

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

Case No. 1:24-cv-21361-KMM

MAURENE CAROLINA GONZALEZ,

Plaintiff,

v.

CARNIVAL CORPORATION,
d/b/a CARNIVAL CRUISE LINES,

Defendant.

ORDER

THIS CAUSE came before the Court upon Defendant Carnival Corporation, d/b/a Carnival Cruise Lines's ("Defendant") Motion to Compel Arbitration and to Stay Judicial Proceedings. ("Mot.") (ECF No. 9). Plaintiff filed a response in opposition. ("Resp.") (ECF No. 22). Defendant filed a reply ("Reply") (ECF No. 25) and a Notice of Supplemental Authority (ECF No. 17). The matter is now ripe for review.

I. BACKGROUND¹

Plaintiff, a citizen and resident of Guayaquil, Ecuador, was an employee of Defendant and began working for Defendant on the Sunrise cruise ship on or about January 8, 2023. Compl. ¶¶ 1, 7. Before Plaintiff began working for Defendant, the Parties executed an employment contract, the Seafarer's Agreement (the "Employment Agreement"), which contains an arbitration clause (the "Arbitration Clause"). *See* (ECF No. 9-1).

¹ The background facts are taken from the Complaint, ("Compl.") (ECF No. 1) and are accepted as true for purposes of ruling on the Motion. *Bacon v. McKeithen*, No. 5:14-CV-37-RS-CJK, 2014 WL 12479640, at *1 (N.D. Fla. Aug. 28, 2014).

Aboard the Sunrise cruise ship, Plaintiff first worked as a bar server at the piano bar. Compl. ¶ 8. While working at the piano bar, Plaintiff was confronted by Defendant's employee, Bartender Patrick (last name unknown), who made comments to Plaintiff about "her being 'fresh meat' and propositioned her for 'chicki chicki' (shipboard slang for sex) because 'all Venezuelans are sexual workers.'" *Id.* Plaintiff, upset, responded, "I don't know who you think you are dealing with, but I demand respect, I am not a courtesan, and I am here to work. I am a married woman and you will respect me." *Id.* In the following days, Bartender Patrick continued with "the unwelcomed advances and sexual harassment." *Id.* ¶ 9.

Sometime between January 9 and January 13, 2023, Plaintiff reported the "sexual harassment and hostile work environment" to Georgiv Staniv ("Staniv"), the Assistant Bar Manager. *Id.* ¶ 10. In response, Staniv told Plaintiff that she "was new aboard ship and needed to be 'quiet, submissive, and obedient.'" *Id.* Staniv then changed Plaintiff's assignment from the piano bar to the night club bar. *Id.* At the night club bar, Plaintiff was required to work up to 15 hours a day "in contravention of international codes on seafarer work hours (her timesheets were improperly manipulated to reflect less work[.])" *Id.* At the night club bar, Plaintiff was also "victim to sexual harassment and assault by [Bartender] Patrick's friend and fellow countryman, Bar Server Leon Patterson[.]" who made "improper sexual comments to plaintiff, touch[ed] Plaintiff's breasts under the guise of closing the blouse of her uniform, rubb[ed] her back, and brush[ed] up against her[.]" *Id.* ¶¶ 11, 12. Plaintiff reported this conduct to Staniv who told Plaintiff that he did not want drama and did not "want to hear anything else coming from [her] mouth." *Id.* ¶ 13. Staniv then changed Plaintiff's assignment to the pool bar. *Id.* Plaintiff began suffering from "fevers, an inability to sleep properly, and exhaustion" due to the "constant harassment and verbal abuse." *Id.* ¶ 14.

