IN THE SUPREME COURT
OF THE
REPUBLIC OF THE MARSHALL ISLANDS

MERVY LLOYD MONGAYA, Plaintiff-Appellant, vs. AET MCV BETA LLC, AET INC. LTD, and AET SHIPMANAGEMENT PTE LTD, Defendants-Appellees.	Supreme Court No. 2017-003 OPINION

BEFORE: CADRA, Chief Justice; SEABRIGHT,* and SEEBORG,** Acting Associate Justices

SEABRIGHT, Acting Associate Justice:

I. INTRODUCTION

This appeal involves a maritime personal injury action brought by a seafarer, Mervy Lloyd Mongaya ("Mongaya"), who signed an employment contract with Defendant AET Shipmanagement Pte Ltd ("ASP") to work on a vessel registered in the Republic of the Marshall Islands (the "RMI"). The contract included an

* The Honorable J. Michael Seabright, Chief United States District Court Judge, District of Hawaii, sitting by designation of the Cabinet.

** The Honorable Richard Seeborg, United States District Court Judge, Northern District of California, sitting by designation of the Cabinet.

arbitration clause and a choice of law clause. The registered owner of the vessel, Defendant AET MCV Beta LLC ("MCV"), and the operator of the vessel, Defendant AET Inc., Ltd., ("AIL") were not signatories to this contract (collectively referred to as the "nonsignatory Defendants").

The first issue before us is whether the nonsignatory Defendants may compel Mongaya to submit to arbitration under the employment contract's arbitration clause. Mongaya argues that the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the "Convention"), to which the RMI has acceded, precludes nonsignatories from compelling arbitration. We hold that the Convention does not apply because it has not been adopted into RMI domestic law, and under common law doctrine of equitable estoppel, the High Court properly determined that the nonsignatory Defendants could compel Mongaya to submit to arbitration.

The second issue on appeal is whether the employment contract's choice of law clause, mandating use of Philippine law, is unlawful under the Merchant Seafarers Act. We hold that the employment contract's choice of law clause is valid.

Accordingly, we affirm the High Court's August 10, 2017 Order Granting Defendants' Motions to Stay Action Pending Arbitration.

II. BACKGROUND

A. POEA Contract

On March 1, 2016, Mongaya, a citizen of the Republic of the Philippines, entered into a Philippine Overseas Employment Administration Contract of Employment (the "2016 POEA Contract") with ASP. Neither MCV nor AIL were signatories to the 2016 POEA Contract. Section 1.A. of the 2016 POEA Contract requires the "Principal/Employer/Master/Company" to provide "a seaworthy ship for the seafarer and take all reasonable precautions to prevent accident and injury to the crew including provision of safety equipment, fire prevention, safe and proper navigation of the ship and such other precautions necessary to avoid accident, injury or sickness to the seafarer."

Section 20.J. of the 2016 POEA Contract provides for employer liability when a seafarer suffers work-related injuries:

> The seafarer or his successor in interest acknowledges that payment for injury, illness, incapacity, disability or death and other benefits of the seafarer under this contract . . . shall cover all claims in relation with or in the course of the seafarer's employment, including but not limited to damages arising from the contract, tort, fault or negligence under the laws of the Philippines or any other country.

And Section 29 of the 2016 POEA Contract includes a mandatory arbitration clause:

> In cases of claims and disputes arising from this employment, the parties covered by a collective bargaining agreement shall submit the claim or dispute to the original and exclusive jurisdiction of the voluntary arbitrator or panel of voluntary arbitrators.

Finally, Section 31 of the 2016 POEA Contract includes a choice of law clause:

> Any unresolved dispute, claim or grievance arising out of or in connection with this contract including the annexes thereof, shall be governed by the laws of the Republic of the Philippines, international conventions, treaties and covenants to which the Philippines is a signatory.

Mongaya was employed on the MT Eagle Texas under this contract. The vessel is registered in the RMI. MCV is the owner of the vessel and ASP managed the vessel. AIL is alleged by Mongaya to be the operator of the vessel.

