



EDWARD VIGO FLORIAN, Plaintiff, v. CARNIVAL CORPORATION, Defendant,

CASE NO. 10-CV-20721 -- KING

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA

2010 U.S. Dist. LEXIS 82587; 22 Fla. L. Weekly Fed. D 320

May 25, 2010, Decided
May 25, 2010, Entered

COUNSEL: [*1] For Edward Vigo Florian, Plaintiff: Keith Steven Brais, Richard Dennis Rusak, Brais & Associates PA, Miami, FL.

For Carnival Corporation, Defendant: Scott P. Mebane, LEAD ATTORNEY, Valentina M. Tejera, Mase Lara Eversole PA, Miami, FL; John Maurice Mitchell, Carnival Cruise Lines, Miami, FL.

JUDGES: JAMES LAWRENCE KING, UNITED STATES DISTRICT JUDGE.

OPINION BY: JAMES LAWRENCE KING

OPINION

ORDER DENYING MOTION TO DISMISS AND GRANTING MOTION TO REMAND

THIS CAUSE comes before the Court upon Plaintiff's Motion to Remand (DE #5) and Defendant's Motion to Dismiss and Compel Arbitration (DE #8). The parties have responded (DE # 9 & 11). Defendant's removal of this case to this Court was premised upon the existence of a signed Seafarer's Agreement containing an arbitration provision, which would provide this Court with subject matter jurisdiction. ¹ However, the Agreement that Defendant presents does not cover the time period in which Plaintiff alleges he was injured during his employment with Defendant. Eleventh Circuit precedent dictates that "Article II of the Convention imposes a prerequisite on a party asking the court to compel arbitration: it requires that the party bring the court the written agreement." *Czarina, L.L.C. v. W.F. Poe Syndicate*, 358 F.3d 1286, 1291 (11th Cir. 2004). [*2] Indeed, the failure to produce a written agreement covering the time

period in which the injury is alleged to have taken place defeats a jurisdictional prerequisite of the Convention Act; namely, that there be an agreement in writing to arbitrate the dispute. *See Thomas v. Carnival Corp.*, 573 F.3d 1113, 1119 (11th Cir. 2009). Therefore, the Court does not have subject matter jurisdiction under the Convention Act, and the case must be remanded.

¹ *See* United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 21 U.S.T. 2517, 330 U.N.T.S. 3 ("the Convention") and its implementing legislation, 9 U.S.C. §§ 202-208 ("the Convention Act").

Accordingly, after careful consideration and the Court being otherwise fully advised, it is **ORDERED, ADJUDGED, and DECREED** that:

1. Plaintiff's Motion to Remand and Request for Attorney's Fee (DE #5) is hereby **GRANTED in PART**, as follows:

a. The Motion to Remand is **GRANTED**.

b. The Request for Attorney's Fees is **DENIED without prejudice** to raise the issue in a Motion for Attorney's Fees with all necessary supporting affidavits.

2. Defendant's Motion to Dismiss and Compel Arbitration (DE #8) is hereby **DENIED**.

3. All other unresolved [*3] pending motions are **DENIED as MOOT**.

4. This case is hereby **REMANDED** to the Eleventh Judicial Circuit of Miami-Dade County, Florida. The Clerk shall take all necessary steps to ensure that the file is transmitted to the state court clerk.

5. The Clerk shall **CLOSE** this case.

DONE AND ORDERED in Chambers, at Miami, Miami-Dade County, Florida, this 25th day of May, 2010.

/s/ James Lawrence King

JAMES LAWRENCE KING

UNITED STATES DISTRICT JUDGE

