UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
- -
IN THE MATTER OF THE APPLICATION TO
CONFIRM AN ARBITRATION AWARD BY

CHIOS CHARM SHIPPING CO.,
Owner of the M/V CHIOS CHARM,

Petitioner, 93 CIV. 6313 (SS)

- against -

RIONDA, CZARNIKOW-RIONDA (FAR EAST)
LTD., CZARNIKOW-RIONDA COMPANY,
INC., CZARNIKOW-RIONDA TRADING COMPANY, INC.,
as Charterers of the M/V CHIOS CHARM,

Respondents.
- -
SONIA SOTOMAYOR, U.S.D.J.

OPINION AND ORDER

Petitioner Chios Charm Shipping Company ("Chios"), moves, pursuant to 9 U.S.C. §§ 9 and 207, to confirm an arbitration award rendered in its favor on July 6, 1993. Respondents Czarnikow-Rionda (Far East), Ltd. ("Far East"), Czarnikow-Rionda Company, Inc. ("C-R Co."), and Czarnikow-Rionda Trading Company, Inc. ("Trading") oppose confirmation as to all parties except Far East. For the reasons discussed below, the arbitration award is confirmed only as to Far East.

FACTUAL BACKGROUND

Chios owns the M/V Chios Charm, a charter vessel. On June 19, 1991, Chios, through its agent, Stewart Alexander & Co., Inc., executed a charter party contract, prepared by Chios, which named "Rionda" as the charterer. The named charterer, Rionda, did not sign the charter party contract, and the contract was not forwarded to the charterer's broker, Miral Marine Corporation ("Miral"), until almost a year later in May 1992. In listing "Rionda" as the charterer, the charter party, petitioner contends, was referring to all three respondent companies -- Far East, C-R Co. and Trading -- collectively. Miral asserts that it acted solely on behalf of Far East when it negotiated and entered into the charter party.

The charter party was performed without difficulty for about one year. During that time, the bulk of the documents exchanged pursuant to the charter party contract were either directed to, or listed Far East as the charterer. On at least two occasions, however, Chios was instructed to make a required payment under the agreement into an account held by C-R Co.

In or about July 1992, a dispute arose under the charter party contract, and Chios sought arbitration in accordance with the arbitration clause of the charter party contract. Chios notified "Rionda" of its desire to arbitrate the matter by telexing C-R Co. at One William Street, New York, New York.[1] David Reinah, an officer of C-R Co. and Trading, responded to the telex addressed to C-R Co., and appointed an arbitrator "on behalf of charterers," signing the telex "David Reinah Czarnikow-Rionda Trading Company, Inc. ["Trading"]". Reinah is neither an officer nor an employee of Far East. Respondents contend, however, that the arbitrator was appointed on behalf of Far East pursuant to a contract obligating Trading

[1] Chios acquired this address from the caption on correspondence between the Charterer and itself during the course of the charter. This was the only address which Chios had for the Charterer.

VOL. 9, #5, 5/94 - #05-940523-101

to provide administrative services for Far East.

In response to two telephone messages from the chairman of the arbitration panel requesting that "Rionda" propose a hearing date for the arbitration and submit the name of their representing attorney, Reinah contacted the chairman and informed him that Far East and C-R Co. had ceased operations. Reinah explained that he periodically picked up the mail delivered to the dissolved companies at their old offices and on one occasion, had received the telex addressed to C-R Co. at One William Street requesting the arbitration hearing. Although Reinah admitted having appointed an arbitrator "on behalf of charterers" in response to that telex, he also stated that he had not received any additional instructions as to the arbitration and that he did not expect to receive any in the future since the companies were no longer in business. Reinah never disavowed the appointment of the arbitrator, nor did he ever seek a stay of the arbitration. The chairman kept Reinah apprised of the status of the pending arbitration and sent numerous letters to "Rionda" advising them to appear at the hearings, but Reinah never appeared, and none of the respondents ever designated a representative.

Having received no response from "Rionda," the panel proceeded with the arbitration based on the documentary evidence presented. The panel rendered its final award on July 6, 1993, granting Chios its detention claims, plus interest and arbitrators' fees, in an amount totalling $78,468.11. The award further provides for additional interest in the event Chios is

VOL. 9, #5, 5/94 - #05-940523-101

not paid promptly.

