UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

Michael Rogers & Hulya Kar,

Plaintiffs,

v.

Royal Carribean Cruise Lines,

Defendant.

Case No: CV 06-4574-SVW (Ex)

ORDER GRANTING DEFENDANT'S MOTION TO COMPEL ARBITRATION [13]

I. INTRODUCTION

This case involves a purported class of seafarers seeking unpaid wages. Plaintiffs Michael Rogers[1] and Hulya Kur[2] ("Plaintiffs") allegedly worked for Defendant Royal Caribbean Cruise Line. Defendant filed a motion to compel arbitration of Plaintiffs' claims.[3]

[1] Rogers is allegedly a citizen of Trinidad. (Workman Decl. ¶4.) Defendant states that it has no record of him ever working as an employee. (Id.)

[2] Kur is a citizen of Turkey. (Workman Decl. Ex. A.)

[3] Defendant also filed a motion to dismiss pursuant to Rule 12(b)(6). Because the motion to compel arbitration is dispositive of Plaintiffs'

The United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards ("The Convention Act"), 330 U.N.T.S.3, 9 U.S.C. §§ 202-208 (2002), mandates that district courts recognize and enforce certain foreign arbitration agreements and awards.[4] Plaintiffs' employment agreements incorporate a collective bargaining agreement ("CBA") which contains an arbitration clause. The CBA provides that "all grievances and any other dispute whatsoever ... shall be referred to and resolved exclusively by binding arbitration." (Workman Decl. Ex. B: Art. 26(d)).

Plaintiffs contend that the arbitration provision is unenforceable as a matter of law because the arbitration provisions are unreasonable, unconscionable, and contrary to public policy. Even if the arbitration provision were enforceable, Plaintiffs argue that the Convention does not apply because the Federal Arbitration Act ("FAA") contains an exemption for seaman. Additionally, Plaintiffs assert that their claims are immunized from arbitration under U.S. Bulk Carriers v. Arguelles, 400 U.S. 351 (1971). For the reasons discussed below, the Convention Act compels the Court to enforce the arbitration agreement and therefore the Court GRANTS Defendant's motion to compel arbitration.

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claims, the Court does not reach the merits of this motion.

[4] A Contracting State "shall recognize an agreement in writing under which the parties undertake to submit to arbitration all or any differences which have arisen ... between them in respect of a defined legal relationship, whether contractual or not, concerning a subject matter capable of settlement by arbitration." Convention Act, art. II(1).

II. THE CONVENTION ACT REQUIRES ENFORCEMENT OF THE ARBITRATION AGREEMENT

In a motion to compel arbitration, "[t]he court's role ... is limited to determining (1) whether a valid agreement to arbitrate exists and, if it does, (2) whether the agreement encompasses the dispute at issue." Chiron Corp. v. Ortho Diagnostic Sys., Inc., 207 F.3d 1126, 1130 (9th Cir. 2000).

A. A Valid Agreement to Arbitrate Exists

Given the "liberal federal policy favoring arbitration agreements . . . the party resisting arbitration bears the burden of proving that the claims at issue are unsuitable for arbitration." Green Tree Financial Corp.-Alabama v. Randolph, 531 U.S. 79, 91 (2000); see also Lobo v. Celebrity Cruises, Inc., 426 F.Supp.2d 1296, 1309 (S.D.Fla. 2006) ("Because of the strong presumption in favor of arbitration, a party seeking to invalidate an arbitration agreement bears the burden of establishing its invalidity.") (citing Lim v. Offshore Specialty Fabricators, Inc., 404 F.3d 898, 906 (5th Cir. 2005)). However, "[i]n determining the validity of an agreement to arbitrate, federal courts 'should apply ordinary state-law principles that govern the formation of contracts." Circuit City Stores v. Adams, 279 F.3d 889, 892 (9th Cir. 2002) (citing First Options of Chicago, Inc. v. Kaplan, 514 U.S. 938, 944 (1995)). In analyzing whether a valid agreement to arbitrate exists, the Court looks to state-law contract principles of Florida law.[5]

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[5] In determining which state law principles to examine, the Court must conduct a choice of law analysis. "Generally, '[i]n a diversity case, a federal court must apply the choice of law rules of the state in which the action was filed.'" Chuidian v. Philippine Nat. Bank, 976 F.2d 561, 564 (9th Cir. 1992) (quoting Sims Snowboards, Inc. v.