B. High Court Proceedings

On March 14, 2017, Mongaya filed a complaint for declaratory judgment and damages in the High Court. Mongaya asserted causes of action for negligence, unseaworthiness, and maintenance and cure against ASP, MCV, and AIL, and alleged that the "Defendants" employed him on board the vessel. Mongaya described the relationship between the Defendants — MCV was the registered

owner of the vessel, ASP was the managing agent, AIL and ASP "operated and/or controlled" the vessel.

Mongaya alleged the following facts: (1) that on or about August 4, 2016, he was working in the vessel's hold when a bag, being raised from the hold, broke loose, fell, and hit Mongaya on the head; (2) Mongaya was airlifted to a medical center in Florida, underwent surgery, and was hospitalized for approximately two weeks; (3) as a result of his injuries, Mongaya is totally and permanently disabled, suffering from permanent paralysis from the chest down, severely limited use of his arms, memory loss, and "diminished thought process."

Mongaya further alleged that "Defendants had the absolute duty to provide the Plaintiff with a safe and seaworthy vessel," and that "this duty was breached and violated by the Defendants . . . ." Mongaya claimed that the unseaworthiness of the vessel was the direct and proximate cause of the accident. Also, Mongaya claimed that the accident resulted from "the direct and vicarious acts of negligence of the Defendants," including failing to provide a safe workplace, appropriate safety equipment, supervision of crewmembers, and a properly staffed vessel. Mongaya does not differentiate between the individual Defendants in making these allegations.

On May 15, 2017, MCV filed a Motion to Stay Action and Compel Arbitration. Mongaya subsequently filed an opposition to MCV's motion. MCV

filed a reply, and then Mongaya filed a sur-reply. On June 12, 2017, AIL filed a Motion to Stay Action and Compel Arbitration. Mongaya subsequently filed an opposition to AIL's motion. On August 10, 2017, the High Court issued an Order Granting Defendants' Motions to Stay Action Pending Arbitration. Mongaya timely appealed to this Court.

III. STANDARD OF REVIEW

Questions of law are reviewed de novo. *Jack v. Hisaiah*, 2 MILR 206, 209 (2002); *Lobo v. Jejo*, 1 MILR (Rev.) 224, 225 (1991).

IV. DISCUSSION

In our view, Mongaya presents two issues on appeal: (1) whether the High Court erred when it allowed, under the doctrine of equitable estoppel, nonsignatories to the arbitration agreement, AIL and MCV, to compel Mongaya to arbitrate with them; and (2) whether the High Court erred under the 2016 POEA Contract's choice of law clause when it ordered Mongaya to arbitrate his claims against Defendants in the Republic of the Philippines applying Philippine law.

A. The Arbitration Clause

1. *The Convention Does Not Apply Because It Was Never Enacted Into Domestic Law*

As an initial matter, we must determine what law is applicable in determining whether nonsignatories to an arbitration agreement can compel a

signatory to arbitrate. Mongaya argues that the Convention applies, and that under the Convention, nonsignatories cannot compel a signatory to arbitrate. We hold that, under *Chubb Insurance (China) Co. v. Eleni Maritime Ltd.*, Supreme Court Case No. 2016-002 , slip op. at 6 (June 6, 2017), the Convention does not apply.

The RMI is a "dualist jurisdiction," where "the courts will only apply the legislation in effect — that is, the laws passed by the competent legislative bodies (e.g., the Nitijela) — and they will not consider intrinsic treaty provisions." *Chubb*, slip op. at *6; *see* Marshall Islands Const. art. V, §1(4) ("No treaty or other international agreement which is finally accepted by or on behalf of the Republic on or after the effective date of this Constitution shall, of itself, have the force of law in the Republic."). And although the RMI acceded to the Convention in 2006, it never enacted the Convention into domestic law. *See Chubb*, slip op. at 6. Thus, the Convention simply does not apply to this case.

