UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 07-21867-CIV-LENARD/TORRES

PULIYURUMPIL MATHEW THOMAS,

Plaintiff,

vs.

CARNIVAL CORPORATION d/b/a CARNIVAL CRUISE LINES, INC.,

Defendant.
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ORDER GRANTING DEFENDANT'S MOTION TO COMPEL ARBITRATION (D.E. 2); DENYING AS MOOT PLAINTIFF'S MOTION TO REMAND (D.E. 7); AND CLOSING CASE

THIS CAUSE is before the Court on Defendant's Motion to Compel Arbitration ("Motion," D.E.24), filed on July 19, 2007. Plaintiff filed a Response Opposing the Motion on August 31, 2007 ("Response," D.E. 36), and Defendant filed its reply on September 12, 2007 ("Reply," D.E. 37).[1] Having thoroughly considered the Motion, the related pleadings, and the record, the Court finds as follows:

I. The Complaint

Plaintiff originally filed his Complaint (D.E. 1-1) in the Circuit Court for the 11th Judicial Circuit in and for Miami-Dade County, Florida, but, on July 19, 2007, Defendant

[1] On July 26, 2007, after the instant Motion was filed, Plaintiff filed a Motion for Remand. (D.E. 7.)

removed the action to this Court (see D.E. 1). In the Complaint, Plaintiff, who was working as a head waiter aboard Defendant's ship, the Imagination, alleges that he was injured when he slipped and fell on a wet substance in the dining room forward pantry while carrying a heavy bus pan of dirty dishes. (D.E. 1-1 at 10.) Specifically, Plaintiff alleges that he injured his spine and right shoulder in the fall, and that a coffeepot also spilled on him during the fall, burning his right leg. (Id.) Plaintiff further alleges that the shipboard physician ignored Plaintiff's neck and shoulder injuries and only treated him for the burn on his right leg. (Id.) Plaintiff alleges that he was not able to return to work due to the severity of his injuries, and that he was signed off by Defendant on regular vacation time, rather than medical leave, and was not given any maintenance or cure payments or treated in any way for his neck and shoulder injuries. (Id.) Plaintiff also alleges that in or around January 2005, he returned to work aboard the Imagination and, approximately one month later, began to experience pain again in his neck and shoulder, at which time he visited the shipboard physician, who "again told Plaintiff he did not have any injuries." (Id.)

The Complaint further details numerous instances between February 2005 and November 2005 in which Plaintiff visited and complained of shoulder and/or neck pain to the shipboard physician, who allegedly alternated between ignoring Plaintiff's injuries and treating Plaintiff for his injuries with pain killers, analgesic balm, local heat, physical therapy, and by ordering Plaintiff to remain off duty for certain periods of time. (See id. at 10-11.) On or about December 7, 2005, Plaintiff was ultimately found to be unfit for duties by the shipboard physician, and Plaintiff alleges that, on or about December 24, 2005, he was given medical sign off with $700.00 payment. (Id. at 10-12.) Plaintiff visited a doctor at

Defendant's request in his home country of India, and was diagnosed with chronic partial tear of right supraspinatus tendon, and degenerative disc disease of the cervical spine at multiple levels. (Id. at 12.) Subsequently, from about May 1, 2006 through June 30, 2006, Plaintiff e-mailed Defendant regarding allegedly insufficient and/or late maintenance and cure payments, and further notified Defendant that the payments were being sent to an area far away from his home, making it expensive and painful for him to pick up the payments. (Id. at 13.)

Based on these events, Plaintiff asserts claims for negligence and unseaworthiness under the Jones Act; for failure to provide prompt and adequate maintenance and cure under the general maritime law of the United States; and for failure to pay wages under the Seaman's Wage Act, 46 U.S.C. Section 10313 (Id. at 13-18.)

II. The Notice of Removal

Defendant asserts that this action was properly removed pursuant to, inter alia, Title 9, United States Code, Section 205,[2] because the subject matter of the instant dispute relates to an arbitration agreement that falls under the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the "Convention"), codified at Title 9, United States Code, Sections 201 et seq. (See D.E. 1.)

