UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In the Matter of the Arbitration -between- SEVEN SEAS SHIPPING (UK) LTD., Petitioner, -v- TONDO LIMITADA, on behalf of the Republic of Angola, Respondent.	99 CIV. 1164 (DLC) OPINION AND ORDER

Appearances:

Donald J. Kennedy, Esq.
Carter, Ledyard & Milburn
2 Wall Street
New York, NY 10005
Attorneys for Petitioner

DENISE COTE, District Judge:

Petitioner Seven Seas Shipping (UK) Ltd. ("Seven Seas"), Disponent Owner of the M/V Mitsa, brought this motion pursuant to 9 U.S.C. § 201, et seq., to obtain an order confirming an arbitration award. Respondent Tando Limitada ("Tando") on behalf of the Republic of Angola has not responded to petitioner's motion. For the reasons stated below, the petitioner's motion is granted.

BACKGROUND

Seven Seas Shipping (UK) Ltd., Disponent Owner of the

Maltese Flag M/V Mitsa, is a British corporation with its principal place of business in Berkshire, England. The respondent, Tando Limitada is organized and existing under the laws of Angola, with its principal place of business in Luanda, Angola. On September 25, 1996, the two entered into a charter party agreement on the NORGRAIN Form, in which Tando chartered the Mitsa to carry wheat from Houston, Texas to Lobito, Luanda and Namibe, Angola.

The Mitsa was loaded and ready to depart at Houston, Texas on October 10, 1996, but because a letter of credit for payment that was required under the governing charter party was not in order, the vessel was not allowed to proceed to the loading berth. The problem was not remedied by Tando until October 24, 1996. After the wheat cargo arrived and was discharged in Angola, Seven Seas presented Tando with invoices of alleged detention damages at the loading port in Houston, and demurrage incurred in discharging at the three Angolan ports, for the total amount of $138,312.47. In response, Fetting & Donalty, Inc., agent for Tando, claimed that the detention charges only amounted to $62,840.

As a result of disputes over the detention costs, pursuant to Clause 44 of the charter party Seven Seas sought to arbitrate and, to that end, appointed Mr. Donald E. Zubrod as an arbitrator, and requested that Tando appoint an arbitrator as well. After Tando failed to do so Seven Seas moved before the United States District Court for the Southern District of New

York to compel arbitration and to appoint an arbitrator for Tando. On July 29, 1997, this Court ordered Pieter L.M. Vismans to serve as Tando's arbitrator. Zubrod and Vismans appointed Jonathan Harris as the third arbitrator. Vismans contacted Tando to confirm his appointment, but did not receive a response. After Tando's grace period of two weeks to respond had elapsed, the matter was considered by the arbitrators and on January 27, 1999, Seven Seas was awarded $95,603.28 for damages and Tando was ordered to pay the full amount of the arbitration fees, which totaled $5,425. The arbitrators also ruled that if Tando failed to satisfy the award to Seven Seas within 30 days from the date of judgment, interest would resume on the principal sum of $84,132.45 at the rate of 7.75% per annum until full payment was made or until the award had been reduced to a court judgment.

Seven Seas has paid the full amount of the arbitrator fees and has demanded satisfaction of the award by Tando. Seven Seas now requests an order confirming the award as a judgment of the Court in the amount of $101,078.28 with interest at the rate of 7.75% until entry of judgment. Tando has not responded to Seven Seas' motion.

DISCUSSION

1. The Standard

Whether to recognize and enforce an arbitration award is governed in the first instance in this case by the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the

"Convention"), 9 U.S.C. §§ 201-208. The Convention requires contracting states such as the United States,

> to recognize an agreement in writing under which the parties undertake to submit to arbitration all or any differences which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not, concerning a subject matter capable of settlement by arbitration.

Convention, Art. II(1). The Second Circuit has recently held that

> any commercial arbitral agreement, unless it is between two United States citizens, involves property located in the United States, and has no reasonable relationship with one or more foreign states, falls under the Convention.