2. *The Arbitration Act 1980 Does Not Answer Whether Nonsignatories Can Compel Signatories to Arbitrate*

Mongaya also argues that the Arbitration Act 1980 precludes nonsignatories to an arbitration agreement from compelling a signatory to arbitrate. We disagree and hold that the Arbitration Act 1980 is silent on this issue.

The Arbitration Act 1980 provides:

> 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.
> . . . .
> [O]n 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*.

30 MIRC Ch. 3 §§ 304-305 (emphases added).

> The Arbitration Act 1980 defines relevant terms as follows:
>
> (b) "arbitration agreement" means . . . a written agreement to submit a controversy to arbitration . . .
> . . . .
>
> (g) "party", in relation to an arbitration agreement, means a party to the agreement:
> (i) who seeks to arbitrate a controversy to the agreement;
> (ii) against whom the arbitration of a controversy pursuant to the agreement is sought . . . .

30 MIRC Ch. 3 § 302.

Mongaya argues that, because there was no written agreement to arbitrate between Mongaya and the nonsignatory Defendants, the nonsignatory Defendants cannot compel arbitration under the Arbitration Act 1980. We do not interpret the Arbitration Act 1980 so narrowly.

First, the Act defines "arbitration agreement" as "a written agreement to submit a controversy to arbitration." 30 MIRC Ch. 3 § 302(b). It is undisputed

that there is a written agreement between Mongaya and ASP to submit this controversy to arbitration. Second, although only "a party to an arbitration agreement" may compel arbitration under the Act, 30 MIRC Ch. 3 § 305(1), nothing in the Act's language precludes the application of the common law doctrine of equitable estoppel. And third, a court may compel arbitration under the Act "if it determines that a written agreement to arbitrate the controversy exists." *Id.* Again, there is no dispute as to the existence of a written agreement to arbitrate between Mongaya and ASP.[1] In sum, we reject Mongaya's argument that the Arbitration Act 1980 precludes nonsignatories from compelling arbitration.[2]

3. *Under the Common Law, Equitable Estoppel May Permit a Nonsignatory to an Arbitration Agreement to Compel a Signatory to Arbitrate*

United States courts recognize the common law doctrine of equitable estoppel, which may permit a nonsignatory to an arbitration agreement to compel a

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[1] Mongaya also argues that in *Air Marshall Islands, Inc. v. Dornier Luftfahrt, GMBH*, 2 MILR 211, 216 (2002), we refused to compel arbitration in the absence of a written agreement between the parties. In *Air Marshall Islands*, we held that "because the very existence of the agreement [was] challenged by one of the parties, the court may not compel such party to arbitrate." *Id.* Here, there is no challenge as to whether there was an agreement between Mongaya and ASP. *See id.* Thus, *Air Marshall Islands* provides no assistance to Mongaya.

[2] Mongaya also relies heavily on cases interpreting the Convention's specific language. But the Convention, unlike the Arbitration Act 1980, more narrowly defines "agreement in writing" as an agreement "signed by the parties." *See* Convention on the Recognition and Enforcement of Foreign Arbitral Awards art. II, § 2, June 10, 1958, 21 U.S.T. 2517; *Yang v. Majestic Blue Fisheries, LLC*, 876 F.3d 996, 1000 (9th Cir. 2017); *Kahn Lucas Lancaster, Inc. v. Lark Int'l Ltd.*, 186 F.3d 210, 214 (2d Cir. 1999), *abrogated on other grounds by Am. Int'l. Grp., Inc. v. Bank of Am. Corp.*, 712 F.3d 775 (2d Cir. 2013). Cases interpreting the Convention thus provide little guidance to interpretation of the Arbitration Act 1980.

signatory to arbitrate. *See, e.g.*, *Arthur Andersen LLP v. Carlisle*, 556 U.S. 624, 629-31 (2009). And we must follow this common law if it is not precluded by an RMI constitutional provision, statutory provision, treaty, customary law, or traditional practice. *See Republic v. Waltz*, 1 MILR (Rev.) 74, 77 (1987) ("Our holding is in accord with the greater weight of judicial authority based upon the common law, which we are obliged to follow in the absence of any provision in the Republic of the Marshall Islands Constitution, or in any custom or traditional practices of the Marshallese people or act of the Nitijela to the contrary."); *Likinbod and Alik v. Kejlat*, 2 MILR 65, 66 (1995) ("The 1979 Marshall Islands Constitution set forth 'the legitimate legal framework for the governance of the Republic.' . . . That framework continued the common law in effect as the governing law, in the absence of customary law, traditional practice or constitutional or statutory provisions to the contrary.") (footnote omitted).