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[2] Section 205 provides: "Where the subject matter of an action or proceeding pending in a State court relates to an arbitration agreement or award falling under the Convention [on the Recognition and Enforcement of Foreign Arbitral Awards, Title 9, United States Code, Sections 201 et seq.], the defendant or defendants may, at any time before the trial thereof, remove such action or proceeding to the district court...where the action or proceeding is pending."

III. The Motion to Compel Arbitration

In its Motion, Defendant contends that, during the relevant period, Plaintiff and Defendant were parties to a Seafarer's Agreement (the "Agreement"), which provided for compulsory foreign arbitration of all claims arising out of that employment, and that, as a result, all of Plaintiff's claims are subject to arbitration. (D.E. 2 at 2.) Moreover, Defendant claims that the four jurisdictional prerequisites of the Convention have been met: there exists an agreement in writing to arbitrate the dispute; the agreement provides for arbitration in London, England, Monaco, Panama City, or Manila, Philippines, countries which are signatories of the Convention; the agreement to arbitrate arises out of a commercial legal relationship; and Plaintiff is not a citizen of the United States. (Id. at 5-6.) Therefore, Defendant maintains that the present dispute must be arbitrated pursuant to the terms of the arbitration clause of the Agreement. (Id. at 6.)

In his Response, Plaintiff asserts that 1) the arbitration clause cited by Defendant cannot serve as the basis to compel arbitration because it applies to a later period of employment that the one during which Plaintiff was injured and from which Plaintiff's causes of action arise, and because the clause is not retroactive; 2) seaman contracts are not commercial and are therefore exempt from arbitration; and 3) various defenses exist to forbid enforcement of the arbitration clause. (See D.E. 36.)

In its Reply, Defendant argues that the arbitration clause in the Agreement is applicable to all of Plaintiff's claims. First, Defendant asserts that Plaintiff's maintenance and cure count arose as of the date Plaintiff signed off from the vessel on medical leave, and is thus covered by the arbitration clause. (D.E. 37 at 1.) Second, Defendant asserts that

Plaintiff's claim for failure to pay wages also arose after October 2005, and thus is also covered by the arbitration clause. (Id. at 2.) As to Plaintiff's claim for negligence under the Jones Act and claim for Unseaworthiness, Defendant asserts that these claims allege that Defendant failed to provide him with adequate medical care after the Agreement was executed, and that the failure to provide him with adequate medical care constitutes ongoing misconduct that triggers the arbitration provision in the Agreement. (Id.)

IV. Discussion

In deciding a motion to compel arbitration, under the Convention, a court conducts a "very limited inquiry." Bautista v. Star Cruises, 396 F.3d 1289, 1294 (11th Cir. 2005) (citing Francisco v. Stolt Achievement MT, 293 F.3d 270, 273 (5th Cir. 2002)). Unless one of the Convention's affirmative defenses applies, the Court must order the parties to arbitrate if the following four jurisdictional prerequisites are met: (1) there is an agreement in writing to arbitrate the dispute; (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, that is considered commercial; and (4) a party to the agreement is not a citizen of the United States, or the commercial relationship has some reasonable relationship with one or more foreign states. Bautista, 396 F.3d at 1294-95.

In its Motion, Defendant argues that each of these jurisdictional prerequisites are satisfied. First, Defendant contends, and Plaintiff appears to concede, that there is a written agreement to arbitrate; namely, the Agreement, which contains a provision pursuant to which the parties agreed to submit to arbitration "[a]ny and all disputes arising out of or in connection with this Agreement . . . or [Plaintiff's] service on the vessel." (D.E. 2 at 5.)

Indeed, "[a]n arbitral clause in a contract . . . signed by the parties" constitutes an "agreement in writing" within the meaning of the Convention. Bautista, 396 F.3d at 1300. Therefore, the Court finds that there exists an agreement in writing to arbitrate the present dispute.

