

United States District Court, E.D. Louisiana.

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Civil Action No. 01-1314, Section "N" (E.D. La. Oct 12, 2001)

.

Decided October 12, 2001

GAVINO v. EUROCHEM ITALIA

Tobias D. Gavino v. Eurochem Italia

· Civil Action No. 01-1314, Section "N"

· United States District Court, E.D. Louisiana.

· October 12, 2001

ORDER AND REASONS

Edith Brown Clement, Chief Judge United States District Court

Before the Court is plaintiff Tobias D. Gavino's Motion for New Trial and/or Reconsideration of Motion to Remand or, Alternatively, for a Jury Trial Pursuant to 9 U.S.C. § 4. For the following reasons, the plaintiff's motion is DENIED.

BACKGROUND

On July 25, 2001, the Court denied plaintiff Tobias D. Gavino's Motion to Remand on the grounds that his lawsuit against Eurochem Italia ("Eurochem") falls within the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 9 U.S.C. § 201-08 ("the Convention"). Gavino now urges the Court to reconsider its previous ruling and, alternatively, to grant him a jury trial on the issue of whether his employment contract contains an arbitration agreement.

LAW AND ANALYSIS

The Court's decision in its previous Order and Reasons rested in part on the interpretation of Section 28 of the Philippine government's revised Employment Contract for Seafarers (the "Revised Contract"), which provides that:

The Philippine Overseas Employment Administration (POEA) or the National Labor Relations Commission (NLRC) shall have original and exclusive jurisdiction over any and all disputes or controversies arising out of or by virtue of this Contract.

In considering the applicability of this arbitration provision to Gavino's tort claim, the Court followed the Fifth Circuit's holding in *Marinechance Shipping, Ltd. v. Sebastian*, 143 F.3d 216, 222-23 (5th Cir. 1998), that the reference in Section 28 to "any and all disputes or controversies arising out of or by virtue of this Contract" includes tort causes of action.

In the instant motion, Gavino reurges his argument that the *Marinechance* holding has been called into doubt by an amicus brief filed by the Philippine government in *Abuan v. Smedvig Tankships, Ltd.*, 717 So.2d 1194 (La.Ct.App. 4 Cir. 1998), writ denied, 736 So.2d 208. In its *Abuan* brief, the Philippine government stated that § 28 of the Revised Employment Contract "clearly and unambiguously refers only to issues or claims regarding the interpretation or implementation of the agreement itself and clearly does not refer or pertain to tort actions." Amicus Br. at 10. In its previous Order and Reasons the Court found the Philippine government's position persuasive but insufficient to warrant departure from Fifth Circuit precedent. See Rec. Doc. No. 9 at 6. The Court stands by its previous conclusion and does not find Gavino's extrinsic evidence invalidates the Fifth Circuit's interpretation of Section 28 of the Revised Contract. Accordingly, Gavino's motion for reconsideration is denied.

Alternatively, Gavino seeks a jury trial under 9 U.S.C. § 4 on the issue of whether an arbitration agreement exists. The Court first notes that in its previous Order and Reasons it already determined that an arbitration agreement exists. See Rec. Doc. No. 9 at 4-5. The parties fully briefed this issue in connection with Gavino's motion to remand, and Gavino did not make any reference to trial by jury on this question. 9 U.S.C. § 4 provides that a party aggrieved by the alleged failure of another to arbitrate under a written arbitration agreement may petition a district court "for an order directing that such arbitration proceed in the manner provided for in such agreement." If the existence of an arbitration agreement is in issue, "the party alleged to be in default may . . . , on or before the return day of the notice of application, demand a jury trial of such issue." *Id.* In its notice of removal, Eurochem alleged that the instant "[p]roceedings are in fact arbitration proceedings," that "this dispute is subject to foreign arbitration," and that Gavino "is obliged to arbitrate his claim." Notice of Removal at ¶ 7 8. In light of these statements, the Court finds that the notice of removal sufficiently informed Gavino that Eurochem intended to seek an order for arbitration. Since the notice of removal was filed on April 27, 2001, the Court finds that Gavino's request for a jury, filed on July 31, 2001, is untimely.

CONCLUSION

For the reasons given above, IT IS ORDERED that plaintiff Tobias D. Gavino's Motion for a New Trial and/or Reconsideration of Motion to Remand or, Alternatively, for a Jury Trial Pursuant to 9 U.S.C. § 4 is DENIED.