

COMMONWEALTH OF MASSACHUSETTS

BRISTOL, ss.

SUPERIOR COURT

 RICHARD SANZO)
)
 Plaintiff,)
)
 v.)
)
 ATLANTIC CAPES FISHERIES,)
 INC., F/V ENTERPRISE, LLC,)
 and ATLANTIC HARVESTERS,)
 LLC,)
)
 Defendants.)
 _____)

Civil Action No. 2473-cv-00151

DEFENDANTS' MEMORANDUM OF LAW IN SUPPORT OF MOTION TO DISMISS COMPLAINT AND COMPEL ARBITRATION

NOW COME Defendants Atlantic Capes Fisheries, Inc., F/V Enterprise, LLC and Atlantic Harvesters, LLC, by and through their undersigned counsel, ECKLAND & BLANDO LLP and REEVES MCEWING, LLP, and pursuant to the Massachusetts Arbitration Act, M.G.L. c. 251, respectfully submit their Memorandum of Law in support of their Motion to Dismiss the Complaint and Compel Arbitration pursuant to the written employment contract ("Contract") governing Plaintiff's employment on the F/V ENTERPRISE (the "Vessel").

I. BACKGROUND

Plaintiff Richard Sanzo was injured on March 4, 2021 while working as a deckhand on the F/V ENTERPRISE, a commercial fishing vessel owned and operated by F/V Enterprise, LLC and Atlantic Harvesters, LLC, respectively (collectively, "Vessel Owners"). Plaintiff filed this Complaint against Vessel Owners on February 20, 2024 ("State Complaint"). Docket No. 1. Pursuant to Superior Court Rule 9A, Defendant Atlantic Capes Fisheries, LLC, another named Defendant, served a Motion to Dismiss the claims against it on July 18, 2024. Docket No. 36.

This action was stayed on July 31, 2024, by Order of the United States District Court for the District of Massachusetts, in response to a limitation of liability action filed by Vessel Owners in the federal court (“Federal Action”). Exhibit A. The Federal Action was dismissed and the stay was dissolved on October 21, 2024. Exhibit B.

The State Complaint alleged causes of action under the Jones Act, as well as the general maritime law of unseaworthiness, maritime negligence and maintenance and cure. Docket No. 1.

Defendants now move to dismiss Plaintiff’s claims, and to compel Plaintiff to arbitrate this dispute pursuant to his Contract.

II. LEGAL ARGUMENT

a. The Complaint Should be Dismissed and Plaintiff should be compelled to arbitrate his claims pursuant to his Contract.

Plaintiff’s employment on the Vessel was governed by his Contract. All crewmembers employed on the Vessel sign the employment contract at the beginning of their employment. Before embarking on his first voyage on the Vessel, Plaintiff signed the Contract, the terms of which governed his employment with Vessel Owners. *See* Exhibit C. The Contract provided, in relevant part:

14. Arbitration: 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 deterring 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.

I have read, understand and agree to the terms of the above Agreement. By signing below, I acknowledge that I have been given time to review this Agreement, that I have read (or otherwise understand) and agree to its terms, and that I make this Agreement freely and voluntarily.

I further understand that the terms of this Agreement shall remain valid throughout my employment, *are not limited to the vessel set forth above, but apply to all vessels and voyages*, and shall survive termination of my employment.”

Exhibit C at pg. 3 (*emphasis in original*).

This case arises from an incident that occurred on March 2, 2021. At that time, Plaintiff's employment on the Vessel was governed by the Contract. Plaintiff initialed each page of the Contract containing this agreement to arbitrate and signed the signature page. *Id.* This Contract contains a “binding arbitration instead of litigation” clause covering Plaintiff's claims; therefore, Plaintiff's complaint should properly be dismissed and Plaintiff should properly be compelled to arbitrate his claims as he agreed.

1. Governing Contract Law
 - a) Massachusetts Law.

The arbitration clause in the Contract provides that “the laws of the state wherein the vessel homeports shall be applied in determining the validity and enforceability of this Agreement.” Exhibit C at pg. 3. The Vessel’s home port is in Fairhaven, Massachusetts. *Id.* at ¶5.

The arbitration clause is enforceable under Massachusetts law. Massachusetts courts generally respect parties’ freedom to contract. *Waithaka v. Amazon.com, Inc.*, 404 F. Supp. 3d 335, 346 (D. Mass. 2019) *citing Beacon Hill Civic Ass’n v. Ristorante Toscano, Inc.*, 422 Mass. 318, 662 N.E.2d 1015, 1017 (1996).

The Massachusetts Arbitration Act 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 such grounds as exist at law or in equity for the revocation of any contract.” M.G.L. c. 251 § 1.

Plaintiff’s claims are all within the scope of the arbitration clause. Where a contract has an arbitration clause that is “broad” in its reach, there is a rebuttable presumption that a contract dispute is covered by the clause, and doubts whether a particular dispute comes within the scope of the clause should be resolved in favor of arbitration. *Warfield v. Beth Israel Deaconess Med. Ctr., Inc.*, 454 Mass. 390, 323-24 (2009) *abrogated on other grounds, Joule, Inc. v. Simmons*, 459 Mass. 88 (2011) *citing Drywall Sys., Inc. v. ZVI Constr. Co.*, 435 Mass. 664, 666–667 (2002). Here, the arbitration clause is broad enough to reach all claims:

“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...”