Plaintiff reported the ongoing issues to Staff Captain Carlos Tenca who in turn told human resources, and Plaintiff met with the ship's chief security officer about "the sexual harassment, sexual assaults, and hostile work environment[.]" *Id.* ¶ 15. Plaintiff also "reported the ongoing sexual-harassment, sexual assaults, and hostile work environment to Defendant's shoreside office" in an email. *Id.* ¶ 16. Days later, Plaintiff was told by Defendant's human resources employee that "as a result of a 'lack of evidence' defendant was taking no further action[.]" and instead Plaintiff was transferred to the lobby bar. *Id.* ¶¶ 17, 20. At the lobby bar, Plaintiff had to lift and carry "excessively heavy boxes without aid" and as a result, Plaintiff "attend[ed] Defendant's infirmary for numbness . . . , bruising, . . . and lack of sensation in the hands." *Id.* ¶¶ 20, 21. Defendant has "refuse[d] to turn over to Plaintiff her employment and medical records" despite her requests. *Id.* ¶ 21.

On April 11, 2024, Plaintiff brought a claim for Intentional Infliction of Emotional Distress ("IIED") stemming from Defendant's conduct while she was employed by Defendant on the Sunrise cruise ship.² *Id.* ¶¶ 23–27. Now, Defendant moves to compel arbitration and to stay proceedings based on the Arbitration Clause in the Employment Agreement. *See generally* Mot.

II. LEGAL STANDARD

The Federal Arbitration Act ("FAA"), 9 U.S.C. §§ 1, *et seq.*, provides a federal "policy favoring arbitration." *Morgan v. Sundance, Inc.*, 596 U.S. 411, 417 (2022). The United Nations

² On May 22, 2024, Plaintiff filed a Motion for Leave to File Amended Complaint to add a second count for "Sexual Harassment" in violation of Title VII of the Civil Rights Acts of 1964 and 1991. (ECF No. 19). On June 12, 2024, Plaintiff filed a Notice of Withdrawal of Motion for Leave to File Amended Complaint, withdrawing her Motion for Leave to File Amended Complaint and stating she would refile the same "if/when she should receive a right to sue letter from the EEOC/FCHR." (ECF No. 28). As of the time of this Order, Plaintiff has not refiled a Motion for Leave to File Amended Complaint, and the only claim in this action is for IIED.

Convention on the Recognition and Enforcement of Foreign Arbitral Awards (“The Convention Act”) is codified at 9 U.S.C. § 201 of the FAA. *Lindo v. NCL (Bahamas), Ltd.*, 652 F.3d 1257, 1262 (11th Cir. 2011). The Convention Act requires courts of signatory nations, such as the United States, to give effect to private arbitration agreements and to enforce arbitral awards made in signatory nations. *See* United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, art. I(1), June 10, 1958, 21 U.S.T. 2517, 330 U.N.T.S. 3; *see also* *Sierra v. Cruise Ships Catering & Servs. Int’l, N.V.*, 631 Fed. Appx. 714, 715–16 (11th Cir. 2015); *Haasbroek v. Princess Cruise Lines, Ltd.*, 286 F. Supp. 3d 1352, 1356. (S.D. Fla. 2017).

The Convention Act “generally establishes a strong presumption in favor of arbitration of international commercial disputes.” *Trifonov v. MSC Mediterranean Shipping Co. SA*, 590 Fed. Appx. 842, 843 (11th Cir. 2014) (citation and quotation marks omitted). Relatedly, the FAA “establishes that, as a matter of federal law, any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration.” *Doe v. Princess Cruise Lines, Ltd.*, 657 F.3d 1204, 1213 (11th Cir. 2011) (citation and quotation marks omitted); *Haasbroek*, 286 F. Supp. 3d at 1356. In ruling on a motion to enforce an arbitration agreement under The Convention Act, a district court conducts a “very limited inquiry.” *Bautista v. Star Cruises*, 396 F.3d 1289, 1294–95 (11th Cir. 2005) (internal quotation marks and citations omitted). As a threshold matter, “[u]nder both the FAA and the Convention the first task of a court asked to compel arbitration of a dispute is to determine whether the parties agreed to arbitrate it.” *Doe*, 657 F.3d at 1213 n.9 (citation and quotation marks omitted). In other words, “the parties will not be required to arbitrate when they have not agreed to do so.” *Id.* at 1214 (quoting *Goldberg v. Bear, Stearns & Co.*, 912 F.2d 1418, 1419 (11th Cir. 1990)). That determination is guided by FAA principles. *Id.* at 1213 n.9.

