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MINUTE ENTRY  
SEAR, CHIEF JUDGE  
FEBRUARY 7, 1996

FILED  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA  
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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA

ARABIAN HOMES FOR FOREIGN TRADE \* CIVIL ACTION  
VERSUS \* NO. 94-3468  
THE M/V GRAIN TRADER, ET AL \* SECTION "G"

MEMORANDUM AND ORDER

Background

Plaintiff, Arabian Homes for Foreign Trade ("Arabian") filed this action against the M/V GRAIN TRADER in rem, its owner, Lyric Shipping, Ltd. ("Lyric") and the time charterer of the vessel, SAROC, S.P.A. ("SAROC"), alleging cargo damage and shortage in connection with a shipment of corn from Convent, Louisiana to Alexandria, Egypt. Plaintiff designated the action as an admiralty and maritime claim within the meaning of Rule 9(h) of the Federal Rules of Civil Procedure, and sought damages in the sum of \$8,971.64 plus survey fees, costs, expenses and interest.

Defendant Lyric answered the complaint on October 4, 1995 and on November 22, 1995 asserted a cross-claim against defendant SAROC, alleging that any damage to the cargo was caused by the acts of SAROC, its stevedores, agents, servants or employees. In response, SAROC has filed a motion to stay Lyric's cross-claim pending arbitration. Lyric opposes the motion.

SAROC has at no time answered plaintiff Arabian's complaint, and counsel for Arabian, appearing before the court on call docket recently advised the court that it had received instructions not

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to pursue its claims against SAROC and wished to dismiss the claims against SAROC. The court intimated at that time that it would be willing to order dismissal of Arabian's claims against SAROC. Arabian and SAROC have now filed a joint motion for dismissal pursuant to Rule 41 (a) (2) of the Federal Rules of Civil Procedure. Lyric opposes dismissal of Arabian's claims against SAROC.

Finally, Lyric seeks leave to amend its cross-claim and/or to file a third-party complaint against SAROC. SAROC opposes the motion.

#### Analysis

##### A. SAROC's Motion to Stay Pending Arbitration

SAROC moves the court to enter an order staying all issues and disputes between SAROC and Lyric in accordance with an arbitration clause contained in the September 2, 1993 time charter between SAROC and Lyric. The pertinent provision is condition 17, which provides that

should any dispute arise between Owners [Lyric] and Charterers [SAROC], the matter in dispute shall be referred to three persons at London . . . their decision or that of any two of them shall be final, and for the purpose of enforcing any award, this agreement may be made a rule of the court.

The Federal Arbitration Act provides that a court, upon being satisfied that a matter is covered by a written agreement to arbitrate, "shall on application of one of the parties stay the trial of the action until such arbitration has been had in accordance with the terms of the agreement, providing the applicant for the stay is not in default in proceeding with such

arbitration." 9 U.S.C. § 3. In addition, the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, to which the United States, Russia and Mexico are signatories, requires each Contracting State to recognize written arbitration agreements and further requires courts, upon request, to "refer the parties to arbitration, unless it finds that the said agreement is null and void, inoperative or incapable of being performed." Convention on the Recognition and Enforcement of Foreign Arbitral Awards, Article II(1-3); 9 U.S.C. § 201 et seq. Taken together, the Federal Arbitration Act and the Convention indicate a strong federal policy favoring agreements to arbitrate, especially in the context of international commerce.

Defendant Lyric does not dispute that the charter party entered into between Lyric and SAROC contains an arbitration clause. Neither does Lyric dispute the court's authority to stay the cross-claim asserted by Lyric. Lyric nevertheless urges the court, in its discretion, to deny SAROC's motion to stay Lyric's cross-claim because it is Lyric's desire that all claims, including the cross-claim, be resolved in this jurisdiction.

Because the dispute between Lyric and SAROC arises out of the charter party agreement, and the arbitration clause mandates that the parties to the agreement resolve their differences through arbitration in London, I am required by the Arbitration Act and Convention to refer the parties to arbitration. Sedco v. Petroleum Mexicanos Mexican National Oil Co., 767 F.2d 1140, 1145 (5th Cir. 1985). Lyric offers no legally cognizable reason for me to rule

otherwise. SAROC's motion to stay must be granted.

B. Arabian and SAROC's Joint Motion to Dismiss

Reiterating its earlier advices to the court that it will not pursue claims against SAROC and that it will not seek recovery from Lyric for any damages for which SAROC is responsible, plaintiff Arabian (jointly with defendant SAROC), seeks an order from the court dismissing Arabian's claims against SAROC. The motion for dismissal is filed pursuant to Rule 41 (a) (2) of the Federal Rules of Civil Procedure.

