inc. ("SunOpta") can step into its shoes for purposes of jurisdiction. Sunrich, an American company, apparently does this because the Convention typically applies only to agreements between parties from separate countries. Thus, it serves Sunrich's objective – federal question jurisdiction – to have the Agreement be between an American company (Plaintiff) and a foreign one: Canadian-based SunOpta. ***The Agreement, however, was signed not by the Canadian parent, SunOpta, but rather its American subsidiary, Sunrich. Defendant's removal petition essentially raises a very basic question. Is the Canadian parent a party to, or otherwise bound by, the contract signed by its subsidiary?*** However, Sunrich makes no attempt to substantively address this question. Instead, Sunrich summarily asserts that the answer is "yes" and then proceeds to assert that the Joint Venture Agreement – now between an American plaintiff and Canadian defendant – falls under the jurisdiction of the Convention.
>
> Not only is the Court not persuaded by Sunrich's maneuvering, but also, the legal authority relied upon by Sunrich does not help its cause. Offered without analysis and in string citation form, the cases on which Sunrich relies are distinguishable from the facts of this case. ***None of the cases cited by Sunrich involve analogous parties – that is, two parties from the same country (here, United States), in which the removing party is a subsidiary to a foreign parent company, thereby presenting a theory under which the Convention may apply to an agreement between the parties. . . .***

Colorado Mills, 2010 WL at *1 (citations omitted); *see also Ling v. Deutsche Bank AG,* No. 4:05-CV-345, 2005 WL 3158040, at *6 (E.D. Tex. Nov. 28, 2005), *report and recommendation adopted*, No. 4:05-CV-345, 2005 WL 3602133 (E.D. Tex. Dec. 30, 2005) ("Brown is a subsidiary of Deutsche Bank AG. Though a subsidiary, Deutsche Bank Alex Brown is a separate, domestic entity. Deutsche Bank Alex Brown, and not Deutsche Bank AG, signed the agreement in the

United States, which was drafted on Deutsche Bank Alex Brown letterhead, and which required the application of New York law. The Court finds Deutsche Bank Alex Brown's relationship to Deutsche Bank AG to be irrelevant to this inquiry").

Here, like the LLC seeking removal in *Sunrich,* the Marlins – without analysis and in string citation form – claim that the Jeter Marlins are a foreign company for purposes of the Convention merely because one parent (Abernue Ltd.) of a parent (Marlins Holdings, LLC) of a parent (Marlins Funding, LLC) is a citizen of the BVI. Just like the district court did in *Sunrich*, this Court should reject the Marlins' rationale, and should instead focus on the domestic character of the parties to the Agreement in determining its jurisdiction to hear this case.

c. Even if the Citizenship of the Jeter Marlins Were Relevant to Jurisdiction Under the Convention, and Even Assuming the Marlins Had Demonstrated the Applicability of Diversity Test for Citizenship Under the Convention, The Marlins Still Did Not Adequately Plead the Jeter Marlins' Citizenship.

Furthermore, even had the Marlins adequately demonstrated to this Court that the citizenship rules of diversity jurisdiction also apply to removals under the Convention, their attempts to plead jurisdiction would still fail. Diversity jurisdiction "requires complete diversity—every plaintiff must be diverse from every defendant." *Palmer v. Hosp. Auth.*, 22 F.3d 1559, 1564 (11th Cir. 1994). When dealing with a non-corporate entity such as a limited liability company, a "party seeking to establish diversity jurisdiction must specifically allege the citizenship of every member of every LLC or partnership involved in a litigation." *Settlement Funding, L.L.C. v. Rapid Settlements, Ltd.*, 851 F.3d 530, 536 (5th Cir. 2017); *see also Fuzzell v. DRC Emergency Servs., LLC,* 2015 WL 412889, *1 (N.D. Ala. Jan. 30, 2015) ("If a member of such an entity is itself a non-corporate entity, the court must continue to drill down through the member entities until only individuals and corporations remain.") (*citing Meyerson v. Harrah's East Chicago Casino,* 299 F.3d 616, 617 (7th Cir. 2002)). It is incumbent upon the party seeking diversity to identify the

