IN THE SUPREME COURT

OF THE

REPUBLIC OF THE MARSHALL ISLANDS

VIRGILIO T. DIERON, JR.,

Plaintiff-Appellant,

v.

STAR TRIDENT XII, LLC,

Defendant-Appellee,

STAR BULK SHIPMANAGEMENT COMPANY (CYPRUS) LIMITED,

Defendant-Intervenor.

Supreme Court No. 2018-015

OPINION

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

SEEBORG, Associate Justice:

I. INTRODUCTION

This appeal involves a maritime personal injury action brought by a seafarer, Virgilio T. Dieron, Jr., against Defendant Star Trident XII, LLC ("Trident"), the owner of the M/V Star Markella ("Vessel") registered in the Republic of the Marshall Islands ("RMI"). While working aboard the Vessel, Dieron suffered catastrophic physical injuries. Dieron, a citizen of the Republic of the Philippines, was employed pursuant to a standard Philippine Overseas

* The Honorable J. Michael Seabright, Chief U.S. District Judge, District of Hawaii, sitting by designation of the Cabinet.

** The Honorable Richard Seeborg, Chief U.S. District Judge, Northern District of California, sitting by designation of the Cabinet.

Employment Administration ("POEA") contract with Intervening Defendant Star Bulk Shipmanagement Company (Cyprus) Limited ("SBSC"), an affiliate company of Trident and manager of the Vessel. The POEA contract contained an arbitration clause, a Philippine choice of law clause, and an elaborate no-fault compensation scheme for personal injury. Dieron executed this employment contract with SBSC only; Trident was not a signatory to the contract.

Following the accident, Dieron filed suit in the High Court against only Trident, bringing claims for negligence, unseaworthiness, and failure to pay maintenance and cure. The High Court granted SBSC's motion to intervene and subsequently granted both Trident's and SBSC's motions to compel arbitration under Philippine law in accordance with the terms of Dieron's employment contract with SBSC. On appeal, Dieron challenges the High Court's decision allowing SBSC to intervene as well as compelling him to arbitrate his claims against both Defendants. Lastly, Dieron challenges the High Court's order permitting the application of the POEA contract's choice of law and compensation scheme, arguing these clauses impermissibly derogate Trident's obligations as a vessel owner under general maritime law. Because the High Court correctly held that SBSC was entitled to intervene, and that Dieron's contract mandated arbitration against both defendants under Philippine law, the High Court's decisions are affirmed.

II. BACKGROUND

A. The POEA Contract

The facts of this case are not disputed. On April 21, 2016, Dieron entered into a POEA contract of employment with Intervening Defendant SBSC, which contemplated he would be working on board the Vessel. Trident, the owner of the Vessel, was not a signatory to the contract.

Section 1.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 20.A.6 further specifies that, "[i]n 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." Section 32 of the POEA contract provides an elaborate scheme of compensation for various kinds of injury and illness.

Section 29 includes the following 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 the 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.

Lastly, Section 31 of the POEA contract includes the following 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.

B. <u>Dieron's Injury and the High Court Proceedings</u>

On June 19, 2016, Dieron was severely injured in the course of his employment when a mooring windlass broke from the deck of the Vessel. Dieron's injuries resulted in the amputation of his left arm and left leg, the fracture of his right wrist, disfiguring damage to his face, loss of vision in his right eye, and brain damage. He was also subsequently diagnosed with post-traumatic stress disorder.

This lawsuit followed. In October 2017, Dieron filed suit against Trident in the High Court for negligence, unseaworthiness, and failure to provide full maintenance and cure. Dieron alleges his injuries were directly and proximately caused by Trident's negligence and failure to provide a seaworthy vessel. Dieron's complaint seeks $25 million in compensatory damages and an additional $25 million in punitive damages. Dieron did not file any claims against SBSC.