Plaintiffs initially disputed that they had signed employment agreements which incorporated the arbitration provision. However, at the hearing on December 11, 2006, Plaintiffs' counsel agreed to stipulate that both Plaintiffs had signed employment contracts which incorporated the arbitration provision. Therefore, an agreement to arbitrate exists. The next issue to determine is whether the agreement is valid.

Plaintiffs object to the agreement on the grounds that it is unreasonable, unconscionable, and contrary to public policy. "Under Florida law, determining the unconscionability of any contract involves two separate components: procedural unconscionability and substantive unconscionability." Hughes v. Alltel Corp., 2004 U.S. Dist. LEXIS 20705, *9 (N.D. Fla. 2004) (citing Powertel, Inc. v. Bexley, 743 So. 2d 570, 574 (1999)). Plaintiffs assert that the CBA is procedurally unconscionable given the difference in bargaining power between the parties. "The procedural component of unconscionability relates to the manner in which the contract was entered and it involves consideration of such issues as the relative bargaining power of the parties and their ability to know and

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Kelly, 863 F.2d 643, 645 (9th Cir.1988)). However, where federal question jurisdiction exists, federal common law rules apply. Chuidian, 976 F.2d at 564. The Court has admiralty jurisdiction over Plaintiffs' claims pursuant to 28 U.S.C. § 1333. Therefore, federal common law rules apply regarding the choice of law.

"Federal choice of law rules follow the approach of the Restatement (Second) of Conflict of Laws." In re Vortex Fishing Sys., Inc., 277 F.3d 1057, 1069 (9th Cir. 2002). The Restatement (Second) of the Conflict of Laws § 187 provides that the law of the state chosen by the parties to govern their contractual rights will be applied. The CBA contains a Florida choice of law provision. (Workman Decl. Ex.B: Art. 27.) Therefore, Florida contract law governs the Court's analysis of whether an agreement to arbitrate exists.

understand the disputed contract terms." Hughes, 2004 U.S. Dist. LEXIS 20705 at *9 (quoting Powertel, Inc., 743 So. 2d at 574); see also Sims v. Clarendon Nat'l Ins. Co., 336 F. Supp. 2d 1311, 1322 (S.D. Fla. 2004) (same). This argument lacks merit because the CBA was the result of an arms-length bargaining process between the Plaintiffs' union and Defendant. See Bautista, 286 F. Supp. 2d at 1362-63.

Plaintiffs contend that the CBA is substantively unconscionable because the arbitration provision "is notably and unfairly sided in favor [of Defendant]." (Pls.' Opp. at 21.) Substantive unconscionability "focuses on the agreement itself' and it involves such issues as whether "the terms of the contract are unreasonable and unfair." Hughes, 2004 U.S. Dist. LEXIS 20705 at *9-10 (quoting Powertel, Inc., 743 So. 2d at 574); see also Sims, 336 F. Supp. 2d at 1321 (same). First, Plaintiffs contend that the arbitration provision is unfair because the Union and Defendant appoint the arbitrators without any input from the crew members. This argument lacks merit because the Union represents the crew members' interests when selecting an arbitrator. Moreover, Plaintiffs do not allege any other factors supporting the allegation of substantive unconscionability. For example, Plaintiffs do not allege that they tried to negotiate the terms of the employment agreement, Plaintiffs do not argue that they would suffer adverse consequences if forced to acquiesce to the arbitration provision, Plaintiffs do not argue that they were denied a fair opportunity to learn about the arbitration agreement, nor do Plaintiffs allege that they were unable to read or understand the terms of the arbitration agreement.