Yusuf Ahmed Alghanim & Sons, W.L.L. v. Toys "R" Us, Inc., 126 F.3d 15, 19 (2d Cir. 1997) (quoting Jain v. de Mere, 51 F.3d 686, 689 (7th Cir. 1995)).

Here, clause 44(a) of the charter party indicates that there is an agreement in writing to arbitrate all disputes that arise out of a commercial contractual relationship. According to the clause, all disputes are to be arbitrated in New York and are subject to United States law. Both parties are foreign corporations with their principal places of business outside of the United States. The agreement is, therefore, governed by the Convention.

The confirmation of an arbitration award is a summary proceeding that converts a final arbitration award into a judgment of the court. Ottley v. Schwartzenberg, 819 F.2d 373, 377 (2d Cir. 1987). A court shall confirm an arbitration award

made under the Convention "unless it finds one of the grounds for refusal or deferral of recognition or enforcement of the award specified in the said Convention." 9 U.S.C. § 207. The Court may refuse recognition and enforcement of an award "at the request of the party against whom it is invoked, only if that party furnishes to the competent authority" proof of the existence of any one of five circumstances. Convention, Art. V(1). Because Tando has not contested Seven Seas' motion in this case, none of these grounds for refusal is relevant. Under the Convention, Article V(2), the Court may refuse to recognize an award upon its own finding that:

> 2. the subject matter of the difference is not capable of settlement by arbitration under the law of the country where recognition is sought;
> 3. the recognition or enforcement of the award would be contrary to the public policy of that country.

Convention, Art. V(2), reprinted at 9 U.S.C. § 201 note.

2. Subject Matter Capable of Settlement by Arbitration

The Federal Arbitration Act ("FAA"), 9 U.S.C. §§ 1-14 (1988), governs arbitration in the United States and "reflects a legislative recognition of the 'desirability of arbitration as an alternative to the complications of litigation.'" Genesco, Inc. v. T. Kakiuchi & Co., 815 F.2d 840, 844. Section 2 of the FAA provides, in relevant part:

> an agreement in writing to submit to arbitration an existing controversy . . . shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract.

9 U.S.C. § 2. This proceeding seeks confirmation of an arbitration award pursuant to the written agreement of the parties to arbitrate any controversy between them. This Court is not aware of any grounds for the revocation of this contract, and finds that the disputed subject matter is, therefore, capable of resolution by arbitration under the laws of the United States.

3. Contrary to Public Policy

[5] The United States, as a signatory of the Convention, is in agreement with the central policy statement of the Convention, which is

> to encourage the recognition and enforcement of commercial arbitration agreements in international contracts and to unify the standards by which agreements to arbitrate are observed and arbitral awards are enforced in the signatory countries.

Scherk v. Alberto-Culver Co., 417 U.S. 506, 520 n. 15 (1974); see Bergesen v. Joseph Muller Corp., 710 F.2d 928, 933 (2d Cir. 1983); Fotochrome, Inc. v. Copal Co., 517 F.2d 512, 516 (2d Cir. 1975); Parsons & Whittemore Overseas Co. v. Societe Generale de l'Industrie du Papier, 508 F.2d 969, 973 (2d Cir. 1974). This statement evidences a strong public policy in support of arbitration proceedings and enforcement of arbitration awards. A court should find that enforcement is contrary to public policy only where enforcement would violate our "most basic notions of morality and justice." Fotochrome, Inc., 517 F.2d at 516; Parsons & Whittemore, 508 F.2d at 974. No understanding of the facts before this Court supports the notion that enforcement of

this arbitration award would violate our basic notions of morality and justice. Instead, the confirmation of this award is quite consistent with the stated policy of the United States, and other signatories of the Convention, to encourage the resolution of commercial disputes by arbitration.

CONCLUSION

[6] For the reasons stated above, Seven Seas' motion is granted. The arbitral award is confirmed and the Clerk of Court shall enter judgment in the amount of $101.078.28 with interest at the rate of 7.75% per annum from February 25, 1999 (thirty days after the date of the arbitration award, during which time Tando had an opportunity to satisfy the award without interest accruing) to the date of entry of the judgment.