Beyond that threshold consideration, a district court “must order arbitration” unless the four jurisdictional prerequisites are not met, or one of The Convention Act’s affirmative defenses applies.³ *Bautista*, 396 F.3d at 1294–95. The jurisdictional prerequisites require that “(1) there is an agreement in writing within the meaning of the Convention; (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 that the commercial relationship has some reasonable relation with one or more foreign states.” *Id.*; *Haasbroek*, 286 F. Supp. 3d at 1357.

III. DISCUSSION

In the instant Motion, Defendant moves the Court for an order directing Plaintiff to arbitrate the dispute and staying the instant Action pending the completion of arbitration. *See generally* Mot. Plaintiff does not dispute that the Arbitration Clause found in the Employment Agreement satisfies the *Bautista* jurisdictional prerequisites. *See* Resp. at 5–14. Nor could Plaintiff do so as the four prerequisites are met. The Arbitration Clause reads in relevant part:

Except for a wage dispute governed by CCL’s Wage Grievance Policy and Procedure, any and all disputes, arising out of or in connection with this Agreement or Seafarer’s service on the vessel, no matter how described, pleaded, or styled including but not limited to constitutional, statutory, common law, admiralty, personal injury, intentional tort, contract, equitable claims, claims of injury, medical and lodging benefits claims, inadequacy or improper care claims, or employment disputes, whether accruing prior to, during or after the execution of this Agreement, shall be resolved by final and binding arbitration on an individual basis. In addition, Seafarer agrees to arbitrate on an individual basis any and all disputes regarding the existence, validity, termination or enforceability of any term or provision in this Agreement, including but not limited to this provision to arbitrate. The seat of the arbitration and the final hearing shall be either in Panama

³ “The affirmative defenses authorized by the Convention have a ‘limited scope’ allowing parties to avoid arbitration only where the arbitration is ‘null and void, inoperative or incapable of being performed’ as those terms are defined within the Convention.” *Polychronakis v. Celebrity Cruises, Inc.*, Civ. No. 08-21806, 2008 WL 5191104, at *2 (S.D. Fla. Dec. 10, 2008).

City, Panama or Manila, Philippines whichever is closer to Seafarer's home country.

Id. at Art. 9.

First, the Employment Agreement which contains the Arbitration Clause is a written agreement signed by Plaintiff. *See id.* at 2. Second, the Arbitration Clause provides that arbitration would occur in Panama or the Philippines, which are both signatories to the Convention. *See id.* at Art. 9; New York Convention, *Contracting States*, <https://www.newyorkconvention.org/contracting-states> (last visited Nov. 21, 2024). The third element is satisfied because “an employment contract is ‘commercial’” within the meaning of the Convention. *See Bautista*, 396 F.3d at 1299; *Haasbroek*, 286 F. Supp. 3d at 1358. Lastly, the fourth element is satisfied because Plaintiff is a citizen of Ecuador. Compl. ¶ 1. Plaintiff also does not assert any affirmative defenses.

Instead, Plaintiff raises two arguments against compelling this action to arbitration. *See Resp.* at 5–14. First, Plaintiff argues that the Arbitration Clause is invalid and unenforceable based on the Ending Forced Arbitration of Sexual Assault and Harassment Act of 2021 (the “EFAA”). *Id.* at 5–8. Second, Plaintiff argues that her intentional tort claim is not subject to arbitration because it does not arise from or relate to her employment. *Id.* at 8–14.