Although SBSC is not named as a defendant and Dieron is not suing under the terms of his employment contract, SBSC nonetheless moved to intervene under Marshall Islands Rule of Civil Procedure ("MIRCP") Rule 24(a)(2), which Dieron opposed. With the motion to intervene pending, both Trident and proposed Intervening Defendant SBSC moved to compel arbitration pursuant to the POEA contract. In the midst of multiple rounds of briefing on both motions, this Court issued its opinion in *Mongaya v. AET MCV BETA LLC*, S. Ct. No. 2017-003 (Aug. 10, 2018), reconsideration denied (Sept. 5, 2018). In *Mongaya*, a Filipino seafarer employed under a POEA contract was seriously injured while working aboard a vessel registered in the RMI. Mongaya brought claims in the High Court for negligence, unseaworthiness, and failure to pay maintenance and cure against three defendants: (1) his employer, the vessel's managing agent, who was a signatory to the POEA contract; (2) the owner of the vessel, a non-signatory; and (3) the vessel operator, also a non-signatory. All defendants, including the non-signatories, moved to compel arbitration, which the High Court granted and this Court affirmed. Because *Mongaya* similarly involved a motion to compel arbitration pursuant to a POEA contract, the parties were asked to submit additional briefing on the arbitration issue.[1]

In November 2018, the High Court granted SBSC's motion for leave to intervene and shortly thereafter granted both Defendants' requests to compel arbitration. In support of its ruling allowing SBSC to intervene, the High Court concluded that SBSC had a "significant protectable interest" in the litigation, which entitled it to intervene as of right under MIRCP Rule 24(a)(2). On the question of arbitration, the High Court reasoned that *Mongaya* controlled. In

[1] Certain counsel representing Dieron also represented Mongaya, another Filipino seafarer suing for serious injuries sustained while working under a POEA contract.

Mongaya, we enforced a POEA contract's arbitration clause even for claims brought by an injured seafarer against a non-signatory to the contract under an equitable estoppel theory. The High Court therefore concluded that Dieron's personal injury claims against the non-signatory Trident were subject to the arbitration provision in Dieron's employment contract with SBSC through equitable estoppel. The High Court accordingly stayed the case pending arbitration. Dieron timely appealed both the intervention and arbitration rulings 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

Dieron presents four issues on appeal: (1) whether the High Court erred when it allowed SBSC to intervene under MIRCP Rule 24(a)(2); (2) whether the High Court erred by compelling Dieron to arbitrate claims against SBSC, despite the fact that Dieron's complaint asserts no claims against SBSC and does not include SBSC as a named defendant; (3) whether the High Court erred when it invoked the doctrine of equitable estoppel to allow Trident to compel Dieron to arbitrate his claims against Trident pursuant to the POEA contract which Trident never signed; and (4) whether the High Court erred by ordering the parties to arbitrate in the Republic of the Philippines under Philippine Law and in accordance with the compensation scheme contained in the POEA contract.[2] Furthermore, in connection with his arguments concerning equitable estoppel, Dieron requests that this Court reconsider its recent holding in *Mongaya*.

A. SBSC May Intervene under Rule 24(a)(2)

MIRCP 24(a) governs when a party has a right to intervene and provides as follows:

> (a) Intervention of Right. On a 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

[2] Dieron identifies a potential fifth question: "Is the application of RMI law under the provisions of the RMI Merchant Seafarers Act to RMI flagged vessels by RMI courts proper?" Opening Br. at 7. Because this Court's treatment of the fourth question resolves the question of applicable law, we need not address this fifth question separately.

> 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.

Because MIRCP Rule 24(a) is nearly identical to the United States' Federal Rule of Civil Procedure ("FRCP") 24(a), this Court looks to United States federal court decisions for guidance. *See Kabua v. Kabua*, 1 MILR 96, 104 (1988). The High Court adopted and applied the four-part test for intervention of right as articulated by the United States Ninth Circuit Court of Appeals in *Southwest Ctr. for Biological Diversity v. Berg*, 268 F.3d 810, 817-18 (9th Cir. 2001). Under *Berg*, to qualify for intervention as of right under FRCP Rule 24(a):

> (1) The application for intervention 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.

Id. Finding this test captures the requirements of MIRCP Rule 24(a), and because Dieron accepts this as the governing standard, we likewise adopt the *Berg* test and apply it here.