In *Carlisle*, the United States Supreme Court recognized the common law doctrine of equitable estoppel in the context of nonsignatories to arbitration agreements. 556 U.S. at 629-31. *Carlisle* found that, "'traditional principles' of state law allow a contract to be enforced by or against nonparties to the contract through 'assumption, piercing the corporate veil, alter ego, incorporation by reference, third-party beneficiary theories, waiver and estoppel.'" *Id.* at 631 (quoting 21 Richard A. Lord, *Williston on Contracts* § 57:19 (4th ed. 2001)

(footnotes omitted)).[3] After determining that no provisions in the relevant statute (the Federal Arbitration Act) "alter[ed] background principles of state contract law regarding the scope of agreements (including the question of who is bound by them)," *Calisle* held that nonsignatories cannot be categorically barred from enforcing an arbitration agreement under the Federal Arbitration Act. *Id.* at 630-31.

Other courts have similarly held. For example, *JLM Industries, Inc. v. Stolt-Nielsen SA*, 387 F.3d 163, 177-78 (2d Cir. 2004), stated that "[o]ur cases have

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[3] *Williston on Contracts* states the following, in relevant part:

> [T]raditional principles of state law allow a contract to be enforced by or against nonparties to the contract through assumption, piercing the corporate veil, alter ego, incorporation by reference, third party beneficiary theories, waiver, and estoppel. Thus, a nonsignatory may acquire rights under or be bound by an arbitration agreement if so dictated by the ordinary principles of contract and agency. While a nonsignatory attempting to bind a signatory to an arbitration agreement is distinct from a signatory attempting to bind a nonsignatory, courts often consider both scenarios under a similar legal framework. According to principles of contract and agency law, arbitration agreements may be enforced by or against nonsignatories under any of six theories: (1) incorporation by reference; (2) assumption; (3) agency; (4) alter ego; (5) equitable estoppel; and (6) third party beneficiary. In deciding whether a party, despite being a nonsignatory to an arbitration agreement, may be equitably bound to arbitrate under traditional principles of contract and agency law, the court must expressly consider whether the relevant state contract law recognizes the particular principle as a ground for enforcing contracts against third parties.

Williston on Contracts § 57:19 (July 2018 Update) (footnotes omitted).

recognized that under principles of estoppel, a non-signatory to an arbitration agreement may compel a signatory to that agreement to arbitrate a dispute." And *MS Dealer Service Corp. v. Franklin*, 177 F.3d 942, 947 (11th Cir. 1999), stated that:

> Although arbitration is a contractual right that is generally predicated on an express decision to waive the right to trial in a judicial forum, this court has held that the lack of a written arbitration agreement is not an impediment to arbitration. This is because there are certain limited exceptions, such as equitable estoppel, that allow nonsignatories to a contract to compel arbitration.

(quotation marks and citations omitted), *abrogated on other grounds by Carlisle*, 556 U.S. at 631. *See also Sokol Holdings, Inc. v. BMB Munai, Inc.*, 542 F.3d 354, 358-59 (2d Cir. 2008).

