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MINUTE ENTRY
 SEAR, J.
 AUGUST 16, 1989

UNITED STATES DISTRICT COURT
 EASTERN DISTRICT OF LOUISIANA

SEMBAWANG SHIPYARD, LTD. * CIVIL ACTION
 VERSUS *
 M/V CHARGER (formerly known as * NO. 88-5005
 GLOBE CHARGER), her engines,
 boilers, etc., and CHARGER, INC. * SECTION "G"

MEMORANDUM AND ORDER

Plaintiff, Sembawang Shipyard, is a Singapore corporation. Defendant, Charger Inc., is a Liberian corporation and owner of the M/V CHARGER which is of Liberian registry. Sembawang repaired the M/V CHARGER in Singapore from March 8, 1987 through August 8, 1987, but Sembawang was never fully paid.

On November 11, 1988, Sembawang brought an action against the M/V CHARGER, in rem, and Charger, Inc., in personam, asserting an alleged maritime lien for ship repair services furnished to the vessel and had the vessel arrested under Supplemental Rule C. Charger, Inc. filed claim to the vessel. On November 14, 1988, the vessel was released upon the posting of security in the form of a corporate surety bond. Service of the in personam complaint has recently been perfected.

Defendant has filed a motion to dismiss for lack of jurisdiction and/or for summary judgment. Plaintiff has filed a motion to stay proceedings pending arbitration and for this Court to retain jurisdiction to enter decree upon award. Opposition

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has been timely filed by each party. The Court finds that oral argument is unnecessary for a determination of the issues raised.

I find that this Court has jurisdiction over this action by virtue of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 9 U.S.C. Secs. 201-208. An arbitration agreement between two foreign parties falls under the Convention according to Sec. 202. Sec. 203 confers original subject matter jurisdiction in federal court. That section provides:

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 (including the courts enumerated in Section 460 of Title 28) shall have original jurisdiction over such an action or proceeding, regardless of the amount in controversy.

9 U.S.C. 203.

The "Standard Conditions of Contract" of Sembawang Shipyard contains a clause providing that:

"[A]ny dispute shall be determined according to the Arbitration Ordinance of 1963. The contract shall be governed by the Law of Singapore."

Therefore, this action falls under the Convention.

As an alternative grounds of jurisdiction, I find that this Court has jurisdiction under Supplemental Rule C(1)(b) which provides that an action in rem may be brought "whenever a statute of the United States provides for a maritime action in rem or a proceeding analogous thereto." Sec. 8 of the Arbitration Act provides for such an action. Therefore, this action will not be dismissed for lack of subject matter jurisdiction.

The plaintiff wants this matter sent to arbitration. Under

the Convention, the Court's inquiry is limited to determining whether there is an agreement in writing to arbitrate, whether the agreement provides for arbitration in the territory of a Convention signatory, whether the agreement to arbitrate arises out of a commercial dispute, and whether one of the parties to the agreement is not an American citizen. Where, as here, the foregoing requirements are met, the Convention requires the district court to order arbitration. Sedco, Inc. v. Petroleos Mexicanos Mexican National Oil Co. (Pemex), 767 F.2d 1140, 1145 (5th Cir. 1985). In addition, "a presumption of arbitrability exists requiring that whenever the scope of an arbitration clause is fairly debatable or reasonably in doubt, the court should decide the question of construction in favor of arbitration." Mar-Len of Louisiana, Inc. v. Parsons-Gilbane, 773 F.2d 633 (5th Cir. 1985). Furthermore, where a contract contains an arbitration clause, "there exists a strong presumption that arbitration should not be denied 'unless it can be said with positive assurance that an arbitration clause is not susceptible of an interpretation which would cover the dispute at issue'." Phillips Petroleum Co. v. Marathon Oil Co., 794 F.2d 1080 (5th Cir. 1986) (quoting Houston General Insurance Corp. v. Realex Group, N.V., 776 F.2d 514 (5th Cir. 1985)).

This Court has jurisdiction and the contract between the parties contains an arbitration clause; therefore, this matter must be sent to arbitration.

The last issue to be considered is whether or not this Court

should retain the bond that was posted as security after the vessel was arrested under Supplemental Rule C. The defendant, who claims that I should not, alleges that the in rem seizure was invalid because there is no maritime lien under Singapore law for ship repairs. The plaintiff claims that the bond should be retained because (1) Singapore law provides a statutory right to commence an action in rem to recover the value of ship repair services performed on a vessel, or (2) American law applies to the right of the plaintiff to seize the vessel and the Federal Maritime Lien Act expressly grants a maritime lien in favor of one furnishing ship repairs, see 46 U.S.C. Sec. 971.

The Fifth Circuit has recently held that "the arrest of a vessel prior to arbitration is not inconsistent with the Convention." E.A.S.T. of Stamford Connecticut v. M/V. ALAIA, 876 F.2d 1168 (5th Cir. 1989). The provisions of the Arbitration Act furnish the applicable principles and authorities for construing the Convention. See 9 U.S.C. 208. Section 8 of the Arbitration Act expressly provides that in admiralty matters "the party claiming to be aggrieved may begin his proceeding hereunder by libel and seizure of the vessel ... according to the usual course of admiralty proceedings, and the court shall then have jurisdiction to direct the parties to proceed with the arbitration and shall retain jurisdiction to enter its decree upon the award." 9 U.S.C. 8.

Therefore, the seizure was proper under the Convention. Alternatively, defendant's argument that under American law,

an action in rem cannot exist without the existence of an underlying valid maritime lien is questionable at best. The defendant cites two cases for this proposition. The first is Ocean Ship Supply v. LEAH, 1982 AMC 2740 (D.S.C. 1982), aff'd in part and rev'd in part, 1984 AMC 2089 (4th Cir. 1984). That case is distinguishable because there, there was no statutory provision analogous to Singapore's statutory in rem right. Because the conditions for an action in rem under Canadian law did not exist, the court dismissed the in rem action. In Ocean Ship, the court held that Canadian law applied and, because such law cuts off any maritime lien once the beneficial ownership of a vessel changes, there was nothing on which to predicate the issuance of in rem process. This holding does not mean however, that if Canadian law had provided a statutory in rem right, that the vessel could have been seized in the United States.

The second case cited by defendants is Comoco Marine Services v. M/V EL CENTROAMERICANO, 1984 AMC 2592 (D.Ore. 1984) (Belloni, J.). This case is distinguishable because there, a condition necessary for an in rem action under Singapore law--the vessel owner's in personam liability--was not satisfied, therefore, the in rem complaint was dismissed. The facts in that case are nearly identical to the ones here in that a Singapore repairman tried to have the vessel seized in the United States. The court held that "absent a maritime lien under Singapore law, the absence of in personam liability on the part of the owner defeats an in rem claim". Comoco Marine, 1984 AMC at 2593. So

just as in Canada, a new owner at the time the action is brought would bar an in rem proceeding. Because the plaintiff did not establish his claims of unjust enrichment nor of an alleged promise to pay, the in rem claim was defeated. In the case at bar however, the defendant is liable in personam. Therefore, the holding in Comoco Marine is not inconsistent with upholding an in rem claim in this case.

Accordingly,

IT IS ORDERED that plaintiff's motion to stay proceedings pending arbitration and to retain jurisdiction to enter decree upon award is GRANTED.

IT IS FURTHER ORDERED that defendant's motion to dismiss for lack of jurisdiction and/or for summary judgment is DENIED.



MOREY L. SEAR
UNITED STATES DISTRICT JUDGE