

- > COUNSEL:
- > For HALTER MARINE INC, plaintiff: David S. Bland, Elizabeth S. Wheeler,
- > King,
- > LeBlanc & Bland, LLP, New Orleans, LA.
- >
- > For OK SHIPPING LIMITED, defendant: John Harold Clegg, Daphne P. McNutt,
- > Chaffe,
- > McCall, Phillips, Toler & Sarpy, LLP, New Orleans, LA.
- >

- > JUDGES:
- > A.J. McNamara.
- >

- > OPINIONBY:
- > A.J. McNamara
- >

- > OPINION:
- >

> Before the Court are the following motions:

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- > (1) "Motion for Preliminary and Permanent Injunction" filed by Plaintiff,
- > Halter
- > Marine, Inc. and opposed by Defendant, OK Shipping Limited; and
- >
- > (2) "Motion to Compel Arbitration Pursuant to The Convention on
- > Recognition and
- > Enforcement of Foreign Arbitral Awards" filed by Defendant, OK Shipping
- > Limited
- > and opposed by Plaintiff, Halter Marine, Inc.
- >

- > The motions are before the court on briefs, without oral argument.
- > Having
- > reviewed the memoranda of Counsel and the applicable law, the court finds
- > that
- > Plaintiff's Motion for Preliminary Injunction should be GRANTED,
- > Plaintiff's
- > Motion for Permanent Injunction should be DENIED and Defendant's Motion to
- > Compel Arbitration should be DENIED.
- >

> BACKGROUND

- >
- > On June 26, 1995, Halter Marine, Inc. entered into a contract
- > [hereinafter
- > "the Contract"] with Air Sea Broker, Ltd. whereby Halter [*2] Marine
- > agreed to
- > build an aluminum utility vessel at its Equitable Shipyard in New Orleans.
- > In
- > October of 1995, Air Sea Broker assigned its rights under the Contract to
- > OK
- > Shipping, Limited. The interpretation of Article XIII of the Contract

> which
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> addresses dispute resolution procedures is the subject of the pending
> motions.

> I. Halter Marine's Motion for Preliminary and Permanent Injunction.

> In its Motion for Preliminary and Permanent Injunction, Halter Marine
> urges
> the court to enjoin OK Shipping from pursuing arbitration until such time
> that
> other settlement options have been exhausted. Specifically, Plaintiff
> contends
> that the Contract language requires a two step process to be followed
> before
> arbitration can be invoked. Article XIII (Disputes and Arbitration) of the
> Contract states:

> 1 PROCEEDING

> "The parties hereto will do their utmost to settle by mutual agreement the
> disputes relating to this Contract. The parties hereto agree to refer to
> the
> Classification Society [American Bureau of Shipping, hereinafter ABS] all
> disputes on technical matters arising in regard to the construction of the
> VESSEL, her machinery and equipment, or concerning the quality [3] of
> materials or workmanship thereof or thereon.

> However, in the event that any dispute cannot be settled as above, such
> dispute
> shall be finally settled in the following manner:

> 1.1 All disputes arising prior to delivery of the Vessel shall be settled
> in New
> Orleans, Louisiana...

> 1.2 All disputes arising after delivery of the Vessel shall be settled in
> London
> (UK)...

> (emphasis added)

> [3] Plaintiff contends that Article XIII contains a three (3) step process
> for
> settling disputes, namely "(i) attempting in good faith to settle any
> disputes
> and failing that, (ii) submitting disputes to ABS New Orleans for
> resolution"
> and as a last resort, (iii) submitting the dispute to arbitration.

> Plaintiff's

> Supplemental Memorandum in Support of Preliminary and Permanent Injunction

> at 1.

> Plaintiff suggests that the parties have not complied with either of the

> two

> steps that it considers to be mandatory prerequisites to arbitration.

>

> a. Good faith attempt to settle

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> In response to Halter Marine's contention that a good faith attempt at

> settlement has not been made, OK Shipping contends that it has made an

> attempt

> to settle the dispute with Halter Marine via OK Shipping's correspondence

> [*4]

> regarding the vibration problems and subsequent water ingress. OK Shipping

> avers

> that Halter Marine has refused to pay for repairs to the vessel and has

> ignored

> OK Shipping's attempts at settlement.