Likewise, *Aggarao v. MOL Ship Management Co.*, 675 F.3d 355, 373 (4th Cir. 2012), a case also involving a POEA contract, held that "[w]ithout a doubt . . . 'a nonsignatory to an arbitration clause may, in certain situations, compel a signatory to the clause to arbitrate the signatory's claims against the nonsignatory despite the fact that the signatory and nonsignatory lack an agreement to arbitrate.'" (quoting *Am. Bankers Ins. Grp., Inc. v. Long*, 453 F.3d 623, 627 (4th Cir. 2006)); *see also Mundi v. Union Sec. Life Ins. Co.*, 555 F.3d 1042, 1045 (9th Cir. 2009) ("General contract and agency principles apply in determining the

enforcement of an arbitration agreement by or against nonsignatories. Among these principles are . . . estoppel." (citations and quotation marks omitted)); *Riley v. BMO Harris Bank, N.A.*, 61 F. Supp. 3d 92, 98 (D.D.C. 2014) ("Courts in the District of Columbia Circuit have held that non-signatories to an arbitration agreement, such as Defendants, may compel a signatory to the agreement to arbitrate a dispute pursuant to the doctrine of estoppel." (footnotes omitted)).

Thus, the common law doctrine of equitable estoppel permits nonsignatories to compel signatories to arbitrate in some situations. We now turn to the various tests that have developed to determine when the doctrine applies, and adopt the test used in *Mundi*, 555 F.3d at 1045, as the law of the RMI.

Mundi reasoned that a signatory may be required to arbitrate with a nonsignatory "because of the close relationship between the entities involved, as well as the relationship of the alleged wrongs to the non-signatory's obligations and duties in the contract and the fact that the claims were intertwined with the underlying contractual obligations." 555 F.3d at 1046 (citations and quotation marks omitted).

Other tests are substantially similar. *JLM Industries* held that the estoppel doctrine applied "where a careful review of the relationship among the parties, the contracts they signed, and the issues that had arisen among them discloses that the issues the nonsignatory is seeking to resolve in arbitration are intertwined with the

agreement that the estopped party has signed." 387 F.3d at 177 (internal editorial marks omitted); *see also Sokol Holdings*, 542 F.3d at 361-62 (discussing *JLM Industries*). In *MS Dealer Service Corp.*, the Eleventh Circuit discussed two different circumstances when equitable estoppel applies:

> First, equitable estoppel applies when the signatory to a written agreement containing an arbitration clause must rely on the terms of the written agreement in asserting its claims against the nonsignatory. When each of a signatory's claims against a nonsignatory makes reference to or presumes the existence of the written agreement, the signatory's claims arise out of and relate directly to the written agreement, and arbitration is appropriate. Second, application of equitable estoppel is warranted when the signatory to the contract containing the arbitration clause raises allegations of substantially interdependent and concerted misconduct by both the nonsignatory and one or more of the signatories to the contract.

177 F.3d at 947 (citations and internal editorial marks omitted).

And *Aggarao* set forth the following requirements:

> Although we have not specifically required allegations of collusion, we agree that, at a minimum, there must be allegations of coordinated behavior between a signatory and a nonsignatory defendant, and that the claims against both the signatory and nonsignatory defendants must be based on the same facts, be inherently inseparable, and fall within the scope of the arbitration clause.

675 F.3d at 374 (quotation marks and citations omitted).

After a careful review of these cases, we adopt the *Mundi* test — requiring (1) a "close relationship between the entities involved," (2) a relationship between "the alleged wrongs" and the nonsignatory's "obligations and duties in the contract," and (3) the claims be "intertwined with the underlying contractual obligations" — as the law in the RMI. 555 F.3d at 1046.

4. *Applying the Doctrine of Equitable Estoppel, the Nonsignatory Defendants May Compel Mongaya to Arbitrate*

We determine that: (1) a close relationship exists between ASP, MCV, and AIL; (2) a relationship exists between the wrongs alleged by Mongaya and the obligations and duties in the 2016 POEA Contract; and (3) Mongaya's claims are intertwined with the contractual obligations arising from the 2016 POEA Contract. Thus, we hold that the nonsignatory Defendants may compel Mongaya to arbitrate.[4]

Aggarao is a case that is both similar factually to the instant case and uses a test similar to our own to determine if equitable estoppel applies. In that case,

