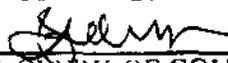


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FILED

DEC 27 2018


ASST. CLERK OF COURTS
REPUBLIC OF THE MARSHALL ISLANDS

IN THE HIGH COURT

OF THE

REPUBLIC OF THE MARSHALL ISLANDS

Appeal 2018-015

VIRGILIO T. DIERON, JR.,

H.Ct. Civil No. 2017-245

Plaintiff,

**PLAINTIFF'S NOTICE OF APPEAL
TO THE SUPREME COURT UNDER
RULE 3 AND 4 OF THE MARSHALL
ISLANDS RULES OF THE SUPREME
COURT**

v.

STAR TRIDENT XII, LLC

Defendants.

NOTICE IS HEREBY GIVEN that Plaintiff-Appellant, VIRGILIO T. DIERON, JR., does intend to appeal the rulings rendered by written Orders of this Court, specifically the *Order Granting SBSC's Motion to Intervene* issued on November 15, 2018, and the *Order Granting Motions to Compel Arbitration*, which was issued on November 23, 2018. Copies of the *Order Granting SBSC's Motion to Intervene*, and the *Order Granting Motions to Compel Arbitration* are attached to this Notice.

The High Court split in two *SBSC's Motion to Intervene and to Compel Arbitration* filed on December 6, 2017. The High Court divided the motion and issued its first order, entitled *Order Granting SBSC's Motion to Intervene*, dated November 15, 2018. The High Court then issued a second *Order Granting Motions to Compel Arbitration*, dated November 23, 2018, which granted defendant Trident's *Motion to Compel Arbitration* and also granted the second half of SBSC's split motion seeking to compel arbitration, although no claims had been made against it.

Dieron respectfully submits his Notice of Appeal of the *Order Granting Motions to Compel Arbitration* dated November 23, 2018, is timely. To the extent this Honorable Court determines review of the *Order Granting SBSC's Motion to Intervene* issued on November 15, 2018, is untimely, Dieron respectfully requests this Honorable Court grant an extension of time, given the precedential nature of the issue and the procedural split of the issue by the High Court.

Plaintiff Dieron appeals both orders of the High Court. The *Order Granting SBSC's Motion to Intervene* is integral and indivisible from *SBSC's Motion to Intervene and to Compel Arbitration*. SBSC's motion to intervene and motion to compel arbitration were made in the same document by SBSC. Moreover, the *Order Granting Motions to Compel Arbitration* ordered Dieron to arbitrate his claims against SBSC, which was superfluous, as there are no claims against SBSC to arbitrate in the litigation.

The following is a concise statement of the questions presented by this Appeal:

- I. Did the High Court properly allow SBSC to intervene and interpose the terms of the POEA Contract into this litigation?
- II. Did the High Court properly compel Dieron to arbitrate his claims against SBSC?
- III. Did the High Court properly compel Dieron to arbitrate his claims against Trident under the doctrine of equitable estoppel?
- IV. Did the High Court properly apply the POEA Contract's choice of law and compensation clauses to Dieron's claims against Trident?
- V. Should the *Mongaya* decision's ruling that application of RMI law to RMI vessels under the provisions of the RMI Merchant Seafarers Act is absurd be revisited?

Proof of service of this Notice of Appeal on all adverse parties as prescribed by the SCRP is attached.

Date: December 21, 2018

Respectfully submitted,



Tatyana Cerullo

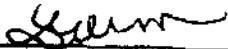
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Attorneys for Plaintiff,
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FILED

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ASST. CLERK OF COURTS
REPUBLIC OF THE MARSHALL ISLANDS

IN THE HIGH COURT

OF THE

REPUBLIC OF THE MARSHALL ISLANDS

Appeal 2018-015

VIRGILIO T. DIERON, JR.,

H.Ct. Civil No. 2017 - 245

Plaintiff,

CERTIFICATE OF SERVICE

v.

STAR TRIDENT XII, LLC

Defendant.

I hereby certify that on 20 November 2018, a true and correct copy of Plaintiff's Notice of Appeal was served upon the following by email attachment in PDF format to:

Dennis J. Reeder and Nenad Krek, Attorneys for Defendant

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dreeder.rm@gmail.com

nkrek@amkhawaii.com



Tatyana Cerullo

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ASST. CLERK OF COURTS
REPUBLIC OF THE MARSHALL ISLANDS

IN THE HIGH COURT
OF THE
REPUBLIC OF THE MARSHALL ISLANDS

VIRGILIO T. DIERON, JR.,)	CIVIL ACTION NO. 2017-245
)	
plaintiff,)	
)	
v.)	
)	ORDER GRANTING SBSC'S MOTION TO
STAR TRIDENT XII, LLC,)	INTERVENE
)	
defendant.)	
)	
)	

