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COMMONWEALTH OF MASSACHUSETTS

BRISTOL, ss.

SUPERIOR COURT
CIVIL ACTION
NO. 2473CV00151

BRISTOL SUPERIOR COURT
FILED

JAN - 8 2025

CLERK/MAGISTRATE

RICHARD SANZO

vs.

JENNIFER A. SULLIVAN, ESQ.
ATLANTIC CAPES FISHERIES, INC. & others[1]

MEMORANDUM OF DECISION AND ORDER ON THE DEFENDANTS' MOTION TO DISMISS AND COMPEL ARBITRATION

Richard Sanzo ("Sanzo" or "the plaintiff") initiated the instant action against Atlantic Capes Fisheries, Inc. ("Atlantic Capes"), F-V Enterprise, LLC ("F-V"), and Atlantic Harvesters, LLC ("Atlantic Harvesters") (collectively, "the defendants") alleging that he sustained significant injuries while working on a fishing boat the defendants owned. On December 11, 2024, the defendants moved to dismiss and compel arbitration. On December 17, 2024, the court held a hearing on the defendants' motion and took the matter under advisement.[2] After hearing and review of the parties' submissions, and for the reasons that follow, the defendants' motion to dismiss and compel arbitration is **ALLOWED**.[3]

BACKGROUND

On March 2, 2021, the defendants hired Sanzo to work as a deckhand on the F/V Enterprise. Upon hire, Sanzo signed, and initialed each page of, the following employment form: "Continuing Crew Terms of Employment For All Voyages" ("the Agreement").

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[1] F-V Enterprise, LLC; Atlantic Harvesters, LLC.
[2] At the hearing, the court gave Sanzo leave to file a sur-reply brief, which he filed on December 23, 2024.
[3] On November 19, 2024, Atlantic Capes filed a separate motion to dismiss. See Paper 48. However, as the defendants' December 11 motion is dispositive of the case, Atlantic Capes' motion to dismiss is **DENIED** as **MOOT**.

Complaint at Ex. A. On page three of the Agreement, article 17, entitled "Arbitration," provided that,

> **I understand and agree that any dispute, claim or controversy arising out of my work as a crewmember, including but not limited to statutory Jones Act claims, negligence, unseaworthiness, maintenance and cure, and wage claims, and whether such claim or controversy be brought against the vessel, vessel owner[s] or vessel operator/employer, or any related or affiliated company; or disputes relating to this Agreement, or the breach, termination, enforcement, interpretation or validity thereof, including the determination of the scope or applicability of this arbitration clause, shall be determined by one arbitrator sitting in Boston, Massachusetts.**
>
> **The arbitration shall be administered by JAMS pursuant to its Comprehensive Arbitration Rules and Procedures. If this agreement to arbitrate is determined to be exempt from enforcement under the Federal Arbitration Act, the laws of the state wherein the vessel homeports shall be applied in determining the validity and enforceability of this agreement.**
>
> **ARBITRATION SHALL BE MY EXCLUSIVE REMEDY AND I UNDERSTAND THAT I GIVE UP MY RIGHT TO SUE. I FURTHER UNDERSTAND AND AGREE THAT I GIVE UP MY RIGHT TO SELECT THE VENUE FOR ANY CLAIM OR CONTROVERSY AND THAT I GIVE UP MY RIGHT TO TRIAL BY JUDGE OR JURY FOR ANY AND ALL CLAIMS, INCLUDING BUT NOT LIMITED TO STATUTORY JONES ACT, NEGLIGENCE, MAINTENANCE AND CURE, UNSEAWORTHINESS, AND WAGES.**
>
> **The fee for arbitration, except the cost of any dispute concerning the enforceability of this Agreement or appeal of the arbitrator's decision, shall be borne by the Vessel's owner or Operator/employer as they may amongst themselves decide. Each party shall be responsible for their own attorney fees and costs and lay and expert witness fees and costs, unless contrary to law. Judgment on the Arbitration Award may be entered in any court having jurisdiction. This clause shall not preclude parties from seeking provisional remedies in aid of arbitration from a court of appropriate jurisdiction; however, each party shall bear its own costs in pursuing such remedies.**

Id.