Second, Plaintiffs argue that the arbitration provision is unfair because "the procedure requires arbitration of issues involving

federal maritime law to be resolved in distant fora based on the crew member's citizenship, without relationship to where the crew member is residing, where the evidence is located, where the witnesses live, [or] where the alleged dispute arose." (Pls.' Opp. at 21.) This argument lacks merit because it appears presumptively fair to the crew member to arbitrate a dispute in the crew member's own country of citizenship. At the very least, Plaintiffs have failed to meet their burden of demonstrating that the contract provision is substantively unconscionable because crew members must return to their home country to arbitrate claims.

Finally, Plaintiffs argue that the agreement to arbitrate is unenforceable because it violates public policy. This argument falls flat in light of the abundant authority demonstrating the "emphatic federal policy in favor of arbitral dispute resolution [which] applies with special force in the field of international commerce." Republic of Nicaragua v. Standard Fruit Co., 937 F.2d 469, 478 (9th Cir. 1991) (quoting Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth Inc., 473 U.S. 614, 631 (1985)). The Ninth Circuit has explained that arbitration agreements involving international companies deserve "great deference":

> According to the Supreme Court, when international companies commit themselves to arbitrate a dispute, they are in effect attempting to guarantee a forum for any disputes. Such agreements merit great deference, since they operate as both choice-of-forum and choice-of-law provisions, and offer stability and predictability regardless of the vagaries of local law

Republic of Nicaragua, 937 F.2d at 478.

Plaintiffs ignore the weight of these decisions emphasizing deference, instead selecting snipets of opinions discussing the federal courts' historic protection of seamen. Defendant points out that the cases Plaintiffs rely on involve United States domestic policies designed to protect U.S. seafarers. To the extent that these policies might apply to foreign seafarers, Congress made a clear policy decision in favor of arbitration when it subsequently enacted the Convention.

Plaintiffs also argue that the arbitration provision violates public policy because it deprives the Plaintiffs of their right to jury trial. Plaintiffs assert that they have a right to a jury trial to determine issues of arbitrability. However, 9 U.S.C. § 4 provides that "[i]f no jury trial be demanded by the party alleged to be in default, or if the matter in dispute is within admiralty jurisdiction, the court shall hear and determine such issue." (emphasis added). Similarly, Plaintiffs' argument that arbitration deprives Plaintiffs of the right to a jury trial clearly lacks merit.[6] Therefore, the Court finds that the agreement to arbitrate is valid.

B. The Agreement Encompasses the Dispute at Issue

The parties do not dispute that the dispute falls within the scope of the parties' agreement to arbitrate. The arbitration agreement covers "all grievances and any other dispute whatsoever,

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[6] See e.g., Cooper v. MRM Inv. Co., 367 F.3d 493, 506 (6th Cir. 2004) ("[T]he loss of the right to a jury trial is a necessary and fairly obvious consequence of an agreement to arbitrate . . .[citations] The Seventh Amendment confers not the right to a jury trial per se, but rather "only the right to have a jury hear the case once it is determined that the litigation should proceed before a court. If the claims are properly before an arbitral forum pursuant to an arbitration agreement, the jury trial right vanishes. [citations]")

whether in contract, regulatory, tort, or otherwise, including constitutional, statutory, common law, admiralty, intentional tort and equitable claims, relating to or in any way connected with seafarer's service." (Workman Decl. Ex. B, Art. 26.) Because the dispute at issue involve unpaid wage claims, the agreement to arbitrate clearly encompasses the dispute. See, e.g., Republic of Nicaragua, 937 F.2d at 479 (interpreting "any and all disputes" broadly).

Finding that the agreement to arbitrate is valid and the agreement encompasses the dispute at issue, the Court must next analyze whether the Convention Act compels enforcement of the agreement.