TO: Tatyana Cerullo, counsel for plaintiff Virgilio T. Dieron, Jr.
Dennis J. Reeder, counsel for defendant Star Trident XII, LLC, and Proposed Intervening
defendant Star Bulk Shipmanagement Company (Cyprus) Limited

I. INTRODUCTION

This case is a maritime personal injury action brought by a seafarer, plaintiff Virgilio T. Dieron, Jr. ("Dieron"), a citizen of the Republic of the Phillipines, who signed an employment contract with the Proposed Intervening Defendant Star Bulk Shipmanagement Company (Cyprus) Limited ("SBSC") to work on a vessel registered in the Republic of the Marshall Islands ("RMI"), the M/V Star Markella (the "Vessel"). The contract included an arbitration clause and a choice of law clause. The Vessel was, and is, owned by Defendant Star Trident XII, LLC ("Trident"). Trident was not a signatory to the contract.

In its Motion for Leave to Intervene and to Compel Arbitration filed on December 6, 2017 ("Motion to Intervene and to Compel Arbitration"), SBSC moved for leave to intervene

under MIRCP 24(a)(2) and to compel Dieron to arbitrate all claims alleged in the Complaint with both SBSC and Trident. For the reasons set forth below, the Court grants SBSC leave to intervene. The Court will address SBSC's motion to compel arbitration in a separate order along with Trident's motion to compel arbitration.

II. BACKGROUND

A. Dieron's Claims

In his Complaint, filed on October 16, 2017, Dieron sued Trident alleging claims for unseaworthiness, negligence, and maintenance and cure, arising from a personal injury he suffered on June 19, 2016, while serving as an employee on board the Vessel. At the time of the accident the Vessel was at port at Itacostisasra, Brazil. Dieron's injuries resulted in the amputation of his left arm, the amputation of his left leg, the fracture of his right wrist, the loss of vision in his right eye, disfiguring damage to his face, and brain injury. Compl. ¶ 8.

With respect to the accident, Dieron alleges that Trident "had the absolute duty to provide [him] with a safe and seaworthy vessel," that "this duty was breached and violated by" Trident, and that the "unseaworthiness was a direct and proximate cause of the accident [that] caused the severe injuries to [him]." Compl. ¶¶ 10-11. Further, Dieron claims that his injuries were "both directly and proximately caused by the direct and vicarious acts of negligence of [Trident]," including failing to provide a safe workplace, appropriate safety equipment, supervision of crew members, and a properly staffed vessel.

As a result of Trident's breach of duty and Dieron's resulting injuries, Dieron seeks compensatory and punitive damages.

B. The POEA Contract

In order to be employed on board the Vessel, Dieron on April 21, 2016, signed with SBSC a standard Philippine Overseas Employment Administration contract for employment on board the Vessel (the "POEA Contract"). SBSC is an affiliate company of Trident, and the ship manager of the Vessel. In the POEA Contract, Dieron agreed to arbitrate disputes arising from his employment, including claims related to personal injury.

Section I.A.4. of the 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 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.

Section 29 of the 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. If the parties are not covered by a collective bargaining agreement, the parties may at their option submit the claim or dispute to either the original and exclusive jurisdiction of the National Labor Relations Commission (NLRC), pursuant to Republic Act (RA) 8042 otherwise known as the Migrant Workers and Overseas Filipinos Act of 1995, as amended, or to the original and exclusive jurisdiction of the voluntary arbitrator or panel of arbitrators. If there is no

provision as to the voluntary arbitrators to be appointed by the parties, the same shall be appointed from the accredited voluntary arbitrators of the National Conciliation and Mediation Board of the Department of Labor and Employment.

Section 31 of the 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.

III. DISCUSSION

A. Intervention under MIRC, Rule 24(a)

Under the Marshall Island Rules of Civil Procedure ("MIRC"), Rule 24(a) provides in relevant part as follows:

(a) Intervention of Right. On timely motion, the court must permit anyone to intervene who:

* * *

(2) claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the moving party's ability to protect its interest, unless existing parties adequately represent that interest.

As MIRC, Rule 24(a), is the same or substantially similar to Rule 24(a) under both United States federal and state rules of civil procedure, this Court can look to United States federal and state court decisions that interpret and apply MIRC, Rule 24(a).¹

With respect rule 24(a), the United States Ninth Circuit Court of Appeals applies a four-part test under Rule 24(a), which it construes liberally in favor of potential intervenors.

We apply a four-part test under Rule 24(a): (1) the application for intervention

¹*Kabua v. Kabua, et al.*, 1 MLR 96, 104 (1988) ("MIRCivP Rule 19 mirrors Rule 19 of Federal Rules of Civil Procedure and as such MIRCivP Rule 19 carries the construction placed upon it by the Federal Courts.")

must be timely; (2) the applicant must have a "significantly protectable" interest relating to the property or transaction that is the subject of the action; (3) the applicant must be so situated that the disposition of the action may, as a practical matter, impair or impede the applicant's ability to protect that interest; and (4) the applicant's interest must not be adequately represented by the existing parties in the lawsuit.