Exhibit C.

As a result, there is a presumption that that the Plaintiff’s claims are covered by the arbitration clause. In fact, each of the causes of action made in the Complaint are specifically identified as being subject to arbitration.

The Parties formed a valid agreement to arbitrate. For a 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. *Ellerbee v GameStop, Inc.*, 604 F. Supp. 2d 349, 353 (D. Mass. 2009) *citing Gonzalez v. G.E. Group Admin., Inc.*, 321 F. Supp. 2d at 165, 168 (D. Mass. 2021); *Bowlby v. Carter Manufac. Corp.*, 138 F. Supp. 2d 182, 186–7 (D. Mass. 2001). Here, there is a written agreement. Exhibit C. As set forth above, the claims raised in Plaintiff’s Complaint are identified with particularity as within the scope of the arbitration clause. The Vessel Owners have not waived their right to arbitrate.¹ The only question then remaining is whether Plaintiff accepted the agreement. The answer to that question is “yes.”

Plaintiff was provided with notice of the arbitration clause before beginning his employment. The issue of whether the parties validly entered into an arbitration agreement

¹ Vessel Owners specifically reserved their right to demand arbitration when they 1) answered the Complaint and 2) filed the limitation action. Docket No. 35 at Affirmative Defense ¶2, ¶18 and Exhibit A at ¶24. Atlantic Capes Fisheries reserved the right to demand arbitration when it served its Motion to Dismiss. Docket No. 17. Filing documents in order to meet court deadlines and the initiation of a court action in order to preserve statutes of limitations does not constitute a waiver. *See e.g. Goldsmith v. Pinez*, 84 F. Supp.2d 228, 236 (D. Mass. 2000); *Levine v. Advest Inc.*, 12 Conn. L. Rptr. 240, 1994 WL 411228 at *4 (Conn. Super. July 15, 1994) *citing Davis Corp. v Interior Steel Equipment Co.*, 669 F. Supp. 32, 34 (D.D.C. 1987).

depends on whether the employer gave “some minimal level of notice” that the employee was waiving his right to pursue claims in a judicial forum.” *Campbell v. General Dynamics Gov’t Systems Corp. et al.*, 407 F.3d 546, 555 (1st Cir. 2005). 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 555. The burden on the employer is only to come forward with proof that under the totality of circumstances, the employer’s communications to its employees afforded “some minimal level of notice” sufficient to apprise those employees that continued employment would affect a waiver of the right to pursue the claim in a judicial forum. *Id.*

Here, Vessel Owners have met their burden. The arbitration clause is set forth in **bold font**, the waiver of trial by judge or jury is **CAPITALIZED**, and the arbitration clause takes up nearly one page of the three-pages of text in the Contract. Exhibit C. Plaintiff has also initialed the page containing the arbitration clause. *Id.* Plaintiff also signed an Acknowledgement of Crew Terms contained in the Contract. Exhibit D.

i. The Federal Court for the District of Massachusetts has granted a motion to compel arbitration filed by a related vessel owner pursuant to a nearly identical employment agreement

In September 2021, the Honorable Judge Allison Burroughs dismissed a similar seaman’s claim based on a nearly identical arbitration clause. *Trejo v. Sea Harvest, Inc.*, C.A. No. 21-cv-10978, 2021 WL 4311958 (D. Mass. Sept. 22, 2021). Although that decision was based on New

York law, the District Court noted that the result would be the same under Massachusetts law. *Id.* at fn. 4.²

In reaching the decision, the District Court noted that arbitration agreements in seamen’s contracts are not governed by the Federal Arbitration Act (“FAA”), as seamen’s employment contracts are exempted from the FAA. *Id.* at 3, citing *Waithaka v. Amazon.com Inc.*, 404 F. Supp. 3d 335, 340 (D. Mass. 2019); 9 U.S.C. §1. The arbitration clause in that case, as well as the one at bar, called for disputes as to arbitrability to be submitted to the arbitrator. *Id.* Accordingly, the District Court found that such a clause was enforceable, and dismissed the action so that the plaintiff’s claims could be submitted to the arbitrator for a determination as to arbitrability.³

ii. The District Court of New Jersey, in another matter, also granted a motion to compel arbitration filed by a related vessel owner pursuant to a nearly identical employment agreement.

This Contract signed by Plaintiff, contains an identical arbitration clause that was recently found by the District Court of New Jersey to be enforceable under New Jersey’s Arbitration Act. *Kozur v. F/V ATLANTIC BOUNTY*, No. 18-cv-08750, 2020 WL 5627019 (slip copy) (D.N.J. August 18, 2020) (*appeal denied*) (staying the action and compelling to arbitration the claims of a Jones Act crewmember allegedly injured on a fishing vessel owned by a company affiliated with Vessel Owners). The *Kozur* court noted that both New Jersey and New York Courts have held that “[t]here is no language in the FAA that explicitly preempts the enforcement of state arbitration statutes.” *Palcko v. Airborne Express, Inc.*, 372 F.3d 588, 595 (3d Cir. 2004) *cert. denied* 543 U.S. 1049 (2005); *Pine Valley Prods. v. S.L. Collections*, 828 F. Supp. 245, 248 (S.D.N.Y. 1993). The

² Because the Massachusetts Arbitration Act is Massachusetts’ “enactment of the Uniform Arbitration Act, it is appropriate to give strong weight to decisions in other jurisdictions.” *O’Brien v. Hanover Ins. Co.*, 474 Mass. 194, 202 (1998).

