UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 14-CV-20593-HUCK/OTAZO-REYES

EMMANUEL NAVARETTE,

Plaintiff,

v.

SILVERSEA CRUISES LTD.,
SILVER SPIRIT SHIPPING CO. LTD.,
V. SHIPS LEISURE INC., V. SHIPS
LEISURE
USA, INC.,V. SHIPS LEISURE SAM, and
V. SHIPS USA, LLC.,

Defendants.

_______________________________________/

ORDER GRANTING DEFENDANT SILVERSEA CRUISES LTD.'S MOTION TO COMPEL ARBITRATION

THIS CAUSE comes before the Court on Defendant Silver Sea Cruises, Ltd.'s ("Silversea") Motion to Compel Arbitration. [D.E. 28]. Plaintiff Emmanuel Navarette ("Navarette") has sued Silversea for injuries he suffered while working on one of Silversea's ships. Navarette's complaint seeks damages for *Jones Act* negligence, unseaworthiness, maintenance and cure, treatment, and general maritime law negligence. The determinative issue in this Motion to Compel Arbitration is whether there is a binding written agreement between the parties which compels arbitration of Navarette's claims pursuant to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards ("Convention"). The Court held a hearing on this Motion on June 13, 2014, and, for the reasons discussed below, grants Silversea's Motion to Compel Arbitration.

Background

Navarette, a Philippine citizen, was injured while working for Silversea as a seaman aboard the *M/V Silver Spirit*. Silversea contends that at the time of his injuries, Navarette's

employment was governed by the terms of two documents, signed by Navarette on May 20, 2013: the "Contract of Employment" and the "Standard Terms and Conditions Governing the Employment of Filipino Seafarers On Board Ocean-Going Vessels ("Standard Terms") (hereinafter together the "May 20 Employment Agreement"). The "Contract of Employment" sets forth the basic terms and conditions of Navarette's employment, for example salary and hours, and states that: "The herein terms and conditions is in accordance with Governing Board Resolution No. 09 and Memorandum Circular No. 10, both Series of 2010, shall be strictly and faithfully observed."

The Standard Terms contains the following provision next to Navarette's signature: "This contract is pursuant to Governing Board Resolution No. 09 and POEA Memorandum Circular No. 10, both series of 2010." Among the specific terms set forth in the Standard Terms are the following two sections relevant here:

> SECTION 29. DISPUTE SETTLEMENT PROCEDURES
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> In cases of claims and disputes arising from this employment, the parties covered by a collective bargaining agreement shall submit the claim or dispute to the original and exclusive jurisdiction of the [Philippines] voluntary arbitrator or panel of voluntary arbitrators. . . . If there is no provision as to the voluntary arbitrators to be appointed by the parties, the same shall be appointed from the accredited voluntary arbitrators of the National Conciliation and Mediation Board of the [Philippines] Department of Labor and Employment.
>
> SECTION 31. APPLICABLE LAW
>
> Any unresolved dispute, claim or grievance arising out of or in connection with this contract including the annexes thereof, shall be governed by the laws of the Republic of the Philippines, international conventions, treaties and covenants to which the Philippines is a signatory.

The May 20 Employment Agreement, by its terms, is conditioned on the approval of the Philippines Overseas Employment Administration ("POEA"), which approval was given on June 1, 2013.

Silversea contends that the May 20 Employment Agreement is the operative employment agreement between it and Navarette, which by its express terms requires arbitration in the Philippines under Philippine law.

Navarette disagrees, first arguing that the May 20 Employment Agreement does not contain an arbitration clause.[1] Navarette next argues that even if the May 20 Employment Agreement contained an arbitration clause, it was, by virtue of novation, superseded by a third document, a "Contract of Employment" dated July 1, 2013, which does not contain an arbitration clause. Finally, Navarette argues that even if there is an arbitration clause, this Court should not enforce it because it violates public policy.

Analysis

The Convention governs agreements to arbitrate international commercial disputes, and empowers federal courts to enforce and compel arbitration agreements, even where the arbitration is to be held outside of the United States. 9 U.S.C. § 206 (2012). In deciding whether to enforce an arbitration agreement under the Convention, a court conducts "a very limited inquiry." *Bautista v. Star Cruises*, 396 F.3d 1289, 1294 (11th Cir. 2005). Courts consider four jurisdictional factors to determine whether an arbitration agreement falls under the Convention. An arbitration agreement falls under the Convention where:

[1] In fairness to Navarette, the Standard Terms document, which explicitly requires arbitration, was not filed by Silversea in support of its Motion to Compel Arbitration until the day before oral argument and well after Navarette filed his memorandum in opposition.

> (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 to 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.

