UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 21-CV-22948-PCH

EMIGDIO ANTONIO DE GRACIA,

Plaintiff,

v.

ROYAL CARIBBEAN CRUISES LTD.
d/b/a ROYAL CARIBBEAN GROUP,

Defendant.
_____/

ORDER DENYING DEFENDANT'S MOTION TO COMPEL ARBITRATION AND DISMISS THE COMPLAINT

THIS MATTER comes before the Court on Defendant, Royal Caribbean Cruises Ltd.'s ("Royal Caribbean's") Motion to Compel Arbitration and Dismiss the Complaint (the "Motion"), which it filed on Thursday, September 2, 2021. [ECF No. 5]. Plaintiff, Mr. Emigdio Antonio De Gracia ("De Gracia") filed a Response in Opposition to Defendant, Royal Caribbean Cruises Ltd.'s Motion to Compel Arbitration on Thursday, September 30, 2021, along with supporting exhibits [ECF No. 8], to which Royal Caribbean filed a Reply [ECF No. 9]. The Court has carefully considered De Gracia's removed state court complaint [ECF No. 1-1], the parties' memoranda and supportive exhibits, and the applicable law. For the reasons below, Royal Caribbean's Motion to Compel Arbitration and Dismiss the Complaint is **DENIED**.

I. BACKGROUND

This case arises out of the work-related injuries Plaintiff De Gracia allegedly sustained while he worked as an Inventory Manager for Admiral Management, Inc. ("Admiral") on Coco Cay, Bahamas, pursuant to a March 8, 2018 written employment agreement (the "Employment Agreement"). [ECF No. 5-2]. Royal Caribbean was not a signatory to the Employment Agreement.

The Employment Agreement included the following choice of law and arbitration provision:

> **15. Law Governing this Agreement**
>
> This employment agreement shall be governed by, construed and interpreted in accordance with the Laws of The Bahamas. In the event of dispute, the Laws of The Bahamas shall apply, and the Company and the Employee agree that all disputes of any nature arising out of or in any way related to Employee's employment or to any other dispute with the Company, including for death, personal injury, illness, medical care, wages and benefits, whether brought under common law, contract or statutory grounds shall be resolved by mandatory arbitration in the Bahamas with one arbitrator mutually agreed by the parties. The arbitration shall be administered by the American Arbitration Association under its International Center for Dispute Resolution Procedures. Each side shall share equally the cost of any arbitration and each side shall bear its own attorney's fees and costs associated with the arbitration.

[ECF No. 5-2] at 15.

De Gracia has brought this legal action following the work-related injuries he sustained. On April 7, 2020, De Gracia initiated arbitration proceedings against Admiral as contemplated under the Employment Agreement, alleging Jones Act negligence; general negligence; failure to provide maintenance and cure; failure to provide prompt, proper, and adequate medical care; and unseaworthiness claims. [ECF No. 5-3]. And just over a year later, on May 27, 2021, De Gracia filed this suit against Royal Caribbean in the Eleventh Judicial Circuit Court of Florida, also alleging the same claims as it did in the arbitration proceedings against Admiral and that Royal Caribbean was also his employer. [ECF No. 5-1]. Royal Caribbean removed this case to this Court on August 13, 2021, [ECF No. 1], predicating its assertion of this Court's jurisdiction under 9 U.S.C. § 205, contending that the arbitration provision of the Employment Agreement applies to De Gracia's claims in the instant case.[1] In its Motion to Compel Arbitration and Dismiss the Complaint, Royal Caribbean contends that binding precedent and a strong judicial deference in

[1] 9 U.S.C. § 205 authorizes the removal of actions from state to federal court if the action "relates to an arbitration agreement . . . falling under the Convention [on the Recognition and Enforcement of Foreign Arbitral Awards]." 9 U.S.C. § 205 (2020).

favor of arbitration permits this Court, under equitable estoppel principles, to compel arbitration between a signatory to an agreement to arbitrate (De Gracia) and a non-signatory (Royal Caribbean). [ECF No 5]. De Gracia contends otherwise, arguing that Royal Caribbean has failed to demonstrate that Bahamian law—the law applicable to this dispute as agreed to in the Employment Agreement—permits a non-signatory to enforce an agreement to arbitrate. [ECF No 8]. De Gracia alternatively argues that, even if Florida's equitable estoppel principles apply here, they would not require arbitration in this case. *Id.*

Following a hearing on Royal Caribbean's Motion, the Court ordered the parties to brief whether and how Bahamian law may apply to their dispute. [ECF No. 10]. Royal Caribbean subsequently filed a Memorandum of Bahamian Law in Support of Its Motion to Compel Arbitration and Dismiss the Complaint, [ECF No. 11], and, following another hearing, this Court entered an order requiring Royal Caribbean to confirm the Court's understanding that Royal Caribbean concedes that Bahamian law does not recognize the equitable estoppel doctrine. [ECF No. 15 at 1]. In response, Royal Caribbean acknowledged that "under Bahamian law[,] third party non-signatories to a contract may not enforce the arbitration provision under the equitable estoppel doctrine." [ECF No. 18 at 1].