In general, we construe Rule 24(a) liberally in favor of potential intervenors. In addition to mandating broad construction, our review is guided primarily by practical considerations, not technical distinctions.

Southwest Center for Biological Diversity v. Berg ("Berg"), 268 F.3d 810, 817-8 (9th Cir. 2001) (citations and additional punctuation omitted).

With respect to arbitration, both federal and state courts allow intervention as of right to preserve a party's right to arbitrate a dispute. *See, e.g., Technology & Intellectual Property Strategies Group PC v. Insperity, Inc.*, 2012 WL 6001098, No. 12-CV-03163-LHK (N.D.Cal., Nov. 29, 2012) ("*Insperity*") (granting intervention as of right under Rule 24(a)(2)); *CBS Inc. v. Snyder*, 136 F.R.D. 364 (S.D.N.Y. 1991) ("*Snyder*") (same); *Matson v. Lamb*, 947 S.W.2d 324 (Ark. 1997) (same).

1. SBSC's Motion is timely

As noted above, the *Berg* test requires that "the application for intervention [under MIRCP, Rule 24(a)] must be timely." Similarly, the *See generally*, § 1916 Timeliness of Motion, 7C Fed. Prac. & Proc. Civ. § 1916 (3d ed.).

In the present case, SBSC on December 7, 2017, filed its Motion to Intervene and to Compel Arbitration in response to Dieron's Complaint filed October 14, 2017. SBSC did not unduly delay filing its motion. Memorandum in Support of Motion to Intervene and to Compel Arbitration ("Memo in Support"), at 6. Dieron does not dispute that the motion to intervene was

timely. *See* Opposition to SBSC's Motion to Intervene and to Compel Arbitration ("Opposition"), at 3.

2. SBSC has a significant protectable interest

Not only must the Motion to Intervene be timely, but under MIRCP, Rule 24(a)(2), and the *Berg* test, "the applicant must [also] have a "significantly protectable" interest relating to the property or transaction that is the subject of the action."

In its Memo in Support, SBSC asserts that its right to enforce the POEA Contract's arbitration provision, and the right to have the contract it has signed properly interpreted, are significant protectable interests that support intervention as of right. *Id.*, at 6, citing *Insperty, supra*, at *7; *Snyder, supra*, at 368. In response, Dieron claims that because his claims arise under general maritime law, and not under the POEA Contract, they are not subject to the POEA Contract's arbitration clause; therefore, SBSC does not have a significant protectable interest. Opposition, at 6-7. Further, *Insperty* is not applicable as the claims in that case arose out of the contract. Plaintiff's Surreply . . . ("Pltf's Surreply"), at 2.

Even if Dieron's assertions regarding the source of his claims are true (*i.e.*, general maritime law versus the POEA Contract), SBSC still has a significant protectable interest in litigating the applicability of the arbitration clause set forth in Section 29 of the POEA Contract. This is so because under Section 20.J. of the POEA Contract, SBSC's liability covers not just claims arising under the contract, but "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." Under Section 20.J., SBSC, as the employer, is liable not just for claims arising under the POEA Contract but for all claims

arising under "contract, tort, fault or negligence." These claims include Dieron's claims under general maritime law for unseaworthiness, negligence and maintenance and cure, arising from a personal injury in suffered while serving as an employee on board the Vessel.

Further, as SBSC urges in its Reply, at 4, it "has a legally protected interest because the [POEA] Contract includes terms and conditions, including an arbitration clause, which SBSC interprets as covering Trident, and SBSC perceives that a different interpretation would prejudice its business model [as the manager Vessel manager for Trident]. This perceived harm to SBSC's business model from an adverse interpretation of its Contract with Dieron gives it the right to be heard by this Court when it interprets the Contract."

In response, Dieron counters that SBSC did not negotiation the POEA Contract, but is just a party to it, and that Dieron claims do not arise under the POEA Contract. Plt's Surreply, at 3. Dieron's argument that SBSC merely signed by did not negotiate the POEA Contract, does not change the fact that SBSC has an interest in protecting its rights under the contract. Further, as noted earlier, the fact that Dieron's claims do not arise under the POEA Contract does not alter the fact that their resolution by arbitration is covered by the contract.

3. Disposing of the action may practically impair SBSC's interest

In addition to a timely motion and a significant protectable interest, MIRCP, Rule 24(a)(2), and the *Berg* test, require that the moving party's interest "is so situated that disposing of the action may as a practical matter impair or impede the moving party's ability to protect its interest." In this regard, SBSC asserts that its right to enforce the POEA Contract's arbitration provision would be impaired if Dieron, without SBSC present in this case, can avoid Trident's demand for arbitration under the contract. As a practical matter, SBSC would have lost its right

to enforce the arbitration provision. Memo in Support, at 6.