The award generally refers to the parties as "Owner" and "Charterer". However, the award in two places names Far East as the charterer. First, in the list of the parties' representatives, the award identifies Chios's counsel as the Owner representative and Far East as the Charterer representative. The second reference to Far East is in the last paragraph of the section of the award entitled "Facts":

> The Panel finally received from this former Representative [Reinah], an address which he had been advised was the last contact of the former Charterer:
> Czarnikow-Rionda (Far East) Ltd. ["Far East"]
> 412 TSIM SHA TSUI CENTER
> EAST WING, 66 MODY ROAD,
> TSIM SHA TSUI
> EAST KOWLOON, HONG KONG
> to which the Chairman wrote a final letter, and to which the local Representative [Reinah] agreed to forward all correspondence previously sent to him by Owners [sic] attorney. The Panel gave Charterer notice, via the Hong Kong adressee [sic], that if no reply were received giving Charterer's defenses, the Panel would have no alternative but to review documents now in it's [sic] possession, and render a Final Award on the assumption that Charterer had no further documentation to add to it's [sic] defense.

Although the award did not refer to either C-R Co. or Trading, a copy of the award was sent to Reinah at One William Street, the New York City address of C-R Co. To ensure that Far East received notice of the award, the chairman requested that Reinah forward an extra copy of the award to Far East at its Hong Kong address.

DISCUSSION

Chios asserts that all three respondents are bound by the arbitral award against "Rionda" because they (1) were

signatories to the charter party contract; (2) appointed an arbitrator; and (3) were, in essence, alter egos of each other. Respondents do not contest the validity of the award as it applies to Far East. However, they argue that C-R Co. and Trading are not bound by its terms because neither company was a party to the contract nor did they ever manifest any intention to be bound by the award. Alternatively, respondents argue that even if C-R Co. and Trading are deemed to have consented to the arbitration by appointing an arbitrator, only Far East is bound since the award identifies Far East as the Charterer.

Both parties have confused the central issue in this case. Chloe seeks to convert this confirmation proceeding into an enforcement action, while respondents incorrectly assert that the arbitrators have the sole authority to determine who is bound by an arbitral award. Orion Shipping & Trading Co. v. Eastern States Petroleum Corp. of Panama, S.A., 312 F.2d 299, 300-01 (2d Cir.), cert. denied, 373 U.S. 949, 83 S. Ct. 167 (1963); Hidrocarburos y Derivados, C.A. v. Lanoa, 453 F. Supp. 160, 176 (S.D.N.Y. 1978). However, the sole issue which I must determine is which party is bound by the arbitral award.

On a confirmation motion, judicial review of an arbitral award is rather narrow, and is limited to determining whether the arbitrators acted within the scope of their authority in rendering the award. United Paperworkers Int'l Union v. Misco, Inc., 484 U.S. 29, 36-37 108 S. Ct. 364, 370-71 (1987); Local 1199, Drug, Hosp. & Health Care Employees Union v. Brooks

Drug Co., 956 F.2d 22, 24-25 (2d Cir. 1992). An arbitral award must be confirmed unless (1) one of the statutory exceptions listed in 9 U.S.C. § 10 applies, (2) the arbitrators acted in manifest disregard of the law, or (3) the arbitral award is incomplete, ambiguous, or contradictory. 9 U.S.C. § 10 (1993); Transit Casualty Co. v. Trenwick Reinsurance Co., 659 F. Supp. 1346, 1350 (S.D.N.Y. 1987), aff'd without opinion, 841 F.2d 1117 (2d Cir. 1988).

Assuming for the sake of argument that the charter party contract bound all three respondent corporations to arbitrate this dispute, neither C-R Co. nor Trading can be bound by the arbitral award. In a confirmation proceeding, a court may not second-guess the merits of the award. Wilko v. Swan, 346 U.S. 427, 436-37, 74 S. Ct. 182, 187-88 (1953); Brooks, 956 F.2d at 25. While a court may modify or correct an award to accomplish the arbitrator's actual intent, if the language of the award is so unclear or ambigous that the arbitrator's intent can not be discerned, the court must send the award back to the arbitrators for clarification. 9 U.S.C. § 11; Americas Ins. Co. v. Seagull Compania Naviera, S.A., 774 F.2d 64 (2d Cir. 1985) (denying confirmation and remanding an arbitral award to the arbitration panel to clarify an ambiguity).