Moreover, contrary to Plaintiff's position that the Agreement relates to "a completely different period of employment Plaintiff had with Defendant than the period of employment implicated by the causes of action in Plaintiff's Complaint" (D.E. 7 at 1),[3] the Court finds that, based on the broad language of the arbitration provision in the Agreement, the parties intended to arbitrate all claims arising from Plaintiff's employment on the Imagination as a result of entering into the Agreement. See Gregory v. Electro-Mechanical Corp., 83 F.3d 382, 386 (11th Cir. 1996) (noting that any doubt concerning scope of arbitrable issues should be resolved in favor of arbitration); Becker v. Davis, 491 F.3d 1292, 1305 (11th Cir. 2007) ("federal policy requires us to construe arbitration clauses generously"). The arbitration clause in the Agreement, which was signed by the parties on October 10, 2005 (see D.E. 7 at 2), clearly states that the parties agreed to arbitrate all disputes arising out of Plaintiff's services on the vessel, and, as the Complaint makes clear, Plaintiff's claims all arise of out his employment on the Imagination. In addition, although Plaintiff argues that the Agreement is not applicable to his claims because his injury occurred nearly one year before the parties entered into the Agreement, the Court notes that the allegations in the Complaint are not limited to the period prior to October 10, 2005, and, in fact, Plaintiff's claims are in large part based upon allegations of Defendant's ongoing misconduct through June 30, 2006,

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[3] In his Response to the Motion, Plaintiff refers the Court to arguments made in his Motion for Remand. (See D.E. 36 at 1.)

months after the parties executed the Agreement. Thus, in line with the principle that the Convention "generally establishes a strong presumption in favor of arbitration of international commercial disputes," Bautista, 396 F.3d at 1295, and given the fact that courts have retroactively applied arbitration agreements to activities which occur prior to the execution of the arbitration agreement, see, e.g., Merrill Lynch, Pierce, Fenner & Smith, Inc., v. King, 804 F. Supp. 1512, 1514 (M.D. Fla. 1992), the Court finds that the scope of the Agreement and the arbitration provision contained therein includes all of Plaintiff's claims at issue in the Complaint.

As to the second prong of the Court's inquiry, at least one of the countries listed in the arbitration clause of the Agreement -- the Philippines -- is a signatory of the Convention. See Bautista, 396 F.3d at 1295 n.7. Moreover, Plaintiff does not dispute that the countries listed in the arbitration clause are signatories of the Convention.

As to the third prong of the Court's inquiry, Defendant avers that a seaman's employment contract, such as the Agreement at issue between Plaintiff and Defendant, constitutes a commercial legal agreement. (D.E. 2 at 5.) The Court agrees. See Bautista, 396 F.3d at 1295-1300 (examining similar employment contract and holding that the contract is a commercial legal agreement within the meaning of the Convention). Therefore, the Court concludes that the agreement to arbitrate between the parties in this case arises out of commercial legal agreement, as required by the Convention.

Finally, it is undisputed that Plaintiff's home country is India, and that he is not a citizen of the United States. (See, e.g., D.E. 1-1 at 5; see generally D.E. 36.)

Having found that all four of the jurisdictional prerequisites of the Convention Act

have been fulfilled, the Court will now turn to the issue of whether any affirmative defense to the Convention Act applies. In its Response, Plaintiff raises various arguments as to why enforcement of the arbitration provision in the Agreement is forbidden. Nonetheless, for the reasons discussed by the Eleventh Circuit in Bautista, the Court finds that Plaintiff has failed to establish that the agreement to arbitrate in this case is "null and void, inoperative or incapable of being performed." See id. at 1301. Therefore, the Court concludes that, under the facts of this case, it is obligated to compel arbitration, which shall occur in the manner and location described in the Agreement. See Bautista, 396 F.3d at 1294-95, 1303.

Accordingly, it is:

ORDERED AND ADJUDGED that:

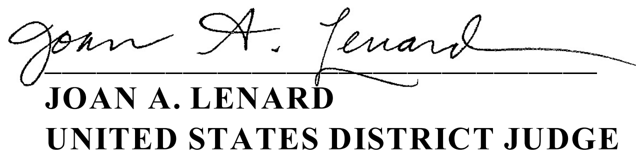
1. Defendant's Motion to Compel Arbitration (D.E. 2), filed on July 19, 2007, is **GRANTED**.

2. Plaintiff's Motion to Remand (D.E. 7), filed on July 26, 2007, is **DENIED as moot**.

3. All other pending motions not otherwise ruled upon are **DENIED as moot.**

4. This case is **CLOSED**.

DONE AND ORDERED in Chambers at Miami, Florida, this 4th day of January, 2008.



JOAN A. LENARD
UNITED STATES DISTRICT JUDGE

cc: U.S. Magistrate Judge Edwin G. Torres
All counsel of record