UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 21-61605-CIV-DIMITROULEAS

MONICA MUNOZ *as Personal Representative of the Estate of Roman Dario Palacios Holguin, deceased*,

Plaintiff,

v.

ROW MANAGEMENT LTD.,

Defendant.
_____/

ORDER GRANTING DEFENDANT'S MOTION TO COMPEL ARBITRATION AND DISMISS PLAINTIFF'S COMPLAINT

THIS CAUSE is before the Court upon Defendant Row Management Ltd.'s ("Row" or "Defendant")'s Motion to Compel Arbitration and Dismiss Plaintiff's Complaint [DE 7], filed on August 17, 2021 (the "Motion"). The Court has carefully considered the Motion, Plaintiff Monica Muñoz, as Personal Representative of the Estate of Roman Dario Palacios Holguin ("Plaintiff")'s Response in Opposition [DE 10], Defendant's Reply [DE 16], and is otherwise advised in the premises. For the reasons stated herein, the Court will grant the Motion.

I. BACKGROUND

On August 4, 2021, Defendant removed this action from the Seventeenth Judicial Circuit in and for Broward County, Florida to this Court. *See* [DE 1]. Plaintiff's five-count complaint alleges claims for (1) Wrongful Death Jones Act Negligence; (2) Unseaworthiness; (3) Failure to Provide Maintenance and Cure; (4) Failure to Treat; (5) Death on the High Seas Act, 46 U.S.C. § 30301 *et seq.*; and Survival Action. *See* [DE 1-1]. The allegations in the complaint arise from the death of Plaintiff Roman Dario Palacios Holguin, a former crew member employed as a doctor

onboard the Defendant's ship, the *M/V the World*. *See id.* Specifically, Plaintiff alleges that Defendants failed to provide the Plaintiff with proper medical care and, as a result, Plaintiff took his own life. *See id.*

On or about March 4, 2020, Plaintiff signed an Employment Agreement. *See* [DEs 16-2, 16-3]. The agreement incorporates by reference the "Agreement Between ROW Management Ltd. (Owners/Company) and Norwegian Maritime Officers' Association, Norwegian Seafarers' Union, Norwegian Union of Marine Engineers for Senior Deck & Engine Officers and Other Key Personnel" ("Collective Bargaining Agreement" or "CBA"). *See* [DE 16-4]. Specifically, above the signature line of the Employment Agreement that Plaintiff signed, the following words appear:

> I hereby certify that I have read, understand, accept and agree to the applicable Collective Bargaining Agreement under which my employment is covered.

See [16-2].

Defendant now moves to enforce the Article 33 of the CBA, and to therefore dismiss this action. *See* [DEs 7, 16-4]. Article 33 of the CBA states, in pertinent part:

> All grievances and any other dispute whatsoever, whether in contract, regulatory, statutory, common law, tort or otherwise relating to or in any way connected with the Seafarer's service for the Owners/Company under the present Agreement, including but not limited to claims for personal injury/disability or death, no matter how described, pleaded or styled, and whether asserted against the Owners/Company, Master, Employer, Ship Owner, vessel or vessel operator shall be referred to and resolved exclusively by mandatory binding arbitration pursuant to the United Nations Conventions of the Recognition and Enforcement of Foreign Arbitral Awards (New York 1958), 21 U.S.T. 2517, 330 U.N.T.S, ("The Convention"), except as provided by any government mandated contract.
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> . . . .
>
> The arbitrator, and not any federal, state or local court or agency shall have the exclusive authority to resolve any dispute relating to the interpretation, applicability, enforceability or formation of this Agreement including, but not limited to any disputes relating to the location of the arbitration and any claim that

> all or any part of this Agreement is void or voidable and as to choice of law. The arbitrator shall also have the power to provide any remedies necessary to address the dispute such as, but not limited to, damages, specific performance, and injunctive relief.

See [DE 16-4] at pp. 27-28.

II. LEGAL STANDARD

International arbitration agreements are subject to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards. The Convention 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. *Haasbroek v. Princess Cruise Lines, Ltd.*, 286 F. Supp. 3d 1352, 1356 (S.D. Fla. 2017). The United States enforces its agreement to the Convention's terms through Chapter 2 of the Federal Arbitration Act. *See* 9 U.S.C. §§ 201–208. The Convention Act "generally establishes a strong presumption in favor of arbitration of international commercial disputes." *Trifonov v. MSC Mediterranean Shipping Co. SA*, 590 F. App'x. 842, 843 (11th Cir. 2014). Relatedly, the Federal Arbitration Act "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). Concerns of international comity, respect for the capacities of foreign and transnational tribunals, and sensitivity to the need of the international commercial system for predictability in the resolution of disputes require that courts enforce the parties' agreement, even assuming that a contrary result would be forthcoming in a domestic context. *Bautista v. Star Cruises*, 396 F.3d 1289, 1302 (11th Cir. 2005).

