

TMC

US 626

4B 2008

PRINCESS CRUISE LINES, LTD.

v.

CHRISTINA DEAN

California, Superior Court, County of Los Angeles, August 15, 2007

No.: PS 009907

ARBITRATION — 11. Disputes Subject to Arbitration — 120. Foreign Arbitral Awards Conventions — PERSONAL INJURY — 117. Foreign Vessels and Law — 12. Jurisdiction — 14. Actions, Remedies and Damages, Burden of Proof.

The court has jurisdiction of a petition to compel arbitration under the N.Y. Convention of a personal injury claim by a Canadian seaman on a Bermudian vessel, pursuant to a clause of her employment contract covering personal injuries, and should compel it, notwithstanding that no legal action has been commenced by her.

William K. Enger and Gregory K. Lee (Wilson Elser Moskowitz Edelman & Dicker LLP) for *Princess Cruise Lines*

Michael D. Eriksen (The Eriksen Law Firm) and Gretchen M. Nelson (Kreindler & Kreindler LLP) for *Dean*

BARBARA M. SCHEPER, J.

The Petition of Princess Cruise Lines, Ltd. ("PCL") to Compel Arbitration came on regularly for hearing in this Court on July 23, 2007 at 8:30 a.m. William K. Enger, Esq. and Gregory K. Lee, Esq. (Wilson, Elser, Moskowitz, Edelman and Dicker LLP) appeared for Petitioner and Gretchen M. Nelson, Esq. (Kreindler & Kreindler) and Michael D. Eriksen (Pro hac vice) appeared for the Respondent, Christina Dean. The Petitioner was made pursuant to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (hereinafter "The Convention Act") (9 U.S.C. §§202-208) and California Code of Civil Procedure §§1281.2 et seq. The Court having considered the Petition, Declaration of Dana Berger, the Response filed by Ms. Dean, Declaration of Christina Dean, Declaration of Paul Harshaw, Petitioner's Reply to Ms. Dean's Response, Declaration of Oscar Santander and Declaration of Rod S. Attride-Stirling and argument of counsel, grants the Petition and finds as follows:

1. On or about September 18, 2006, in Vancouver, Canada, Petitioner, a Bermuda entity, and Respondent, a Canadian citizen, entered into a written agreement entitled "Acceptance of Employment Terms and Conditions" (hereinafter "Acceptance Agreement"). The Acceptance Agreement is a contract provided as a prerequisite for employment aboard a Bermuda flagged vessel operated by Petitioner (referred therein as "The Company").

2. The Acceptance Agreement includes an "Arbitration Notice & Agreement" which provides that any and all disputes must be resolved by arbitration as provided for in the Principal Terms and Conditions of Employment (hereinafter "Terms and Conditions"). The Arbitration Notice & Agreement also incorporated the Terms and Conditions by reference. The following is the conspicuous language of the Arbitration Notice & Agreement contained in the acceptance Agreement, which is enclosed by a box on the one-page document:

ARBITRATION NOTICE AND AGREEMENT. As provided by the Principal Terms and Conditions of Employment, which are deemed to be incorporated herein by reference, the Company and I hereby acknowledge and agree that my employment with the Company constitutes an international commercial relationship between foreign parties, and we agree that any and all disputes shall be referred to and resolved by arbitration as provided for in the Principal Terms and Conditions of Employment.

3. The Terms and Conditions referenced in the Acceptance Agreement further provide in Article 14 entitled, "Governing Law, Arbitration, Venue and Examinations" the following:

ANY AND ALL DISPUTES, CLAIMS OR CONTROVERSIES WHATSOEVER (WHETHER IN CONTRACT, REGULATORY, TORT OR OTHERWISE AND WHETHER PRE-EXISTING, PRESENT OR FUTURE AND INCLUDING CONSTITUTIONAL, STATUTORY, COMMON LAW, ADMIRALTY, INTENTIONAL TORT AND EQUITABLE CLAIMS) RELATING TO OR IN ANY WAY ARISING OUT OF OR CONNECTED WITH THE CREW AGREEMENT, THESE TERMS, OR SERVICES PERFORMED FOR THE COMPANY, INCLUDING BUT NOT LIMITED TO WAGE AND BENEFIT MATTERS, EMPLOYMENT APPLICATIONS, WRONGFUL TERMINATION OR DISCRIMINATION CLAIMS, PROPERTY LOSS OR DAMAGE, PERSONAL INJURY, DEATH OR ANY OTHER CLAIM, NO MATTER HOW DESCRIBED, PLEADED OR STYLED [COLLECTIVELY "DISPUTES"] BETWEEN THE CREW MEMBER AND THE COMPANY . . . SHALL BE REFERRED TO AND RESOLVED BY BINDING ARBITRATION PURSUANT TO THE UNITED NATIONS CONVENTION ON THE RECOGNITION AND ENFORCEMENT OF FOREIGN ARBITRAL AWARDS (NEW YORK, 1958), 21 U.S.T. 2517, 330 U.N.T.S..3, 1970 U.S.T. LEXIS 115 ("THE CONVENTION") IN

HAMILTON, BERMUDA . . . [OR] PURSUANT TO THE CONVENTION EXCLUSIVELY IN LOS ANGELES, CALIFORNIA . . .

4. On or about January 1, 2007, Respondent claims that she was physically assaulted by another crewmember while aboard the Bermuda-flagged *M/V Star Princess*, while the vessel was on the high seas near Jamaica, well outside of U.S. waters. A dispute has arisen in that Petitioner and Respondent are unable to agree about whether and the extent to which Respondent is legally entitled to recover damages from Petitioner as a result of that assault. Respondent has not yet filed a Complaint regarding her claims against the other crewmember or Petitioner. The other crewmember was arrested by Bermuda authorities and is presently awaiting trial in Bermuda.

5. The Petition is ripe for adjudication notwithstanding the fact that Respondent asserts that she has not filed an action for damages in any court against Petitioner. Respondent cites to California Code of Civil procedure §1297.81 as setting forth a jurisdictional requirement that a claimant must first commence litigation against the Petitioner in order to invest this Court with power to consider the Petition under the convention Act. The Respondent's reading of the statute is incorrect. Section 1297.81 does not set forth a jurisdictional requirement. Rather, it merely allows a court to stay litigation that had already been filed by a claimant, which litigation arises from an international commercial arbitration agreement and which is also the subject matter of a petition to compel arbitration under the Convention Act.

6. The Court finds that the Petition herein establishes all the "Jurisdictional Requirements" necessary to compel arbitration under the Convention Act. The Arbitration Notice and Agreement in the one-page Acknowledgment Agreement between the parties constitutes an agreement in writing to arbitrate "any and all claims" arising from Respondent's employment with the Petitioner. Furthermore, the agreement to arbitrate arises from a relationship that is commercial and is not truly domestic in nature. (9 U.S.C. §202, *Bautista v. Star Cruises* (11 Cir. 2005) 2005 AMC 372, 396 F.3d 1289.

7. The Respondent has not carried her burden to establish any of the affirmative defenses to the Convention Act. Respondent argues that the agreement to arbitration is "null and void" because the Respondent declares that she did not receive a copy of the Terms and Conditions before signing and that an employee misrepresented to her that the Terms and Conditions had not changed from a prior version that she had seen. The facts are disputed by Petitioner, but even assuming that they are true, the Court finds