³ The Honorable Joel Schneider (ret), the arbitrator in *Trejo v. Sea Harvest*, held that the arbitration agreement was enforceable, and compelled the seaman to arbitrate. Exhibit E.

Kozur court further found that the parties had an agreement to arbitrate under both New York and New Jersey law, *Kozur* at *4, and, that there was no conflict between the laws of New Jersey or New York respecting the enforceability of the arbitration clause. *Id.* at *6. The arbitration clause is therefore also enforceable under both New Jersey and New York law.

As set forth above, Vessel Owners respectfully submit that this Court should properly reach the same conclusion as the District Courts of New Jersey and Massachusetts noted above, as well as the decision of the arbitrator in *Trejo v. Sea Harvest*, and find that the parties have entered into a valid agreement to arbitrate and/or dismiss this case to allow submission of the arbitrability issue to an arbitrator. For the reasons set forth below, this Court should further find that the arbitration agreement in the Contract must be enforced under state law notwithstanding Section 1 of the Federal Arbitration Act.

- b) Arbitration Agreements in Seamen's employment contracts are enforceable under state law, notwithstanding the exclusion set forth in Section 1 of the Federal Arbitration Act.

Prior to the alleged injury, Plaintiff signed the Contract including the Crew Terms of Employment for the voyage, in which he agreed to arbitrate all claims, including any Jones Act, negligence and unseaworthiness claims, as well as claims for maintenance and cure. Exhibit C. It is undisputed that Plaintiff is a seaman. An employee is regarded as a seaman if he “performs service which is rendered primarily as an aid in the operation of a vessel as a means of transportation, provided he performs no substantial amount of work of a different character.” *Brown v. Nabors Offshore Corp.*, 339 F.3d 391, 395 (5th Cir. 2003); *see also, Garza Nunez v. Weeks Marine, Inc.*, Civil Action No. 06-3777, 2007 WL 496855 at *2 (E.D. La. Feb. 13, 2007) (holding that the term *seaman* has been found to have the same meaning for purposes of both the FAA and the Jones Act).

Employment contracts concerning seamen and other transportation workers are exempt from the Federal Arbitration Act and are governed by state law. *In re Oil Spill by the Oil Rig DEEPWATER HORIZON in the Gulf of Mexico, on Apr. 20, 2010*, C.A. No. 06-3777, 2010 WL 4365478 at *1, *4 (E.D. La. 2010); *see also Palcko v. Airborne Express, Inc.*, 372 F.3d 588, 596 (3d Cir. 2004) *cert. denied* 543 U.S. 1049 (2005) *citing Mason-Dixon Lines, Inc. v. Local Union No. 560*, 443 F.2d 807 (3d Cir. 1971). The Court of Appeals for the First Circuit has also clearly held that the FAA does not preempt state law. *Waithaka v. Amazon.com, et al.* 966 F.3d 10, 33 (1st Cir. 2020).

In general, federal maritime law also recognizes the enforceability of arbitration clauses in seamen's employment contracts. *Kozur v. F/V ATLANTIC BOUNTY, et al.*, Case No.: 18-cv-08750, 2020 WL 5627019 (Slip Copy) (D.N.J. August 8, 2020) (granting Motion to Compel on basis that the general requirement of uniformity with regard to maritime law does not preclude application of state law to seaman's arbitration agreements); *O'Dean v. Tropicana International, Inc.*, 98 cv 4543, 1999 WL 335381 at *2 (S.D.N.Y. May 25, 1999) *citing Red Cross Line v. Atlantic Fruit Co.*, 264 U.S. 109,122-124 (1924) (holding that "[u]nder federal maritime law, there is nothing inherently invalid or unenforceable about an agreement to arbitrate disputes relating to the employment of seamen."); *Grooms v. Marquette Transportation Co., LLC*, 14 cv 603, 2015 WL 681688, 2015 A.M.C. 955 (S.D. Ill. Feb. 17, 2015) *appeal dismissed* (7th Cir. 15-1576 Oct. 16, 2015).; *Nunez v. Weeks Marine, Inc.*, Civil Action No. 06-3777, 2007 WL 496855 at *6 (E.D. La. Feb. 13, 2007); *see also Valdes v. Swift Transp. Co., Inc.*, 292 F. Supp. 2d 524 (S.D.N.Y. 2003).

The laws of Massachusetts, as well as New Jersey and New York, favor arbitration as a matter of public policy. Plaintiff executed the Contract, and expressly agreed to waive his right to a trial by jury and to arbitrate any claim for any injury sustained onboard the Vessel. Accordingly,

this Court should properly dismiss the Complaint and compel Plaintiff to arbitrate his claims pursuant to the Contract, and/or to allow him to submit his Claims to the arbitrator for a determination of arbitrability.