Rule 41 (a) (2) provides for dismissal by court order at plaintiff's instance and on such terms and conditions as the court deems proper. The grant or denial of a dismissal on motion under Rule 41 (a) (2) is within the sound discretion of the court. Whereas the parties negotiate the terms and conditions of dismissal under Rule 41 (a) (1), when a motion for voluntary dismissal is made pursuant to Rule 41 (a) (2), the power to set the terms and conditions of dismissal is vested in the court. C. Wright & A. Miller, 9 Federal Practice and Procedure § 2366 (West 1995).

Defendant Lyric opposes any dismissal by Arabian of its claims against co-defendant SAROC. Lyric maintains that under the general maritime law, Lyric and SAROC are jointly liable to the plaintiff and once SAROC is out of the litigation, Lyric may be forced to pay plaintiff's full damages, including those for which SAROC allegedly is responsible. Lyric proposes that in order to prevent the prejudice to Lyric created by dismissal of SAROC, the court should deny the motion to dismiss and force Lyric to answer and defend in

this litigation.

SAROC has never served an answer to plaintiff Arabian's complaint against it. Accordingly, under Rule 41 (a) (1) of the Federal Rules of Civil Procedure plaintiff could simply have dismissed its claims against SAROC by stipulation, without order of court. Nevertheless, a motion for dismissal has been made pursuant to Rule 41 (a) (2), so I am entitled to decide whether to allow dismissal and to impose whatever conditions and terms I deem proper on the dismissal.

I find Lyric's arguments against dismissal unpersuasive. Although allowing partial dismissal will not determine the suit finally as between all of the parties, I am not inclined, under the circumstances, to force a plaintiff to prosecute claims it is not interested in prosecuting. Arabian has represented to the court in both open court and its motion papers that it does not intend to seek from Lyric any damages for which SAROC may be liable, only those caused by Lyric and for which Lyric is liable. I intend to adopt and enforce this representation as a term and condition of the dismissal.

#### C. Lyric's Motion for Leave to Amend Cross-Claim

In response to the actions of Arabian and SAROC, and in furtherance of Lyric's opposition to the dismissal and stay, Lyric seeks to amend its cross claim against SAROC and, in the alternative, to file a third-party complaint against SAROC.

The cross-claim originally filed by Lyric against SAROC seeks contribution and indemnity from SAROC for any liability Lyric may

have to plaintiff. By the proposed amended cross-claim, Lyric does not supplement or amend its allegations against SAROC, but seeks to tender SAROC as a direct defendant to plaintiff, Arabian, pursuant to Rule 14 (c) of the Federal Rules of Civil Procedure. Lyric thus aims to do indirectly what it has been unable to achieve directly, i.e. to force plaintiff to seek damages from SAROC despite plaintiff's unwillingness to do so. I do not view this as a proper or efficient use of Rule 15 (c) of the Federal Rules of Civil Procedure, which governs the amendment of pleadings.

Apparently anticipating that I would order dismissal of Arabian's claims against SAROC and deny Lyric leave to amend its cross claim, Lyric seeks, in the alternative, to file a third-party complaint against SAROC. The third-party complaint reiterates Lyric's claims for contribution and indemnity against SAROC and also seeks to tender SAROC as a direct defendant to plaintiff pursuant to Rule 14 (c). Inasmuch as Lyric's cross-claim against SAROC has merely been stayed pending arbitration, there is no need to implead SAROC for purposes of seeking contribution and indemnity. Further, as previously explained, I decline to allow a Rule 14 (c) tender under the circumstances.

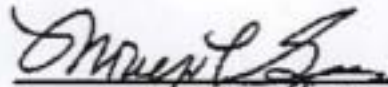
Accordingly,

IT IS ORDERED that SAROC's motion to stay Lyric's cross-claim pending arbitration IS GRANTED.

IT IS FURTHER ORDERED that the joint motion of dismissal filed by Arabian and SAROC IS GRANTED, that Arabian's claims against SAROC are dismissed without prejudice, and that Arabian may pursue

from Lyric only such damages as were caused by and for which Lyric, as opposed to SAROC, is responsible.

IT IS FURTHER ORDERED that Lyric's motion for leave to amend cross-claim and, in the alternative, to file third-party complaint IS DENIED.

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**MOREY L. SEAR**  
**CHIEF JUDGE**

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