UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 1:24-cv-22643-KMM

RYNO VAN DER MERWE, individually,
and as legal guardian for wife,
ELIS CARNEIRO PEREIRA,

Plaintiff,

v.

VANTER CRUISE GLOBAL, INC.,

Defendant.
_____/

OMNIBUS ORDER

THIS CAUSE came before the Court upon Defendant Vanter Cruise Global, Inc.'s ("Defendant") Motion to Dismiss Plaintiff's Amended Complaint for Lack of Personal Jurisdiction Over Defendant, Motion to Dismiss Count III for Failure to State a Claim and Alternative, Motion to Compel Arbitration ("Def. Mot.") (ECF No. 8), and Plaintiff Ryno van der Merwe's ("Plaintiff") Motion to Remand this Case to Miami-Dade County Circuit Court ("Pl. Mot.") (ECF No. 12). The Parties filed respective Responses and Replies. *See* (ECF Nos. 14, 18, 20, 22). The Motions are now ripe for review.

I. BACKGROUND

Elis Carneiro Pereira ("Pereira")[1] was working as a bar server for Crystal Cruises, Ltd. ("Employer") aboard the Crystal Serenity (the "Vessel") when she suddenly fell ill. Pl. Mot. at 2. During Pereira's medical examination by a doctor employed by Defendant aboard the Vessel,

[1] Plaintiff Ryno van der Merwe brings this action individually and as legal guardian for his wife, Elis Carneiro Pereira. On June 6, 2024, the 11th Judicial Circuit in and for Miami-Dade County, Florida found that Pereira was "totally incapacitated" and appointed Plaintiff as her legal guardian. *See* (ECF No. 12–1) at 2.

Pereira was allegedly misdiagnosed and mistreated. *Id.* Plaintiff asserts that Pereira "underwent multiple procedures and surgeries to repair the extensive brain damage she suffered as a result of [Defendant's] delay in providing emergency medical care." *Id.* at 3. Prior to the incident, Defendant entered into a medical services agreement with Pereira's Employer. *Id.* Therein, Defendant agreed to "operate and manage the [Vessel's] medical clinic as well as provide medical staffing aboard the vessel to provide quality health services to passengers and crew members. *Id.*

Plaintiff filed this action in the Circuit Court for the 11th Judicial Circuit in and for Miami-Dade County, Florida against Defendant alleging (1) negligence "for the substandard medical care" Pereira received, (2) "Third Party Beneficiary Breach of Contract" under Florida Law, and (3) Loss of Consortium under Florida Law. *See generally* ("Compl.") (ECF No.1–4). Defendant removed the case to this Court and now moves to dismiss the action under Federal Rules of Civil Procedure 12(b)(2) and 12(b)(6) or, in the alternative, compel arbitration. *See* ECF No. 1. Plaintiff moves to remand to state court and opposes Defendant's motion to dismiss and compel arbitration. Pl. Mot.; (ECF No. 14) at 7.

II. LEGAL STANDARD

The statute governing removal, 28 U.S.C. § 1441, permits a defendant to remove a case brought in state court to federal court if the federal court has subject matter jurisdiction over the action. *See* 28 U.S.C. § 1441. The removing party bears the burden of proving that federal subject matter jurisdiction exists. *See Mitchell v. Brown & Williamson Tobacco Corp.*, 294 F.3d 1309, 1314 (11th Cir. 2002). A district court is required to "'strictly construe the right to remove' and apply a general 'presumption against the exercise of federal jurisdiction, such that all uncertainties as to removal jurisdiction are to be resolved in favor of remand.'" *Scimone v. Carnival Corp.*, 720 F.3d 876, 882 (11th Cir. 2013) (citation omitted). Indeed, "[a] presumption in favor of remand is

necessary because if a federal court reaches the merits of a pending motion in a removed case where subject matter jurisdiction may be lacking it deprives a state court of its right under the Constitution to resolve controversies in its own courts." *Id.*

III. DISCUSSION

The Complaint lodges three claims against Defendant: Jones Act negligence (Count I), Florida breach of contract (Count II), and Florida loss of consortium (Count III). *See generally* Compl. Defendant moves to dismiss the action under (1) Federal Rules of Civil Procedure 12(b)(2) for lack of personal jurisdiction, (2) Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim upon which relief can be granted, or (3) in the alternative, to compel arbitration pursuant to the United Nations Convention on the Recognition (the "Convention") and its implementing legislation, 9 U.S.C. §§ 201–208. Def. Mot. at 1. Plaintiff argues that this case should not be subjected to arbitration and should be remanded to Florida state court. *See generally* Pl. Mot. The Court will first address whether it possesses subject matter jurisdiction under the Jones Act, the Federal Arbitration Act, and 28 U.S.C. § 1332, respectively.