An acknowledgement, which indicated that the signee, i.e., Sanzo, read, understood, and agreed to the terms of the Agreement and that he received time to review it followed the arbitration provision. *Id.* Sanzo signed his name on the signature line and included the requested identifying information therein. *Id.*

Sanzo also signed a separate form, entitled "Acknowledgement of Crew Terms." Complaint at Ex. B. This form stated that the Agreement was an employment contract, that he could read English, and that he "will read the [Agreement] . . . [or] have someone read it to [him]." *Id.* Besides signing this document, Sanzo also initialed next to both clauses that he "will read" or "have someone read" the Agreement to him. *Id.*

The ship departed from Fairhaven on March 2, 2021. On March 4, 2021, Sanzo was injured while working on the ship, suffering serious injuries.

Sanzo filed the Complaint and a demand for jury trial on February 20, 2024, alleging claims under the Jones Act, maritime law – unseaworthiness, maritime negligence, and maritime law – maintenance and cure, and seeking a declaratory judgment. On March 18, 2024, the defendants removed the case to the District of Massachusetts. On July 8, 2024, the case was remanded. On July 18, 2024, the defendants answered the Complaint. The defendants' first affirmative defense stated that they did "not waive their right to demand that [Sanzo's] claims be arbitrated pursuant to [his] employment agreement." Also on July 18, 2024, the defendants filed a "Complaint for Exoneration from or Limitation of Liability" ("LOLA") in the federal district court. In ¶ 24 of the LOLA Complaint, the defendants indicated that they filed the LOLA as a "protective action" and did "not waive their rights to file a motion to compel Sanzo to arbitrate his claims pursuant to the Arbitration Clause in his employment agreement . . . ." On July 29, 2024, the defendants filed a notice of federal court limitation order, staying the instant action. The federal judge dissolved the stay on October 18, 2024.

DISCUSSION

The defendants move to dismiss the Complaint arguing that Sanzo should be compelled to arbitrate his claims pursuant to the Agreement. Sanzo argues that the arbitration clause in the Agreement should be set aside, and that the defendants waived their right to enforce the arbitration provision through substantial litigation choices, causing undue delay. The court agrees with the defendants that the claims must be dismissed and that Sanzo be compelled to arbitrate.

The defendants argue that state law and the Massachusetts Arbitration Act ("MAA") applies to the enforceability of the arbitration provision. They also rely on case law indicating that the Federal Arbitration Act ("FAA") does not apply to a seaman's contract. In Sanzo's opposition, while he does not directly dispute the defendants' position about the applicability of state law, he suggests that both the MAA and FAA apply. There is no disagreement between the parties that Sanzo was employed as a seaman. Thus, the FAA does not apply to the enforceability of the arbitration provision because the FAA does not apply to seamen's contracts. See *Trejo* v. *Sea Harvest, Inc.*, No. 21-cv-10978-ADB, 2021 WL 4311958, at *2 (D. Mass. Sept. 22, 2021), and cases cited. Accordingly, the court analyzes the enforceability of the arbitration provision under state law and the MAA. See *id.*[4]

In relevant part, G. L. c. 251, § 1 provides that, "[a] written agreement to submit any existing controversy to arbitration or a provision in a written contract to submit to arbitration any controversy thereafter arising between the parties shall be valid, enforceable and irrevocable, save upon which grounds as exist at law or in equity for the revocation of any contract." "For a

[4] While the court analyzes the enforceability of the arbitration provision under the MAA, the same result would be produced under the FAA. See *McInnes* v. *LPL Fin., LLC*, 466 Mass. 256, 260 (2013) ("In all relevant respects, the language of the FAA and the MAA providing for enforcement of arbitration provisions are similar, and we have interpreted the cognate provisions in the same manner" [citations omitted].).

valid arbitration agreement to exist under Massachusetts law, the court must find that (1) a written agreement exists; (2) the disputed question falls within the scope of that agreement; and (3) the party seeking arbitration has not waived its right to arbitration." *Ellerbe* v. *Gamestop, Inc.*, 604 F. Supp. 2d 349, 353 (D. Mass. 2009).[5]

