

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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LA FONDIARIA ASSICURAZIONE, S.P.A.,

Plaintiff,

-against-

OCEAN WORLD LINES, INC. *in personam*
and SL MOTIVATOR, *in rem*,

Defendants,

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OCEAN WORLD LINES, INC.,

Third-Party Plaintiff,

-against-

COMPAGNIE MARITIME D'AFFRETEMENT-
COMPAGNIE GENERALE MARITIME,

Third-Party Defendant, and

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COMPAGNIE MARITIME D'AFFRETEMENT-
COMPAGNIE GENERALE MARITIME,

Fourth-Party Plaintiff,

-against-

MAERSK TERMINAL UNIVERSAL MARITIME
SERVICE, A.P. MOLLER, AKTIESELSKABET
DAMPSKIBSSELSKABET SVENBORG,
DAMPSKIBSSELSKABET AF 1912,
AKTIESELSKAB a.k.a MAERSK SEALAND,

Fourth-Party Defendant.

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JOHN S. MARTIN, Jr., District Judge:

Third-party defendant, Compagnie Maritime D'Affretement-
Compagnie Generale Maritime's ("CMA"), moves to dismiss all

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OPINION AND ORDER

claims against it based on a forum selection clause. For the reasons stated below, CMA's motion is granted.

I. Background

In December 2000, Plaintiff hired Ocean World Lines, Inc. ("OWL") as a non-vessel operating common carrier ("NVOCC") to ship ham, cheese, squid and salmon from Genoa, Italy to Miami, Florida. As an NVOCC, OWL picks up cargo from multiple shippers and arranges with a vessel-operating carrier to transport the cargo to its destination. OWL issued a bill of lading to Plaintiff that included a clause selecting New York as the forum for any disputes.

OWL then contracted with CMA to ship the goods. CMA shipped the ham and cheese aboard the S/L Motivator and the squid and salmon aboard the S/L Value. CMA issued a bill of lading that included Marseilles as the forum for any disputes.

Plaintiff alleges that the cargo was damaged upon arrival in Miami due to improper refrigeration and brought this action in January, 2002 alleging breach of contract, breach of bailment obligations and negligence against OWL for the damaged ham and cheese.¹

¹Plaintiff filed a similar action for the damaged squid and salmon shipped aboard the S/L Value. This action is currently pending in the Southern District of New York before Judge Sprizzo.

In March, 2002, OWL notified CMA of these cases and requested that CMA, as carrier of the goods, defend the actions. CMA declined to defend the actions and OWL filed a third-party complaint seeking contribution and indemnification. CMA subsequently filed a fourth-party complaint for indemnity and contribution against fourth-party defendants as the owner and operator of the vessel and the terminal operator.

II. Discussion

The Supreme Court has held that a federal court sitting in admiralty should generally give full effect to a mandatory forum-selection clause. M/S Bremen v. Zapata Off-Shore Co., 407 U.S. 1, 10, 15 (1972). See LPR, SRL v. Challenger Overseas, LLC, No. 99 cv. 8883, 2000 WL 973748, at * 3 (S.D.N.Y. July 13, 2000) (defining a mandatory forum selection clause). The OWL bill of lading included a mandatory forum selection clause stating:

Any claim or dispute (if any) arising under this Bill of Lading, including third party proceedings or those involving several defendants, shall be governed, except as herein otherwise provided, by the law and determined by the Court of the place where the Carrier (as specified above) has his registered office, which is New York District Court for OWL.

CMA's bill of lading also includes a mandatory forum selection clause:

All claims and disputes arising under or in connection with [the] bill of lading shall be determined by the courts of Marseille at the exclusion of the courts of any other country.

The CMA bill of lading includes additional provisions specifically stating the forum and which law shall apply:

Insofar as anything has not been dealt with by the terms and conditions of the Bill of Lading, the law of France shall apply.

All actions under the contract of Carriage evidenced by this Bill of Lading shall be brought before the Tribunal of Commerce at Marseille and no other Court shall have jurisdiction with regards to any such action.

A forum selection clause should be enforced unless the resisting party can "clearly show that enforcement would be unreasonable and unjust, or that the clause was invalid for such reasons as fraud or overreaching." See Bremen, 407 U.S. at 10,

15. Forum selection clauses are unreasonable:

(1) if their incorporation into the agreement was the result of fraud or overreaching; (2) if the complaining party 'will for all practical purposes be deprived of his day in court,' due to the grave inconvenience or unfairness of the selected forum; (3) if the fundamental unfairness of the chosen law may deprive the plaintiff of a remedy; or (4) if the clauses contravene a strong public policy of the forum state. Roby v. Corp. of Lloyd's, 996 F.2d 1353, 1363 (2d Cir. 1993) (citations omitted).

OWL has presented no evidence that the CMA forum selection clause was unreasonable. OWL argues that CMA's forum selection clause should not be enforced because it would violate principles of judicial efficiency and uniformity to have OWL litigate against Plaintiff in New York and then travel to France to litigate against CMA about the same transaction. Admittedly, it might be more efficient to dispose of the entire case in one

court, but that is not the standard for overcoming a forum selection clause. Street, Sound Around Electronics v. M/V Royal Container, 30 F.Supp.2d 661, 663 (S.D.N.Y. 1999) ("The possibility of multiple parallel proceedings was a contingency entirely foreseeable to plaintiff when it agreed to the forum selection clause.").

Forum selection clauses are favored for the certainty they bring to overseas shipping transactions. See Vimar Seguros Y Reaseguros, S.A. v. M/V Sky Reefer, 515 U.S. 528, 538 (1995). This certainty would be undermined if OWL could impose its forum selection clause on CMA when CMA was not a party to the OWL bill of lading and had its own forum selection provision that OWL could or should have known about when contracting with CMA to carry the goods to Miami.

For the foregoing reasons, CMA's motion to dismiss is granted.

SO ORDERED.

Dated: New York, New York
December , 2002

JOHN S. MARTIN, JR., U.S.D.J.

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