II. LEGAL STANDARD

The United States of America is a signatory to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, an international, multi-lateral agreement that requires signatory nations to give effect to private arbitration agreements and enforce arbitration awards in other contracting nations. 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 (the "New York Convention"); *see also Sierra v. Cruise Ships Catering & Servs. Int'l, N.V.*, 631 F. App'x 714,

715–16 (11th Cir. 2015). Pursuant to the New York Convention, the United States has codified its agreement to the terms of the New York Convention in Chapter 2 of the Federal Arbitration Act (the "FAA"). *See* 9 U.S.C. §§ 201–08. A federal district court must conduct "a very limited inquiry" into whether enforcement of an arbitration agreement under the New York Convention is appropriate. *Bautista v. Star Cruises*, 396 F.3d 1289, 1294 (11th Cir. 2005).

The specific steps of the Court's limited judicial inquiry are well settled. As a threshold matter, "the first task of a court asked to compel arbitration of a dispute is to determine whether the parties agreed to arbitrate it." *Doe v. Princess Cruise Lines, Ltd.*, 657 F.3d 1204, 1213 n.9 (11th Cir. 2011). Federal courts consider four jurisdictional factors in deciding whether an arbitration agreement falls under the scope of the New York Convention. An arbitration agreement falls within the scope of the New York Convention where (1) there is an agreement in writing within the meaning of the New York Convention; (2) the agreement provides for arbitration in the territory of a New York Convention signatory; (3) the agreement arises out of a commercial legal relationship (whether contractual or not); and (4) a party to the agreement is not an American citizen, or that the commercial relationship has some reasonable relation to one or more foreign states. *Bautista*, 396 F.3d at 1294 n.7. If these four factors are met and none of the New York Convention's affirmative defenses apply, then a district court must order arbitration. *Id.* at 1294–95. In other words, "arbitration is mandatory unless the plaintiff proves that the agreement is 'null and void, inoperative, or incapable of being enforced.'" *Azevedo v. Carnival Corp.*, No. 08-CIV-20518, 2008 WL 2261195, at *3 (SD. Fla. May 30, 2008) (citation omitted).

Moreover, the party opposing a motion to compel arbitration has an affirmative duty to demonstrate—either by factual submission or allegation of fact—why the court should not compel arbitration. *See Sims v. Clarendon Nat'l Ins. Co.*, 336 F. Supp. 2d 1311, 1314 (S.D. Fla. 2004).

"This burden is not unlike that of a party seeking summary judgment," and therefore "the party opposing arbitration should identify those portions of the pleadings, depositions, answers to interrogatories, and affidavits which support its contention." *Id.* The court should resolve any doubts regarding the scope of arbitrable issues in favor of arbitration. *Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 24–25 (1983); *see also Bautista*, 396 F.3d at 1295 ("the Convention Act 'generally establishes a strong presumption in favor of arbitration of international commercial disputes'") (internal citation omitted).

III. DISCUSSION

The central issue now before the Court is whether it may compel arbitration of De Gracia's claims against Royal Caribbean despite the lack of an independent written arbitration agreement signed by both. In support of its position that the same matter should be arbitrated, Royal Caribbean contends that the doctrine of equitable estoppel binds De Gracia to the arbitration clause in the Employment Agreement. De Gracia contends that Royal Caribbean's Motion to Compel Arbitration and Dismiss the Complaint should be denied because Royal Caribbean failed to demonstrate whether and how equitable estoppel principles under Bahamian law would apply to this dispute.

a. This Court owes no judicial deference to the parties' arbitration agreement because this dispute concerns whether the arbitration agreement applies at all.

Royal Caribbean argues that the federal policy in favor of arbitration bears on this dispute, requiring this Court to review its Motion in light of the strong federal policy in favor of ordering arbitration. Royal Caribbean overstates federal precedent. "Because arbitration is a matter of contract, . . . the FAA's strong proarbitration policy *only* applies to disputes that the parties have agreed to arbitrate." *Klay v. Pac. Health Sys. Inc.*, 389 F.3d 1191, 1200 (11th Cir. 2004) (emphasis

added). De Gracia and Royal Caribbean dispute whether those two parties agreed to arbitrate claims between them.