III. CONCLUSION

Plaintiff agreed to arbitrate all injury claims. The Complaint alleges causes of action specifically covered by the arbitration clause, which is clear, understandable and was communicated to Plaintiff. Massachusetts supports enforcement of arbitration clauses. Accordingly, this action should be dismissed and Plaintiff should be compelled to arbitrate his claims according to the Contract, and/or to allow him to submit his claims to the arbitrator for a determination of arbitrability.

WHEREFORE, Defendants Atlantic Capes Fisheries, Inc., F/V Enterprise, LLC and Atlantic Harvesters, LLC, respectfully request that this Honorable Court grant their Motion to Dismiss the Complaint and Compel Arbitration.

Respectfully submitted,

Defendants, Atlantic Capes Fisheries, Inc.,
F/V Enterprise, LLC, and Atlantic
Harvesters, LLC,

By their attorneys,

ECKLAND & BLANDO LLP

Dated: November 5, 2024

/s/ SAMUEL P. BLATCHLEY
Samuel P. Blatchley, BBO# 670232
555 Pleasant Street, Unit 3
New Bedford, MA 02740
(617) 217-6936
sblatchley@ecklandblando.com

REEVES MCEWING LLP

/s/ MARY ELISA REEVES

Mary Elisa Reeves (*pro hac vice*)
Brian McEwing (*pro hac vice forthcoming*)
10 Andrews Lane, PO BOX 599
Dorchester, NJ 08316
(P) 609-846-4717
(F) 609-884-4378
mcewing@lawofsea.com
reeves@lawofsea.com

RULE 9C CERTIFICATE

I, Samuel P. Blatchley, hereby certify that counsel for Defendant has conferred with all parties affected by this Motion to Dismiss. Counsel for Defendants held a phone with counsel for Plaintiff Richard Sanzo regarding the relief sought by this motion. Further, at the Rule 16 Conference before the Court on October 30, 2024, Plaintiff's counsel indicated that she would oppose the relief sought in this Motion.

/s/ SAMUEL P. BLATCHLEY

Samuel P. Blatchley, Esq. BBO# 670232

CERTIFICATE OF SERVICE

I, Samuel P. Blatchley, hereby certify that on this 5th day of November 2024, I caused to be served this document via electronic mail on all counsel of record in the above captioned matter.

/s/ SAMUEL P. BLATCHLEY

Samuel P. Blatchley, Esq. BBO# 670232

EXHIBIT

A

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

In the Matter of the Complaint)

of)

F-V ENTERPRISE, LLC, as Owner, AND ATLANTIC)
HARVESTERS, LLC, as Owner Pro Hac Vice, of the)
F/V ENTERPRISE, Her Engines, Machinery, Tackle)
Apparel, Appurtenances, etc., for Exoneraton From,)
or Limitation of, Liability, Civil and Maritime,)

Plaintiffs.)

Civil Action No.:
IN ADMIRALTY

COMPLAINT FOR EXONERATION FROM OR LIMITATION OF LIABILITY

NOW COME, Plaintiffs F-V Enterprise, LLC and Atlantic Harvesters, LLC, titled owner and owner *pro hac vice*, respectively, of the F/V ENTERPRISE, by and through their attorneys, Eckland & Blando and Reeves McEwing LLP, and hereby bring this Complaint seeking exoneration from or limitation of liability pursuant to 46 U.S.C. § 30501 *et seq.* (formerly 46 U.S.C. § 181 *et seq.*), and in support thereof aver as follows:

1. This is an admiralty and maritime claim within the meaning of 28 U.S.C. § 1333, Rule 9(h) of the Federal Rules of Civil Procedure, and Rule F of the Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture Action of the Federal Rules of Civil Procedure (“Supplemental Rules”).

2. Venue is proper in this District in accordance with Supplemental Rule F(9), as claims have been filed by Richard Sanzo (“Sanzo”) in the Massachusetts Superior Court for Bristol County against Atlantic Capes Fisheries, Inc. and Plaintiffs F-V Enterprise, LLC and Atlantic Harvesters, LLC in the matter captioned *Richard Sanzo v. Atlantic Capes Fisheries*,



Inc., et al., 2473-cv-00151, which was removed to this Federal Court, 1:24-cv-10666-RGS, and then subsequently remanded to the Massachusetts Superior Court for Bristol County.

3. Plaintiffs do not waive their right to move to compel Sanzo to arbitrate all of his claims against them pursuant to the arbitration clause in his employment agreement, and file this limitation of liability action to comply with the time limits of 46 U.S.C. § 30501 *et seq.* and Supplemental Rule F.

4. At all times material hereto, the F/V ENTERPRISE was a commercial fishing vessel, engaged in the clam fishery off the east coast of the United States.

5. Plaintiff F-V Enterprise, LLC is a New Jersey limited liability company with a principal place of business in New Jersey and at all times material hereto was the title owner of the F/V ENTERPRISE (“the Vessel”).