citizenship of every member because "[i]n the Eleventh Circuit, the citizenship of a limited liability company is determined, for diversity purposes, by the citizenship of all the members composing the entity. A limited liability company is a citizen of any state of which a member is a citizen." *Golden v. Jericho All-Weather Opportunity Fund, LP*, No. 17-23241-CIV, 2017 WL 3738704, at *1 (S.D. Fla. Aug. 29, 2017, SCOLA) (*citing Rolling Greens MHP v. Comcast SCH Holdings, LLC*, 374 F.3d 1020, 1021–22 (11th Cir. 2004)).

Here, the Marlins plead only that 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."[9] *See* D.E. 1 at ¶ 2(c) (emphasis added). This statement obviously begs the question regarding the citizenship of the remaining members of Marlins Holdings, LLC; the Marlins have told this Court nothing about the citizenship of any of these other members. If any of them is a U.S. citizen, then, even under the diversity standard relied upon by the Marlins, so, too, is the Jeter Marlins. Thus, the Agreement would still be one entirely between U.S. citizens. *See e.g. NASCAR Lic. Oper., LLC v. Racetime RV Resorts, LLC*, No. 6:14-CV-1553-ORL-40KRS, 2014 WL 12625947, at *2 (M.D. Fla. Dec. 17, 2014) (holding that for complete diversity to exist, no member of a defendant LLC could be domiciled in Florida since the plaintiff LLC's sole member was a Florida corporation).

In other words, it is not the case, as the Marlins seemingly claim, that a multi-citizen LLC can pick and choose its citizenship as it pleases to suit the situation that it finds itself in. Even the two cases cited by the Marlins – *Rolling Greens MHP, L.P. v. Comcast SCH Holdings, L.L.C.*, 374

[9] Abernue Ltd.'s BVI citizenship is insufficiently established. The Supreme Court has established that the term "principal place of business" is the location of its "nerve center." *Hertz Corp. v. Friend,* 559 U.S. 77, 93 (2010). The Jeter Marlins made no attempt to demonstrate that Abernue's "nerve center" is in the BVI. *See id.*, at 96-97 ("When challenged on allegations of jurisdictional facts, the parties must support their allegations by competent proof").

F.3d 1020, 1022 (11th Cir. 2004) and *Americold Realty Trust v. Conagra Foods, Inc.*, 136 S. Ct. 1012, 1014 (2016) – make clear that an LLC is a citizen of ***ALL*** of the jurisdictions of which its members are citizens. *Rolling Greens*, 374 F.3d at 1021 ("citizenship of an artificial, unincorporated entity generally depends on the *citizenship of* ***all*** *the members* composing the organization") (emphasis added); *Americold Realty Trust*, 136 S. Ct. at 1014 ("diversity jurisdiction in a suit by or against the entity depends on the citizenship of '***all*** [its] members.') (emphasis added).

Thus, even if the Convention used the same citizenship test as diversity jurisdiction, and even if the Marlins had otherwise established that the Jeter Marlins is a BVI citizen, it may also be a citizen of the United States. The Marlins failed to provide sufficient facts to this Court to make such a determination. Thus, the Marlins failed to meet their pleading burden. This failure also requires this matter to be remanded to State Court.

III. CONCLUSION

For the reasons discussed above, the County and City respectfully request that this Court remand this action back to the Circuit Court for the Eleventh Judicial Circuit in and for Miami-Dade County pursuant to 28 U.S.C. § 1447, and grant such further relief deemed just and proper.

Date: March 26, 2018.

Respectfully submitted,

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CERTIFICATE OF GOOD FAITH CONFERENCE

Prior to the filing of this motion, the undersigned counsel conferred with counsel for Miami Marlins, L.P. and Marlins TeamCo, LLC, who indicated that they oppose the relief sought.

/s/Monica Rizo Perez
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on March 26, 2018, I served a copy of this document via CM/ECF upon the recipients listed below.

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