A. The Arbitration Clause is Valid

Plaintiff argues that the EFAA applies to the instant dispute and renders the Arbitration Clause invalid and unenforceable. The EFAA was signed into law on March 3, 2022, and invalidates pre-dispute mandatory arbitration clauses of disputes related to sexual assault or sexual harassment. 9 U.S.C. § 402 (“[N]o predispute arbitration agreement or predispute joint-action waiver shall be valid or enforceable with respect to a case which is filed under Federal, Tribal, or

State law and relates to the sexual assault dispute or the sexual harassment dispute.”); *see Mitchell v. Raymond James & Assocs., Inc.*, No. 8:23-CV-2341-VMC-TGW, 2024 WL 4486565, at *1 (M.D. Fla. Aug. 23, 2024), *report and recommendation adopted*, No. 8:23-CV-2341-VMC-TGW, 2024 WL 4263151 (M.D. Fla. Sept. 23, 2024). The EFAA defines a “sexual harassment” dispute as “a dispute relating to conduct that is alleged to constitute sexual harassment under applicable Federal, Tribal, or State law.” 9 U.S.C. § 401(4). The EFAA states that “whether this chapter applies with respect to a dispute shall be determined under Federal law.” *Id.* § 402(b).

Here, Plaintiff brings one claim stemming from her employment: IIED.⁴ Defendant argues that the EFAA does not apply because there is no allegation that a Federal, Tribal, or State sexual harassment law was violated. Reply at 3–5. Plaintiff argues that the EFAA does apply because its case “was filed under federal law, and plainly ‘relates to [a] . . . sexual harassment dispute.’” Resp. at 6. Plaintiff is incorrect that its case was filed under federal law, as Plaintiff only alleges one claim for IIED, a common law state tort claim. *See generally* Compl. However, whether the IIED claim “relates to . . . the sexual harassment dispute” under the meaning of the EFAA requires a further analysis. *See* 9 U.S.C. § 402.

Few federal courts have considered this issue, but the courts that have addressed it have concluded that the “EFAA is inapplicable where there has not been an allegation that such conduct violated a law prohibiting sexual harassment.” *See K.T. v. A Place for Rover*, No. CV 23-02858, 2023 WL 7167580, at *4 (E.D. Pa. Oct. 31, 2023), *reconsideration denied*, No. 23-02859, 2024 WL 1356221 (E.D. Pa. Mar. 29, 2024) (holding that Plaintiffs did not allege a claim for sexual harassment as defined by the EFAA where Plaintiffs asserted claims for IIED, negligence,

⁴ As mentioned above, Plaintiff has not filed a Renewed Motion for Leave to File an Amended Complaint to add a second count for “Sexual Harassment” in violation of Title VII of the Civil Rights Acts of 1964 and 1991.

vicarious liability, negligent infliction of emotional distress, violation of the Pennsylvania Human Trafficking Statute, and violation of the Commonwealth's wiretapping statute, where none of the laws are "a law under which the alleged conduct constitutes 'sexual harassment.'"); *Yost v. Everyrealm, Inc.*, 657 F. Supp. 3d 563, 585 (S.D.N.Y. 2023) (holding that where Plaintiff's sexual harassment claims under Title VII, the New York States Human Rights Law (the "NYSHRL"), and the New York City Human Rights Law (the "NYCHRL") were dismissed for failure to state a claim, and the only remaining claims were violations of the Equal Pay Act, violations of the Americans with Disabilities Act, and IIED, the EFAA no longer had any bearing on the litigation).

While not binding on this Court, the court in *Yost* provided a helpful and thorough analysis of the scope of the EFAA:

The initial clause of § 402(a), which serves to explain which party may invoke the EFAA, refers to the "person alleging conduct constituting a sexual harassment dispute." Read in isolation, this text could support that a plaintiff, merely by describing conduct in the vernacular as "sexual harassment," could neutralize an arbitration agreement, even if the plaintiff did not claim that such conduct violated the law. Section 401(4), however, precludes that result. It does so by requiring that the dispute relate to "conduct that is alleged to constitute sexual harassment under applicable Federal, Tribal, or State law." It thus requires the plaintiff to assert that the conduct violated such a law. It does so by modifying the term "alleged" with the qualifying words "to constitute sexual harassment under applicable Federal, Tribal, or State law. Thus, although the term "alleged" commonly refers to an allegation of fact, as used in § 401(4), the term adds a legal dimension to the required allegation. And § 401(4)'s concluding clause identifies the legal measuring stick. The conduct must have been "alleged to constitute sexual harassment *under applicable Federal, Tribal, or State law.*" Congress's decision to add those qualifying words is significant. *See Bedi*, 15 F.4th at 226 (each word in a statute must be construed "in its context and in light of the terms surrounding it"). This plain language makes the EFAA inapplicable where there has not been an allegation that such conduct violated a law prohibiting sexual harassment.