The parties agree with the High Court's finding that SBSC's motion was timely. However, Dieron insists the High Court erred in finding SBSC had a "significantly protectable" interest. According to Dieron, "SBSC's interest in the litigation is simply to reduce Trident's financial exposure," which falls short of a significantly protectible interest for purposes of intervention under MIRCP Rule 24(a). Opening Br. at 8. To demonstrate a "significantly protectable" interest, "an applicant must establish that the interest is protectable under some law and that there is a relationship between the legally protected interest and the claims at issue." *Citizens for Balanced Use v. Mont. Wilderness Ass'n*, 647 F.3d 893, 897 (9th Cir. 2011). Moreover, "[w]hile an applicant seeking to intervene has the burden to show that the[] four elements are met, the requirements are broadly interpreted in favor of intervention" and the "review is guided primarily by practical considerations, not technical distinctions." *Id*.

SBSC has a strong interest in seeing the terms of its employment contract with Dieron enforced, given the POEA contract applies to "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." Order Granting Mots. to Compel Arbitration at 4-5 (citing Section 20.J of POEA contract). The plain language encompasses the claims for negligence and unseaworthiness which Dieron asserts against Trident, SBSC's corporate affiliate. Indeed, this is SBSC's interpretation of the POEA contract. Furthermore, whether the broad terms of the POEA contract estop injured employees from pleading around the contract and suing SBSC's corporate affiliates instead has serious business implications for SBSC as a vessel manager. SBSC therefore has a significant interest in enforcing its legal rights under its contracts and in having an opportunity to be heard in litigation interpreting them. *See Tech. & Intellectual Prop. Strategies Grp. PC v. Insperity, Inc*., 2012 WL 6001098, at *8 (N.D. Cal. Nov. 29, 2012) (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).

The third and fourth *Berg* factors are likewise satisfied. If SBSC were prohibited from intervening, it would be unfairly deprived of the opportunity to be heard on the consequential issue of whether Dieron's POEA employment contract should govern this dispute. Furthermore, Trident cannot adequately represent SBSC's interest because it was not a signatory to the POEA employment contract and cannot speak authoritatively on its interpretation. Although the two companies are affiliates and wholly owned by the same parent corporation, Trident cannot adequately protect SBSC's interests here. Without SBSC in the lawsuit, Trident's argument for compelling arbitration becomes noticeably weaker. SBSC has a right to protect its own legal interests in this action.

The requirements of MIRCP Rule 24(a)(2) are therefore satisfied and practical considerations require allowing SBSC to intervene. Dieron appears to have strategically omitted SBSC from its complaint to avoid the unfavorable provisions of his contract, which could reduce his expected recovery. Although Dieron's claims technically arise under general maritime law, the incident implicates the contract, which covers these types of accidents. Particularly given

MIRCP Rule 24(a)(2)'s broad interpretation in favor of intervention, SBSC has a right to intervene here. *See Citizens for Balanced Use*, 647 F.3d at 897.

B. Dieron Must Arbitrate His Claims Against Trident and SBSC

Dieron also challenges the High Court's decision compelling him to arbitrate his claims against Trident and SBSC. He claims the order to arbitrate against SBSC is nonsensical because he brings no claims against his former employer. He further avers that he should not be forced to arbitrate his claims against Trident because he never signed any agreement with Trident, much less one containing an arbitration clause. The analysis must begin with the governing arbitration statute.

1. UMLICA Governs This Case

On March 15, 2018, the UNCITRAL[3] Model Law on International Commercial Arbitration Act, 2018 ("UMLICA"), 30 MIRCP Ch. 6, took effect in the RMI. UMLICA partially enacted the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards ("Convention"). UMLICA provides, in relevant part:

> §607. Definition of arbitration agreement.
>
> "Arbitration agreement" is an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not.
>
> §608. Arbitration agreement and substantive claim before court.
>
> (1) A court before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party so requests not later than when submitting his first statement on the substance of the dispute, refer the parties to arbitration unless it finds that the agreement is null and void, inoperative or incapable of being performed.

