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STELLAR LINES

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OPINION AND ORDER

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

STELLAR LINES, S.A.,
Petitioner,

-v-

EUROLEADER SHIPPING AND TRADING CORP.,
Respondent.

Appearances:

Leo G. Kailas
Piper & Marbury L.L.P.
12151 Avenue of the Americas
New York, NY 10020-1104
Counsel for petitioner

DENISE COTE, District Judge:

Petitioner Stellar Lines, S.A. ("Stellar"), a Liberian corporation, filed this action pursuant to 9 U.S.C. §§ 1-9 to confirm an arbitration award. Respondent Euroleader Shipping and Trading Corp. ("Euroleader"), owner of the M/V Benicoli Sierra (the "Vessel"), has not responded to petitioner's motion or otherwise appeared. For the reasons stated below, the petitioner's motion is granted.

BACKGROUND

On June 24, 1995, Stellar and Euroleader entered into a New York Produce Exchange Time Charter Party ("Charter"). Under the Charter, the Vessel was to carry cargo for the Greek military from the United States to Greece. During the trip, the Vessel's

main engine was damaged. Euroleader blamed Stellar for the damages and initiated an arbitration. As provided for by the Charter, an arbitration panel was constituted and held a series of twenty-two evidentiary hearings between September 1995 and April 1998. Following Euroleader's failure to make any post-hearing submission, Stellar submitted its post hearing memorandum and the proceedings were formally closed on March 19, 1999. By final award dated May 7, 1999, the panel concluded that Euroleader's claim was without merit and made an award in favor of Stellar for overpaid hire and costs. The final award directs Euroleader to pay Stellar a total of \$670,105.98. The final award also provides for interest in the amount of 7.75% per annum on the principal amount of \$575,983.79, to be accrued from the date of the award if Euroleader fails to make payment within thirty days of the award. Euroleader has made no such payment.

DISCUSSION

1. The Standard

Whether to recognize and enforce an arbitration award is governed in the first instance in this case by the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the "Convention"), 9 U.S.C. §§ 201-208. The Convention requires contracting states such as the United States,

to recognize an agreement in writing under which the parties undertake to submit to arbitration all or any differences which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not, concerning a subject matter capable of settlement by

arbitration.

Convention, Art. 11(1). The Second Circuit has held that

any commercial arbitral agreement, unless it is between two United States citizens, involves property located in the United States, and has no reasonable relationship with one or more foreign states, falls under the Convention.

Yusuf Ahmed Alghanim & Sons, W.L.L. v. Tays "R" Us, Inc., 126 F.3d 15, 19 (2d Cir. 1997) (quoting Jain v. de Marg, 51 F.3d 686, 689 (7th Cir. 1995)).

[2] Paragraph 17 of the Charter provides for the arbitration of all disputes that arise out of a commercial contractual relationship. Both parties are foreign corporations with their principal places of business outside of the United States. The agreement is, therefore, governed by the Convention.

[3] The confirmation of an arbitration award is a summary proceeding that converts a final arbitration award into a judgment of the court. Ottley v. Schwartzberg, 815 F.2d 373, 377 (2d Cir. 1987). A court shall confirm an arbitration award made under the Convention "unless it finds one of the grounds for refusal or deferral of recognition or enforcement of the award specified in the said Convention." 9 U.S.C. § 207. The Court may refuse recognition and enforcement of an award "at the request of the party against whom it is invoked, only if that party furnished to the competent authority" proof of the existence of any one of five circumstances. Convention, Art. V(1). Because Euroleader has not contested Stellar's motion in this case, none of these grounds for refusal is relevant. Under

the Convention, Article V(2), the Court may refuse to recognize an award upon its own finding that:

2. the subject matter of the difference is not capable of settlement by arbitration under the law of the country where recognition is sought;
3. the recognition or enforcement of the award would be contrary to the public policy of that country.

Convention, Art. V(2), reprinted at 9 U.S.C. § 201 note.

2. Subject Matter Capable of Settlement by Arbitration

[4] The Federal Arbitration Act ("FAA"), 9 U.S.C. §§ 1-14 (1988), governs arbitration in the United States and "reflects a legislative recognition of the 'desirability of arbitration as an alternative to the complications of litigation.'" Genesco, Inc.

v. T. Makiuchi & Co., 815 F.2d 840, 844. Section 2 of the FAA provides, in relevant part:

an agreement in writing to submit to arbitration an existing controversy . . . shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract.

9 U.S.C. § 2. This proceeding seeks confirmation of an arbitration award pursuant to a written agreement of the parties to arbitrate any controversy between them. Since Euroleader initiated the arbitration, it apparently could not contest the arbitrability of this dispute. This Court is not aware of any grounds for the revocation of this contract and finds that the disputed subject matter is therefore capable of resolution by arbitration under the laws of the United States.

3. Contrary to Public Policy

[5] The United States, as a signatory of the Convention, is in agreement with the central policy statement of the Convention, which is

to encourage the recognition and enforcement of commercial arbitration agreements in international contracts and to unify the standards by which agreements to arbitrate are observed and arbitral awards are enforced in the signatory countries.

Scherk v. Alberto-Culver Co., 417 U.S. 506, 520 n. 15 (1974).

See also Bergesen v. Joseph Muller Corp., 710 F.2d 928, 933 (2d Cir. 1983);

Fotochrome, Inc. v. Copal Co., 517 F.2d 512, 516 (2d Cir. 1975);

Parsons & Whittemore Overseas Co. v. Societe General de l'Industrie du Papier, 508 F.2d 969, 973 (2d Cir. 1974). This

statement evidences a strong public policy in support of arbitration proceedings and enforcement of arbitration awards.

A court should find that enforcement is contrary to public policy only where enforcement would violate our "most basic notions of morality and justice." Fotochrome, Inc., 517 F.2d at 516.

Parsons & Whittemore, 508 F.2d at 974. There is nothing in the submissions presented to the Court that suggests that enforcement

of this arbitration award would violate our basic notions of morality and justice. Instead, confirmation of the award is

consistent with the stated policy of the United States, and other signatories of the Convention, to encourage the resolution of

commercial disputes by arbitration.

(...)

CONCLUSION

For the reasons stated above, Stellar's motion is granted. The arbitral award is confirmed and the Clerk of Court shall enter judgment in amount of \$679,405.79 with interest at the rate of 7.75% per annum on the principal amount of \$575,983.79 from May 7, 1999 to the date of entry of the judgment.

SO ORDERED.

Dated: New York, New York
August 16, 1999

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Denise Cote
DENISE COTE
United States District Judge