United States District Court, E.D. Louisiana.
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Civil Action No: 00-3532 Section: "R" (1) (E.D. La. Mar 23, 2001)
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Decided March 23, 2001

FRANCISCO v. M/T STOLT ACHIEVEMENT

ERNESTO FRANCISCO v. M/T STOLT ACHIEVEMENT, STOLT ACHIEVEMENT, INC., STOLT-NIELSEN TRANSPORTATION GROUP, LTD.
· Civil Action No: 00-3532 Section: "R" (1)
·United States District Court, E.D. Louisiana.
· March 23, 2001

ORDER AND REASONS

VANCE, Judge

Before the Court is defendants' motion to compel arbitration and stay, or in the alternative, to dismiss. For the reasons stated below, defendants' motion is GRANTED.

I. BACKGROUND

Plaintiff, Ernesto Francisco, is a Philippine national who was employed aboard the M/T STOLT ACHIEVEMENT, a ship under the Cayman Islands flag and registry. The vessel was owned by Stolt Achievement, Inc., a Cayman Islands corporation, and operated by Stolt-Nielsen Transportation Group, Ltd., a Liberian corporation. Plaintiff was injured aboard the vessel while it was on the Mississippi River in Louisiana headed for the Port of New Orleans. Plaintiff filed suit against his employers in state court under the "saving to suitors" clause of28 U.S.C. § 1333, seeking damages under the Jones Act and the general maritime law, as well as maintenance and cure.

On November 29, 2000, defendants, M/T STOLT ACHIEVEMENT, Stolt Achievement, Inc., and Stolt-Nielsen Transportation Group, Ltd., removed the case to this Court. Defendants now move to compel arbitration and stay, or in the alternative, to dismiss plaintiff's claims.

II. DISCUSSION

Plaintiff was employed by Stolt Achievement Inc. pursuant to an employment contract. This contract incorporated the Standard Terms and Conditions Governing the Employment of Filipino Seafarers On Board Ocean-Going Vessels, as approved by the Philippine Overseas Employment Administration (POEA), a division of the Department of Labor and Employment of the Republic of Philippines. Plaintiff signed both the employment contract and the incorporated Standard Terms and Conditions. (See Defs.' Mem. Supp. Mot. to Compel Arbitration Ex. 1.) These Terms and conditions contain the following provision regarding arbitration of claims:

In cases of claims and disputes arising from this employment, the parties covered by a collective bargaining agreement shall submit the claim or dispute to the original and exclusive jurisdiction of the voluntary arbitrator or panel of arbitrators. If the parties are not covered by a collective bargaining agreement, the parties may at their option submit the claim or dispute to either the original and exclusive jurisdiction of the National Labor Relations Commission (NLRC), pursuant to Republic Act (RA) 8042 otherwise known as the Migrant Workers and Overseas Filipino Act of 1995 or to the original and exclusive jurisdiction of the voluntary arbitrator or panel of arbitrators. If there is no provision as to the voluntary arbitrators to be appointed by the parties, the same shall be appointed from the accredited voluntary arbitrators of the National Conciliation and Mediation Board of the Department of Labor and Employment.

(See Defs.' Mem. Supp. Mot. to Compel Arbitration Ex. B, Section 29.) The NLRC uses arbitration to resolve disputes within its jurisdiction. See Migrant Workers and Overseas Filipino Act of 1995 § 10.

Relying on the foregoing provision of the standard Terms and Conditions, defendants move to compel arbitration pursuant to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the "Convention"), 9 U.S.C. § 201, et seq. Title 9 of the United States Code deals with arbitration and is divided into three chapters. Chapter 1 (9 U.S.C. § 1-16) addresses domestic arbitration agreements. Chapter 2 (9 U.S.C. § 201-208) deals with the Convention and its enabling legislation. See Sedco, Inc. v. Petroleos Mexicanos Mexican Nat'l Oil, Co., 767 F.2d 1140, 1146 (5th Cir. 1985). Section 201 of the Arbitration Act provides that the Convention "shall be enforced" by United States courts; Section 206 allows district courts to order parties to a Convention arbitration even outside the United States. See id. The provisions of Chapter 1 apply to Chapter 2 to the extent that the provisions of Chapter 1 are not in conflict with those of Chapter 2. 9 U.S.C. § 208.