Precedent within and beyond the United States Court of Appeals for the Eleventh Circuit contradict Royal Caribbean's position. The United States Supreme Court in *Granite Rock v. Int'l Brotherhood of Teamsters* held that the federal policy favoring arbitration does not apply to disputes over the formation of the arbitration agreement, its enforceability, or application to the parties at bar. 561 U.S. 287, 299–300 (2010) ("[O]ur precedents hold that courts should order arbitration of a dispute only where the court is satisfied that neither the formation of the parties' arbitration agreement nor . . . its enforceability or applicability to the dispute is in issue."). Further, "federal policy favoring arbitration does not apply to the determination of whether there is a valid agreement to arbitrate between the parties or to the determination of who is bound by the arbitration agreement." *Am. Heritage Life Ins. Co. v. Lang*, 321 F.3d 533, 537 (5th Cir. 2003) (quotations omitted). "The FAA's presumption is inapplicable in this situation, as courts are to apply the presumption of arbitrability *only* where a validly formed and enforceable arbitration agreement is ambiguous about whether it covers the dispute at hand." *Dasher v. RBC Bank (USA)*, 745 F.3d 1111, 1115 (11th Cir. 2014) (citing *Granite Rock*, 561 U.S. at 301) (internal quotations omitted).

Put simply, the parties' dispute is whether the Employment Agreement's arbitration clause applies to De Gracia's instant legal claims against Royal Caribbean. Neither Royal Caribbean nor De Gracia argue that the Employment Agreement's arbitration clause is ambiguous as to the scope of claims the parties must arbitrate. Rather, Royal Caribbean asserts that equitable estoppel principles render the arbitration clause applicable against De Gracia's claims against Royal Caribbean, a non-signatory. Further, the parties' memoranda clearly dispute whether the Employment Agreement's arbitration clause is enforceable under the New York Convention. [ECF

No. 5] at 7 ("Here, all four conditions are met; thus, arbitration must be compelled."); [ECF No. 8] at 6 ("[Royal Caribbean] erroneously argues that the four New York Convention arbitration prerequisites are satisfied here. They are not because [Royal Caribbean] cannot even overcome the first hurdle."). Therefore, the federal policy in favor of arbitration does not apply with regard to whether Royal Caribbean may be considered a "party" to the subject agreement to arbitrate.

b. Royal Caribbean has not met its burden in demonstrating that the parties' chosen body of law authorizes the Court to compel arbitration based upon principles of equitable estoppel.

The crux of Royal Caribbean's theory is that Florida's contract-law doctrine of equitable estoppel permits it, a non-signatory to an arbitration agreement, to enforce arbitration against De Gracia. De Gracia disagrees. De Gracia claims that because the Employment Agreement requires Bahamian law to apply to disputes arising out of it, and because Royal Caribbean does not demonstrate whether or how Bahamian law authorizes the Court to compel arbitration with a non-signatory, the Supreme Court cannot grant Royal Caribbean's Motion. De Gracia's position maintains stronger legal support.

Royal Caribbean relies primarily on the United States Supreme Court's recent decision in *GE Energy Power Conversion France SAS, Corp. v. Outokumpu Stainless USA, LLC*, 140 S. Ct. 1637 (2020). In *GE Power*, the Supreme Court considered the broader legal question of whether the terms of the New York Convention conflicted with general equitable estoppel principles to the extent that the New York Convention prohibits all non-signatories' enforcement of arbitration agreements. *Id.* at 1642. In reversing the Eleventh Circuit's holding that the New York Convention requires parties to sign an arbitration agreement to compel arbitration, the Supreme Court held that the existence and application of the doctrine of equitable estoppel among the New York Convention's contracting states supported the conclusion that the New York Convention itself

does not prohibit those principles from applying to permit a non-signatory to compel arbitration. *Id.* at 1646–47.

Royal Caribbean reads too much into the Supreme Court's *GE Energy* holding. The *GE Energy* Court did not prohibit private parties from choosing to apply foreign law in disputes over whether an arbitration clause applies. Instead, the *GE Energy* Court's holding was a narrow one: "We hold only that the New York Convention does not conflict with the enforcement of arbitration agreements by non-signatories under domestic-law equitable estoppel doctrines." *Id.* at 1648. The *GE Energy* Court even contemplated that a lower court would include a choice-of-law analysis in its consideration of which equitable estoppel principles may apply to enforce an arbitration agreement: "Because the Court of Appeals concluded that the Convention prohibits enforcement by non-signatories, the court did not determine whether GE Energy could enforce the arbitration clauses under principles of equitable estoppel *or which body of law governs that determination.* Those questions can be addressed on remand." *Id.* (emphasis added). In light of this, this Court should first consider which body of law applies to this dispute before it considers whether the corresponding equitable estoppel principles—if any—would permit Royal Caribbean's enforcement of the Employment Agreement as a non-signatory.