In response, Dieron argues that "a decision that plaintiff is not required to arbitrate his claims against Trident has no effect on the arbitrability of any claims he bring[s] against SBSC." Opposition, at 9-10. However, the relevant interest is not SBSC's ability to arbitrate any claims Dieron asserts against SBSC, but SBSC's ability to be heard in this action on the issue whether the arbitration clause in the POEA Contract with Dieron also includes Trident. As the court in *Insperty* noted: "If Plaintiff prevails in this lawsuit without [the intervenor], [the intervenor] will, as a practical matter, be denied the right to enforce the provisions in the [contract] requiring mandatory arbitration." *Id.* at *7. Reply in Support of Motion . . . ("Reply"), at 4.

4. SBSC is not adequately represented

Finally, MIRCPC, Rule 24(a)(2), and the *Berg* test do not allow the moving party to intervene to protect its interest if "existing parties adequately represent that interest." SBSC asserts it can only be deemed to be adequately represented by Trident if Dieron concedes that Trident has the right to enforce the arbitration clause in the Contract. Otherwise, if Dieron contests Trident's right to compel arbitration because Trident is a non-signatory of the Contract, Trident may not adequately represent SBSC's interest as a signatory. *See Insperty, supra*, at *8 (holding that the signatory seeking intervention was not adequately represented by its non-signatory corporate parent, because the plaintiff contested the corporate parent's right to enforce the arbitration agreement as a non-signatory).

In response, Dieron argues that SBSC's interest is adequately represent by Trident because Trident makes substantially the same argument as SBSC to compel arbitration. Opposition, at 10. However, at the same time Dieron argues that Trident, as a non-signatory to

the POEA Contract, does not have the right to compel arbitration. Reply, at 4-5; Plaintiff's Opposition to [Trident's] Motion to Compel Arbitration ("Opposition to Trident's Motion"), at 5-6. Dieron cannot have it both ways. As the party opposing intervention, Dieron has not met the burden of establishing adequate representation.²

IV. CONCLUSION

For the reasons set forth above, the Court grants SBSC leave to intervene as a defendant.

Ordered and Entered: November 15, 2018.

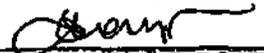
A handwritten signature in black ink, appearing to read 'C. Ingram', written over a horizontal line.

Carl B. Ingram
Chief Justice, High Court

²*Matson, Inc. v. Lamb & Associates Packaging, Inc.*, 947 S.W.2d 324, 326 (Ark. 1997) citing *SEC v. Dresser Indus., Inc.*, 628 F.2d 1368 (C.A.D.C.1980); *Liz Claiborne, Inc. v. Mademoiselle Knitware, Inc.*, 1996 WL 346352 (S.D.N.Y.1996); *CBS, Inc. v. Snyder*, 136 F.R.D. 364 (S.D.N.Y.1991); 7C Charles Alan Wright, Arthur R. Miller, and Mary Kay Kane, *Federal Practice and Procedure*, Civil 2d § 909 (1986).

FILED

NOV 23 2018



ASST. CLERK OF COURTS
REPUBLIC OF THE MARSHALL ISLANDS

**IN THE HIGH COURT
OF THE
REPUBLIC OF THE MARSHALL ISLANDS**

<p>VIRGILIO T. DIERON, JR.,</p> <p>plaintiff,</p> <p>v.</p> <p>STAR TRIDENT XII, LLC, and STAR BULK SHIPMANAGEMENT COMPANY (CYPRUS) LIMITED</p> <p>defendants.</p>	<p>CIVIL ACTION NO. 2017-245</p> <p>ORDER GRANTING MOTIONS TO COMPEL ARBITRATION</p>
--	--

TO: Tatyana Cerullo, counsel for plaintiff Virgilio T. Dieron, Jr.
Dennis J. Reeder, counsel for defendant Star Trident XII, LLC, and intervening defendant
Star Bulk Shipmanagement Company (Cyprus) Limited

I. INTRODUCTION

This case is a maritime personal injury action brought by a seafarer, plaintiff Virgilio T. Dieron, Jr. ("Dieron"). Dieron is a citizen of the Republic of the Philippines, who signed a standard Philippine Overseas Employment Administration contract ("POEA Contract") with Intervening Defendant Star Bulk Shipmanagement Company (Cyprus) Limited ("SBSC") to work on the M/V Star Markella (the "Vessel"), a vessel registered in the Republic of the Marshall Islands ("RMI"). The Vessel was, and is, owned by Defendant Star Trident XII, LLC ("Trident"), an affiliate company of SBSC. Defendant Trident was not a signatory to the POEA Contract. However, both SBSC and Trident seek to compel Dieron to arbitrate his claims against them under the terms of the contract.

