UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF FLORIDA
Miami Division
Case Number: 11-20862-CIV-MARTINEZ

THOMAS HINES,

Plaintiff,

vs.

CARNIVAL CORPORATION,

Defendant.
_____/

ORDER GRANTING PLAINTIFF'S MOTION TO REMAND

THIS CAUSE came before the Court upon Defendant's Motion to Dismiss and Compel Arbitration (D.E. No. 4) and Plaintiff's Motion for Remand (D.E. No. 9). After careful consideration and for the reasons set forth below, the Court grants Plaintiff's motion to remand.

I. Relevant Factual and Procedural Background

Plaintiff Thomas Hines ("Plaintiff") alleges that he was employed by Defendant Carnival Corporation ("Defendant") as an entertainment technician and a member of the crew of the *M/S Carnival Glory* ("Glory") and the *M/S Carnival Spirit* ("Spirit"). Plaintiff states that he first injured his right and left shoulder on July 20, 2008 while "pulling down an Intelligent Lighting Fixture which required lifting this heavy lighting fixture over his head without the aid of necessary mechanical devices." (D.E. No. 1-2 at ¶ 9). On November 9, 2010, Plaintiff suffered an additional injury to his right shoulder when he was "required to lift the 'head' of a Lycian Superstar Spotlight (a heavy lighting fixture) without the aid of necessary mechanical devices." *Id.* at ¶ 16. Plaintiff alleges that he was injured due to the fault and negligence of Defendant. *Id.* at ¶¶ 10-11, 17. Plaintiff also alleges that Defendant negligently "failed to properly manage Plaintiff's medical care

and treatment after Plaintiff was injured." *Id.* at ¶¶ 11, 18. Plaintiff filed suit against Defendant in the Eleventh Judicial Circuit in and for Dade County (state court) in a six-count complaint. In his Complaint, Plaintiff alleged a claim for Jones Act negligence, unseaworthiness, failure to provide maintenance and cure, failure to treat, and seeking wages and penalties pursuant to 46 U.S.C. § 30104. Defendant removed this action to this Court pursuant to 28 U.S.C. § 1441, and the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards ("the Convention") and its implementing legislation, 9 U.S.C. § 205, *et seq.* (D.E. No. 1).

It is also undisputed that Plaintiff signed a Seafarer's Agreement ("Agreement"). Paragraph 7 of the Agreement provides in relevant part:

> 7. Arbitration - Except for a wage dispute governed by CCL's Wage Grievance Policy and Procedure, any and all disputes arising out of or in connection with this Agreement, including any question regarding its existence, validity, or termination, or Seafarer's service on the vessel, shall be referred to and finally resolved by arbitration under the American Arbitration Association/International Center for Dispute Resolution International Rules, which Rules are deemed to be incorporated by reference into this clause. The number of arbitrators shall be one. The place of arbitration shall be London, England, Monaco, Panama City, Panama, or Manila, Philippines whichever is closer to Seafarer's home country. The Seafarer and CCL must arbitrate in the designated jurisdiction, to the exclusion of all other jurisdictions. The language of the arbitral proceeding shall be English. Each party shall bear its own attorney's fees, but CCL shall pay for the costs of arbitration as assessed by the AAA. Seafarer agrees to appear for medical examinations by doctors designated by CCL in specialties relevant to any claims Seafarer asserts, and otherwise the parties agree to waive any and all rights to compel information from each other.

(D.E. No. 1-1, Agreement at ¶ 7). The Agreement also provides that

> [t]his Seafarer's Agreement constitutes the sole and entire employment agreement of the parties. There are no prior or present agreements, representations or understandings, oral or written, which are binding on either party, unless expressly included in the Seafarer's Agreement. No modification or change shall be valid or binding upon parties unless in writing and executed by the party or parties intended to be bound by it.

Id. at ¶ 5. Section 8 of the Seafarer's Agreement provides in relevant part:

> 8. Governing Law

> This Agreement shall be governed by, and all disputes arising under or in connection with this Agreement or Seafarer's service on the vessel shall be resolved in accordance with, the laws of the flag of the vessel on which Seafarer is assigned at the time the cause of action accrues, without regard to principles of conflicts of laws, thereunder. The parties agree to this governing law notwithstanding any claims for negligence, unseaworthiness, maintenance, cure, failure to provide prompt, proper and adequate medical care, wages, personal injury, or property damage which might be available under the laws of any other jurisdiction.

(D.E. No. 1-1, at ¶ 8). Defendant has now moved to compel arbitration, and Plaintiff has moved to remand this action back to state court, arguing that the arbitration clause is void.

II. Analysis

For this Court to obtain jurisdiction over this matter, it must meet the jurisdictional requirements set forth in 9 U.S.C. § 202 and discussed below. "In deciding a motion to compel arbitration under the Convention Act, a court conducts a very limited inquiry." *Bautista v. Star Cruises*, 396 F.3d 1289, 1294 (11th Cir. 2005) (internal quotations and citations omitted). The Court must first consider whether four jurisdictional prerequisites are met. *Id.* These four conditions are as follows:

> (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.

Id. at 1294 n. 7. If these four conditions are met, the Court must then consider whether an affirmative defense under the Convention bars arbitration. *Id.* at 1294.

In this matter, the parties agree that the first three criteria are met. (D.E. Nos. 4, 19). Namely, there is an agreement in writing, this agreement provides for arbitration in countries which are all signatories to the Convention, and the agreement arises out of a legal relationship that is considered commercial. (D.E. Nos. 4, 19). However, Plaintiff has argued that the fourth

jurisdictional factor is absent, because both Plaintiff and Defendant are U.S. Citizens, and Plaintiff alleges that the agreement does not meet the jurisdictional standard of a "relationship involv[ing] property located abroad, or has some other reasonable relation with one or more foreign states," as set forth in the Convention. 9 U.S.C. § 202. Consequently, this Court must determine whether the fourth jurisdictional requirement is met.