Three decisions of this Court—two before the Supreme Court's *GE Energy* decision in 2020 and one after—offer instructive guidance. The first decision was *Wexler v. Solemates Marine, Ltd.*, Case No. 16-cv-62704-BLOOM/Valle, 2017 WL 979212 (S.D. Fla. Mar. 14, 2017). The plaintiff in *Wexler* was a crew member initially employed by one defendant, Solemates Marine, Ltd. ("Solemates"). *Id.* at *1. About a month after the *Wexler* plaintiff began employment with Solemates, another company (and co-defendant), Seavisions, Ltd. ("Seavisions") acquired Solemates. Plaintiff's initial employment agreement with Solemates did not contain an arbitration

provision while the subsequent employment agreement she signed with Seavisions did. *Id.* After the *Wexler* plaintiff sued both companies for neck injuries she sustained while working for Solemates, Solemates argued that the court should compel to arbitration of the plaintiff's claims against it based on equitable estoppel principles. The *Wexler* court denied Solemates's argument on the merits notwithstanding its procedural shortcomings (Solemates made the argument without actually filing a motion to compel arbitration). *Id.* at *4. The *Wexler* court rejected Solemates's equitable estoppel argument:

> [P]ursuant to the Supreme Court's decision in *Carlisle*, "state law provides the rule of decision" on whether a nonparty can enforce an arbitration clause against a party. Here, Solemates Marine makes no indication whatsoever that the contract law of the Cayman Islands—***which the parties agree govern in this case***—recognizes the equitable estoppel doctrine in this context. This is significant as Solemates Marine bears the initial burden to show that an agreement to arbitrate exists.

Id. (emphasis added) (citations omitted). Thus, while the *Wexler* court clearly re-affirmed the principle of state law providing the rule of decision in this context, it took a natural, logical step in considering the applicable choice of law provisions to which the parties agreed.

This Court in *Haasbroek v. Princess Cruise Lines, Ltd.* embarked on a similar analysis a few months after *Wexler*. 286 F. Supp. 3d 1352 (S.D. Fla. 2017). In *Haasbroek*, this Court recognized the default applicable rule that "the issue of whether a non-signatory to an agreement can use an arbitration clause in that agreement to force a signatory to arbitrate a dispute between them is controlled by state law." *Id.* at 1361 (quoting *Kroma Makeup EU, LLC v. Boldface Licensing + Branding, Inc.*, 845 F.3d 1351, 1354 (11th Cir. 2017)). Then the *Haasbroek* court appropriately considered the relevant choice of law provision in the arbitration agreement at issue. *Id.* ("The law of the Bahamas governs the SEA and the Arbitration Clause therein."). In support of its application of the law that the parties chose, the *Haasbroek* court cited *Judge v. Unigroup,*

Inc., in which the U.S. District Court for the Middle District of Florida applied the law of four different jurisdictions in deciding whether the respective jurisdictions' equitable estoppel principles would permit a non-signatory to compel arbitration. Case No. 8:17-cv-201-T-23TGW, 2017 WL 3971457, at *4 (Sep. 8, 2017).

Most recently, this Court considered the issue at bar in *Sisca v. Hal Maritime Ltd.*, 20-cv-22911-BLOOM/Louis, 2020 WL 6581608 (Nov. 9, 2020). In that case, there were two defendants who moved to compel arbitration: Hal Martime, Ltd. ("Hal") and Princess Cruise Lines, Ltd. ("Princess"). *Id.* at *1. The plaintiff, a former Hal employee who worked on a Princess-owned vessel, entered into an employment agreement containing an arbitration provision with Hal but not Princess. *Id.* The employment agreement at issue in *Sisca* also contained a choice of law provision that agreed to the application of the law of the British Virgin Islands in disputes arising under the agreement. *Id.* at *2. The *Sisca* court recounted its *Wexler* and *Haasbroek* decisions as instructive, noting that "[i]n each case, the courts reasoned that the non-signatory defendant failed to demonstrate that the law of the applicable jurisdiction . . . recognized equitable estoppel." *Id.* at *5. Following suit, the *Sisca* court denied Princess's the motion to arbitrate the plaintiff's claims against Princess because it "ma[de] no showing that British Virgin Islands law recognizes the equitable estoppel doctrine in this context, much less that it would apply in Princess' favor." *Id.* The *Sisca* court held that Princess did not carry its burden "to show that, as a non-signatory, Princess can enforce the Employment Agreement against Plaintiff." *Id.*