The POEA Contract includes an arbitration clause, a choice of law clause, and an elaborate scheme of compensation for personal injuries and illness. Under the POEA Contract, Dieron agreed to arbitrate in the Philippines and under Philippine law disputes arising from his employment, including claims related to personal injury. Also, under the POEA Contract, Dieron agreed that compensation paid under the contract covers all claims arising from his employment under the laws of any country.

Defendants Trident and SBSC have moved to compel Dieron to arbitrate his personal injury claims against them and to stay this action pursuant to the Arbitration Act 1980 (the "1980 Arbitration Act"), Title 30 MIRC §305. For the reasons set forth below, the Court grants the motions. *See* Trident's Amended Motion to Compel Arbitration filed October 19, 2018 ("Amended Motion") and SBSC's Motion for Leave to Intervene and to Compel Arbitration filed December 6, 2017 ("SBSC's Motion").

II. FACTUAL BACKGROUND

1. Dieron is a citizen of the Republic of the Philippines. Complaint ("Compl.") ¶ 1.
2. Trident is the owner of the Vessel. *Id.* ¶ 2.
3. SBSC, an affiliate of Trident, is the manager of the Vessel with responsibility for hiring the Vessel's crew. Declaration of Georgia Mastagaki ("Mastagaki Decl.").
4. SBSC was the authorized representative of Trident in connection with signing up the Vessel's crew and executing seafarers' employment contracts, including the contract with Dieron. Supplemental Declaration of Georgia Mastagaki ("Supp. Mastagaki Decl.").
5. No entity other than Trident and SBSC has operated the Vessel. *Id.*
6. On April, 21, 2016, Dieron signed the POEA Contract with SBSC. Declaration of

Ma Lilli May M. Maduro ("Maduro Decl.") and Exhs. "1" through "6" thereto. The cover page of the Contract shows that Dieron was hired to work on board the STAR MARKELLA. Maduro Decl., Exh. "1."

7. On June 19, 2016, Dieron was injured in the course of his employment on board the Vessel. Compl. ¶ 9.

8. Dieron's injuries resulted in the amputation of his left arm, the amputation of his left leg, the fracture of his right wrist, the loss of vision in his right eye, disfiguring damage to his face, and brain injury. He also has been diagnosed with post-traumatic stress disorder. *Id.* ¶ 8.

9. With respect to the accident, Dieron alleges that Trident "had the absolute duty to provide [him] with a safe and seaworthy vessel," that "this duty was breached and violated by" Trident, and that the "unseaworthiness was a direct and proximate cause of the accident [that] caused the severe injuries to [him]." Compl. ¶¶ 10-11.

10. Further, Dieron claims that his injuries were "both directly and proximately caused by the direct and vicarious acts of negligence of [Trident]," including failing to provide a safe workplace, appropriate safety equipment, supervision of crew members, and a properly staffed vessel. Compl. ¶ 12.

11. As a result of Trident's breach of duty and Dieron's resulting injuries, Dieron seeks compensatory and punitive damages. Compl. ¶¶ 12-14.

12. Section I.A.4 of the 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." *See* Maduro Decl., Exhs. "2," "5"; Declaration of Nenad Krek ("Krek Decl."), Exhs. "3," "4."

13. Sections 20.A.2, 3 and 6 of the POEA Contract provide for employer liability when a seafarer suffers work-related injuries:

2. If the injury or illness requires medical and/or dental treatment in a foreign port, the employer shall be liable for the full cost of such medical, serious dental, surgical and hospital treatment as well as board and lodging until the seafarer is declared fit to work or to be repatriated. However, if after repatriation, the seafarer still requires medical attention arising from said injury or illness, he shall be so provided at cost to the employer until such time he is declared fit or the degree of his disability has been established by the company-designated physician.

3. In addition to the above obligation of the employer to provide medical attention, the seafarer shall also receive sickness allowance from his employer in an amount equivalent to his basic wage computed from the time he signed off until he is declared fit to work or the degree of disability has been assessed by the company-designated physician. The period within which the seafarer shall be entitled to his sickness allowance shall not exceed 120 days. Payment of the sickness allowance shall be made on a regular basis, but not less than once a month.

6. In case of permanent total or partial disability of the seafarer caused by either injury or illness the seafarer shall be compensated in accordance with the schedule of benefits enumerated in Section 32 of his Contract.

See Maduro Decl., Exh. "2"; Declaration of Nenad Krek ("Krek Decl."), Exh. "4."