A. Existence of Agreement

Sanzo argues that he should not be compelled to arbitrate his claims because (1) he did not have time to properly review and understand the arbitration provision and (2) the arbitration agreement was unconscionable. The court disagrees. "Adjudication of a motion to compel arbitration, including a challenge to the validity of the arbitration agreement, is governed by G. L. c. 251, § 2(a). If there is a dispute as to a material fact, the judge conducts an expedited evidentiary hearing" (quotations and citation omitted). *Johnson* v. *Kindred Healthcare Inc.*, 466 Mass. 779, 781-782 (2014). Here, as "there is not such a dispute, the [court] resolves the issue as a matter of law." *McInnes* v. *LPL Fin., LLC*, 466 Mass. 256, 261 (2013). See *Johnson*, 466 Mass. at 782.[6]

1. Reasonable Notice and Manifestation of Assent

"[F]or there to be an enforceable contract, there must be both reasonable notice of the terms and a reasonable manifestation of the assent to those terms." *Kauders* v. *Uber Techs., Inc.*, 486 Mass. 557, 572 (2021). Actual notice exists where the party has reviewed the terms. *Archer* v. *Grubhub, Inc.*, 490 Mass. 352, 361 (2022). Where, as here, Sanzo asserts that he did not

[5] As Sanzo's challenge is only to the first and third elements, the court only addresses these.

[6] While Sanzo requested an evidentiary hearing, one is not required because there is no dispute as to any material fact. In an affidavit attached to his opposition to the defendants' motion, Sanzo alleged he did not have enough time to read and understand the arbitration provision in the few hours between when he received and signed the Agreement and before boarding the ship. See Ex. 6 at ¶¶ 8-11. Sanzo's counsel made similar assertions at the hearing on the defendants' motion. The defendants do not dispute Sanzo's assertions about the length of time he had to review the arbitration provision. Thus, there is no dispute as to any material fact. Accordingly, an evidentiary hearing is not required.

review the arbitration agreement, the court assesses the "totality of the circumstances" to determine whether reasonable notice was given. *Id.* Reasonable notice exists even where the party did not view the agreement, so long as the party had an adequate opportunity to do so. *Id.* at 361-362, and cases cited. "This is an objective test: the sufficiency of the notice turns on whether, under the totality of the circumstances, the employer's communication would have provided a reasonably prudent employee notice of the waiver [of the right to proceed in a judicial forum]." *Id.* at 362. With respect to reasonable manifestation of assent, the court considers "the specific actions required to manifest assent[,]" including physically signing a document. *Kauders*, 486 Mass. at 574-575. Here, based on the "totality of the circumstances," Sanzo had reasonable notice of the terms of the arbitration agreement and reasonably manifested assent to those terms. See *Archer*, 490 Mass. at 361.

First, Sanzo had reasonable notice of the arbitration provision. The Agreement was a three-page document, with the arbitration provision on page three. As outlined above, the arbitration provision is bolded and the language concerning arbitration being the exclusive remedy under the Agreement is bolded and in all capital letters. Next, as Sanzo indicated in his affidavit, there were a few hours between when he received the Agreement and when the ship left. This period provided ample time for him to review the arbitration provision. Furthermore, Sanzo both initialed and signed the page with the arbitration provision on it. Thus, he was provided reasonable notice of the provision. See *id.* at 362 (reasonable notice provided where plaintiffs specifically informed they were signing arbitration agreement on page preceding signature page and on signature page).

Sanzo's failure to read the arbitration provision does not excuse him from abiding by its terms. See, e.g., *Good* v. *Uber Techs., Inc.*, 494 Mass. 116, 141-142 (2024) ("offerees have a

duty to read the terms of a contract to which they assent and are not excused from a contract's terms solely by virtue of having chosen not to do so"); Restatement (Second) of Contracts § 23 comment e (1981) ("An offeree, knowing that an offer has been made to him, need not know all its terms. Knowing that an offer has been made, he can accept without investigation of the exact terms, either intentionally or by words or conduct creating an unintended appearance of intention to accept."). That Sanzo received and signed the arbitration provision a few hours before departing on the ship does not change the court's analysis. See *Emmanuel* v. *Handy Techs., Inc.*, 992 F.3d 1, 9 (1st Cir. 2021) (plaintiff unsuccessfully challenged reasonable notice of arbitration provision where "she chose not to review it despite having had an adequate opportunity to do so"). See generally *Lopez Rivera* v. *Stetson*, 103 Mass. App. Ct. 187, 188-193 (2023) (reasonable notice provided where arbitration agreement signed morning of surgery). Sanzo has not directed the court to any facts suggesting fraud or duress. See *Lopez Rivera*, 103 Mass. App. Ct. at 188-189 (arbitration agreements generally enforceable, "save upon such grounds as exists at law or in equity for the revocation of any contract[,] . . . including fraud, duress, or unconscionability" [quotations and citations omitted]). For these reasons, Sanzo received reasonable notice of the arbitration provision.

