

United States District Court, E.D. Louisiana.

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Civil Action No. 02-2048 c/w No. 01-1449, SECTION "J" (2) (E.D. La. Aug 29, 2002)

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Decided August 29, 2002

JARANILLA v. MEGASEA MARITIME

Wilfredo Jaranilla v. Megasea Maritime, LTD., Pankar Maritime S.A., Greece and Kouros Maritime Enterprises

- Civil Action No. 02-2048 c/w No. 01-1449, SECTION "J" (2)
- United States District Court, E.D. Louisiana.
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MINUTE ENTRY

CARL BARBIER, Judge.

Before the Court is Plaintiff's Motion to Re-Remand (Rec. Doc. 4). Defendant, Megasea Maritime Ltd. ("Megasea"), the owner of M/V KOUROS V, opposes the motion. The motion was set for hearing on August 28, 2002. For the reasons that follow, the Court concludes that Plaintiff's motion should be DENIED.

BACKGROUND

On February 26, 2001, Plaintiff, Wilfredo Jaranilla, a Philippine seaman, filed suit in the 25th Judicial District Court, Parish of Plaquemines, State of Louisiana, seeking damages pursuant to the Jones Act, general maritime law, and applicable foreign law. On May 11, 2001, Defendants, Megasea and Pankar Maritime S.A., filed a notice of removal pursuant to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, arguing that Plaintiff's employment contract contained an international agreement to arbitrate, and, therefore, the articles of the Convention governed the dispute. See Convention on the Recognition and Enforcement of Foreign Arbitral Awards, adopted by the U.S. Dec. 29, 1970, 9 U.S.C. § 201-208 ("the Convention"). On October 12, 2001, this Court granted Plaintiff's motion to remand on the grounds that the Convention did not apply to a seaman's employment contract.¹ Jaranilla v. Megasea Maritime Ltd., 171 F. Supp.2d 644, 646 (E.D.La., 2001).

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Plaintiff entered into an employment contract with Defendants, which Defendants allege contains an agreement to arbitrate all disputes before the Philippine National Labor Relations Commission.

Subsequently, on June 4, 2002, the United States Fifth Circuit Court of Appeals held that the Convention is applicable to such contracts. *Francisco v. M/T Stolt Achievement*, 293 F.3d 270, 274 (5th Cir. 2002). On July 3, 2002, Defendants filed a second notice of removal arguing that under *Francisco*, this Court has proper subject matter and removal jurisdiction. Plaintiff seeks to have the case re-remanded on the grounds that *Francisco* is inapplicable to the instant case under 28 U.S.C. § 1446(b).

DISCUSSION

The party seeking removal of the action bears the burden of showing that removal is proper. *Frank v. Bear Stearns Co.*, 128 F.3d 919, 921-22 (5th Cir. 1997). Under the Convention, a defendant may remove an action pending in state court as long as it "relates to an arbitration agreement or award falling under the Convention." 9 U.S.C. § 205. A defendant may remove such action, at any time before trial, to the United States district court embracing the location where the action in state court is pending. *Id.* This is in direct contradiction to 28 U.S.C. § 1446(b), the general removal provision which sets forth strict time limitations on removal. Under § 1446(b), where the action was not originally removable, a defendant may only file a notice of removal within thirty days after receiving a copy of an amended pleading, motion, order, or other paper from which it can be determined that removal is now proper.

The Fifth Circuit has concluded that this incompatibility between the two removal provisions is exactly what Congress intended. *Beiser v. Weyler*, 284 F.3d 665, 674 (5th Cir. 2002). In creating 9 U.S.C. § 205, Congress intended to make removal easy in state actions involving the Convention. *Id.* Through § 205, Congress sought to favor federal jurisdiction over actions related to the Convention, thereby promoting the creation of a uniform body of law under the Convention. *Id.* at 672. Thus, a federal district court will have removal jurisdiction under § 205 over any action where the defendant argues that an arbitration agreement covered by the Convention provides a defense. *Id.* at 669. If the defendant's argument is to some degree justifiable and possible, the action will "relate to" an arbitration agreement or award falling under the Convention, and will thus be removable under § 205. *Id.*

In the instant case, Defendant Megasea seeks removal under the Convention. Defendant claims that the employment contract signed by Plaintiff contains agreements to arbitrate all disputes before the Philippine National Labor Relations Commission. The Convention applies to the contract in question under the Fifth Circuit's opinion in *Francisco v. M/T Stolt Achievement*. 293 F.3d 270, 274 (5th Cir. 2002). Furthermore, Defendant filed its notice of removal prior to the commencement of trial in this action. Based on these factors, removal to this Court under § 205 is proper. Since removal is proper under § 205, it is not necessary to address the issue of removal under the time limits of 28 U.S.C. § 1446 (b). Accordingly, Plaintiff's Motion to Re-Remand (Rec. Doc. 4) is hereby DENIED.