>

> The court finds that both parties should make a good faith attempt at

> settlement and orders the parties to do so. Such settlement attempts may

> be

> aided by referral to the ABS.

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> b. Referral to the ABS before arbitrating

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> Halter Marine asserts that if the parties cannot agree on a settlement

> between themselves, then the disputes must be referred to the ABS for

> settlement

> attempts before resorting to arbitration. OK Shipping initially responds

> by

> claiming that referral to the ABS of these disputes is not required by the

> Contract. Defendant argues that the Contract language applies only to

> disputes

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>

> arising during construction and should not be applied to disputes arising

> after

> delivery of the Vessel. In interpreting the plain language of the Contract

> in

> Article XIII, the court finds that referral to the ABS pertains to all

> disputes

> regarding "technical matters arising in regard to the construction of the

> VESSEL," Thus, such referral is not limited to those disputes arising

> during [*5] construction and does apply to the disputes at hand.

> Consequently,

> the court finds that referral of the disputes to the ABS is a prerequisite

> to
> arbitration as was urged by Plaintiff.
>
> [5] Based on the fact that the ABS' involvement in the construction of the
> Vessel
> ended long ago, Defendant also asserts that the submission of the
> post-delivery
> dispute to the ABS would be futile and "a vain and useless act."
> Defendant's
> Memorandum in Opposition at 15. However, the court disagrees that referral
> to
> the ABS would necessarily be a "vain and useless act."
>
> [6] Finally, notwithstanding the court's recognition that any dispute
> resolution
> by the ABS would be non-binding on the parties, the court rules that the
> language of the Contract entitles Halter Marine to submit the disputes to
> the
> ABS for review before arbitration procedures are invoked. Accordingly, the
> Court
> sets forth the following deadlines:
>
> (1) The parties are to confer in good faith in an attempt to make a joint
> referral of the disputes to the ABS. In the event that the parties cannot
> agree
> on a joint referral, each party is to make its own referral of the
> disputes to
> the ABS. Any and all referrals to the ABS must be made within [6] 30
> days of
> the entry of this Minute Entry.
>
> (2) If the disputes cannot be resolved by the ABS within 90 days of its
> receipt
> of such referrals, then either party may seek to compel arbitration at
> that
> time.
>
> (3) Any and all costs assessed by the ABS regarding the referral of these
> disputes shall be borne equally by the parties.
>
> Arbitration may be invoked, if necessary, as set forth by Article XIII
> of the
> Contract at such time when the parties have made a good faith attempt at
> settlement and have complied with the referral deadlines as set forth
> above. ⁰³
> (---)
> Accordingly;
>
> IT IS ORDERED that Plaintiff's Motion for Permanent Injunction be and

> is
> hereby DENIED.

>
> IT IS FURTHER ORDERED that Plaintiff's Motion for Preliminary
> Injunction be
> and is hereby GRANTED. Such injunction shall have effect until completion
> of the
> ABS referral as outlined above. Defendant's right to arbitration is
> expressly
> reserved.

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> II. OK Shipping's Motion to Compel Arbitration

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> Considering the foregoing reasons, the court concludes that arbitration
> is
> premature at this time. The disputes are first to be referred to the ABS
> as
> detailed above.

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> Accordingly;

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> IT IS ORDERED [*7] that Defendant's Motion to Compel Arbitration
> Pursuant to
> The Convention on Recognition and Enforcement of Foreign Arbitral Awards
> be and
> is hereby DENIED.

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> IT IS FURTHER ORDERED that this Civil Action No. 98-3184 be and is
> hereby
> ADMINISTRATIVELY CLOSED for statistical purposes, to be re-opened upon
> proper
> motion of either party if circumstances change so that it may proceed to
> final
> disposition. This order shall not prejudice the rights of the parties to
> this
> litigation.

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> A.J. McNamara
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