SO ORDERED:

Dated: New York, New York
June 24, 1999

DENISE COTE
United States District Judge

21ST CASE of Level 1 printed in FULL format.

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99 CIV. 1164 (DLC)

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

1999 U.S. Dist. LEXIS 9574

June 24, 1999, Decided

June 25, 1999, Filed

DISPOSITION: [*1] Seven Seas' motion to obtain order confirming arbitration award granted.

COUNSEL: For Petitioner: Donald J. Kennedy, Esq., Carter, Ledyard & Milburn, New York, NY.

JUDGES: DENISE COTE, United States District Judge.

OPINIONBY: DENISE COTE

OPINION: OPINION AND ORDER

DENISE COTE, District Judge:

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The confirmation of an arbitration award is a summary proceeding that converts a final arbitration award into a judgment of the court. *Ottley v. Schwartzberg, 819 F.2d 373, 377 (2d Cir. 1987)*. A court shall confirm an arbitration award made under the Convention "unless it finds one of the grounds for refusal or deferral of recognition or enforcement of the award specified in the said Convention." *9 U.S.C. § 207*. The Court may refuse recognition and enforcement of an award "at the request of the party against whom it is invoked, only if that party furnishes to the competent authority" proof of the existence of any one of five circumstances. Convention, Art. V(1). Because Tando has not contested Seven Seas' motion in this case, none of these grounds for refusal is relevant. Under the Convention, Article V(2), the Court may refuse to recognize an award upon its own finding that:

2. the subject matter of the difference is not capable of settlement [*6] by arbitration under the law of the country where recognition is sought;
3. the recognition or enforcement of the award would be contrary to the public policy of that country.

Convention, Art. V(2), reprinted at *9 U.S.C. § 201* note.

2. Subject Matter Capable of Settlement by Arbitration

The Federal Arbitration Act ("FAA"), *9 U.S.C. §§ 1-14 (1988)*, governs arbitration in the United States and "reflects a legislative recognition of the 'desirability of arbitration as an alternative to the complications of litigation.'" *Genesco, Inc. v. T. Kakiuchi & Co., 815 F.2d 840, 844*. Section 2 of the FAA provides, in relevant part:

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9 U.S.C. § 2. This proceeding seeks confirmation of an arbitration award pursuant to the written agreement of the parties to arbitrate any controversy between them. This Court is not aware of any grounds for the revocation of this contract, and finds that the disputed subject matter is, therefore, capable of resolution [*7] by arbitration under the laws of the United States.

3. Contrary to Public Policy

The United States, as a signatory of the Convention, is in agreement with the central policy statement of the Convention, which is

to encourage the recognition and enforcement of commercial arbitration agreements in international contracts and to unify the standards by which agreements to arbitrate are observed and arbitral awards are enforced in the signatory countries.

Scherk v. Alberto-Culver Co., 417 U.S. 506, 520 n. 15, 41 L. Ed. 2d 270, 94 S. Ct. 2449 (1974); see *Bergesen v. Joseph Muller Corp., 710 F.2d 928, 933 (2d Cir. 1983)*; *Fotochrome, Inc. v. Copal Co., 517 F.2d 512, 516 (2d Cir. 1975)*; Parsons & Whittemore Overseas

Co. v. Societe Generale de l' *Industrie du Papier, 508 F.2d 969, 973 (2d Cir. 1974)*. This statement evidences a strong public policy in support of arbitration proceedings and enforcement of arbitration awards. A court should find that enforcement is contrary to public policy only where enforcement would violate our "most basic notions of morality and justice." *Fotochrome, Inc., 517 F.2d at 516; Parsons & Whittemore, 508 F.2d at [*8] 974*. No understanding of the facts before this Court supports the notion that enforcement of this arbitration award would violate our basic notions of morality and justice. Instead, the confirmation of this award is quite consistent with the stated policy of the United States, and other signatories of the Convention, to encourage the resolution of commercial disputes by arbitration.

CONCLUSION

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SO ORDERED:

Dated: New York, New York

June 24, 1999

DENISE COTE

United States District Judge