MAGSINO v. SPIAGGIA MARITIME, LTD., US: Dist. Court, ED Louisiana 2004

(2004)
FRANCISCA UMALI MAGSINO INDIVIDUALLY AND AS CURATRIX OF DOMINGO MAGSINO
v.
SPIAGGIA MARITIME, LTD. AND M/V SEA PATRON.

Civil Action No. 04-2148. Sect. `T'(3).
United States District Court, E.D. Louisiana.

November 10, 2004.

G. PORTEOUS, District Judge.

Before this Court is a motion by the defendant, Spiaggia Maritime, Ltd. (hereinafter "Spiaggia"), to compel arbitration, and stay, or alternatively dismiss, the maritime personal injury claims of the petitioner. Also before this Court is a motion by the petitioner, Francisca Umali Magsino, individually and as curatrix of Domingo Magsino (hereinafter "Magsino") to remand this action to state court. This Court heard oral arguments on September 22, 2004. Having studied the legal memoranda submitted by both parties, the evidence presented, the Court record, the law and applicable jurisprudence, this Court is fully advised and ready to rule.

ORDER AND REASONS

I. BACKGROUND:

Magsino, is a Filipino seaman who was injured aboard a foreign flag vessel on the Mississippi River. Spiaggia, is Magsino's employer and the owner of the vessel. Magsino brought an action under admiralty and maritime law in a Louisiana state court pursuant to the "savings to suitors clause." 28 U.S.C. § 1333(1). Spiaggia removed the action to this Court seeking to compel arbitration on the basis of a "Dispute Settlement Procedures" clause included in a standard Philippine government document pertaining to the employment of Filipino seaman. This document was incorporated by reference into Magsino's employment contract. Spiaggia requests this Court dismiss or stay Magsino's injury action, in favor of arbitration.

II. ARGUMENTS OF THE RESPECTIVE PARTIES:

A. Arguments in Support of Arbitration and Against Remand:

Spiaggia argues that the dispute settlement procedures clause of Magsino's contract is binding, and this Court is required to enforce arbitration pursuant to the United States' ratification of The Convention on the Recognition and Enforcement of Foreign Arbitral Awards (hereinafter "Convention"). Spiaggia relies primarily on Francisco v. M/T Stolt Achievement, 293 F.3d 270 (5th Cir. 2002), wherein the Fifth Circuit upheld an Order compelling arbitration and dismissing a Motion to Remand, on facts very similar to the present case. Spiaggia argues that Louisiana law and policy are inapplicable here because they are preempted by the federal Convention and its statutory enactments.

B. Arguments Against Arbitration and in Support of Remand:

Magsino argues that Spiaggia's reliance on Francisco is inappropriate because the Court there was not presented with arguments addressing La. Rev. Stat. 23:321A(2) and its applicability under M/S Bremen v. Zapata Offshore Company, 407 U.S. 1, 92 S. Ct. 1907, 32 L.Ed. 2d 513 (1972) and Sawicki v. K/S Stavanger Prince, 802 So.2d 598 (La. 12/7/01). Magsino cites The Bremen for the proposition that contractual "choice-of-forum" clauses should not be enforced if to do so would violate the strong public policy of the forum in which suit is brought. He then argues that Louisiana has a strong public policy against forum selection clauses in employment contracts as expressed by La. Rev. Stat. 23:921A(2) and interpreted by Sawicki. Magsino thus argues that the exclusive arbitration clause of his employment contract is null and void and his Motion to Remand should be granted.

The Law Offices of Les A. Martin and Bonin Law intervene herein to reassert Magsino's arguments. They also argue that the Louisiana statute is not preempted by the federal Convention because the two are not in direct conflict. Intervenors draw a distinction between arbitration clauses, which would be governed by the Convention, and forum selection clauses, which are the subject of the Louisiana statute.

III. LAW AND ANALYSIS:

The clause of Magsino's employment contract at issue before this Court states, "In cases of claims and disputes arising from this employment, the parties covered by the collective bargaining agreement shall submit the claim or dispute to the original and exclusive jurisdiction of the voluntary arbitrator or panel of arbitrators." By requiring that claims be submitted to the "original and exclusive" jurisdiction of arbitrators, the clause functions both as an arbitration clause and a forum selection clause. The distinction between the two, however, is not practically significant. Under Vimar Seguros y Reaseguros, S.A. v. M/V Sky Reefer, 515 U.S. 528, 115 S.Ct. 2322, 132 L.Ed. 2d (1995), arbitration clauses in employment contracts are considered a "subset" of forum selection clauses. Furthermore, the two are generally analyzed under the same standards. Fransisco, 293 F.3d at 277; Haynesworthe v. The Corporation, 121 F.3d 956 (1997).

This Court recognizes that by means of La. Rev. Stat. 23:921A(2), Louisiana has expressed a strong public policy against forum selection clauses in employment contracts. Sawicki, 802 So.2d at 603. This Court also recognizes, however, that in enacting the Convention, the United States has expressed an equally strong policy favoring arbitration in the type of situation now before us. The Supreme Court's key basis for its ruling in The Bremen, was that forum selection clauses in international agreements are "prima facie valid and should be enforced unless enforcement is shown by the resisting party to be unreasonable under the circumstances." The Bremen 407 U.S. at 10. One possible way of demonstrating that such a forum selection clause is unreasonable is by showing that the clause contravenes the "strong public policy of the forum in which the suit is brought." Id. at 15. However, given the strong federal policy in favor of enforcement of arbitration clauses in international agreements, Magsino's claim that the clause is unreasonable must meet a "heavy burden" of proof under The Bremen. Id. at 17.