C. The Convention Act Compels Enforcement of the Agreement

Three statutes comprise Title 9: the FAA.[7] comprises Chapter 1, the Convention Act comprises Chapter 2, and Chapter 3 contains the "Inter-American Convention on International Commercial Arbitration." 9 U.S.C. §§ 1-16, 202-208, 301-307. Although all three Acts relate to arbitration, "each act has a specific context and purpose." Bautista v. Star Cruises, 396 F.3d 1289, 1297 (11th Cir. 2005).

Assuming an arbitration agreement exists, Plaintiffs' claims are clearly covered by the Convention Act which governs any "arbitration agreement or arbitral award arising out of a legal relationship, whether contractual or not, which is considered as commercial,

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[7] Although some courts have referred to all of Title 9 as the FAA, see, e.g., Indus. Risk Insurers v. M.A.N. Gutehoffnungshutte GmbH, 141 F.3d 1434, 1440 (11th Cir. 1998), Chapter 1 contains the general provisions of the FAA while Chapter 2 contains the codification of the "Convention on the Recognition and Enforcement of Foreign Arbitral Awards." Therefore, this opinion uses FAA to refer to the statute contained in Chapter 1 and the "Convention Act" to refer to Chapter 2.

including a transaction, contract, or agreement described in section 2."

To determine whether to enforce an arbitration provision, the court must determine that "(1) there is an agreement in writing within the meaning of the Convention; (2) the agreement provides for arbitration in the territory of a signatory of the Convention; (3) the agreement arises out of a legal relationship, whether contractual or not, which is considered commercial; and (4) a party to the agreement is not an American citizen, or that the commercial relationship has some reasonable relation with one or more foreign states." Bautista, 396 F.3d at 1295 (citing Std. Bent Glass Corp. v. Glassbots Oy, 333 F.3d 440, 449 (3d Cir. 2003)). A court must order arbitration if these four elements are satisfied. Bautista, 396 F.3d at 1295; Std. Bent Glass Corp., 333 F.3d at 449; Francisco v. Stolt Achievement MT, 293 F.3d 270, 273 (5th Cir. 2002). "The Convention Act 'generally establishes a strong presumption in favor of arbitration of international commercial disputes.'" Bautista, 396 F.3d at 1295 (quoting Indus. Risk Insurers v. M.A.N. Gutehoffnungshutte GmbH, 141 F.3d 1434, 1440 (11th Cir.1998)). All four elements are satisfied.[8]

1. The Agreement to Arbitrate Is in Writing

First, the agreement to arbitrate is in writing. The agreement to arbitrate is contained in the CBA, which is a written contract signed by Plaintiffs' Union and Defendant.[9] (Workman Decl. Ex. B.)

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[8] Plaintiffs do not contest that all four elements are satisfied in their opposition to Defendant's motion for summary judgment.

[9] The "Sign-On Employment Agreement" between Plaintiffs and Defendant incorporated the CBA. (Workman Decl. Ex. A.)

2. Arbitration Would Take Place in the Territory of a Signatory to the Convention

Second, arbitration would take place in the territory of a signatory to the convention. Article 26 of the CBA provides that the place of arbitration shall be either "in the Seafarer's country of citizenship or the Ship's flag state, unless arbitration is unavailable under the convention in those countries, in which case only said arbitration shall take place in Miami, Florida." (Workman Decl. Ex. B.) Plaintiff Kar is a citizen of Turkey and Plaintiff Rogers is a citizen of Trinidad and Tobago. Therefore, arbitration would take place in the territory of a signatory because Turkey and Trinidad and Tobago are signatories to the Convention. See 9 U.S.C.A. § 201.

3. The Agreement Arises Out of a Commercial Relationship

Third, the agreement must arise out of a legal relationship "which is considered commercial." Id. at 1296. The Ninth Circuit has never addressed whether seamen employment contracts are "commercial" for the purposes of the Convention. However, the Fifth and Eleventh Circuits have addressed this issue and both concluded that seamen employment contracts and the arbitration provisions in such contracts are "commercial legal relationships within the meaning of the Convention Act." Bautista, 396 F.3d at 1300; Stolt, 293 F.3d at 274. See also Lobo v. Celebrity Cruises, Inc., 426 F. Supp. 2d 1296, 1298-99 (S.D. Fla. 2006). Therefore, the Court finds that the agreement to arbitrate arises out of a commercial relationship.

