

United States District Court, E.D. Louisiana.

·
CIVIL ACTION No. 02-2196, SECTION "C" (5) (E.D. La. Dec 04, 2002)

·
Decided December 4, 2002

MARANAN v. LMS SHIP MANAGEMENT, INC

SHARON MARANAN v. LMS SHIP MANAGEMENT, INC., ET AL.

· CIVIL ACTION No. 02-2196, SECTION "C" (5)

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MINUTE ENTRY

BERRIGAN, Judge.

IT IS ORDERED that the motion for new trial filed by the plaintiffs is DENIED. This motion is based on the recent decision of *Dahiya v. Talmidge International, Ltd.*, Civ. Act. 02-2135 "F" (October 11, 2002). In *Dahiya*, the court acknowledged that the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 9 U.S.C. § 205 ("Convention") applies to an arbitration agreement if: (1) there is an agreement in writing to arbitrate the dispute; (2) the agreement provides for arbitration on the territory of a Convention signatory; and (3) the agreement arises out of a commercial legal relationship; and (4) a party to the agreement is not an American citizen. The court then found that *Dahiya's* employment contract fails to satisfy the second element of a covered arbitration agreement: "While it is undisputed that both countries are signatories to the Convention, the forum selection clause is invalid because it contravenes Louisiana express public policy." *Dahiya*, supra at p. 4.

This Court finds that unlike the plaintiff in *Dahiya*, the have no Louisiana connection. In addition, the plaintiffs are heirs asserting wrongful death claims, and have ratified any employment contract by instituting arbitration proceedings or actually settling claims.

This Court, however, is not convinced that the coverage intended by the Convention can be so readily ignored. More specifically, this Court is unaware of authority allowing the substitution of the second requirement for coverage of an arbitration agreement under the Convention with an interpretation of the rule of *M/V BREMEN v. Zapata Offshore, Inc.*, 407 U.S. 1 (1972) pertaining to forum selection clauses. This Court is wary of the conclusion that the *BREMEN* body of law allows for invalidation of an arbitration clause sanctioned by the

Convention simply because it is construed as a forum selection clause. Instead, this Court finds guidance in Fifth Circuit precedence. See *Francisco v. Stolt Achievement*, 293 F.3d 270 (5th Cir. 2002), and the established rule that where the scope of an arbitration clause is in question, the court should construe the clause in favor of arbitration. *Id.* Fortunately, the *Dahiya* appeal will clarify this issue.