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[4] Mongaya relies heavily on *Yang*, 876 F.3d at 999, to argue that equitable estoppel does not apply to this case. *Yang*, in dicta and applying California law, refused to compel a nonsignatory to arbitrate because Yang "would have a claim independent of the existence of the agreement containing the arbitration provision," namely that the defendant furnished an unseaworthy vessel and crew. 876 F.3d at 1002-03 (emphasis omitted). Further, the court determined that Yang's Death on the High Seas Act claims, general maritime law claims, and Jones Act claims did not require proof of a written employment agreement. *Id.* The court concluded that equitable estoppel did not apply because the plaintiff had claims that did not rely on obligations arising from the employment contract. *Id.* In our view, *Yang* applied an overly restrictive view of equitable estoppel, one inconsistent with general common law.

Aggarao entered into a POEA contract, which contained an arbitration clause identical to the clause in the instant 2016 POEA Contract. 675 F.3d at 360-61. While working on the vessel, Aggarao was injured by a deck lifting machine. *Id.* at 362. Aggarao filed a motion seeking a preliminary injunction against two nonsignatories to the agreement — the manager of the vessel and the operator of the ship — to provide maintenance and cure in the United States. *Id.* at 364. On appeal, the Fourth Circuit held that Aggarao must arbitrate his claims against the nonsignatory defendants in the Republic of the Philippines. *Id.* at 380.

The court held that Aggarao's claims against both the signatory and nonsignatory defendants "allegedly arose from the same occurrence or incident, i.e., the tragic circumstances on the Asian Spirit . . . resulting in his injuries." *Id.* at 374 (quotation marks and citations omitted). The court also determined that the conduct of the defendants "was coordinated by virtue of each defendant's alleged involvement in that incident — instigating and contributing to one another." *Id.* For example, one defendant carried out the orders of another. *Id.* Also, the unsafe conditions were exacerbated by the design defects of the ship, which was owned by a third defendant. *Id.* The court said, "[i]n short, Aggarao's claims against [the signatory defendant] depend, in some part on the nature of tortious acts allegedly committed by [the nonsignatory defendants]." *Id.* (quotation marks and citation omitted).

The court also found important that Aggarao "emphasize[d] in his claims against [the defendants] that his injuries occurred while he was acting in the scope of his employment," which were covered under the POEA contract. *Id.* at 375. That contract, which contained the arbitration clause, also included obligations to provide a seaworthy vessel as well as maintenance and cure. *Id.*

The facts in *Aggarao* are nearly identical to the facts here. Mongaya, like the plaintiff in *Aggarao*, is a citizen of the Republic of the Philippines and signed a POEA contract before being subsequently injured while performing that employment contract. The 2016 POEA Contract, like the contract in *Aggarao*, requires the "Principal/Employer/Master/Company" to provide a seaworthy ship as well as to provide other safety precautions to "avoid accident, injury or sickness to the seafarer."

While Mongaya's complaint does not explain in detail how the Defendants interacted, as did the plaintiff in *Aggarao*, Mongaya does describe the Defendants' relationships (owner, operator, and manager). Further, Mongaya brings all his claims uniformly against all the Defendants, without making specified allegations as to certain Defendants. Mongaya claimed that *all* Defendants failed to provide Mongaya with a safe place to work, appropriate safety equipment, a properly supervised crew, a properly staffed vessel, or a seaworthy vessel.

A close relationship — that of owner, operator, and manager of the vessel — exists between MCV, AIL, and ASP. A relationship exists among the wrongs alleged by Mongaya, such as the failure to provide a seaworthy vessel and utilize proper safety precautions, and the obligations and duties in the 2016 POEA Contract, which required the employer to provide a seaworthy vessel and safety precautions. Further, Mongaya's claims of negligence, unseaworthiness, and maintenance and cure are intertwined with the contractual obligations arising from the 2016 POEA Contract, such as the obligations to provide a seaworthy vessel and safety precautions. We thus hold that the doctrine of equitable estoppel applies, and accordingly, the nonsignatory Defendants may compel Mongaya to participate in arbitration.