Royal Caribbean's efforts to distinguish *Haasbroek*, *Wexler*, and *Sisca* in its Reply fall short. Contrary to Royal Caribbean's representation, *GE Energy* does not abrogate *Haasbroek* and *Wexler* because those two cases deal with different legal questions than in *GE Energy*. The central question in *GE Energy* was "whether the [New York Convention] conflicts with domestic

equitable estoppel doctrines that permit the enforcement of arbitration agreements by non-signatories." *GE Energy*, 141 S. Ct. at 1642. That question is distinct from the question before the *Haasbroek* and *Wexler* courts as well as this one: whether the chosen body of law in an arbitration agreement applies over domestic law in determining whether equitable estoppel may permit a non-signatory to enforce an arbitration agreement. The district court in both *Haasbroek* and *Wexler* first recognized the default application of domestic equitable estoppel principles. They then considered the parties' consensual selection of a different, foreign body of law to govern the contractual dispute, including equitable estoppel principles. *Wexler*, 2017 WL 979212, at *4; *Haasbroek*, 286 F. Supp. 3d at 1361. Indeed, in *Sisca*, this court cited decisions of other courts similarly concluding that the specific, applicable equitable estoppel principles were those of the jurisdictions selected by the parties in the choice-of-law provisions. *Sisca*, 2020 WL 6581608, at *5. Additionally, this Court's *Wexler*, *Haasbroek*, and *Sisca* decisions all confirmed that the movant had the burden of demonstrating the applicable equitable estoppel principles required arbitration. Because the movants in each of these cases did not carry its burden, this Court denied the movant's motion to compel arbitration respectively.

The Eleventh Circuit's precedent regarding a district court's power to enforce agreements to arbitrate is clear. Generally, "one who is not a party to an agreement cannot enforce its terms against one who is a party" because "the right of enforcement generally belongs to those who have purchased it by agreeing to be bound by the terms of the contract themselves. *Lawson v. Life of the S. Ins. Co.*, 648 F.3d 1166, 1168 (11th Cir. 2011). However, "a nonparty may force arbitration if the relevant state contract law allows him to enforce the agreement to arbitrate." *Id.* at 1170. "Whether a non-signatory to an agreement can use an arbitration clause in that agreement to force a signatory to arbitrate a dispute between them is controlled by state law." *Kroma Makeup EU,*

LLC, 845 F.3d at 1354. As detailed above, the relevant contract law to the dispute at bar is that of the Bahamas. [ECF No. 5-2].

As the defendants in *Wexler*, *Haasbroek*, and *Sisca*, Royal Caribbean has not demonstrated that Bahamian law recognizes the doctrine of equitable estoppel in the context of enforcement of an arbitration agreement, much less that it would apply in its favor. To the contrary, Royal Caribbean acknowledges that under Bahamian law, a non-signatory to an arbitration agreement cannot compel a signatory to arbitrate pursuant to the arbitration agreement. [ECF No. 18 at 1]. Accordingly, Royal Caribbean has not met its burden to demonstrate that it may enforce the Employment Agreement against De Gracia as a non-signatory. *Resolution Trust Corp. v. Dunmar Corp.*, 43 F.3d 587, 599 (11th Cir. 1995); *Phillips v. Hillcrest Med. Ctr.*, 244 F.3d 790, 800 n.10 (10th Cir. 2001) ("A litigant who fails to press a point by supporting it with pertinent authority, or by showing why it is sound despite a lack of supporting authority or in the face of contrary authority, forfeits the point. The court will not do his research for him."). Royal Caribbean therefore has not established the first jurisdictional element of Bautista: "the existence of an agreement in writing within the meaning of the [New York] Convention to arbitrate the dispute at issue." *Sisca*, 2020 WL 6581608, at *5; *Bautista*, 396 F.3d at 1294 n.7.

CONCLUSION

For the foregoing reasons, it is hereby **ORDERED** that Defendant, Royal Caribbean Cruises, Ltd.'s Motion to Compel Arbitration and Dismiss the Complaint [ECF No. 5] is **DENIED**.

DONE AND ORDERED in Miami, Florida, on January 7, 2022.

PAUL C. HUCK
UNITED STATES DISTRICT JUDGE

cc: Counsel of Record