UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

PRECIOUS GARNETS LTD., as Owner of the M/V Chada Naree and PRECIOUS SHIPPING (MAURITIUS) LTD., as Disponent Owner of the M/V Chada Naree, Plaintiffs, -v- COMMERCIAL UNION INSURANCE CO., as alleged subrogated underwriter of American Rice, Inc., and Erly Industries, Inc., Defendant.	99 CIV. 423 (DLC) MEMORANDUM OPINION

Appearances:

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DENISE COTE, District Judge:

Plaintiff Precious Garnets Ltd. is a corporation organized under the laws of Thailand and is the registered or head owner of the M/V Chada Naree. Plaintiff Precious Shipping (Mauritius) Ltd. is a corporation organized under the laws of Mauritius and is the disponent owner of the M/V Chada Naree. Defendant Commercial Union Insurance Co. is a United States corporation and is the subrogated underwriter of Erly Industries and American Rice, Inc. American Rice chartered plaintiffs' vessel for the carriage of rice from Kandla, India to Freeport, Texas between

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August and September 1997. That shipment is the source of the current litigation.

On April 1, 1999, this Court granted the motion of defendant Commercial Union to transfer this action to the Southern District of Texas pursuant to 28 U.S.C. § 1404(a), in part on the ground that litigation dealing with this same shipment is pending in that district. On April 12, 1999, plaintiffs filed a motion to reconsider the Court's decision. On April 13, 1999, the Clerk of Court in this district sent the entire file in this action to the Southern District of Texas via overnight courier. On April 16, 1999, the United States District Court for the Southern District of Texas issued a Notice of Receipt of Transferred Case acknowledging receipt of the file on April 15, 1999. At no point did plaintiffs seek a stay in this Court. For the reasons stated, the motion to reconsider is denied.

Local Rule 6.3 requires a party moving for reconsideration to "set[] forth concisely the matter or controlling decisions which counsel believes the court has overlooked." A district court will grant a motion for reconsideration "only where the court has overlooked matters or controlling decisions which might have materially influenced the earlier decision." Farkas v. Ellis, 783 F.Supp. 830, 833 (S.D.N.Y. 1992), aff'd, 979 F.2d 945 (2d Cir. 1992).

In its motion for reconsideration, plaintiffs advance a new argument not included in its opposition to the motion to transfer. Specifically, plaintiffs argue that Section 4 of the

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Federal Arbitration Act ("FAA"), 9 U.S.C. § 4, which authorizes the Court to issue orders compelling arbitration, requires this Court to decide the present action and precludes transfer. Defendants argue only that since this argument was not made in briefing the underlying motion to transfer, it cannot be made now.

The failure of a party to seek a stay of a transfer order in the transferor court prior to the receipt of the action's papers by the clerk of the transferee court divests the transferor court of jurisdiction, absent a finding that the transferor court lacked power to transfer the case. See Warrick v. General Electric Co., 70 F.3d 736, 739 (2d Cir. 1995) (per curiam); Farrell v. Wyatt, 408 F.2d 662, 664-65 (2d Cir. 1969); Drabik v. Murphy, 246 F.2d 408, 409 (2d Cir. 1957). Plaintiffs sought no such stay.

To the extent that plaintiffs are now arguing that the FAA prevented this Court from transferring the action to the Southern District of Texas, such that the Court lacked power to transfer, that argument is rejected. Even assuming that plaintiffs' application for a declaratory judgment is the equivalent of a motion to compel for purposes of the FAA, Section 4 is not applicable to the present dispute. Rather, since plaintiffs are corporations of Thailand and Mauritius and the contract involves international performance, this case is governed by the Convention on the Recognition and Enforcement of Foreign Arbitral Awards ("Convention"), 9 U.S.C. §§ 201-208. See Yusuf Ahmed

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Alghanim & Sons v. Toys "R" Us, Inc., 126 F.3d 15, 19 (2d Cir. 1997). Both Thailand and Mauritius are signatories of the Convention. See Convention, reprinted at 9 U.S.C. § 201 note.

The Convention does not have the restrictive venue provisions of the FAA. See 9 U.S.C. § 204. With respect to a motion to compel arbitration, the Convention permits a court to "direct that arbitration be held in accordance with the agreement at any place therein provided for, whether that place is within or without the United States." 9 U.S.C. § 206. The Texas court may therefore compel arbitration in New York under the Convention. Because of this less restrictive venue provision, this Court was not required by Section 4 of the FAA to refrain from the transferring the case. Instead, the Convention permits the Court to exercise its normal discretionary power to transfer a case. See Todd's Point Marine, Ltd. v. Rojos, 96 Civ. 5827 (SHS), 1996 WL 469667, at *2 (S.D.N.Y. Aug. 19, 1996).

As a result, the Court had power to transfer the case to the Southern District of Texas and the Court lacks jurisdiction to decide the motion for reconsideration. The motion is therefore denied.

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SO ORDERED:

Dated: New York, New York
May 28, 1999

DENISE COTE
United States District Judge