Id. at 1294 n. 7. If (1) the four factors are met, and (2) the Convention's affirmative defenses do not apply, then a district court must order arbitration. *Id.* at 1294.

Navarette, as indicated above, contends that: (1) Silversea failed to satisfy the Convention's first factor, the agreement in writing requirement; (2) the July 1 Contract of Employment constitutes a novation of the May 20 Employment Agreement; and (3) enforcement of the arbitration clause is against public policy. While considering his contentions, we keep in "mind[] that the Convention Act generally establishes a strong presumption in favor of arbitration of international commercial disputes." *Quiroz v. MSC Mediterranean Shipping Co. S.A.*, 522 F. App'x 655, 661 (11th Cir. 2013).

I. There is an agreement in writing to arbitrate the dispute

Navarette challenges only the first of the Convention's jurisdictional factors: the existence of "an agreement in writing" to arbitrate the matter in dispute. Under the Convention, parties have an "agreement in writing" if there is "an arbitral clause in a contract or an arbitration agreement, signed by the parties or contained in an exchange of letters or telegrams." Convention, art. II(2); *Quiroz*, 522 F. App'x at 661. Here, Navarette signed the two documents comprising the May 20 Employment Agreement. By its express terms, the May 20 Employment Agreement requires arbitration in the Philippines. Accordingly, the May 20 Employment Agreement fulfills the signed writing requirement. *Czarina, L.L.C. v. W.F. Poe Syndicate*, 358 F.3d 1286, 1291 (11th Cir. 2004).

II. The July 1 Contract of Employment does not constitute a novation of the May 20 Employment Agreement

In the alternative, Navarette asserts that there is no binding agreement to arbitrate because the July 1 Contract of Employment, which neither contains nor references an arbitration clause, served as a novation annulling the May 20 Employment Agreement and its arbitration clause. The Court disagrees. A contractual novation requires: "(1) a previous valid obligation; (2) the agreement of all parties to a new contract; (3) the validity of the new contract; and (4) the extinguishment of the old contract by the substitution of the new contract." *Aggarao v. MOL Ship Mgmt. Co.*, 675 F.3d 355, 367 (4th Cir. 2012). Navarette fails to demonstrate that a novation occurred because he has failed to establish the fourth requirement.

In *Aggaro*, the Fourth Circuit had before it virtually the same employment documents and seaman's novation arguments as presented here. That court held that the employment agreement's arbitration clause was not superseded by the later agreement, finding that "there is no indication, either expressed or implied, that both parties intended" that the second contract would constitute a novation of the first contract. *Id.* The Court finds the Fourth Circuit's analysis of the relevant documents and legal principles in *Aggaro* persuasive and applicable here. As set forth in *Aggaro*, "when a party seeking to avoid arbitration contends that the clause providing for arbitration has been superseded by some other agreement, the presumptions favoring arbitrability must be negated expressly or by clear implication." *Id.* at 368 (quoting *Zandford v. Prudential-Bache Secs., Inc.*, 112 F.3d 723, 727 (4th Cir. 1997)). As in *Aggaro*, the alleged superseding document, here the July 1 Contract of Employment, lacks any language, express or clearly implied which was intended to extinguish the May 20 Employment Agreement. Therefore, the

Court rejects Navarette's contention that the July 1 Contract of Employment constituted a novation of the Employment Agreement.[2]

III. Navarette's public policy argument does not avoid arbitration

Navarette argues that various public policy concerns disfavor arbitration agreements in this context, including because enforcement would prospectively waive Navarette's right to pursue United States' statutory remedies. However, at the hearing, Navarette's counsel candidly and properly conceded that under well-established, binding precedent, his public policy arguments have been rejected. In fact, courts "enforce the parties' agreement, even assuming that a contrary result would be forthcoming in a domestic context." *Mitsubishi Motors Corp. v. Soler Chrysler–Plymouth, Inc.*, 473 U.S. 614, 629 (1985). "A party opposing arbitration pursuant to an international commercial agreement may not seek to avoid arbitration on the basis that it is contrary to public policy." *Brown v. Royal Caribbean Cruises, Ltd.*, 549 F. App'x 861, 863 (11th Cir. 2013). Accordingly, the Court rejects Navarette's public policy arguments.

<u>Conclusion</u>

For the reasons stated above, Silversea's Motion to Compel Arbitration is GRANTED. Because Navarette's claims will be arbitrated and not litigated in this Court, this case is closed and all other pending motions are denied as moot.

DONE AND ORDERED in chambers, Miami, Florida this 24th day of June, 2014.

PAUL C. HUCK
UNITED STATES DISTRICT JUDGE

<u>Copies furnished to:</u>
All counsel of record

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[2] The Court also notes that the July 1 Contract of Employment was conditional on the POEA's approval, which approval has not been established by Navarette.