In addition, UMLICA, like the Convention, only applies to "commercial" matters. While the parties initially disputed whether UMLICA—enacted while this case was pending before the High Court—applies here, they now agree that Dieron's contract is a "commercial" contract covered by UMLICA. United States courts that have considered the issue have similarly

[3] "UNCITRAL" refers to the United Nations Commission on International Trade Law.

concluded seafarer employment contracts like Dieron's are "commercial" agreements for purposes of the Convention. *See, e.g., Rogers v. Royal Caribbean Cruise Line*, 547 F.3d 1148, 1155 (9th Cir. 2008) ("The employment contracts of seafarers 'aris[e] out of legal relationship[s] . . . which [are] considered as commercial,' and therefore those contracts 'fall[] under the [C]onvention.'") (quoting 9 U.S.C. § 202); *Bautista v. Star Cruises*, 396 F.3d 1289, 1295-96 (11th Cir. 2005) (finding plaintiffs' POEA employment contracts "are commercial legal relationships under the Convention Act"). The High Court did not expressly decide whether UMLICA or the Arbitration Act of 1980 applied, because the court concluded either statute compelled the same result.

Because UMLICA tracks the Convention's limitation to "commercial" agreements, which numerous United States appellate courts have found to apply to seafarer employment contracts like Dieron's, there is no reason to adopt a different conclusion here. UMLICA governs this dispute.

2. UMLICA Mandates Arbitration Against SBSC

UMLICA, like the Convention, strongly favors the enforcement of arbitration agreements in international disputes. Indeed, section 608 states that a court "shall" refer a dispute to arbitration when the matter "is the subject of an arbitration agreement." As quoted above, Dieron's employment contract covered claims of negligence and unseaworthiness in connection with his service on board the Vessel. Therefore, despite the fact that Dieron's claims are brought only against Trident and only under general maritime law, they are nonetheless "the subject of an arbitration agreement," albeit an agreement with SBSC, not Trident.

Section 608 does, however, contain an exception to the general rule enforcing arbitration clauses when a court finds the agreement is "null and void, inoperative or incapable of being performed." United States courts have interpreted this "null and void" exception narrowly to include only the traditional contract defenses of fraud, mistake, duress and waiver. *See, e.g., Aggarao v. MOL Ship Mgmt. Co*., 675 F.3d 355, 372 (4th Cir. 2012) ("[T]he null and void defense only applies when the arbitration agreement has been obtained through those limited

situations, such as fraud, mistake, duress, and waiver, constituting standard breach-of-contract defenses that can be applied neutrally on an international scale. . . . The narrow scope of the null and void clause is in complete accord with the prevailing authority in other circuits.") (internal quotations and citations omitted).

Because Dieron is not claiming the arbitration clause contained in his POEA contract was the product of fraud, mistake, or duress, nor is he claiming that SBSC somehow waived this provision, UMLICA requires this dispute be referred to arbitration in accordance with Dieron's contract. Although Dieron brought no claims against SBSC, he signed a contract that bound him to arbitrate all claims arising from injuries suffered while working about the Vessel. Given this subject matter overlap, UMLICA required the High Court to refer the dispute to arbitration.

Dieron, on appeal, makes much of the fact that Defendants could not point to a single case where a signatory to a POEA contract was allowed to intervene and interpose the contract's arbitration clause into litigation against a non-signatory affiliate. The absence of such authority, however, speaks more to the novelty of Dieron's pleading strategy than to any error on the part of the High Court. Indeed, certain of the counsel representing Dieron here also represented the plaintiff in the *Mongaya* action two years prior and presumably devised this plan to omit Dieron's employer altogether in hopes of avoiding application of the contract. This was the logical next step after *Mongaya* officially endorsed the application of equitable estoppel to compel arbitration against a non-signatory.