The federal policy favoring arbitration in international commercial agreements is clearly expressed by the signing of the Convention itself. SEDCO, Inc. v. PEMEX, 767 F.2d 1140 (5th Cir. 1985), discussed the need for the federal policy favoring such clauses in terms of

"sensitivity to the need of the international commercial system for predictability in the resolution of disputes." In Mitsubishi v. Solar Chrysler, 473 U.S. 614, 105 S. Ct. 3346, 87 L.Ed.2d 444 (1985), the Supreme Court of the United States emphasized the importance of the federal policy favoring international arbitration when it held that "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, all require enforcement of the arbitration clause in question." Thus, behind the strong federal policy of international arbitral enforcement is Congress's recognition that in order for international commerce to thrive, there must be a system which creates predictability and uniformity in the marketplace. Both of these underlying goals would suffer substantial injury if parties were allowed to circumvent arbitration agreements based on the mere fortuity that injury occurred in a state which disfavors such agreements.

Any statute enacted pursuant to the United States Constitution is the supreme law of the land and "any state law, however clearly within the State's acknowledged power, must yield if it interferes with or is contrary to federal law." Gade v. National Solid Wastes Management, 505 U.S. 88, 112 S. Ct. 2374, 120 L.Ed. 2d 73 (1992). Magsino argues that based on The Bremen and LA R.S. 23:921, the arbitration clause in Magsino's employment contract is invalid as volitive of Louisiana's strong public policy against such clauses. However, as an international treaty ratified by the United States, the Convention preempts any state law which would invalidate an otherwise valid arbitration agreement. Here, under a straightforward application of LA R.S. §23:921, the arbitration clause in Magsino's contract would be presumptively invalid. This is in direct opposition to the federal law which presumes the clause is valid. The Bremen 407 U.S. at 10. The Court's reasoning is guided on this point by the dissenting opinion of Judge DeMoss in Dahiya v. Talmidge Int., Ltd., 371 F.3d 207 (5th Cir. 2004), which concluded that state statutes invalidating arbitration agreements are preempted by federal law.[1] This Court therefore finds that, if the clause at issue in Magsino's employment contract is of a type contemplated by the Convention, the Convention governs, irrespective of any conflicting state policy.

The test for determining whether an action arises under the Convention is set out in SEDCO. Because of the federal policy favoring enforcement of arbitration clauses, the Convention contemplated a "very limited inquiry by the courts when considering a motion to compel arbitration:

1) is there an agreement in writing to arbitrate the dispute...;
2) does the agreement provide for arbitration in the territory of a Convention signatory;
3) does the agreement to arbitrate arise out of a commercial legal relationship;
4) is a party to the agreement not an American citizen?"
SEDCO, 767 F.2d at 1144, 1145.

The clause at issue in Magsino's employment contract states that "any dispute arising from this employment" is to be referred to arbitration in the Philippines. Magsino's suit alleges injuries arising from his employment. Therefore, there is an agreement in writing to arbitrate this dispute. The clause does provide for arbitration in the Philippines, which is a Convention signatory. The agreement arises from the employment relationship and is therefore "commercial" in nature. Francisco, 293 F.3d at 274. Finally, it is uncontested that Magsino is a citizen on the Philippines and not an American citizen. This Court therefore finds that the clause in Magsino's employment contract falls within the type contemplated by the Convention and is governed thereby.

Having found that the clause of Magsino's employment contract is of the type specifically contemplated by the Convention, this Court has subject matter jurisdiction pursuant to the Convention's firm mandate. "An action or proceeding falling under the Convention shall be deemed to arise under the laws and treaties of the United States. The district courts of the United States... shall have original jurisdiction over such an action." 9 U.S.C. §203.

Therefore, after considering the applicable law, the policies in support of international arbitration in commercial relationships, and the laws of federal preemption, this Court finds that the exclusive arbitration clause of Magsino's employment contract is governed by the Convention.

Accordingly,

IT IS ORDERED that defendant, Spiaggia Maritime, Ltd.'s Motion to Compel Arbitration is hereby GRANTED, and that petitioner, Francisca Umali Magsino, individually and as curatrix of Domingo Magsino is ordered to submit to arbitration in accordance with the terms of his employment contract, and that this matter be STAYED pending the outcome of the arbitration. Petitioner's Motion to Remand is therefore DENIED.

[1] In Dahiya, another decision out of the Eastern District, the Court was presented with facts and issues very similar to those of the present case, and reached the opposite conclusion. The federal district court held that based on The Bremen and Louisiana's public policy, they lacked subject matter jurisdiction, and granted remand. The United States Court of Appeal, Fifth Circuit, upheld the order to remand, finding that there was a statutory bar on their appellate jurisdiction pursuant to 28 U.S.C. § 1447(d). Judge DeMoss filed a dissenting opinion, in which he not only discussed the Court's appellate jurisdiction, but also reached the merits of the case.