A. Jurisdiction Under the Jones Act

Claims under the Jones Act are not removable to federal court absent an independent basis for subject matter jurisdiction. *See, e.g.*, *Trifonov v. MSC Mediterranean Shipping Co. SA*, 590 F. App'x 842, 844–45 (11th Cir. 2014) ("Jones Act claims are generally not subject to removal."); *see also Am. Dredging Co. v. Miller*, 510 U.S. 443 (1994) (noting that Congress "appears to have withheld from Jones Act defendants the right of removal generally applicable to claims based on federal law"). Second, claims under state law are not removable absent diversity or supplemental jurisdiction. *See Underwriters at Lloyd's, London v. Osting-Schwinn*, 613 F.3d 1079, 1085 (11th Cir. 2010) (explaining diversity jurisdiction requirements). Third, "all doubts about jurisdiction

should be resolved in favor of remand." *Univ. of S. Alabama v. Am. Tobacco Co.*, 168 F.3d 405, 412 (11th Cir. 1999).

B. Jurisdiction Under the Federal Arbitration Act

When claims that are not otherwise removable fall within the scope of an arbitration clause under the Convention, they are nevertheless subject to removal for the purposes of compelling arbitration. *Trifonov*, 590 F. App'x at 845 (citing *Lindo v. NCL (Bahamas), Ltd.*, 652 F.3d 1257, 1286–87 (11th Cir. 2011)). The Eleventh Circuit has made "clear" that "Jones Act claims may be subject to arbitration under the Convention." *Id.*; *see also Allen v. Royal Caribbean Cruise, Ltd.*, 2008 WL 5095412, at *3–4 (S.D. Fla. Sept. 30, 2008), *aff'd*, 353 Fed. Appx. 360 (11th Cir. 2009) (finding that a case could be "removed notwithstanding the Jones Act claims"). Thus, if Plaintiff's claims fall within the scope of an arbitration agreement under the Convention, this case is properly removed and shall be compelled to arbitration. *See Pysarenko v. Carnival Corp.*, No. 14-20010-CIV, 2014 WL 1745048, at *8 (S.D. Fla. Apr. 30, 2014), *aff'd*, 581 F. App'x 844 (11th Cir. 2014). If not, however, unless there are alternative grounds for jurisdiction, this case must be remanded back to state court. *See, e.g.*, *Florian v. Carnival Corp.*, No. 10-CV-20721, 2010 WL 11527315, at *1 (S.D. Fla. May 25, 2010) (finding that Jones Act case "must be remanded" where jurisdictional prerequisites under the Convention Act were not satisfied).

The Convention "generally establishes a strong presumption in favor of arbitration of international commercial disputes." *Trifonov*, 590 F. App'x at 843 (citation and quotation marks omitted). "In deciding a motion to compel arbitration under the Convention Act, a 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). Nevertheless, "courts may not require arbitration beyond the scope of the contractual agreement, because "a party cannot be required to submit to

arbitration any dispute which he has not agreed so to submit." *JPay, Inc. v. Kobel*, 904 F.3d 923, 929 (11th Cir. 2018) (citing *United Steelworkers of Am. v. Warrior & Gulf Navigation Co.*, 363 U.S. 574, 582 (1960)). When there are questions regarding arbitration, courts "assume [parties'] intent to arbitrate anything not specifically excluded." *Id.*

Pereira entered an Employment Contract (ECF No. 8–2) with her Employer, subject to the terms and conditions of a Collective Bargaining Agreement (ECF No. 8–3) between Pereira's Employer and the Norwegian Seafarers' Union ("CBA"). In its Notice of Removal, Defendant asserts "[Defendant] was acting as [Employer's] agent when it provided medical services to the crew working aboard the [Vessel]. As a result, all claims against [Defendant] based on provision of medical services to the [Vessel's] crew are subject to the arbitration provision in the [CBA]." ECF No. 1 ¶ 11. In Plaintiff's Motion to Remand, Plaintiff notes that Defendant is not a party to Pereira's Employment Contract or CBA. Pl. Mot. at 6. Moreover, Plaintiff argues the dispute falls within an *explicit* exception to the agreement to arbitrate contained in the CBA. *Id.* at 7–8.

First, Pereira never agreed to arbitrate with Defendant. Defendant was a third-party contractor hired by Pereira's Employer to provide medical services aboard the Vessel. *Id.* at 6. Both Pereira's Employment Agreement and the CBA are silent as to third-party contractors, except where a third-party "has assumed the responsibility for the operation of the vessel to take over the duties and responsibilities imposed on owners." (ECF No. 8–3) at 5. Here, Defendant did not assume the responsibilities imposed on the Vessel's owners, but merely provided health care services aboard the Vessel. Pl. Mot. at 6–7; *see also* ECF No. 1 ¶ 11 ("[Defendant] was acting as [Employers] agent when it provided medical services to the crew").