14. Section 20.J. of the POEA Contract also 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.

15. Section 29 of the 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. If the parties are not covered by a collective bargaining agreement, the parties may at their option submit the claim or dispute to either the original and exclusive jurisdiction of the National Labor Relations Commission (NLRC), pursuant to Republic Act (RA) 8042 otherwise known as the Migrant Workers and Overseas Filipinos Act of 1995, as amended, or to the original and exclusive jurisdiction of the voluntary arbitrator or panel of arbitrators. If there is no provision as to the voluntary arbitrators to be appointed by the parties, the same shall be appointed from the accredited voluntary arbitrators of the National Conciliation and Mediation Board of the Department of Labor and Employment. *Id.*

16. Section 31 of the 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. *Id.*

17. Section 32 of the POEA Contract provides an elaborate scheme of compensation for various kinds of injury and illness. *Id.*

III. DISCUSSION

A motion to compel arbitration is governed by the standards set in the applicable arbitration statute. *Lim v. Offshore Specialty Fabricators, Inc.*, 404 F.3d 898, 902-03 (5th Cir. 2005). The RMI has two arbitration statutes: (1) the 1980 Arbitration Act, 30 MIRCPC Ch. 3; and (2) UNCITRAL Model Law on International Commercial Arbitration Act, 2018 (the

"UMLICA"), 30 MIRCPC Ch. 6. UMLICA came into effective on March 15, 2018, enacting the Convention on the Recognition and Enforcement of Foreign Arbitral Awards ("Convention"). Whichever statute applies, there is no argument that SBSC, who signed the POEA Contract, can compel Dieron to arbitrate his personal injury claims against SBSC.

Dieron, however, argues that he has sued Trident, not SBSC, and that with the enactment of the UMLICA, the UMLICA, not the 1980 Arbitration Act, governs this case. That is, under the UMLICA Trident, as a non-signatory to the POEA Contract, cannot compel Dieron to arbitrate its claims against Trident. In his opposition, Dieron asserts that the UMLICA applies to "commercial" matters and that under United States case law commercial matters include seamen's employment contracts. *See* Notice of Plaintiff's Opposition to [SBSC]'s Amended Motion to Compel Arbitration ("Supp. Opp.") at 8-9. Further, recent Ninth Circuit case law interpreting the Convention (as enacted by the UMLICA) "requires a written agreement *signed by the parties*, and . . . only the parties to the written agreement may compel arbitration." Supp. Opp. at 10 (emphasis added), citing *Yang v. Majestic Blue Fisheries, LLC*, 876 F.3d 996 (9th Cir. 2017). According to Dieron, with the recent enactment of the UMLICA, the RMI Supreme Court's decision in *Mongaya v. AET MCV BETA LLC et al.*, S.Ct. No. 2017-003 (Aug. 10, 2018), rec. den. (Sep. 5, 2018) ("*Mongaya*"), which applied the 1980 Arbitration Act and permitted a non-signatory to compel arbitration, should not be followed by this Court.

Initially, in its Amended Motion, Trident argued that the 1980 Arbitration Act governs

this case because it covers the arbitration of employment contracts¹ and the UMLICA does not². Amended Motion at 7. Later in its reply, Trident argues that even if the UMLICA is applicable to this case, the UMLICA, unlike the Convention, does not address the application of arbitration contracts to nonsignatories. In this respect, the UMLICA is like the 1980 Arbitration Act. Accordingly, under either the 1980 Arbitration Act or the UMLICA, the RMI Supreme Court's ruling in *Mongaya* governs this case, and Trident can compel Dieron to arbitrate his claims against Trident under the POEA Contract. See Trident's Reply in Support of Amended Motion to Compel Arbitration ("Reply") at 2-3, n.1.

More specifically, Trident argues that the language of the RMI's UMLICA is patterned on the UNCITRAL Model Law on International Commercial Arbitration of 1985 with amendments adopted in 2006. The UMLICA differs significantly from the language of the Convention, language that enacted by the United States in 1958. Whereas the Convention in Article II, § 2, which defines the term "agreement in writing," defines agreement as one "signed by the parties," Article 7 of the UMLICA, which defines the term "agreement," does not include a requirement that it be "signed by the parties." Instead, like the 1980 Arbitration Act, the UMLICA is silent as to non-signatories. Therefore, the holding of *Mongaya* that, in the absence of a specific statutory

¹Section 302(a)(ii) of the 1980 Arbitration Act.

²Amended Motion at 7, n.1., citing *Analytical commentary on draft text of a model law on international commercial arbitration*, (available by searching for <https://www.mcgill.ca/arbitration/files/arbitration/Commentaireanalytique-en.pdf>), p.10, point 18 ("Not covered are, for example, labour or employment disputes and ordinary consumer claims, despite their relation to business."). See also *UNCITRAL 2012 Digest of Case Law on the Model Law on International Commercial Arbitration*, point 7 at pp. 9-10 and nn.32 and 34 (citing Canadian case law), available at <http://www.uncitral.org/pdf/english/clout/MAL-digest-2012-e.pdf>, which also provides links for download of the key cases cited.

provision, the right of a non-signatory to compel arbitration is governed by general principles of agency and contract, including estoppel, fully applies here and is binding on Dieron.