657 F. Supp. 3d at 584–85. As such, where Plaintiffs allege conduct that violates Federal, Tribal, or State laws specifically prohibiting sexual harassment or sexual assault, like Title VII of the Civil

Rights Act, the NYSHRL, or the NYCHRL, then the EFAA may apply and render the arbitration clause invalid. *See Olivieri v. Stifel, Nicolaus & Co., Inc.*, 112 F.4th 74, 92 (2d Cir. 2024) (finding that claims under Title VII and the NYSHRL for retaliation based on sexual harassment fell within the definition of a “sexual harassment dispute” under the EFAA because the retaliation is based on the conduct that is alleged to constitute sexual harassment); *Johnson v. Everyrealm, Inc.*, 657 F. Supp. 3d 535, 557–58 (S.D.N.Y. 2023) (finding where Plaintiff plausibly pled claims for sexual harassment under the NYCHRL, the EFAA applied to the action, however, conversely, the Plaintiff’s IIED claim did not trigger an EFAA application analysis).

Here, Plaintiff does not allege conduct that violates a law prohibiting sexual harassment but only brings a state common law claim for IIED. *See generally* Compl. Therefore, the EFAA does not apply to the instant Action and does not render the Arbitration Clause invalid.

B. The Issue of Arbitrability Belongs to the Arbitrator Not the Court

Plaintiff next argues that “there is no basis in law or contract to arbitrate” her intentional tort claim for IIED because the underlying incident does not arise out of the legal employment relationship nor is it foreseeable to the “scope of employment contemplated by the contract.” Resp. at 8–9. Plaintiff cites to *Doe v. Princess Cruise Lines, Ltd.*, 657 F.3d 1204 (11th Cir. 2011) and *Maglana v. Celebrity Cruises, Inc.*, No. 20-14206, 2022 WL 3134373 (11th Cir. Aug. 5, 2022) for the proposition that intentional torts are inherently not subject to arbitration. *Id.* at 8–14. In both *Doe* and *Maglana*, the Eleventh Circuit held that the arbitration clauses at issue did not cover common law tort claims because the claims did not “relate to, arise out of, [n]or [we]re connected” to the employees’ services under the contracts. *Maglana*, 2022 WL 3134373 at *4; *Doe*, 657 F.3d at 1219. Defendant claims that *Doe* and *Maglana* are inapplicable to the instant Action because Defendant is not asking the Court to decide whether the claims are arbitrable, instead, Defendant

is “arguing **only** that the responsibility of determining arbitrability belongs to an arbitrator, which . . . is a permissible delegation under binding law.” Reply at 6–8 (emphasis in original). Defendant is correct.

The Employment Agreement containing the Arbitration Clause, which was signed by both Parties, in relevant part states:

Except for a wage dispute governed by CCL’s Wage Grievance Policy and Procedure, any and all disputes, arising out of or in connection with this Agreement or Seafarer’s service on the vessel, no matter how described, pleaded, or styled including but not limited to constitutional, statutory, common law, admiralty, personal injury, intentional tort, contract, equitable claims, claims of injury, medical and lodging benefits claims, inadequacy or improper care claims, or employment disputes, whether accruing prior to, during or after the execution of this Agreement, shall be resolved by final and binding arbitration on an individual basis. **In addition, Seafarer agrees to arbitrate on an individual basis any and all disputes regarding the existence, validity, termination or enforceability of any term or provision in this Agreement, including but not limited to this provision to arbitrate.**

