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UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK  
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TODD'S POINT MARINE, LTD.,

Petitioner,

96 Civ. 5827 (SHS)

-against-

ANTONIO ROJOS D/B/A VENUS MARITIME,  
AND COMET LINES, INC.,

Respondents.

OPINION AND ORDER

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Todd's Point's petition for the appointment of an arbitrator and to compel arbitration denied as moot insofar as Venus Lines Maritime has already appointed A.J. Siciliano as its arbitrator and granted insofar as arbitration is compelled between Todd's Point and Venus Lines Maritime pursuant to the Charter Party dated May 10, 1996; Comet's application to transfer venue pursuant to 28 U.S.C. § 1404(a) to the District of Puerto Rico granted.

**COUNSEL:** For TODD'S POINT MARINE, LTD., petitioner: Caspar F. Ewig, Hill Rivkins Loesberg O'Brien Mulroy & Hayden, New York, NY.

MEALEY PUBLICATIONS, INC.

SIDNEY H. STEIN, District Judge.

Petitioner Todd's Point Marine, Ltd. ("Todd's Point") brought by order to show cause this petition for the appointment of an arbitrator and to compel arbitration against respondents Antonio Rojas d/b/a Venus Maritime ("Venus") and Comet Lines, Inc. ("Comet"). Oral argument was held on August 9, 1996 and the parties have submitted memoranda of law. After due consideration, **IT IS HEREBY ORDERED THAT:**

1. Todd's Point's petition for the appointment of an arbitrator and to compel arbitration is denied as moot insofar as Venus Lines Maritime has already appointed A.J. Siciliano as its arbitrator and is granted insofar as arbitration is compelled between Todd's Point and Venus Lines Maritime pursuant to the Charter Party dated May 10, 1996;

2. Comet's application to transfer venue pursuant to 28 U.S.C. § 1404(a) to the District of Puerto Rico is granted. Todd's Point seeks to compel arbitration against Comet as an assignee of the Charter Party. Comet denies the existence of a valid assignment. Todd's Point seeks to have this Court conduct an evidentiary hearing to determine whether or not Comet is an assignee of the Charter party. In light of a pending action between the same parties, Comet seeks to transfer this petition to the District of Puerto Rico. See Maria Victoria Naviera, S.A. v. Cementos Del Valle, S.A., 759 F.2d 1027, 1031 (2d Cir. 1985);

W.J. Nolan & Co., Inc. v. Midway Federal Credit Union, 913 F. Supp. 806, 811 (S.D.N.Y. 1996).

A motion to transfer venue pursuant to 28 U.S.C. § 1404(a) requires a threshold showing of the availability of an alternative forum. See, e.g., Factors Etc., Inc. v. Pro Arts Inc., 579 F.2d 215, 218 (2d Cir. 1978); cert. denied, 440 U.S. 908, 99 S. Ct. 1215, 59 L. Ed. 2d 455 (1979); Rothschild v. Paramount Distillers, Inc., 923 F. Supp. 433, 437 (S.D.N.Y. 1996); CSY Liquidating Corp. v. Trinity Industries, Inc., 1996 U.S. Dist. LEXIS 1123, No. 95 Civ. 4860, 1996 WL 44462, at \*3 (S.D.N.Y. Feb. 2, 1996). Todd's Point argues that a court in the District of Puerto Rico lacks power under the Federal Arbitration Act to compel arbitration outside its own jurisdiction, see 9 U.S.C. § 4, and that since the Charter Party provides for arbitration in New York this Court is the only venue properly to consider its petition.

This argument, however, ignores the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the "Convention"), which "controls arbitration disputes in the international context." Jain v. Mere, 51 F.3d 686, 688 (7th Cir.), cert. denied, 116 S. Ct. 300, 133 L. Ed. 2d 206 (1995). Todd's Point is incorporated outside the United States and does not claim to have its principal place of business in the United States, and the Charter Party is a commercial agreement; accordingly, the agreement falls within the Convention. See 9 U.S.C. § 202; see Jamaica Commodity Trading Co. Ltd. v. Connell



Rice & Sugar Co., Inc., 1991 U.S. Dist. LEXIS 8976, No. 87 Civ. 6369, 1991 WL 123962, at \*2 (S.D.N.Y. July 3, 1991).

The Convention permits a court to "direct that arbitration be held in accordance with the agreement at any place therein provided for, whether that place is within or without the United States." 9 U.S.C. § 206; See Filanto, S.p.A. v. Chilewich Int'l Corp., 789 F. Supp. 1229, 1240 (S.D.N.Y. 1992), appeal dismissed, 984 F.2d 58 (2d Cir. 1993); Oil Basins Ltd. v. Broken Hill Proprietary Co., 613 F. Supp. 483, 486-87 (S.D.N.Y. 1985). Accordingly, a court in Puerto Rico can compel Comet to arbitrate in New York if it found that Comet was an assignee of Venus.

Upon a showing of an available alternative forum, this Court has "broad discretion" to grant or deny a motion to transfer venue based on a balancing of the following factors: plaintiffs' choice of forum, location of the operative facts, convenience of the parties and witnesses, location of documents and ease of access to sources of proof, relative means of the parties, the forum's familiarity with the governing law and trial efficiency and the interests of justice. See CSY Liquidating Corp., 1996 U.S. Dist. LEXIS 8976, 1996 WL 44462, at \*3; Pesin v. Goldman, Sachs & Co., 397 F. Supp. 392, 393 (S.D.N.Y. 1975).

In this case, Todd's Point's choice of forum is not entitled to substantial deference because this district is not its home and this forum lacks a material connection to the issues of this case. See, e.g., CSY Liquidating Corp., 1996 U.S. Dist. LEXIS 8976, 1996 WL 44462 at \*3. Furthermore, the potential witnesses

are located in Connecticut and Florida and hence all will need to travel to testify regardless of the venue. Id. at \*4. Neither party suggests that any witnesses would be unavailable in one or the other venue. The documents and access to proof favor neither venue. The location of the operative facts, trial efficiency and the interests of justice, however, militate strongly in favor of transferring this action to the District of Puerto Rico. An action between these same parties is currently pending in that court; that action involves the same facts that Todd's Point seeks to arbitrate. Furthermore, the vessel that underlies this dispute is currently under arrest there.

Accordingly, this action is hereby transferred in the interests of justice to the District of Puerto Rico.

3. The Clerk of Court is directed to close this case on the active docket of this Court.

Dated: New York, New York

August 16, 1996

SO ORDERED:

Sidney H. Stein, U.S.D.J.