6. Plaintiff Atlantic Harvesters, LLC is a Rhode Island limited liability company with a principal place of business in New Jersey, and at all times material hereto, was the operator and owner *pro hac vice* of the Vessel. Atlantic Harvesters, LLC managed the Vessel, employed her crew, and provided fuel, bait, and supplies to, and procured all necessary services for, the Vessel, including maintenance and repairs, all at its own expense.

7. Plaintiff Atlantic Harvesters, LLC manned, victualed and navigated the Vessel, and is therefore an owner *pro hac vice*, within the meaning of the Limitation of Liability Act, 46 U.S.C. § 30501 *et seq.*

8. On or about March 2, 2021, the F/V ENTERPRISE departed Fairhaven, Massachusetts to fish for clams in a location more than three (3) nautical miles from shore (“the Voyage”).

9. On or about March 4, 2021, Sanzo, a crewmember, was injured on the deck of the F/V ENTERPRISE, when a line he was to tend got entangled in the Vessel's propeller while it was fishing off the coast of New York ("the Casualty").

10. In response to the Vessel's call to the U.S. Coast Guard for medical assistance, Sanzo was evacuated from the Vessel by a helicopter operated by the New York City Police Department.

11. Sanzo suffered independent and/or additional injuries during the evacuation as a result of the negligence of the New York City Police Department.

12. On March 6, 2021, the Vessel arrived under tow in Staten Island so that the propeller could be unfouled.

13. The Vessel unloaded her catch and concluded her Voyage on March 7, 2021.

14. After the Casualty and Voyage, the fair market value of the Vessel was \$900,000. *See Exhibit A, Affidavit of David Tantrum.*

15. After the Casualty and Voyage, the fair market value of the catch aboard the Vessel was \$6,144.00. *See Exhibit B, Affidavit of Barry Cohen.*

16. At all times material hereto, Plaintiffs used due diligence to make the Vessel seaworthy in all respects. Prior to the commencement of the Voyage, the Vessel was tight, staunch, strong, properly manned, equipped and supplied, and in all respects seaworthy for the voyage and service in which she was engaged.

17. The Casualty and resulting loss, damage, and injury was not caused by or contributed to by any negligence or fault on the part of Plaintiffs or for those whom Plaintiffs are responsible, and Plaintiffs deny any such loss, damage, injury, or destruction was done, occasioned by, or occurred with any privity or knowledge of Plaintiffs.

18. On February 16, 2024, Counsel for Sanzo served a written demanded for Fifteen Million Dollars (\$15,000,000.00) in damages from Plaintiffs, an amount far in excess of Plaintiffs' interest in the Vessel and her catch at the close of the Voyage.

19. This Complaint is filed within six (6) months of the written demand for damages in excess of the Vessel's value and catch at the conclusion of the Voyage.

20. Upon information and belief, there are no known liens against the Vessel arising during the relevant Voyage, nor any claims or demands which are paramount to those which may arise by reason of the Casualty.

21. Plaintiffs are now ready, willing and able, and hereby offer to give a stipulation or bond with sufficient surety for the value of Plaintiffs' interest in the Vessel and her catch, as required, at the conclusion of the Voyage in which Sanzo's claims arose, with interest thereon, and security for costs pursuant to Supplemental Admiralty Rule F(1).

22. Plaintiffs, as owner and owner *pro hac vice* of the F/V ENTERPRISE, claim exoneration from liability for any and losses, damages, or injuries caused, done, occasioned, incurred or arising out of the voyage or during the relevant voyage, and for any and all claims therefor.

23. If, however, it is found that Plaintiffs are liable for any such damages, which is specifically denied, Plaintiffs alternatively claim the benefit of limitation of liability, as provided by the Limitation of Liability Act, 46 U.S.C. § 30501 *et seq.*, Supplemental Rule F, and the various statutes supplementary thereto and amendatory thereof.

24. Plaintiffs file this Limitation Complaint as a protective action, and by so filing, Plaintiffs reserve and do not waive their rights to file a motion to compel Sanzo to arbitrate his

claims pursuant to the Arbitration Clause contained in his employment agreement with the Plaintiffs.

25. Plaintiffs further claim the benefit of an injunction under Supplemental Rule F(3), enjoining the further prosecution or commencement of any action or proceeding against Plaintiffs, the Vessel, or their agents or property with respect to any claim subject to exoneration or limitation in this action.

26. The aforesaid allegations are true and correct, and are brought within the admiralty and maritime jurisdiction of this Honorable Court.

