WWW.NEWYORKCONVENTION.ORG

Ledee v. Ceramiche Ragno, 684 F.2d 184, 187 (1st Cir. 1982). If the above prerequisites are satisfied, the court must order arbitration unless the agreement is found to be "null and void, inoperative or incapable of being performed." Id. citing Convention, Article II(3).

Applying the facts of this case to the above cited criteria there is no question but that the first three criteria are satisfied and that the parties to the employment agreement are American citizens.[1] Thus, the pivitol questions are whether the commercial relationship has some reasonable relationship with one or more foreign states and if so, whether the agreement is null and void, inoperative or incapable of being performed.

Defendants submit the commercial relationship is reasonably related to a European venue because plaintiff's employment contract contemplated performance and enforcement abroad.

The Court disagrees. During the course of his employment, plaintiff made several trips to Europe for business purposes. However, these trips were not required under plaintiff's employment contract. To the contrary, the employment contract defines a single duty on the part of plaintiff to:

> ...build up a sales and marketing organization for the distribution of LIGNOTOCK products and services in the metropolitan Detroit area...

The contract clearly calls for performance within the United States. Lignotock, an American corporation, maintained offices in Michigan. Plaintiff's sales market existed exclusively in the United States. Although it was plaintiff's duty to sell products manufactured abroad, all sales contracts generated by plaintiff were made in Michigan. The products sold by plaintiff were eventually installed in the United States in vehicles sold in the United States. Plaintiff's trips to

Europe were incidental to the performance of plaintiff's contractual duty of selling Lignotock products to U.S. automobile manufacturers.

Defendants' argument with respect to European enforcement of the employment agreement is equally unavailing. While the contract contemplates arbitration in Zurich, Switzerland, the arbitration provision of the employment contract unequivocably provides that enforcement of the arbitration award shall be pursuant to U.S. law:

> ...the execution of any judgment of the arbitrators shall be done in accordance with U.S. law. The parties of the Agreement are agreed that it is a question, in the case of an arbitral award, of an U.S. arbitral award.

Since the employment contract dictates that U.S. law shall govern the enforcement of any arbitration award and further dictates that performance of plaintiff's contractual duties shall be within the United States, the Court finds no reasonable relation between the commercial relationship existing between the litigants and Zurich, Switzerland, the proposed cite of arbitration. Accordingly, this Court finds the employment contract is not subject to the Convention and this Court lacks jurisdiction over this dispute.

Assuming, arguendo, that the commerical relationship at issue was reasonably related to Europe, the Court would nonetheless find the arbitration agreement incapable of being performed. The arbitration agreement requires that arbitration be conducted "...in accordance with the rules of the International Arbitration Court in Paris, France." By defendants' admission, no such entity exists anywhere in Europe, and thus, no rules exist to govern this dispute.

CONCLUSION

Finding no jurisdiction over this matter, defendant

© 1989 MEALEY PUBLICATIONS, INC.

to direct arbitration is DENIED. This case is REMANDED to Wayne County Circuit Court for the State of Michigan.

IT IS SO ORDERED.

LAWRENCE P. ZATKOFF
UNITED STATES DISTRICT JUDGE

FOOTNOTE

[1] There is a written agreement to arbitrate this dispute. Plaintiff's employment contract provides:

> Any controversy arising from, or related to this Agreement which cannot be amicably settled, shall be determined by arbitration in Zurich, Switzerland....

Zurich, Switzerland is a signatory to the Convention. See Convention, Article XVI. Furthermore, an employment contract is considered a commercial relationship for purposes of the Convention. Faberge International, Inc. v. DiPino, 491 NYS 2d 345; 109 A 2d 235 (1985). Thus, the first three prerequisites to finding the contract subject to the Convention are satisfied.

WWW.NEWYORKCONVENTION.ORG