

FILED

IN THE HIGH COURT
OF THE
REPUBLIC OF THE MARSHALL ISLANDS

AUG 10 2017
ASST. CLERK OF COURT
REPUBLIC OF THE MARSHALL ISLANDS

<p>MERVY LLOYD MONGAYA,</p> <p>Plaintiff,</p> <p>v.</p> <p>AET MCV BETA LLC, AET INC., LTD, and AET SHIPMANAGEMENT PTE LTD,</p> <p>Defendants.</p>	<p>CIVIL ACTION 2017-044</p> <p>ORDER GRANTING DEFENDANTS' MOTIONS TO STAY ACTION PENDING ARBITRATION</p>
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Tatyana Cerullo, counsel for plaintiff
Melvin Narruhn, counsel for plaintiff
Dennis Reeder, counsel for defendants
Nenad Krek, counsel for defendants

Plaintiff Mervy Lloyd Mongaya ("Mongaya") is an adult citizen of the Republic of the Philippines. He was employed as a seafarer on the M/V EAGLE TEXAS ("the Eagle"), which is owned and/or operated by defendants.

Prior to his employment on the Eagle, Mongaya signed a Philippine Overseas Employment Administration Standard Employment Contract ("the contract"). Section 29 of the contract requires seafarers to participate in arbitration for "claims and disputes" arising from their employment.

In August 2016, Mongaya was severely injured while performing manual labor on the Eagle. At the time, the Eagle was anchored off the coast of Florida.

In March 2017, Mongaya filed this action seeking damages for his injuries without having first participated in arbitration. The defendants filed motions to stay this matter pending arbitration. Mongaya argues that the contract is null and void because it violates the laws of the Republic.

The Court has carefully reviewed and considered Mongaya's submissions and arguments. The Court does not find that the contract is contrary to the laws of the Republic, does not find any grounds upon which the contract should be revoked, does not find that the contract is null and void, does not find that the contract is inoperative, and does not find that the contract is incapable of being performed. To the contrary, the Court finds that the laws of the Republic actually *require* Mongaya to participate in arbitration before proceeding in the present matter.

30 MIRC §304 states:

A written agreement to submit to arbitration an existing controversy or a controversy arising after the agreement, *is* valid, enforceable and, except on such grounds that exist for the revocation of any contract, irrevocable.

30 MIRC §305(1) states:

Subject to Subsections (2) and (3) of this Section¹, on the petition of a party to an arbitration agreement alleging that a party to the agreement refuses to arbitrate a controversy in accordance with the agreement, the High Court *shall* order the petitioner and the respondent to arbitrate the controversy, if it determines that a written agreement to arbitrate the controversy exists.

¹ Subsections (2) and (3) *allow, but do not require*, the Court to refuse to order arbitration under certain identified circumstances. The Court does not find any of those circumstances here.

Article II, Section 3 of the New York Convention on Enforcement and Recognition on Foreign Arbitral Awards, to which the Republic acceded in 2006, states:

The court of a Contracting State, when seized of an action in a matter in respect of which the parties have made an agreement within the meaning of this article, *shall*, at the request of one of the parties, refer the parties to arbitration, unless it finds that the said agreement is null and void, inoperative or incapable of being performed.

BASED ON THE FOREGOING, IT IS HEREBY ORDERED that this matter is stayed pending completion of arbitration.

DATED this 10th day of August, 2017.

BY THE COURT:



COLIN R. WINCHESTER
Associate Justice