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

As the RMI Supreme Court held in *Mongaya* to be the law of the RMI, "the common law doctrine of equitable estoppel permits nonsignatories to compel signatories to arbitrate in some situations." *Mongaya* at 13. Those situations include "(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 (quotation marks and citations omitted)." *Id.*

1. A Close Relationship Between the Entities Involved

In *Mongaya*, the RMI Supreme Court held that a relationship between the nonsignatory owner and the signatory manager of the vessel is a sufficiently "close relationship" for the purpose of enforcing an agreement to arbitrate. *Id.* at 18. Here, Trident is a corporate affiliate of SBSC, the signatory of Dieron's POEA Contract for employment on board the Vessel, and is the owner of the Vessel, which is managed by SBSC under a ship management contract between Trident and SBSC. *See* Mastagaki Decl. and Compl. ¶ 1. Moreover, SBSC was the authorized representative of Trident in signing Dieron's Contract. *See* Supp. Mastagaki Decl. Accordingly, the Court concludes that the relationship between Trident and SBSC is, as the relationship in *Mongaya* was, sufficiently close for purposes of Trident enforcing the POEA Contract to arbitrate.

2. A Relationship Between the Alleged Wrongs and the Nonsignatory's Obligations and Duties in the Contract

Also, in *Mongaya*, the RMI Supreme Court held that "[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." *Mongaya* at 18. As Trident points out in its Amended Motion, the allegations in this case of unseaworthiness, negligence, and failure to pay maintenance and cure are the same or substantially the same as in *Mongaya*, with changes from the plural to the singular and in the names of the parties. *See* Amended Motion at 8-10. Accordingly, the Court concludes that the relationship between the alleged wrongs and the obligations and duties of the POEA Contract are sufficiently close for purposes of Trident enforcing the POEA Contract to arbitrate.

3. The Claims Are Intertwined with the Underlying Contractual Obligations

In *Mongaya*, the RMI Supreme Court held that "*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." *Mongaya* at 18. In this case, Dieron's allegations implicate, and his claims are intertwined with, his POEA Contract. Without limitation, these allegations include the following.

- (1) Dieron's allegation of employment on the Vessel at the time of the injury, *see* Comp. ¶ 8, implicates the POEA Contract. The contract explicitly specifies that Dieron would be employed on board the STAR MARKELLA. *See* Maduro Decl., Exh. "1." The

arbitration clause in Section 29 of the contract provides for the arbitration of claims and disputes.

(2) Dieron's allegation of employment on the Vessel, *see* Compl. ¶ 8, is a necessary predicate for his claims of maintenance and cure and unseaworthiness.

(3) Dieron's allegations of negligence and unseaworthiness against Trident, *see* Compl. ¶¶ 11-12, implicate Section 1.A.4 of the POEA Contract, quoted at p.3, *supra*, which 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." *See* Maduro Decl., Exh. "2," Krek Decl., Exh. "3."

(4) Dieron's claims for maintenance and cure, *see* Compl. ¶ 14, implicate provisions of Section 20.A.2 & 3 of the POEA Contract, quoted at p.4, *supra*. *See* Krek Decl., Exh. "4."

(5) Dieron's allegations seeking recovery for permanent injuries, *see* Compl. ¶¶ 8, 13, implicate Section 20.A.6 of the POEA Contract, quoted at p.4, *supra*, which provides that such injuries shall be compensated in accordance with the schedule of benefits enumerated in Section 32 of the Contract, *see* Krek Decl., Exh. "4."

(6) Dieron's allegations claiming injury, incapacity, and disability, *see* Compl. ¶¶ 8, 13, implicate Section 20.J of Dieron's Contract, quoted at pp.4, 5, *supra*, which provides that "payment for injury . . . incapacity [or] disability . . . under this contract . . . shall cover all claims in relation with [his] employment, including . . . damages arising from the contract, tort, fault or negligence under the laws of Philippines or any other country." *See* Maduro Decl., Exh. "5."

See Amended Motion at 10-11. Accordingly, the Court concludes that Dieron's claims are sufficiently intertwined with POEA Contract obligations for purposes of Trident enforcing the POEA Contract to arbitrate.

In summary, under the common law, Trident needs only to prove, and has proved, a close relationship between the entities involved, a relationship between the alleged wrongs and the nonsignatory's obligations and duties in the contract, and that the claims are intertwined with the underlying contractual obligations. Trident need not prove that it is a party to Dieron's POEA Contract or that Dieron sued SBSC, a signatory to the contract. For these reasons, the Court concludes that under the *Mongaya* test Trident can compel Dieron to arbitrate its claims against Trident under the POEA Contract.

Having so concluded, the Court need not consider Trident's arguments that it is a party to Dieron's POEA Contract as a matter of law, *i.e.*, RMI Maritime Regulations, MI-108, or under principles of agency as a partially disclosed principal.