WHEREFORE, Plaintiffs F-V Enterprise, LLC and Atlantic Harvesters, LLC pray that:

1. This Honorable Court issue a Notice to all person(s) asserting claims with respect to which the Complaint seeks exoneration or limitation directing them to file their respective claims with the Clerk of the Court and to serve on the attorneys for Plaintiffs a copy thereof on or before the date to be named in the notice;

2. This Honorable Court issue a notice to all persons desiring to contest either the right to exoneration from or the right to limitation of liability, he/she/it shall file and serve on the Plaintiffs' attorneys an answer to the Complaint on or before said date, unless his/her/its claim has included an answer, so designated;

3. This Honorable Court issue an Order restraining, staying and enjoining the further prosecution of any and all actions, suits, or proceedings already commenced and enjoining the commencement or prosecution hereafter of any and all actions, suits, or proceedings, of any nature or description against the Plaintiffs or others concerning the Casualty, or any other property of Plaintiffs to recover damages for, or in respect of, any loss, damage, or injury caused

or resulting from the aforesaid Casualty or Voyage, or done, occasioned or incurred on the aforesaid Voyage;

4. This Honorable Court adjudge that Plaintiffs are not liable to any extent for any loss, damage, or injury for any claim therefore in any way resulting from, done, occasioned or incurred, as a result of the Voyage, or during the aforesaid Voyage;

5. If Plaintiffs are adjudged liable, as owner and owner *pro hac vice* of the F/V ENTERPRISE, then this Honorable Court adjudge that any such liability for all claims shall be limited to \$906,144.00, the value of the Plaintiffs' interest in the Vessel at the termination of the Voyage, and that judgment be entered discharging Plaintiffs from all further liability; and

6. Plaintiffs shall have such other and further relief as this Honorable Court deems just and proper under the circumstances.

Respectfully submitted,

Plaintiffs, F-V Enterprise, LLC and Atlantic
Harvesters, LLC

By its attorneys,

ECKLAND & BLANDO LLP

/s/ SAMUEL P. BLATCHLEY

Samuel Blatchley, BBO# 670232
22 Boston Wharf Road, 7th Floor
Boston, MA 02210
(617)-217-6936
sblatchley@ecklandblando.com

REEVES MCEWING, LLP

Mary E. Reeves, Esq.
(pro hac vice application forthcoming)
Brian McEwing, Esq.
(pro hac vice application forthcoming)

10 Andrews Lane, PO BOX 599
Dorchester, NJ 08316
(P) 609-846-4717
(F) 609-884-4378
reeves@lawofsea.com
mcewing@lawofsea.com

CERTIFICATE OF SERVICE

I hereby certify that on July 18, 2024, I electronically filed the within document with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all counsel of record.

/s/SAMUEL P. BLATCHLEY
Samuel P. Blatchley BBO# 670232

EXHIBIT

B

United States District Court

District of Massachusetts

Notice of Electronic Filing

The following transaction was entered on 10/21/2024 at 2:28 PM EDT and filed on 10/21/2024

Case Name: F-V Enterprise, LLC and Atlantic Harvesters, LLC

Case Number: [1:24-cv-11849-RGS](#)

Filer:

WARNING: CASE CLOSED on 10/18/2024

Document Number: 25(No document attached)

Docket Text:

Judge Richard G. Stearns: ELECTRONIC ORDER entered re [4] Order. The stay is dissolved. (RGS, law3)

1:24-cv-11849-RGS Notice has been electronically mailed to:

Michael B. Flynn mflynn@flynnwirkus.com, adunn@flynnwirkus.com, ewhitner@flynnwirkus.com,
mbassett@flynnwirkus.com

Samuel P. Blatchley sblatchley@ecklandblando.com, dmcloone@ecklandblando.com,
lhappke@ecklandblando.com, lradies@ecklandblando.com, tharshaw@ecklandblando.com

Mary Elisa Reeves reeves@lawofsea.com, mcewing@lawofsea.com, reception@lawofsea.com

Brian McEwing mcewing@lawofsea.com, reception@lawofsea.com, reeves@lawofsea.com

James G Hasson, Jr jhasson@flynnwirkus.com, adunn@flynnwirkus.com

1:24-cv-11849-RGS Notice will not be electronically mailed to:



EXHIBIT

C



ACKNOWLEDGMENT OF CREW TERMS

I Richard Scarozzo [PRINT NAME] hereby acknowledge that on this 2 day of MARCH, 2021, I was given a document entitled "CONTINUING CREW TERMS OF EMPLOYMENT FOR ALL VOYAGES", which consisted of three pages and a signature page, and contain important terms and conditions of my employment, as it is my employment contract. I confirm that I can read the English language, and will read the document RS [initial], or I will have someone read it to me RS [initial].

[Signature]
Witness

[Signature]
Crewmember

Atlantic Harvesters, LLC- VESSEL OPERATOR

Date: 7-2-21

F/V ENTERPRISE

CONTINUING CREW TERMS OF EMPLOYMENT FOR ALL VOYAGES

THIS AGREEMENT IS MADE BETWEEN THE UNDERSIGNED AND THE VESSEL[S] OWNER[S] AND OPERATOR/EMPLOYER.

