

RED CUBE INTERNATIONAL AG, Petitioner, -against- I-LINK,
INCORPORATED, Respondent.

01 Civ. 1253 (LAK)

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
NEW YORK

2001 U.S. Dist. LEXIS 3211

March 22, 2001, Decided

DISPOSITION:

[*1] Petitioner's motion to remand this proceeding to state court denied.

COUNSEL:

For I-LINK, INCORPORATED, respondent: Stephen R. Stern, Hoffinger,
Friedland,
Dobrish & Stern, P.C., New York, NY.

JUDGES:

Lewis A. Kaplan, United States District Judge.

OPINIONBY:

Lewis A. Kaplan

OPINION:

ORDER

LEWIS A. KAPLAN, District Judge.

This proceeding was instituted in the New York Supreme Court, New York
County, to compel arbitration in New York and to stay another action
pending

between the parties in Utah. The petitioner is a Swiss company, the
respondent a

Florida corporation headquartered in Utah. Respondent promptly removed the
proceeding to this Court, asserting that the Court has subject matter
jurisdiction under 9 U.S.C. @ 205. Parenthetically, jurisdiction is present
also

under 28 U.S.C. @ 1332. Petitioner moves to remand the proceeding,
asserting

broadly that the removal is simply a tactical device designed to stall the
arbitration. Respondent counters that it is petitioner that is engaged in
tactical maneuvers. But the charges and countercharges are entirely beside
the

point.

This Court plainly has subject matter jurisdiction over the proceeding.

[*2]

It is immaterial whether petitioner is correct in asserting that "removal is without point or purpose" (Greenfield Decl. P 7); the fact remains that the Court has a "virtually unflagging obligation" to exercise the jurisdiction that

Congress has vested in it. *Colorado River Water Conservation Dist. v. United*

States, 424 U.S. 800, 817-18, 47 L. Ed. 2d 483, 96 S. Ct. 1236 (1976). Nor does

it matter that the parties agreed that "any action or proceeding seeking to compel arbitration . . . may be brought in the courts of the State of New York."

(Emphasis added) Not only is that forum selection provision permissive rather

than exclusive, but it does not address much less waive any right by the party

against whom such a proceeding is brought in State court to remove it. Finally,

it may well be that the removal of this proceeding is an attempt to make an end

run around the prior decision of the United States District Court for the District of Utah. But its decision is not, contrary to petitioner's claim,

"the law of the case." (Greenfield Decl. P 9) This is not even the same case. The

effect to be given the prior decision of the Utah court is an appropriate issue

for [*3] this Court's consideration in determining whether petitioner is entitled to the relief it seeks, not whether respondent was entitled to

remove

the proceeding.

Accordingly, the motion to remand this proceeding to the state court is denied. Any papers in opposition to the petition shall be served and filed

no

later than March 29, 2001.

SO ORDERED.

Dated: March 22, 2001

Lewis A. Kaplan

United States District Judge