The Fifth Circuit in Sedco described the scope of the Court's inquiry when considering a motion to compel arbitration under the Convention. See id. at 1144. Courts consider: (1)

whether there is an agreement in writing to arbitrate the dispute; (2) does the arbitration agreement provide for arbitration in the territory of a Convention signatory; (3) does the agreement to arbitrate arise out of a commercial legal relationship; and (4) is a party to the agreement not an American citizen. See id. at 144-45. "If these requirements are met, the Convention requires district courts to order arbitration." See id. at 1145. Whenever the scope of an arbitration clause is at issue, courts should construe the clause in favor of arbitration. See id. (citing United Steel Workers v. Warrior Gulf Navigation Co., 363 U.S. 574,582-83, 80 S.Ct. 1347, 1353 (1960)).

A. Does the Convention Apply to the Contract?

1. Is there an Agreement to Arbitrate in Writing?

In order for the Convention to apply, there must be an agreement in writing to arbitrate. The Court finds that such an agreement exists. The employment contract clearly sets forth that if there is a dispute, it must be submitted to arbitration. Plaintiff has tried to parse the language in the contract to argue that unless there is a collective bargaining agreement, arbitration is optional. The Court does not find this to be an accurate reading of the contract's terms. Again, the contract reads:

In cases of claims and disputes arising from this employment, the parties covered by a collective bargaining agreement shall submit the claim or dispute to the original and exclusive jurisdiction of the voluntary arbitrator or panel of arbitrators. If the parties are not covered by a collective bargaining agreement, the parties may at their option submit the claim or dispute to either the original and exclusive jurisdiction of the National Labor Relations Commission (NLRC), pursuant to Republic Act (PA) 8042 otherwise known as the Migrant Workers and Overseas Filipino Act of 1995 or to the original and exclusive jurisdiction of the voluntary arbitrator or panel of arbitrators. If there is no provision as to the voluntary arbitrators to be appointed by the parties, the same shall be appointed from the accredited voluntary arbitrators of the National Conciliation and Mediation Board of the Department of Labor and Employment.

(See Defs.' Mem. Supp. Mot. to Compel Arbitration Ex. B, Section 29.) Under this provision, if there is a collective bargaining agreement, the parties must submit the dispute to the voluntary arbitrator or panel of arbitrators. If there is no collective bargaining agreement, the parties have their choice of submitting the dispute to the NLRC, which also uses arbitration, or to the voluntary arbitrator or panel of arbitrators. In either case, however, the dispute must be submitted to arbitration.

Plaintiff also argues that the Court should not enforce the arbitration agreement because the Filipino Supreme Court has temporarily suspended the application of Section 20(G) of the Standard Terms and Conditions incorporated in the contract. Section 20(G) states:

the seafarer acknowledges that payment for injury, illness, incapacity, disability or death of the seafarer under this contract shall cover all claims arising from or in relation with or in the course of the seafarer's employment, including but not limited to damages arising from the contract, tort, fault, or negligence under the laws of the Philippines or any other country.

(See Defs.' Mem. Supp. Mot. to Compel Arbitration Ex. B, Section 20.) plaintiff claims that the suspension of this language undermines the enforceability of the arbitration clause in the contract. However, Section 20(G) simply means that if a seafarer accepts benefits as provided under the contract's terms for death or disability, he waives the right to seek further benefits or damages under arbitration. (See id.) The suspension of Section 20(G) does not affect the applicability of the arbitration clause to disputes under the contract. The suspension affects the nature of the claims a plaintiff may assert if he accepts contract benefits. The suspension simply holds in abeyance the contract provision preventing a plaintiff from pursuing alternative remedies if he receives benefits under the contract.