Sanzo also provided reasonable manifestation of assent to the arbitration provision. Sanzo initialed each page of the Agreement, including page three where the arbitration provision was located, and signed the Agreement on that same page. "In contract law, a written signature provided the traditional evidence of assent because when we are asked to sign something, we are conditioned to think that we are doing something important" (citation omitted). *Kauders*, 486 Mass. at 575. Sanzo does not dispute that he initialed and signed the Agreement. Therefore,

Sanzo reasonably manifested assent to the arbitration provision by initialing and signing the Agreement.

2. Unconscionability

To show that the arbitration agreement was unconscionable, Sanzo must show "substantive unconscionability (that the terms are oppressive to one party) and procedural unconscionability (that the circumstances surrounding the formation of the contract show that the aggrieved party had no meaningful choice and was subject to unfair surprise." *Machado* v. *System4, LLC*, 471 Mass. 204, 218 (2015). Sanzo has shown neither.

As to substantive unconscionability, nothing in the arbitration provision's "purpose and effect" suggests substantive unconscionability. See *Miller* v. *Cotter*, 447 Mass. 671, 680 (2007). Either party could invoke the right to arbitrate. The arbitration provision did not "result in unfair surprise and was [not] oppressive" to Sanzo. See *id.* at 679-680.

With respect to procedural unconscionability, the arbitration provision was part of an adhesion contract. An adhesion contract is "drafted unilaterally by the dominant party and then presented on a 'take-it-or-leave-it' basis to the weaker party who has no real opportunity to bargain about its terms." Restatement (Second) of Conflict of Laws § 187 comment b (1971). However, simply because the arbitration provision was part of an adhesion contract does not render the provision procedurally unconscionable and "is insufficient to render an arbitration agreement invalid." *McInnes*, 466 Mass. at 266. See *Oxford of Glob. Res., LLC* v. *Hernandez*, 480 Mass. 462, 466 (2018) ("[c]ontracts of adhesion are enforceable unless they are unconscionable, offend public policy, or are shown to be unfair in particular circumstances" [modifiers, quotations, and citations omitted]). Additionally, other courts have compelled arbitration with nearly identical arbitration provisions as presented here. See, e.g., *Trejo*, 2021

WL 4311958; *Kozur* v. *F/V Atl. Bounty, LLC*, No. 18-08750, 2020 WL 5627019 (D. N.J. Aug. 18, 2020). As Sanzo has failed to show the arbitration provision was substantively and procedurally unconscionable, the provision was not unconscionable.

B. Waiver

Sanzo argues that the defendants waived their opportunity to arbitrate by substantially engaging in the litigation process. The court disagrees.

The Massachusetts Legislature and the courts favor the enforceability of arbitration agreements. See, e.g., *Good*, 494 Mass. at 164; *Miller*, 448 Mass. at 676. "Whether a party has waived arbitration is a question of arbitrability for the court to determine." *O'Brien* v. *Hanover Ins. Co.*, 427 Mass. 194, 199 (1998). Where one party contends that another has waived its right to arbitrate, "[t]he essential question is whether, under the totality of the circumstances, the defaulting party acted 'inconsistently' with the arbitration right." *Martin* v. *Norwood*, 395 Mass. 159, 162 (1985). The court relies on the following factors to assess the totality of the circumstances:

> whether the party has actually participated in the lawsuit or has taken other action inconsistent with his right[;] . . . whether the litigation machinery has been substantially invoked and the parties were well into preparation of a lawsuit by the time an intention to arbitrate was communicated by the defendant to the plaintiff[; and] . . . whether there has been a long delay in seeking a stay or whether the enforcement of arbitration was brought up when trial was near at hand . . . . Other relevant factors are whether the defendants have invoked the jurisdiction of the court by filing a counterclaim without asking for a stay of the proceedings[;] . . . whether important intervening steps (e.g., taking advantage of judicial discovery procedures not available in arbitration . . .) had taken place[;] . . . and whether the other party was affected, misled, or prejudiced by the delay . . . (citations omitted).