The Court finds that the facts of this case are similar to that of *Matabang v. Carnival Corp.* *See Matabang v. Carnival Corp.*, 630 F. Supp. 2d 1361 (S.D. Fla. 2009). In *Matabang*, the court determined that the employment agreement did not create a "relationship involv[ing] property located abroad, or [having] some other reasonable relation with one or more foreign states." *Id.* at 1367. Specifically the court noted that the performance contract between the parties contained no reference to performance abroad or in any foreign state apart from the arbitration clause, and that the choice of law clause was also neutral, stating that the dispute would be governed by "the laws of the flag of the vessel on which [Matabang] is assigned at the time the cause of action accrues." *Id.* at 1366. Furthermore, the plaintiff in *Matabang* conducted his work on the high seas and at the home port located within the United States. *Id.*

The facts of *Matabang* are very similar to the matter at hand. In this matter, the Seafarer's Agreements are also silent as to any work to be performed in another country and also employ the same choice of law clause provision that was at issue in *Matabang*. The Seafarer's Agreements merely state that Plaintiff will be assigned to a vessel, but does not state the vessel's name, the vessel's registry, or vessel's itinerary. (D.E. No. 1-1). Furthermore, the Seafarer's Agreements do not state Plaintiff is to perform his services in a foreign country, and Plaintiff has alleged that he has not preformed any employment duties on foreign soil. (D.E. 9-3, ¶7,¶12). Moreover, the terms of the agreement and the work performed is largely associated with the United States. In support of

his position, Plaintiff states that the terms governing the Seafarer's Agreements in effect at the time of his personal injuries were both executed within the United States. "The May 25, 2008, Seafarer's Agreement was signed in Port Canaveral, Florida," and while Plaintiff served under that agreement, he was assigned to the Spirit, which was based in Port Canaveral and would begin and end each voyage from Port Canaveral. (D.E. 9-3, ¶¶ 5-6). The May 18, 2010 Seafarer's Agreement was signed in Seattle, Washington. *Id.* at ¶ 9. Under this Seafarer's Agreement, Plaintiff was assigned to the Glory. (D.E. 9-3, ¶8). For the first four months during Plaintiff's assignment to the Glory, "the vessel started and ended its cruises from Seattle, Washington and would sail to Alaska and Hawaii." *Id.* at ¶10. The Glory was then repositioned in San Diego, California. *Id.* at ¶11. Additionally, the subject Seafarer's Agreements require payment to Plaintiff in United States Dollars. (D.E. No. 1-1, ¶ 3B).

Defendant argues that this Court should adopt the holding of *Freudensprung v. Offshore Technical Servs.* or *Odom v. Celebrity Crusies, Inc.* and find that it has jurisdiction. *See Freudensprung v. Offshore Technical Servs.*, 379 F.3d 327 (5th Cir. 2004); *Odom v. Celebrity Crusies, Inc.*, Case No. 10-23086-civ-Jordan (S.D. Fla. 2009). However, this Court finds that the facts of the current case distinguish it from both *Freudensprung* and *Odom*.

In *Freudensprung*, the plaintiff was employed as a barge leaderman in West Africa and, therefore, satisfied the jurisdictional requirement of a commercial relationship that has some reasonable relation with one or more foreign states. *See Freudensprung*, 379 F.3d at 331. Such foreign activity is absent in the matter at hand. In *Odom*, the contract between the parties signified that Italian law was to govern any issues arising out of the employment agreement. *Odom v. Celebrity Crusies, Inc.*, Case No. 10-23086-civ-Jordan (S.D. Fla. 2009). Such a choice of law provision is absent in Plaintiff's Seafarer's Agreement.

Defendants also allege that the fourth requirement is satisfied because both the Spirit and the Glory are Panamanian flagged vessels. (D.E. No. 19). However, this Court does not find this fact to be persuasive in determining a relationship to a foreign state. The court in *Matabang*, held that the country corresponding with a flagged vessel is irrelevant for deciding jurisdiction because 9 U.S.C. § 202 instructs courts to disregard the foreign corporate status of a U.S. based company in deciding whether the relationship is international. *Matabang*, 630 F. Supp. 2d at 1367. Furthermore, courts have also held that activity in international waters does not satisfy a relationship with one or more foreign states. *Matabang* held that "even assuming [a vessel] spends 80-85% of the time "in the Bahamas, in Bahamian waters and sailing on the high seas, as estimated in the declaration of Carnival. . . this does not necessarily equate with a 'reasonable relation with one or more foreign states.'" *Id.* at 1366. Similarly, the court in *Ensco Offshore Com. V. Titan Marine L.L.C.*, found that endeavors that were located ninety miles south of Louisiana in the Gulf of Mexico did not meet the fourth jurisdictional element of a reasonable relation with one or more foreign states. *See Ensco*, 370 F. Supp. 2d 594 (S.D. Tex. 2005). Accordingly, this Court finds that the fourth jurisdictional requirement is not met and this Court, therefore, must remand this case to state court. As such, it is hereby:

ORDERED AND ADJUDGED that

1. Plaintiff's Motion to Remand (D.E. No. 9) is **GRANTED**. The Clerk is **DIRECTED** to mark this case as **CLOSED**. All pending motions, not otherwise ruled on, are **DENIED as MOOT**.

DONE AND ORDERED in Chambers at Miami, Florida, this 29 day of March, 2012.

JOSE E. MARTINEZ
UNITED STATES DISTRICT JUDGE

Copies provided to:
Magistrate Judge McAliley
All Counsel of Record