4. A Party to the Agreement is not an America Citizen

Finally, neither Plaintiff is an American citizen. Therefore all four elements are satisfied and the Court must compel arbitration.

D. The FAA Seamen Exemption Does Not Apply to Claims Covered by the Convention Act

Plaintiffs argue that the Convention does not apply because the Federal Arbitration Act ("FAA") contains an exemption for seaman. While the Convention Act clearly covers the alleged arbitration agreement, 9 U.S.C. § 1 provides that "contracts of employment of seamen" are exempted from the general provisions of the FAA. 9 U.S.C. § 202. The issue for the Court to determine is whether this seamen employment contract exemption, contained in the FAA, exempts an arbitration agreement otherwise covered by the Convention Act.

The Ninth Circuit has never addressed this issue. However, the Fifth and Eleventh Circuits have addressed this precise issue and both Circuits held that the FAA seamen exemption does not apply to arbitration agreements under the Convention Act. Bautista, 396 F.3d at 1292; Freudensprung v. Offshore Tech. Servs., Inc., 379 F.3d 327 (5th Cir. 2004); Francisco v. Stolt Achievement MT, 293 F.3d 270 (5th Cir. 2002). See also Acosta v. Norwegian Cruise Line, Ltd., 303 F.Supp.2d 1327 (S.D.Fla. 2003) (holding that seamen exemption does not apply); Adolfo v. Carnival Corp., 2003 WL 23829352, (S.D.Fla. Mar. 11, 2003) (same); Amon v. Norwegian Cruise Lines, Ltd., 2002 U.S. Dist. LEXIS 27064 (S.D.Fla. Sept. 26, 2002) (same). Although this Court is not bound by Bautista, Freudensprung, or Francisco, the Court finds the reasoning of these Circuits compelling. Accordingly, the Court

holds that the exemption for seamen does not apply to claims covered by the Convention Act.[10]

E. Plaintiffs' Claims are Not Immunized From Arbitration under *Arguelles*

Plaintiffs assert that their claims are immunized from arbitration under U.S. Bulk Carriers v. Arguelles, 400 U.S. 351 (1971). Plaintiffs argue that under the holding in Arguelles, the arbitration clause in the CBA does not defeat an individual seaman's right to bring a statutory wage claim pursuant to 46 U.S.C. § 10313. In Arguelles,, the Supreme Court held that § 301 of the LMRA, which enforces grievance and arbitration provisions of CBAs, does not abrogate the statutory remedy of a seaman to sue for wages in federal court. Id. at 375.

Plaintiffs' reliance on Arguelles is misplaced because its holding involves the Labor Management Relations Act rather than the Convention Act. The Supreme Court did not address whether the Convention Act abrogates the statutory remedy of a seaman to sue for remedies because Arguelles was decided before the Convention Act was implemented. Thus, the specific holding of Arguelles is limited to the LMRA.

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[10] Whether the seamen exemption contained in 9 U.S.C. § 1 applies to the Convention Act contained in 9 U.S.C. §§ 202-208 is an issue of statutory interpretation. There are two ways in which Title 9 addresses conflicts between the three acts comprising Title 9. First, provisions of the Convention Act and Inter-American Act directly incorporate certain sections of the FAA. Second, the Convention Act and Inter-American Act residually incorporate the provisions of the FAA to the extent that they do not conflict with the provisions of the Act. 9 U.S.C. §§ 208, 307. Because the Convention Act does not apply directly or residually incorporate Section 1, the seamen exemption does not apply to arbitration covered by the Convention Act. See Francisco, 293 F.3d at 273-76.