In ruling on a motion to enforce an arbitration agreement under the Convention, a district court conducts a "very limited inquiry." *Bautista*, 396 F.3d 1289 at 1294–95. A district court must order arbitration unless the four jurisdictional prerequisites are not met, or one of the

Convention's affirmative defenses applies. *Bautista*, 396 F.3d at 1294–95. The four jurisdictional prerequisites are as follows: "1) there is an agreement in writing to arbitrate the dispute, 2) the agreement provides for arbitration in the territory of a signatory to the Convention, 3) the agreement to arbitrate arises out of a commercial legal relationship, and 4) there is a party to the agreement who is not an American citizen." *Doe v. Royal Carribean Cruises, Ltd.,* 365 F.Supp.2d 1259, 1262 (S.D.Fla.2005) (citing *Bautista,* 396 F.3d at 1294 n. 7). If these conditions are satisfied, "the court must order arbitration unless it determines the agreement is null and void." *Std. Bent Glass Corp. v. Glassrobots Oy,* 333 F.3d 440, 449 (3d Cir. 2003).

Furthermore, the party resisting arbitration bears the burden of showing that the arbitration agreement is invalid or does not encompass the claims at issue. *Green Tree Fin. Corp.-Ala. v. Randolph*, 531 U.S. 79, 92 (2000). The Court considers a motion to compel under a summary judgment-like standard and may decide the motion as a matter of law where there is no genuine dispute of fact. *Bazemore v. Jefferson Capital Sys., LLC*, 827 F.3d 1325, 1333 (11th Cir. 2016). A dispute is not "genuine" if it is unsupported by the evidence; "conclusory allegations without specific supporting facts have no probative value." *Id.*

III. DISCUSSION

Defendant moves to dismiss this case and compel Plaintiff to arbitrate his claims pursuant to the Employment Agreement and CBA, arguing that all four prerequisites have been met. In response, Plaintiff disputes only the first prerequisite: that there is an agreement in writing to arbitrate the dispute. Significantly, Plaintiff admits to signing the Employment Agreement that incorporates the CBA by reference. The Eleventh Circuit has held that a signed employment agreement satisfies the Convention's requirement for a written agreement to arbitrate. *Bautista*, 396 F.3d at 1300-01. Moreover, numerous cases in the district have found that the first

prerequisite is satisfied where, as in here, a crewmember signs an employment agreement that incorporates by reference a collective bargaining agreement. *See, e.g., Hiotakis v. Celebrity Cruises, Inc.*, No. 10-22954-CIV, 2011 WL 2148978, at *6 (S.D. Fla. May 31, 2011); *Hodgson v. Royal Caribbean Cruises, Ltd.,* 706 F. Supp. 2d 1248, 1254 (S.D. Fla. 2009); *Polychronakis v. Celebrity Cruises, Inc.*, No. 08-21806-CIV, 2008 WL 5191104, at *4–5 (S.D. Fla. Dec. 10, 2018); *Allen v. Royal Caribbean Cruises, Ltd.,* 2008 WL 5095412, at *4–5 (S.D. Fla. Sept. 30, 2008).

Plaintiff argues the above cases are distinguishable because the CBA in the present case is inoperative and void. "The Convention requires that courts enforce an agreement to arbitrate unless the agreement is 'null and void, inoperative or incapable of being performed.'" *Bautista*, 393 F.3d at 1301 (quoting New York Convention, art. II(3)). An agreement to arbitrate is null and void under the Convention only in situations such as fraud, mistake, duress, and waiver, which "can be applied neutrally on an international scale." *Id.* at 1302 (quoting *DiMercurio v. Sphere Drake Ins. PLC*, 202 F.3d 71, 79 (1st Cir. 2000)).

Plaintiff first contends that Defendant has failed to produce evidence that CBA was in effect at the time of the signing of Plaintiff's Employment Agreement on March 4, 2020. Plaintiff argues that the CBA expired on December 31, 2019. Article 38 of the CBA states:

> That this agreement shall be effective from January 1, 2017 through December 31, 2019, **and further for one year at a time if a request for termination is not given** neither by the Owners/Company or the Unions with three (3) months written notice. The terms and conditions of this Agreement may be reviewed at any time by the Owners/Company and Unions and if at any time the Owners. Company and Unions mutually agree on amendments and/or additions to this Agreement, such amendments and additions shall be agreed in writing and signed by the parties and considered incorporated in the ITF Special Agreement.