(ECF No. 9-1) at Art. 9 (emphasis added). Neither party disputes the existence of the Arbitration Clause, and it includes a clear delegation provision that requires an arbitrator to determine the issue of arbitrability. In *Doe* and *Maglana*, the defendants did not raise the threshold issue of arbitrability before the district courts, instead asking the district courts themselves to decide whether the dispute was subject to arbitration. *See Maglana*, 2022 WL 3134373 at *3–4; *Doe*, 657 F.3d at 1213; *see also Singh v. Carnival Corp.*, No. 1:23-cv-24173, ECF No. 46 (S.D. Fla. May 6, 2024) (granting the motion to compel arbitration based on the same grounds raised here by Defendant where the same arbitration clause was at issue). Here, unlike in *Doe* and *Maglana*, Defendant is not asking the Court to interpret the scope of the first sentence of the Arbitration Clause: whether the dispute “aris[ed] out of or in connection with” Plaintiff’s employment. *See Mot.* at 4; Reply at 7–8.

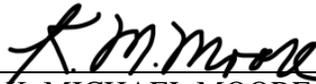
Instead, this Court must compel arbitration based on the delegation provision included in the Arbitration Clause. *See Henry Shein, Inc. v. Archer and White Sales, Inc.*, 586 U.S. 63, 68 (2019) (“When the parties’ contract delegates the arbitrability question to an arbitrator, a court may not override the contract. In those circumstances, a court possesses no power to decide the arbitrability issue.”); *Rent-a-Center, West, Inc. v. Jackson*, 561 U.S. 63, 68-69 (2010) (“The delegation provision is an agreement to arbitrate threshold issues concerning the arbitration agreement. We have recognized that parties can agree to arbitrate ‘gateway’ questions of ‘arbitrability.’”). Where a clear and unmistakable delegation provision exists in an arbitration agreement, the court “must respect the parties’ decision as embodied in the contract.” *Attix v. Carrington Mortg. Servs., LLC*, 35 F.4th 1284, 1296 (11th Cir. 2022) (quoting *Henry Schein*, 586 U.S. at 71); *Martinez v. Carnival Corp.*, 744 F.3d 1240, 1246 (11th Cir. 2014) (“[A] court may conclude that the parties agreed to arbitrate the very issue of ‘arbitrability’ where ‘there is clear and unmistakable evidence that they did so.’”) (quoting *Rent-a-Center*, 561 U.S. at 68–70).

Here, the Arbitration Clause in the Employment Agreement, signed by both Parties, clearly and unmistakable includes a delegation provision: “In addition, Seafarer [Plaintiff] agrees to arbitrate on an individual basis any and all disputes regarding the existence, validity, termination or enforceability of any term or provision in this Agreement, including but not limited to this provision to arbitrate. *See* (ECF No. 9-1) at Art. 9. Plaintiff agreed to be bound by and accept all terms and conditions within the Employment Agreement, including the delegation provision therein. *See id.* at 2. Plaintiff’s only arguments regarding the delegation provision involve the applicability of the EFAA which is addressed above. *See Resp.* at 5–6. Therefore, based on the delegation provision in the Arbitration Clause, whether Plaintiff’s claim is arbitrable is for the arbitrator, not this Court, to decide.

IV. CONCLUSION

Accordingly, UPON CONSIDERATION of the Motion, the pertinent portions of the record, and being otherwise fully advised in the premises, it is hereby ORDERED AND ADJUDGED that Defendant's Motion to Compel Arbitration and Stay (ECF No. 9) is GRANTED. Pursuant to 9 U.S.C. § 3, this Action is hereby STAYED until arbitration has been conducted in accordance with the terms of the Arbitration Clause. The Clerk of Court is instructed to ADMINISTRATIVELY CLOSE THE CASE until the time when the stay is lifted. All pending motions are DENIED AS MOOT.

DONE AND ORDERED in Chambers at Miami, Florida, this 22nd day of November, 2024.



K. MICHAEL MOORE
UNITED STATES DISTRICT JUDGE

c: All counsel of record