B. The Choice of Law Provision

Mongaya next argues that RMI law should govern Mongaya's claims rather than Philippine law, which is required by the choice of law clause in the 2016 POEA Contract. Citing §§ 853 and 858 of the Merchant Seafarers Act, Mongaya argues that the RMI has "strong public policy that favors the application of the laws of the Republic to disputes between seafarers and their employers on vessels registered in and flying the flag of the Republic." Mongaya also argues that "[t]he laws of the Republic prohibit any provision in a labor contract that attempts to set aside the application of the laws of the Republic . . . ."

The Merchant Seafarers Act provides:

> **§853. Contracts for seafaring labor.**
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> . . . .
>
> All contracts relating to service aboard a vessel registered under this Title shall be governed in interpretation and application by the Laws of the Republic, including this Chapter and any Regulations thereunder.
>
> . . . .
>
> **§858. Provisions prohibited in labor contracts.**
>
> It shall be unlawful for any employer . . . to enter into, any labor contract containing any provision which attempts to set aside the application of or is inconsistent with or is violative of the laws of the Republic or which prescribes terms or conditions of employment less favorable to seafarers than those set forth in this Chapter . . . and any such prohibited provisions shall be deemed null and void.

30 MIRC Ch. 8 §§ 853, 858.

First, Mongaya appears to argue that the 2016 POEA Contract's choice of law provision that requires application of Philippine law must be declared null and void because it "sets aside" application of RMI law.

But if we were to follow this interpretation, every RMI flag vessel could be compelled to arbitrate under RMI law, no matter whether the parties had agreed to a choice of law provision that said otherwise. Choice of law provisions "in international commercial contracts are 'an almost indispensable precondition to achievement of the orderliness and predictability essential to any international

business transaction,' and should be enforced absent strong reasons to set them aside." *See Northrop Corp. v. Triad Int'l Mktg. S.A.*, 811 F.2d 1265, 1270 (9th Cir. 1987), modified on other grounds, 842 F.2d 1154 (9th Cir. 1988) (citing *Scherk v. Alberto-Culver Co.*, 417 U.S. 506, 516-20 (1974), *and M/S Bremen v. Zapata Off-Shore Co.*, 407 U.S. 1, 15 (1972)). We cannot read the plain language of the Merchant Seafarers Act to lead to this absurd result suggested by Mongaya. *See Dribo v. Bondrik*, 3 MILR 127, 138 (2010) ("It has long been recognized that the literal meaning of a statute will not be followed when it produces absurd results.") (citing *Lamie v. United States Trustee*, 540 U.S. 526, 534 (2004), *Helvering v. Hammel*, 311 U.S. 504, 510-11 (1941), *and Sorrells v. United States*, 287 U.S. 435, 446 (1932)).

Second, Mongaya argues that Philippine law "is inconsistent with or is violative of" RMI law, but nowhere identifies any such specific law. Nor does Mongaya present any facts showing how Philippine law sets terms or conditions of employment less favorable than RMI law. And we will not consider arguments made for the first time during oral argument. *Walker Int'l Holdings Ltd. v. Republic of Congo*, 395 F.3d 229, 232 (5th Cir. 2004) (argument deemed waived when first asserted at oral argument); *Butler v. Curry*, 528 F.3d 624, 642 (9th Cir. 2008) (same); *Veluchamy v. F.D.I.C.*, 706 F.3d 810, 817 (7th Cir. 2013) ("[A]rguments raised for the first time at oral argument are waived.").

Thus, we have no basis to find, even under Mongaya's interpretation of the statute, that the choice of law clause violates the Merchant Seafarers Act because Philippine law is somehow at odds with RMI law.

Accordingly, we hold that the choice of law provision stands.

V. CONCLUSION

For the foregoing reasons, we AFFIRM the High Court's August 10, 2017 Order Granting Defendants' Motions to Stay Action Pending Arbitration.

DATED: August 7, 2018 /s/ Daniel N. Cadra, Chief Justice

DATED: August 7, 2018 /s/ J. Michael Seabright, Associate Justice

DATED: August 7, 2018 /s/ Richard Seeborg, Associate Justice