2. Does the Agreement Provide for Arbitration in a Convention Signatory?

The contract requires that plaintiff arbitrate before either the NLRC or the voluntary arbitrator or panel of arbitrators. Section 29 of the contract provides that if the parties do not provide who the arbitrator will be, then the parties will choose from the accredited voluntary arbitrators of the National Conciliation and Mediation Board of the Filipino Department of Labor and Employment. The contracts that the parties have provided to the Court do not identify who the arbitrators will be in the event of a dispute. Accordingly, they must choose from those accredited by the Philippine government. These provisions indicate that the arbitration must be in the Philippines. The Republic of Philippines is a signatory of the Convention. Therefore the second element is satisfied.

3. Does the Agreement Arise Out of a Commercial Relationship?

An employment contract is a commercial legal relationship, which is required for application of the Federal Arbitration Act. See9 U.S.C. § 2, 202; Circuit City Stores, Inc. v. Adams, No. 99-1379, 2001 WL 2753205 (U.S.) (March 20, 2001) (interpreting 9 U.S.C. § 2); Lejano v. K.S. Bandak, Civ. A. No. 00-2990, (E.D. La. Nov. 3, 2000) (citing Prograph Int'l, Inc. v. Barhivdt, 928 F. Supp. 983 (N.D. Cal. 1996)). Section 202 of Chapter 2 of the Federal Arbitration Act provides that the Convention applies to arbitration agreements arising out of commercial relationships as follows:

An arbitration agreement or arbitral award arising out of a legal relationship, whether contractual or not, which is considered as commercial, including a transaction, contract, or agreement described in section 2 of this title, falls under the Convention.

Section 2 of Chapter 1 provides that:

A written provision in any maritime transaction or a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction, or the refusal to perform the whole or any part thereof, or an agreement in writing to submit to arbitration an existing controversy arising out of such a contract, transaction, or refusal, shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract.

Section 1 of Chapter 1 sets forth the exclusions to Section 2. See Circuit City, 2001 WL 2753205, at *3 Section 1 excludes from the scope of Section 2 "contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce."9 U.S.C. § 1. The Supreme Court in Circuit City held that Section 2 applies to all employment contracts except those by seamen and other transportation workers. See id.

The exclusion of employment contracts of seamen from the domestic arbitration laws does not apply to contracts covered by the Convention. This follows because § 208 of Chapter 2 incorporates Chapter 1 into the Convention only "to the extent that that chapter is not in conflict with this chapter or the Convention as ratified by the United States." Like our sister court in Lejano v. KS. Bandak, Civ. A. No. 00-2990, the Court finds that the seamen exclusion of § 1 does not apply to Chapter 2 and the Convention.

In Lejano, the court explained that § 202 covers arbitration agreements arising out of all commercial, legal relationships, including "a transaction, contract or agreement described in section 2. . . ." Section 2 refers to a "maritime transaction or a contract evidencing a transaction involving commerce. . . ." Thus, § 202 applies to all legal relationships that are commercial, while § 2 is limited by § 1 to exclude from the universe of commercial contracts, "contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce." The Court agrees with the Lejano court that to the extent that § 1 conflicts with § 202, § 208 precludes § 1 exclusions from applying to the Convention. Thus, seamen contracts are not excluded from the Convention.

Alternatively, Section 202 can be read to avoid the conflict. This follows because Section 202 refers to the types of commercial transactions described in Section 2. Section 202 makes no reference to Section 1. Accordingly, Section 202 can be read to include the types of transactions described in Section 2 without incorporating the exclusions of Section 1.

The result reached here is consistent with the policy behind adopting the Convention. As the Supreme Court observed in Scherk v. Alberto-Culver Co.:

[t]he goal of the Convention, and the principal purpose underlying American adoption and implementation of it, was 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.
417 U.S. 506, 520 n. 15, 94 S.Ct. 2449, 2457 n. 15 (1974). In addition, Article II (1) of the Convention states the policy that arbitration agreements are to be recognized by the states adopting the Convention:

Each Contracting State shall 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.
Id. Further, the Supreme court noted in Circuit City that Congress may have exempted seamen and transportation workers from the scope of domestic arbitration because it would provide for these workers by specific legislation. See Circuit City, 2001 WL 2753205, at *9. If so, there is no reason to believe that Congress intended the exclusions in Section 1 to apply to foreign workers covered by international arbitration agreements. Therefore, the Court finds that seaman contracts involve commercial relationships subject to the Convention.