The differing policy goals of the LMRA and the Convention Act support the conclusion that the holding in Arguelles should not be extended to the Convention Act. The Supreme Court's decision in Arguelles was based on its determination that the main purpose of § 301 of the LMRA was suits by unions rather than claims by individual workers and as a result Congress had not intended to restrict the traditional protections afforded to seamen in federal court:

> Enforcement by or against labor unions was the main burden of § 301, though standing by individual employees to secure declarations of their legal rights under the collective agreement was recognized. Since the emphasis was on suits by unions against unions, little attention was given to the assertion of claims by individual employees and none whatsoever concerning the impact of § 301 on the special protective procedures governing the collection of wages of maritime workers. We can find no suggestion in the legislative history of the Labor Management Relations Act of 1947 that grievance procedures and arbitration procedures were to take the place of the old shipping commissioners or to assume part or all of the roles served by the federal courts protective of the rights of seaman since 1790.

Arguelles, 400 U.S. at 355-56. As a result, the Court concluded that the federal courts' historical protection of seamen was not abrogated by the LMRA.

In contrast, the purpose of the Convention Act is "the recognition and enforcement of 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." Scherk v. Alberto-Culver Co., 417 U.S. 506, 520 n.15

(1974). In furtherance of this purpose, the Convention Act encompasses a broad range of agreements. See 9 U.S.C. § 202 ("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.") As the Eleventh Circuit has explained, this primary purpose of the Convention Act would be frustrated "if domestic courts were to inject their 'parochial' values into the regime." Bautista, 396 F.3d at 1300. If this Court were to extend Arguelles to the Convention Act and create an exemption for seamen, the Court would be frustrating the core purpose of the Convention Act.

Additionally, one of the justifications for the Supreme Court's holding in Arguelles was that the Court could find no evidence that "grievance procedures and arbitration procedures [of the LMRA] were to take the place of the old shipping commissioners." Arguelles, 400 U.S. at 356. The Office of the U.S. Shipping Commissioner no longer exists and instead unions protect the interests of seamen through collective bargaining and grievance procedures. See 44 Fed. Reg. 70, 155 (Dec. 6, 1979). As a result, it is reasonable to infer the Convention Act, which enforces arbitration provisions of collective bargaining agreements, was intended to replace the traditional protections of certain seamen.

As a result, the Court finds that it would be inconsistent with the Supreme Court's interpretation of the Convention Act to extend the holding in Arguelles beyond the LMRA. This interpretation is consistent with the handful of other courts that have examined this and similar issues. In Lobo v. Celebrity Cruises, Inc., 426 F. Supp.

2d 1299-1301 (S.D.Fla. 2006) a district court confronted with this precise issue determined that a seaman's federal wage claims were not exempt from the Convention At under Arguelles. See also Lim v. Offshore Specialty Fabricators, Inc., 404 F.3d 898 (5th Cir. 2005) (rejecting Filipino seaman's argument that arbitration had never been required in seamen's wage litigation and enforcing arbitration under the Convention); Bautista, 396 F.3d at 1289 ("In pursuing effective, unified arbitration standards, the Convention's framers understood that the benefits of the treaty would be undermined if domestic courts were to inject their "parochial" values into the regime: 'In their discussion of [Article II(1)], the delegates to the Convention voiced frequent concern that courts of signatory countries in which an agreement to arbitrate is sought to be enforced should not be permitted to decline enforcement of such agreements on the basis of parochial views of their desirability or in a manner that would diminish the mutually binding nature of the agreements.') (quoting Scherk, 417 U.S. at 520 n. 15).

Therefore, the Court concludes that Arguelles does not preclude enforcement of the arbitration agreement under the Convention.

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III. CONCLUSION

For the foregoing reasons, the Court GRANTS Defendant's motion to compel arbitration and Plaintiff's complaint is dismissed without prejudice.

IT IS SO ORDERED.

DATED: 1/24/07

STEPHEN V. WILSON
UNITED STATES DISTRICT JUDGE