While creative, Dieron's gambit to omit SBSC from his pleadings should not allow him to avoid arbitration pursuant to Dieron's contract, which by its terms applies to this dispute. SBSC was properly allowed to intervene as of right under Rule 24(a)(2), and having done so, was permitted to compel arbitration under UMLICA and under the terms of its employment contract with Dieron. The High Court's order compelling Dieron to arbitrate against SBSC is

affirmed.[4]

3. Dieron is Estopped from Avoiding Arbitration with Trident

Because UMLICA, like the Arbitration Act of 1980, does not address when a non-signatory may compel a signatory plaintiff to arbitrate, we look to the common law. *See Mongaya*, S. Ct. No. 2017-003 at 9-10 (finding that, because the Arbitration Act did not address non-signatories' ability to compel arbitration, the Court would turn to the common law); *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.").

In *Mongaya*, we applied the common law doctrine of equitable estoppel and permitted a non-signatory vessel owner to compel arbitration pursuant to plaintiff's POEA employment contract. *Mongaya* specifically held that "the common law doctrine of equitable estoppel permits non-signatories to compel signatories to arbitrate in some situations," S. Ct. No. 2017-003 at 13, and the Court announced a three-part 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." *Id*. at 15 (quoting *Mundi*, 555 F.3d at 1046) (internal quotations and citations omitted).

On appeal, Dieron does not contest that the common law doctrine of equitable estoppel may, in certain circumstances, enable a non-signatory defendant to compel a signatory plaintiff to arbitrate. Rather, Dieron makes a two-part argument: first, that *Mongaya* adopted the wrong test for equitable estoppel and to that extent should be abrogated; and second, that under the appropriate test, equitable estoppel should not apply to Dieron's claims against Trident.

Dieron asks this Court to reconsider *Mongaya*. He posits that though the equitable

[4] The High Court's order compels Dieron to arbitrate his *claims* against SBSC, but because no claims are asserted against it, this aspect of the order was not technically correct. Rather, SBSC simply has a right to participate.

estoppel test we adopted was described in *Mundi*, it was only in the course of reviewing an approach used in an earlier case, *E.I. DuPont de Nemours & Co. v. Rhone Poulenc Fiber & Resin Intermediates*, 269 F.3d 187, 199 (3d. Cir. 2001). The *Mundi* court ultimately deemed *DuPont* inapposite and, eight years later, the Third Circuit in *White v. Sunoco, Inc.* clarified that it "did not adopt a rule regarding alternative estoppel in *DuPont*. . . . In *DuPont*, we had no occasion to adopt or reject a standard, but merely observed that other Courts of Appeals have employed an 'alternative estoppel' theory when 'a nonsignatory voluntarily pierces its own veil to arbitrate claims against a signatory that are derivative of its corporate-subsidy's claims against the same signatory.'" 870 F.3d 257, 263 (3d Cir. 2017) (quoting *DuPont*, 269 F.3d at 201). Regardless of its origin, however, the *Mongaya* test provides an analytically reasonable way to evaluate equitable estoppel.[5] We take this opportunity to reaffirm the three-part *Mongaya* test as the law of the RMI and hold that, as applied here, it compels Dieron to arbitrate his claims against Trident.

Dieron is estopped from avoiding arbitration of his claims against Trident because all three factors are satisfied. Just as the non-signatory vessel owner and operator successfully compelled arbitration under the POEA contract in *Mongaya*, so too can Trident compel arbitration here. There is a "close relationship" between the entities involved—SBSC hired Dieron pursuant to SBSC's agreement with Trident to serve as vessel manager, and both affiliates are wholly owned by the same corporate parent. Second, there is a close relationship between the wrongs Dieron alleges and the scope and duties outlined in the contract. Third, Dieron's claims, though arising under general maritime law, are "intertwined" with the

[5] Moreover, the three-pronged test we adopt is, as discussed at length in *Mongaya*, "substantially similar" to the formulation adopted in various United States Courts of Appeal. *Mongaya*, S. Ct. 2017-003 at 13-14. Dieron claims that under his preferred test, articulated in *MS Dealer Serv. Corp. v. Franklin*, 177 F.3d 942 (11th Cir. 1999), the argument for arbitration against Trident fails because Dieron did not expressly allege any "substantially interdependent and concerted misconduct" by SBSC and Trident. In fact, Dieron construes this *MS Dealer* prong too narrowly. Multiple cases purporting to apply *MS Dealer* have found "intertwined" conduct is sufficient. Even under *MS Dealer*, therefore, Trident can compel arbitration.