Moreover, even if the CBA was broadly construed to include Defendant, Plaintiff's claims fall outside the scope of the CBA's arbitration provision. *See* CBA at 27. Article 32, Section A

of the Union Agreement provides:

> If not resolved by the Union, the Company, and/or the Seafarer, all claims, grievances, and disputes **relating to the Seafarer's service for the Company**, whether in contract, regulatory, statutory, common law tort or otherwise, including but not limited to claims for personal injury/disability or death, no matter how described, pleaded or styled, and whether asserted against the Seafarer, Company, Captain, Ship Owner, vessel, vessel operator or their Agents, shall be referred to and resolved exclusively by binding arbitration pursuant to the United Nations Convention on Recognition and Enforcement of Foreign Arbitral Awards (New York 1958), except as otherwise provided in any government mandated contract, such as the Standard POEA Contract for Seafarers from the Philippines or by any other applicable law.

Id. In *Doe v. Princess Cruise Lines, Ltd.*, the Eleventh Circuit addressed whether the district court was required to compel arbitration in an analogous case. 657 F.3d 1204, 1217 (11th Cir. 2011). The Eleventh Circuit noted that the phrase 'related to' marks a boundary and indicates the requirement of a direct connection. *Id.* ("[T]he plain language of the arbitration provision imposes the limitation that, to be arbitrable, the dispute between Doe and the cruise line must relate to, arise from, or be connected with her crew agreement or the employment services that she performed for the cruise line. The arbitration provision is broad, but not limitless."). Likewise, the CBA's drafters purposely included the phrase "relating to," indicating the drafters' intent to limit the arbitration agreement to concerns specifically "relating to" Pereira's "service" to her Employer. *Id.*; *see also N.Y. State Conference of Blue Cross & Blue Shield Plans v. Travelers Ins. Co.*, 514 U.S. 645, 655 (1995) (explaining "related to" is limiting language requiring a connection).

Here, Pereira's injuries did not "relate to" her employment as a bar server, and thus fall outside the scope of the CBA's arbitration agreement. Consequently, the Court finds the Federal Arbitration Act does not warrant exercising jurisdiction over Plaintiff's claims, nor does the Federal Arbitration Act permit this Court to compel the Parties here to arbitration.

C. Diversity Jurisdiction Pursuant to 28 U.S.C. § 1332

Defendant also asserts removing the case was appropriate because the Parties are diverse

as defined under 28 U.S.C. § 1332. "It is a standard rule that federal courts do not have diversity jurisdiction over cases where there are foreign entities on both sides of the action, without the presence of citizens of a state on both sides." *Iraola & CIA, S.A. v. Kimberly-Clark Corp.*, 232 F.3d 854, 860 (11th Cir. 2000) (citing *Cabalceta v. Standard Fruit Co.*, 883 F.2d 1553, 1558 (11th Cir. 1989)). Defendant is a foreign corporation "incorporated in the Commonwealth of the Bahamas." Def. Mot. at 1 n.1. Defendant fails to allege Plaintiff's citizenship and, in its Motion, merely states that the "action is between citizens of different states and/or a foreign state." *Id.* at 3. In its filings, Plaintiff asserts that no party to this case is a United States citizen, rendering jurisdiction under 28 U.S.C. § 1332 inapplicable. Pl. Mot. at 5 (citing *Diplomat Golf Course, Venture LLC v. Indian Harbor Ins. Co.*, 2022 WL 3575345, at *1 (S.D. Fla July 20, 2022)). In its responsive filings, Defendant does not contest these assertions. *See generally* (ECF No. 20). As discussed above, federal courts cannot exercise jurisdiction under 28 U.S.C. § 1332 where the only parties on both sides are foreign entities. *Iraola*, 232 F.3d at 860 (citation omitted). Thus, the Court does not have diversity jurisdiction under 28 U.S.C. § 1332. Accordingly, for the reasons discussed above, the Court finds it is without jurisdiction under the Federal Arbitration Act or 28 U.S.C. § 1332, and thus, the case must be remanded to Florida state court. *See generally Florian*, 2010 WL 11527315.

D. Additional Relief Sought

When a district court is faced with both a motion to remand and motion to dismiss "the district court should be free to dispose of the case upon whichever of the two grounds may appear to it to be the more convenient." *Walker v. Savell*, 335 F.2d 536, 539 (5th Cir. 1964). Defendant seeks to dismiss the instant case under either Federal Rule of Civil Procedure 12(b)(2) or 12(b)(6). *See generally* Def. Mot. As the Court is without subject matter jurisdiction, the

Court finds it most efficient to remand the case without reaching the merits of Defendant's motion.

IV. CONCLUSION

Accordingly, UPON CONSIDERATION of the Motions, 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 Dismiss for Lack of Personal Jurisdiction, Motion to Dismiss Count III for Failure to State a Claim, and Motion to Compel Arbitration (ECF No. 8) is DENIED and Plaintiff's Motion to Remand to State Court (ECF No. 12) is GRANTED. All other pending motions are DENIED AS MOOT. The Clerk is directed to remand this case to the Circuit Court for the 11th Judicial Circuit in and for Miami-Dade County, Florida.

DONE AND ORDERED in Chambers at Miami, Florida, this 2nd day of October, 2024.

K. MICHAEL MOORE
CHIEF UNITED STATES DISTRICT JUDGE

cc: All counsel of record