B. Lesser Recovery Under the POEA Contract's Compensation Scheme Is Not a Valid Objection to Arbitration

Dieron contends that because he would be awarded less under the POEA Contract's arbitration and compensation scheme than he would under RMI law, the POEA Contract is not enforceable. This, however, is not the standard under either the 1980 Arbitration Act or the UMLICA. The 1980 Arbitration Act states that a written agreement to arbitrate "is valid, enforceable and, except on such grounds that exist for the revocation of any contract, irrevocable." 30 MIRC §304. Dieron has established no grounds for revocation. Similarly, the UMLICA requires a court to compel arbitration unless "it finds that the agreement is null and

void, inoperative or incapable of being performed.” 30 MIRC §608(1). The “null and void” language has been interpreted by U.S. Courts as being limited to fraud, mistake, duress and waiver, constituting standard breach-of-contract defenses. Dieron has established no grounds for a breach-of-contract defense. *See, e.g., Lindo v. NCL (Bahamas)*, 652 F.3d 1257, 1276 (11th Cir. 2011). In short, a lesser recovery under the POEA Contract’s arbitration and compensation scheme is not grounds for avoiding arbitration under either Act.

As Dieron claims, a workmen's compensation scheme may be prohibited for domestic seafarers under Alaska State law. *See Brown v. State*, 816 P.2d 1368 (Alaska 1991). However, United States federal courts have enforced the POEA Contract's arbitration cause. *See, e.g., Bautista v. Star Cruises*, 396 F.3d 1289 (11th Cir. 2005); *Lindo, supra*. In *Asignacion v. Rickmers Genoa Schiffahrtsgesellschaft mbh & Cie KG*, 783 F.3d 1010 (5th Cir. 2015) (“*Asignacion*”), the Court of Appeals specifically rejected the very argument Dieron makes here. *Asignacion* argued that the Philippine arbitral award was inadequate for his severe injuries, and that he should be entitled to pursue greater recovery available under general maritime law notwithstanding the provisions of his POEA contract. *Asignacion* at 1014-17. The Court of Appeals rejected *Asignacion*’s argument, stating *inter alia* that:

Were he to prevail in a suit under United States general maritime law, we have little doubt his recovery would be greater . . . [but] . . . with regard to foreign seamen, United States public policy does not necessarily disfavor lesser or different remedies under foreign law.

Asignacion at 1017, citing *Romero v. Int’l. Terminal Operating Co.*, 358 U.S. 354, 384 (1959). Similarly, this Court concludes that RMI public policy does not necessarily disfavor lesser or different remedies under foreign law.

In support of his argument, Dieron also cites *Aggarao v. MOL Ship Mgmt. Co.*, No. CIV. CCB-09-3106, 2014 WL 3894079 (D. Md. Aug. 7, 2014), which set aside Aggarao's Philippine arbitral award. Supp. Opp. at 21. However, the District Court could not, and did not, overrule the Fourth Circuit's earlier opinion in *Aggarao v. MOL Ship Management Co., Ltd.*, 675 F.3d 355 (4th Cir. 2012), which compelled Aggarao to arbitrate his claims in the Philippines under the terms of his POEA contract. The District Court instead set aside the arbitral award after arbitration had taken place as directed by the Court of Appeals. Likewise, after Dieron has arbitrated with Trident, and if he is unhappy with his award, he can seek to have it set aside under UMLICA §634(b)(ii) if "the award is in conflict with the public policy of the Republic" or under the Arbitration Act §317(4). However, Dieron's assertion of public policy at this stage is premature. *See Lindo*, 652 F.3d at 1284 (public policy argument must be based on the actual, not anticipated, arbitral award).

C. *Mongaya* Bars Dieron's Argument Under the Merchant Seafarers' Act

Dieron also argues that the Merchant Seafarers' Act, 47 MIRC Ch. 8, requires application of RMI law to all seafarers employed on RMI flagged vessels. Supp. Opp. at 21-22. The RMI Supreme Court expressly rejected this argument in *Mongaya* as "absurd." *Mongaya* at 18-20. Dieron argues the RMI Supreme Court is wrong. Sup. Opp. at 22. This Court, however, is bound by the Supreme Court's decision in *Mongaya* until the Supreme Court rules otherwise.

IV. CONCLUSION

For the above reasons, the Court concludes that under either the Arbitration Act §305(1) or UMLICA §608(1) it can compel Dieron to arbitrate his personal injury claims against Trident and SBSC, and under the Arbitration Act §305(3)(b) or UMLICA §608(2) the Court can stay

these proceedings pending arbitration. Accordingly, the Court orders Dieron to arbitrate his claims against Trident and SBSC in the Philippines under Philippine law in accordance with the POEA Contract, and the Court stays this matter pending arbitration: provided, however, the parties shall on or before 4:30 p.m. on May 24, 2019, and every six months thereafter, file a report on the status of the arbitration until the arbitration is concluded.

Ordered and Entered: November 23, 2018.

A handwritten signature in black ink, appearing to read 'C. Ingram', written over a horizontal line.

Carl B. Ingram
Chief Justice, High Court