contractual obligations in the POEA contract. The POEA contract obligated the "Principal/Employer/Master/Company" to provide a seaworthy ship and take reasonable precautions to avoid injury. Dieron's claims of unseaworthiness and negligence track exactly these terms of the POEA contract and allege the specific types of harm it sought to regulate. The High Court's decision compelling arbitration against Trident is thus affirmed.[6]

C. The POEA Contract's Choice of Law Clause and Compensation Scheme Applies

Dieron also challenges the High Court's ruling that the POEA contract's choice of law and compensation scheme should be honored in arbitration. The High Court treated this as a public policy argument protesting the lesser recovery available under Philippine law and the contract's compensation scheme. The High Court responded that "a lesser recovery under the POEA Contract's arbitration and compensation scheme is not grounds for avoiding arbitration[,]" and that "RMI public policy does not necessarily disfavor lesser or different remedies under foreign law." *See* Order Granting Mots. to Compel Arbitration at 11-12. The court further observed: "Dieron's assertion of public policy at this stage is premature." *Id.* at 13.

On appeal, Dieron claims the High Court mischaracterized his argument. Instead of protesting the lesser recovery available under the contract, Dieron argues that the choice of law and compensation scheme impermissibly "derogate a vessel owner's obligation to provide a seaworthy vessel, all in violation of U.S. Supreme Court precedent and RMI and U.S. general maritime law." Pls.' Opening Br. at 15.

The United State Supreme Court has indeed emphasized that the doctrine of unseaworthiness is of critical importance to seafarers. A shipowner's liability for the seaworthiness of its vessel "is neither limited by conceptions of negligence nor contractual in character"; rather, it is an "absolute duty." *Seas Shipping Co. v. Sieracki*, 328 U.S. 85, 94-95

[6] The holdings here and in *Mongaya* should not be read to suggest that all seafarer signatories to POEA contracts will be compelled to arbitrate their claims. For example, if a signatory were to bring claims against an independent vessel owner, arbitration would not be a foregone conclusion because the first factor of the *Mongaya* test requires a "close relationship" between the entities involved.

(1946). The United States Supreme Court has further cautioned that the "obligation of seaworthieness cannot be shifted about, limited, or escaped by contracts or by the absence of contracts and that the shipowner's obligation is rooted, not in contracts, but in hazards of the work." *Reed v. Steamship Yaka*, 373 U.S. 410, 414-15 (1963). Nonetheless, Dieron's argument on this point fails for three reasons.

First, Dieron's argument is undercut by this Court's enforcement of an identical provision in *Mongaya*, where we did not find any impermissible derogation of a vessel owner's duty to maintain a seaworthy vessel. Similarly, numerous appellate courts in the United States have affirmed orders compelling arbitration under POEA contracts. *See, e.g., Aggarao v. MOL Ship Mgmt. Co., Ltd.*, 675 F.3d 355 (4th Cir. 2012). This would not be the case if the POEA contract's standard terms ran afoul of general maritime law.

Second, pursuant to his authority under Maritime Regulation MI-108 § 7.45.1.b, the Maritime Administrator of the Republic approved the POEA Standard Terms for use on board vessels flagged in the RMI. *See* Republic of the Marshall Islands Response to Comments by the International Labour Organization Committee of Experts on the Application of Conventions and Recommendations on MLC, 2006, submitted February 5, 2016 (noting that "the [RMI Maritime] Administrator has deemed the following collective bargaining agreements for employment acceptable for use onboard RMI flag vessels: Philippine collective bargaining agreements or contracts based on the Philippine Overseas Employment Administration Contract of Standard Terms and Conditions . . ."), as cited in Appellees' Appendix at 7. This approval makes sense, given the POEA's terms are intended to safeguard Filipino sailors from lower workplace standards. *See Asignacion v. Rickmers Genoa Schiffahrtsgesellschaft mbH & Cie KG*, 783 F.3d 1010, 1018 (5th Cir. 2015) ("The importance of the POEA Standard Terms to the Philippine economy also weighs in favor of enforcement. As the Ninth Circuit has noted, '[a]rbitration of all claims by Filipino overseas seafarers is an integral part of the POEA's mandate to promote and monitor the overseas employment of Filipinos and safeguard their interests.'" (quoting *Balen v. Holland America Line, Inc.*, 583 F.3d 647, 651 (9th Cir. 2009)). The international trend to