THE UNDERSIGNED CREW MEMBER AGREES TO THE FOLLOWING TERMS AND CONDITIONS:

1. I understand and agree that I am a self-employed fishermen and I am solely responsible for paying my own state, federal and local taxes.
2. I understand that I have been hired by the Captain and can be dismissed by the Captain at any time, in his sole discretion. **Also, at the conclusion of any trip, the Captain shall have the right to dismiss me with or without cause.**
3. I understand and agree that I have been hired by the Captain and that the Captain and crew are working for a percentage (%) of the catch, less certain expenses, including but not limited to fuel, oil, food, packaging, and consumables. My full, or part, share shall be determined solely by the Captain at the time of settlement. My full or part share shall be paid at the end of the trip based on my position, duties, and my performance of the duties assigned to me by the Captain, and my cooperation and coordination with the rest of the crew.
4. I authorize the vessel to withhold from my gross share, advances for travel, gear, cigarettes, and other personal consumables. I understand that only the Captain can authorize advances to the crew.
5. I understand the vessel homeports in **FAIR HAVEN, MASSACHUSETTS**, but that the vessel may from time to time offload in other ports. I understand and agree that it is my sole responsibility and cost to arrange transportation to and from the vessel and to be at the vessel at the time directed by the Captain.
6. I understand and agree it is the responsibility of the crew to offload and pack out the vessel, clean the vessel's exterior, fish-hold, and interior, and to completely maintain the vessel to the satisfaction of the Captain. I agree that I will not put any pins, nails, tape or other material into the walls of the vessel for personal belongings.
7. I understand and agree that following the vessel's mooring and offload, the captain may release me from duty and permit me to leave the vessel. Once I leave the vessel, I understand and agree that I, and not the vessel's captain, am solely responsible for my activities and actions. I agree to return to the vessel sober, drug free and fit for duty and that my employment will resume only after I have returned to the vessel fit to perform my duties. If I decide to leave the vessel at the end of the trip, I agree to give notice to the Captain so that a replacement can be found.
8. I certify that I am more than eighteen (18) years of age and have full knowledge and understanding of the dangers involved with ocean fishing and the handling of fishing equipment. I certify that I am physically able to perform the duties of a crewmember aboard a scallop/fish trawler and have no current injury, illness or other condition which would prevent me, or limit me, in performing my assigned duties.

Initials:

RS

9. I certify that I have no prior injury, illness, or condition except as I have noted under my name below. I understand that I must be fit for my assigned duties and that I must report all current and prior injury, illness or condition that could affect my ability to perform my duties, to the vessel operator. I understand that if I fail to disclose any injury, illness, or condition, I may be denied payment of any claim related to a non-disclosed prior injury or illness.

10. I further certify that I have not filed any claims against a former employer, or a vessel owner or operator, except as I have noted under my name below. I have familiarized myself with the vessel, its equipment and safety procedures and based upon my experience, I find that the vessel is fit for its intended fishery and waters.

11. I certify I am drug and alcohol free and will not bring drugs or alcohol on board the vessel, or report for duty under the influence of drugs or alcohol. As a condition of fishing, and in the event of an accident, I consent to submit to drug and alcohol testing upon the request of the vessel owner or operator.

12. I agree to comply with all fishing, navigation, customs and criminal laws while in the service of the vessel and to indemnify owner and vessel operator for any fine or penalty imposed on them as a result of the violation in which I knowingly participated.

13. It is my understanding that the Captain is responsible for the operation of the vessel and the safety of the crew. I understand that it is my duty to assist the Captain and other crewmembers to work safely. Toward this end, I may be penalized or paid a partial share as determined by the Captain if:

- A. I refuse to work on the vessel during the trip; or
- B. I bring or have dangerous weapons or intoxicants (i.e. firearms, illegal drugs, liquor); or
- C. I leave the vessel without the Captain's permission before the trip is over, or after being granted leave, fail to return at the time designated by the Captain or mate; or
- D. I delay or hinder the vessel or otherwise do not fully perform my duties; or
- E. I fight or cause trouble/disruption of any kind during the trip.

14. The Captain has instructed me and I certify that I completely understand the vessel's safety procedures and location and use of safety equipment including the following:

- | | |
|---|-------------------------------------|
| A. Life raft locations and operations; | F. Location of First Aid Kit; |
| B. Survival suit location and use; | G. Rough weather procedures; |
| C. General alarm, fire, emergency signals, abandon ship signal; | H. Flooding procedures; |
| D. Distress radio calls; | I. Procedures for man overboard; |
| E. Firefighting; | J. Reporting all injury or illness. |

15. The Captain has instructed me on environmental management policies related to this trip and I certify that I have been trained and read the "Vessel EMS Trip Start Training Card" and agree to adhere to the policies contained therein.

16. Injuries: I understand and agree that I must report any injury, or illness to the Captain and vessel operator immediately upon occurrence. **If I am injured, I authorize the vessel owner and operator to obtain a drug and alcohol test as they may demand post-injury.** Failure to give written notice to the Captain with seven (7) days of an injury or illness shall release the vessel operator and vessel owner from any obligation to pay maintenance and cure. In the event of an injury or illness, I agree to cooperate fully in my recovery and to reach an amicable settlement with the vessel owner and operator.

Initials: RS

17. Arbitration: 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.

I have read, understand and agree to the terms this Agreement, consisting of three pages. By signing below, I acknowledge that I have been given time to review this Agreement, that I have read (or otherwise understand) and agree to its terms, and that I make this Agreement freely and voluntarily.

I further understand that the terms of this Agreement shall remain valid throughout my employment, *are not limited to the vessel set forth above, but apply to all vessels and voyages*, and shall survive termination of my employment.