Based on the plain language of the award, see Folkways Music Publishers, Inc. v. Weiss, 989 F.2d 108, 110 (2d Cir. 1993) (citing with approval the lower court's confirmation of an arbitration award based on its clear language), I conclude that

C-R Co. and Trading are not liable under the arbitral award. As discussed above, the arbitration award named Far East alone, and an interpretation that would make C-R Co. and Trading liable would be inconsistent with the award's plain language. Chios has not introduced any evidence that the arbitrators intended to impose liability upon C-R Co. and Trading. Thus, I shall confirm the award in accordance with its express terms, making Far East, and Far East alone, liable under the award.

Chios further asserts that even if the arbitration agreement did not obligate C-R Co. and Trading to arbitrate disputes arising under the charter party contract, these entities are bound by the arbitral award because they manifested an intent to arbitrate by appointing an arbitrator. I disagree.

It is well-settled that non-signatories to an arbitral agreement may be bound by an arbitral award if they clearly and unambiguously demonstrated an intent to be bound by the arbitral proceeding. Gvozdenovic v. United Air Lines, Inc., 933 F.2d 1100, 1105 (2d Cir.), cert. denied, __ U.S. __, 112 S. Ct. 305 (1991); Transrol Navegacao, S.A. v. Rederiaktiebolaget Marc Scandia XXIX, 782 F. Supp. 848, 851 (S.D.N.Y. 1991).[1] Demonstrating a clear and unambiguous intent to be bound, however, involves more than merely sending an ambiguous telex

[1] Chios cites Compania Naviera Aisgiannis, S.A. v. Holt, 1984 A.M.C. 2228, in support of its argument that non-signatories to an arbitration agreement can be held liable under an arbitral award. Holt is inapposite because that case involved an enforcement, as opposed to a confirmation, proceeding.

appointing an arbitrator. For example, in Gvozdenovic, a clear and unambiguous intent was found where the non-signatories made no objections to the arbitral proceeding, participated in the arbitration, and failed to seek judicial intervention to halt the arbitration. 933 F.2d at 1105. Similarly, the court in Transrol refused to vacate an arbitration award where in seeking to have a prior foreign judicial proceeding dismissed, the non-signatory had argued that the dispute was governed by the arbitral agreement.

Certainly, when viewed against this backdrop, the telex from Reinah appointing an arbitrator "on behalf of (unspecified) charterers", standing alone, does not manifest a clear and unambiguous intent on the part of Trading and C-R Co. to arbitrate, particularly when neither Trading nor C-R Co. ever participated in the arbitration proceeding. Consequently, I conclude that neither the Reinah telex nor any other conduct by Trading or C-R Co. during the arbitration demonstrate the requisite clear and unambiguous intent to arbitrate.

Lastly, Chios argues that the three "Rionda" companies conducted themselves as alter ego entities throughout the charter performance, and as such, should be liable for the obligations of the others. Although Chios may have a claim against C-R Co. and Trading under an alter ego theory, a motion to confirm an arbitration award is not the proper procedural stage to raise such a claim. Orion Shipping, 312 F.2d at 301; Halley Optical Corp. v. Jaguar Int'l Marketing Corp., 752 F. Supp. 638, 639

VOL. 9, #5, 5/94 - #05-940523-101

(S.D.N.Y. 1990). Cf. Carte Blanche (Singapore) Pte., Ltd. v. Diners Club Int'l, 2 F.3d 24 (2d Cir. 1993) (in an action to compel parent corporation of franchisor to satisfy arbitral award obtained against franchisor, the court conducted an alter ego analysis holding that the parent corporation was not liable for the award).[3]

CONCLUSION

For the reasons set forth above, petitioner's motion to confirm the July 6, 1993 arbitration award is GRANTED as to respondent Czarnikow-Rionda (Far East) Ltd., and DENIED as to respondents Czarnikow-Rionda Company, Inc. and Czarnikow-Rionda Trading Company, Inc. The Clerk of the Court is directed to enter judgment in accordance with this Opinion and Order.

SO ORDERED

Dated: New York, New York
April 11, 1994

SONIA SOTOMAYOR
U.S.D.J.

[3] An alter ego theory requires substantial evidence -- not present on the record before me -- that putatively separate corporate identities were disregarded. Lonos, 453 F. Supp. at 172. Therefore, even if the present confirmation motion were the proper forum to address Chios' alter ego claims, I would not decide this issue given the sparse evidentiary record before me.