See [DE 16-4] (emphasis added). The Court finds that by its plain terms, the CBA automatically renews absent timely written notice.[1] *See Rose v. M/V Gulf Stream Falcon*, 186 F.3d 1345, 1350 (11th Cir. 1999) ("It is well settled that the actual language used in the contract is the best evidence of the intent of the parties and, thus, the plain meaning of that language controls.") (citing *Green v. life & Health of America*, 804 So. 2d 1386, 1391 (Fla. 1998)).

Plaintiff further argues that Defendant has not shown whether any party terminated the CBA. Plaintiff, however, offers no authority indicating that the party seeking arbitration has the burden of demonstrating that a request to terminate a collective bargaining agreement that automatically renews did not occur. To require such a showing seems to be at odds with the "very limited inquiry" courts must conduct, an inquiry which strongly favors arbitration. *Bautista*, 396 F.3d 1289 at 1294–95; *Trifonov*, 590 F. App'x at 843. In any case, Defendant produced a declaration by Defendant's Vice President of Human Resources that establishes that the CBA was extended in February 2020: "[T]he provisions in current agreements remain in place until new agreements have been agreed upon or current ones terminated." *See* [DEs 5-1, 5-4].[2]

Moreover, Plaintiff's argument that Defendant has offered no evidence that Defendant advised Plaintiff of whether the CBA was terminated or renewed is equally unavailing. *Bautista*

[1] Plaintiff also points out that Defendant failed to produce an executed copy of the CBA. In its Reply, Defendant conceded that it inadvertently attached an unsigned CBA to its Motion and attached a signed CBA therein. *See* [DEs 16, 16-4]. This error does not alter the Court's decision today. *See Bautista*, 396 F.3d at 1301 ("The agreement-in-writing prerequisite [of the Convention] does not specify when a party seeking arbitration must provide the court with the agreement in writing.").

[2] The Court finds Plaintiff's discussion of paragraph 7 of the February 2020 Protocol and whether it makes the arbitration clause operative unavailing. Both the plain language of Article 38 of the CBA and paragraph 5 of the February 2020 protocol make clear that the CBA's provisions, including the provisions pertaining to arbitration, remained in place through September 17, 2020, when the CBA's extension was renewed through December 31, 2021. *See* [DEs 5-1, 5-4, 5-5, 16-4].

establishes that a party seeking to compel arbitration need not demonstrate notice or knowledgeable consent of an arbitration provision. *See Bautista*, 396 F.3d at 1300-01.

Finally, Plaintiff contends that Defendant waived the arbitration agreement by settling contractual benefits with Monica Muñoz Murgeuitio, Plaintiff's widow. A "party that substantially invokes the litigation machinery prior to demanding arbitration may waive its right to arbitrate." *S & H Contractors, Inc. v. A.J. Taft Coal Co.,* 906 F.2d 1507, 1514 (11th Cir. 1990). Waiver occurs where a one "substantially participates in litigation to a point inconsistent with an intent to arbitrate and this participation results in prejudice to the opposing party." *Morewitz v. W. of Eng. Ship Owners Mut. Prot. & Indemnity Assoc. (Luxembourg*), 62 F.3d 1356, 1366 (11th Cir. 1995). Prejudice may be found if "the party seeking arbitration allows the opposing party to undergo the types of litigation expenses that arbitration was designed to alleviate." *Id.*

Here, Defendant settled contractual claims with Plaintiff's widow on or about July 22, 2020. The agreement states, in pertinent part:

> The payment is made to Monica Muñoz Murgeuitio without admission of liability of any claims and is accepted without prejudice to my/the Seafarer's legal heir and/or estate and/or dependent's right to pursue any non-contractual claim at law in respect of negligence, tort, personal injury and death, or any other legal redress available and arising out of the above incident against any parties including but not limited to The World of ResidenSea II, Ltd./ROW Management, Ltd.

See [DE 10], Exh. A. Plaintiff argues that Defendant invited Plaintiff to litigate the claims at issue in this matter, thereby relinquishing any requirement to arbitrate. In response, Defendant contends, and this Court agrees, that nothing in the settlement agreement waives Defendant's right to compel arbitration. As such, Plaintiff must submit this claim to arbitration if he wishes to proceed.

IV. CONCLUSION

For the foregoing reasons, it is hereby **ORDERED AND ADJUDGED** as follows:

1. Defendant's Motion to Compel Arbitration and Dismiss Plaintiff's Complaint [DE 7] is **GRANTED**.
2. This case is **DISMISSED** in favor of arbitration**.** If Plaintiff wishes to pursue the claims pled herein against Defendant, Plaintiff must proceed to mandatory, binding arbitration pursuant to the terms of the CBA.
3. The Clerk is directed to **CLOSE** this case and **DENY** any pending motions as moot.

DONE AND ORDERED in Chambers at Fort Lauderdale, Broward County, Florida, this 2nd day of December, 2021.

WILLIAM P. DIMITROULEAS
United States District Judge

Copies to:
All counsel of record