enforce the POEA standard terms cuts strongly against a finding that they flout general maritime law. [7]

Lastly, while it is certainly possible that arbitration under the contract's compensation scheme will yield an award that is inadequate and unenforceable, that is a question reserved for the award recognition stage. In *Aggarao v. MOL Ship Mgmt. Co.*, 2014 WL 3894079 (D. Md. Aug. 7, 2014), for example, a Filipino seafarer working under a POEA contract suffered catastrophic injuries in the course of his employment. After countless surgeries, he was left wheelchair-bound and incontinent. He had to endure abdominal wall reconstruction, skin expansion, and a host of other procedures. Eventually, he filed a lawsuit in United States federal court, but the Fourth Circuit ultimately compelled him to arbitrate his claims pursuant to his contract. At the time of this district court decision on remand, the plaintiff was roughly $800,000 in debt from medical-related expenses, yet the arbitration award under the POEA's compensation scheme yielded an award of only "$89,100, 240 days of sick pay, and attorney's fees." *Id.* at *7. The district court set the award aside as a violation of United States public policy, as allowed under the Convention. *Id.* at *8 (citing 9 U.S.C. § 207 ("The court shall confirm [a foreign arbitration] award unless it finds one of the grounds for refusal or deferral of recognition or enforcement of the award specified in the . . . Convention.")).

UMLICA, like the Convention, enables the High Court to set aside an arbitral award if it finds that "the award is in conflict with the public policy of the Republic." UMLICA § 634(b)(ii). This assessment, however, must be made after an award has been calculated and

[7] In arguing against application of the POEA compensation scheme, Dieron relies on *Brown v. State*, 816 P.2d 1368, 1375 (Alaska 1991), a case in which the Alaska Supreme Court rejected a similar workers' compensation scheme as "an impermissible limitation of the state's obligations under the doctrine of unseaworthiness." Although the reasoning of this case did rely in part on United States Supreme Court decisions addressing general maritime law, it is not in line with the majority of United States appellate decisions interpreting seafarer employment contracts. *See, e.g.*, *Asignacion*, 783 F.3d at 1020 (reversing district court's order invalidating arbitration award under POEA contract). This Court thus declines both to contradict the Administrator and overrule *Mongaya* by invalidating the compensation scheme and choice of law provisions.

finalized under the contract in arbitration. To disregard the POEA contract's choice of law and compensation scheme at this stage would therefore be premature. *See, e.g.*, *Escobar v. Celebration Cruise Operator, Inc.*, 805 F.3d 1279, 1288 (11th Cir. 2015) (rejecting plaintiff's argument that the choice of law clause in his employment contract is unenforceable for selecting a jurisdiction that does not afford the same rights and remedies as American law and noting that "[plaintiff's] public-policy defense is premature at this arbitration-enforcement stage"). The High Court's order requiring the arbitration to honor the POEA contract's choice of law clause and compensation scheme is therefore affirmed.

V. CONCLUSION

For the foregoing reasons, the High Court's Order Granting SBSC's Motion to Intervene and the High Court's Order Granting Motions to Compel Arbitration are affirmed.

Dated: June 3, 2021

/s/ Daniel N. Cadra
Daniel N. Cadra
Chief Justice

Dated: June 3, 2021

/s/ J. Michael Seabright
J. Michael Seabright
Associate Justice

Dated: June 3, 2021

/s/ Richard Seeborg
Richard Seeborg
Associate Justice