Plaintiff argues that because he asserts a tort claim, his claim does not arise out of his employment contract, and that the arbitration clause therefore does not apply to this claim. In a similar context, which involved interpreting the scope of a forum selection clause, the Supreme Court looked to the language of the contract to determine whether tort disputes were included. See Carnival Cruise Lines, Inc. v. Shute,499 U.S. 585, 111 S.Ct. 1522 (1991). It found that a provision stating that "all disputes and matters whatsoever arising under, in connection with or incident to this Contract" included a negligence (slip and fall) cause of action. Id. at 588, 111 S.Ct. at 1524. Similarly, in Lejano v. K.S. Bandak, 705 So.2d 158, 167 (La. 1997), the Louisiana Supreme Court found that a forum selection clause encompassing all "[c]ases concerning the seafarer's service on the ship" included tort causes of action. Likewise, the Fifth Circuit has determined that courts should look to the language of the contract when determining which causes of action are covered under a forum selection clause. See Marinechance Shipping Ltd. v. Sebastian, 143 F.3d 216, 222-23 (5th Cir. 1998) In Marinechance, the Court found that there was nothing in these types of contract clauses that justified limiting them to contract claims and that the provision stating that "any and all disputes arising out of or by virtue of this Contract" included tort causes of action arising between a seaman and his employer. See id. In this case, the standard Terms and Conditions of the employment contract deal with work-related injuries, and plaintiff agreed to submit any "claims and disputes arising from this employment" to arbitration. Plaintiff's argument that he is not obligated to arbitrate tort claims is without merit.

4. Is One of the Parties to the Agreement Not an American Citizen?

This element is clearly satisfied. plaintiff is a citizen and resident of the Philippines. Because the contract satisfies the above factors, the Court finds that the Convention applies to the contract.

5. Forum Selection

Lastly, in addition to the above analysis, plaintiff urges the Court to analyze the validity of the arbitration clause under the principles applicable to forum selection clauses. Even if this analysis is proper, the argument is unavailing. The Supreme Court has consistently found forum-selection and choice-of-law clauses to be presumptively valid. See Mitsui Co. v. Mira M/V, 111 F.3d 33, 35 (5th Cir. 1997) (citing Vimar Seguros y Reaseguros, S.A. v. H/V SKY REEFER, 515 U.S. 528,115 S.Ct. 2322 (1995) (foreign arbitration clause); Carnival Cruise Lines, Inc. v. Shute, 499 U.S. at 595, 111 S.Ct. at 1528; M/S BREMEN v. Zapata Off-Shore Co., 407 U.S. 1, 15, 92 S.Ct. 1907, 1916 (1972)). The Supreme Court in BREMEN explained the policy underlying the validity of these clauses:

The expansion of American business and industry will hardly be encouraged if, notwithstanding solemn contracts, we insist on a parochial concept that all disputes must be resolved under our laws and in our courts. . . . We cannot have trade and commerce in world markets and international waters exclusively on our terms, governed by our laws, and resolved in our courts.
407 U.S. at 9, 92 S.Ct. at 1913. Therefore, courts must enforce these clauses in the interests of international comity and out of deference to the integrity and proficiency of foreign courts.

See Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.,473 U.S. 614, 629, 105 S.Ct. 3346, 3355 (1985). In order to overcome the presumption that the forum selection clause is enforceable, the party challenging the clause must make a strong showing that the clause is unreasonable. See Marinechance, 143 F.2d at 220 (citing BREMEN,407 U.S. at 15, 92 S.Ct. at 1916). In Carnival Cruise Lines, the Supreme Court stated that these types of clauses are "subject to judicial scrutiny for fundamental fairness." See Carnival Cruise Lines, 499 U.S. at 595,111 S.Ct. 1528. plaintiff has pointed to nothing that establishes the unreasonableness of the arbitration provision. Accordingly, the Court finds the provision valid and applies it to plaintiff's claims.

III. CONCLUSION

Because plaintiff and defendant entered into a valid contract containing an enforceable arbitration agreement, the defendants' motion to compel arbitration is GRANTED.