Home Gas Corp. v. *Walter's of Hadley, Inc.*, 403 Mass. 772, 775-776 (1989).

Considering the totality of the circumstances, the defendants have not waived their right to enforce the arbitration provision. Since Sanzo initiated the current litigation on February 20, 2024, approximately eleven months ago, the defendants have consistently reserved their right to

compel arbitration. Notably, they reserved their right to arbitrate in answering the Complaint and filing the LOLA Complaint. The fact that the defendants removed the case to federal court does not alter the court's opinion. See, e.g., *Trout* v. *Organización Mundial De Boxeo, Inc.*, 965 F.3d 71, 77 (1st Cir. 2020) (arbitration not waived where defendant sought to remove case); *Halim* v. *Great Gatsby's Auction Gallery, Inc.*, 516 F.3d 557, 562 (7th Cir. 2008) ("Absent any other action, removal alone did not amount to implicit waiver of [the] right to arbitrate.").

The current litigation is still in its infancy, discovery has not closed, and Sanzo has shown no actual prejudice from any delay. See, e.g., *Archer*, 490 Mass. at 363 (arbitration not waived where motion to compel filed in response to complaint); *Buruk* v. *Experian Info. Sols., Inc.*, No 23-10537, 2024 U.S. Dist. LEXIS 82094, at *11-13 (D. Mass. May 6, 2024) (totality of circumstances did not show waiver of arbitration where motion to compel arbitration not filed until nine months after litigation initiated, parties had engaged in settlement talks, and exchanged discovery requests). Contrast *Home Gas Corp.*, 403 Mass. at 776-778 (defendant waived arbitration where demand not filed until approximately two and one-half years into litigation); *Rankin* v. *Allstate Ins. Co.*, 336 F.3d 8, 13 (1st Cir. 2023) (arbitration waived where right to compel not enforced "until after discovery had closed and the long-scheduled trial date had almost arrived").

Sanzo argues that the defendants' initiation of a LOLA shows waiver. The court is not convinced. To support his argument, Sanzo relies on *Quarrington Court*, 102 F.2d 916 (2nd Cir. 1939), and *Mirro* v. *Freedom of Boat Club, LLC*, 328 So. 3d 1108 (Fla. 2nd Dist. Ct. App. 2021). However, both cases are distinguishable. In *Quarrington Court*, the court determined that the vessel owner had waived arbitration where a LOLA had been filed first. 102 F.2d at 917-919. However, the Second Circuit has since indicated that the "Court favors agreements to

arbitrate; any broad suggestion that *Quarrington Court* may have provided to the contrary should not be relied upon." *Mediterranean Shipping Co. S.A. Geneva* v. *POL-Atl.*, 229 F.3d 397, 405 n.14 (2nd Cir. 2000). See also *Afram Carriers, Inc.* v. *Moeykens*, 145 F.3d 298, 303 n.9 (5th Cir. 1998) ("The *Quarrington Court* was decided in an era in which forum-selection and arbitration clauses were disfavored because they were sought to 'oust their jurisdiction.' . . . By 1972, the Supreme Court had rejected the 'ouster of jurisdiction' notion as parochial. Now, there is a heavy presumption in favor of such clauses . . . " [citations omitted].).

In *Mirro*, the party seeking to enforce arbitration filed a LOLA and several substantive objections upon the initiation of litigation without invoking or reserving a right to arbitrate. See 328 So. 3d at 1109-1111. Conversely, throughout these proceedings, the defendants reserved their right to arbitrate. Like *In re Nakliyati*, 1989 U.S. Dist. LEXIS 13195, at *33-38 (E.D. N.Y. July 10, 1989), the initiation of a LOLA is not inconsistent with an intent to arbitrate. See also *id.* at *54 ("The ship owner . . . is correct in pointing out that there was no reason for it to commence an arbitration proceeding, since it had no claim to press[.]").

ORDER

The defendants' motion to dismiss and compel arbitration (Paper 49) is **ALLOWED**.

By The Court,
(Cloutier, J.)

Attested to: Garrett R. Fregault, Esq.
Assistant Clerk / Magistrate

January 9, 2025