PLEASE COMPLETELY AND LEGIBLY FILL IN ALL BLANKS BELOW. IF YOU HAVE NO PRIOR EMPLOYMENT CLAIMS OR MEDICAL HISTORY, PLACE "N/A" ON THAT LINE.

NAME Richard Sanzo SS# 223-13-1249 PHONE 757 503 7962
ADDRESS 1626
NEXT OF KIN Charles Sanzo RELATION Son PHONE 757-503-7902
CLAIMS/MEDICAL HISTORY N/A

SIGNATURE [Signature]

Initials: RS

EXHIBIT

D



ACKNOWLEDGMENT OF CREW TERMS

I Richard Scarozzo [PRINT NAME] hereby acknowledge that on this 2 day of MARCH, 2021, I was given a document entitled "CONTINUING CREW TERMS OF EMPLOYMENT FOR ALL VOYAGES", which consisted of three pages and a signature page, and contain important terms and conditions of my employment, as it is my employment contract. I confirm that I can read the English language, and will read the document RS [initial], or I will have someone read it to me RS [initial].

[Signature]
Witness

[Signature]
Crewmember

EXHIBIT

E

**IN THE MATTER OF
ARBITRATION BETWEEN**

**AARON TREJO,
Claimant,
and**

**SAULO TREJO,
Claimant,**

vs.

**SEA HARVEST, INC.,
Respondent**

Arbitrator: Hon. Joel Schneider (Ret.)

ARBITRATION DECISION AND AWARD

This matter is before the Arbitrator on Sea Harvest's application to compel arbitration. The Arbitrator received claimants' opposition and Sea Harvest's reply, and determined that oral argument was not necessary. This will serve as the Arbitrator's Arbitration Decision and Award.¹

This matter arises out of Claimants' injuries allegedly suffered during their employment as commercial fisherman with Sea Harvest. The parties do not dispute the relevant underlying facts. The issue before the Arbitrator is whether the arbitration clause in Claimants' employment contracts is enforceable and whether Sea Harvest's request to compel arbitration should be granted. For the reasons to be discussed, the Arbitrator finds that the arbitration clause contained in Claimants' employment contracts is enforceable and hereby grants Sea Harvest's request to compel arbitration.

¹ For ease of reference and for present purposes only the Arbitrator will treat this as one matter although the Arbitrator recognizes two arbitrations were filed. The same issue is involved in both arbitrations.



BACKGROUND

Claimants Aaron Trejo and Saulo Trejo assert claims for personal injuries alleged suffered during their employment as commercial fisherman. In particular, Claimants assert claims for Jones Act negligence, unseaworthiness, and maintenance and cure. Claimants signed a new employment contract (“Crew Terms of Employment”) with Sea Harvest at the beginning of each fishing voyage. Each employment contract signed by Claimants during the relevant time period contained the following arbitration clause:

Arbitration: 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 combination of them; 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 Philadelphia, Pennsylvania.

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 of New York 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 shall bear its own costs in pursuing such remedies.

I have read, understand and agree to the terms of the above Agreement. By signing below, I acknowledge that I have been given time to review this Agreement, and I have read (or otherwise understand) and agree to its terms, and that I make this Agreement freely and voluntarily.

See, e.g., Resp't Ex. 1 at SHI0102 (emphasis in original).

Sea Harvest concedes that a seaman's employment contract, as is the case here, is exempt from enforcement under the Federal Arbitration Act ("FAA"). Nonetheless, Sea Harvest asserts that its arbitration clause is enforceable pursuant to state law, and further claims that the clause is enforceable under the laws of New York, New Jersey and Massachusetts. Moreover, contrary to Claimants' argument, Sea Harvest argues that public policy and unconscionability considerations do not render its arbitration clause unenforceable.

In opposition Claimants argue that the arbitration clause is unenforceable under the FAA and New York law. Claimants further assert that the arbitration clause is unconscionable and violates public policy. In addition, Claimants contend that the enforcement of Sea Harvest's arbitration clause would create a lack of uniformity in federal maritime law.

DISCUSSION

The parties agree that the arbitration agreement unambiguously identifies that New York law should apply if the FAA does not apply. The agreement states: "If this agreement to arbitrate is determined to be exempt from enforcement under the Federal Arbitration Act, the laws of the State of New York shall be applied in determining the validity and enforceability of this agreement." Accordingly, the Arbitrator will apply New York law and finds there is no need to discuss the result that would occur if the law of New Jersey or Massachusetts applied.

The Arbitrator rejects Claimants' argument that an exemption from enforceability under the FAA precludes enforcement of an arbitration agreement under state law. As Sea Harvest correctly notes, no case law squarely supports this argument. To the contrary, there are many instances where an arbitration agreement that was exempt from enforcement under the FAA was nonetheless enforced under state law. See, e.g., Valdes v. Swift Transp. Co., 292 F. Supp. 2d 524, 528 (S.D.N.Y. 2003) ("Although the Second Circuit has not squarely addressed the issue presented in this case, other courts have enforced arbitration provisions against claims arising from FAA-excluded contracts if such provisions were enforceable under state law." (citations omitted)). With regard to similar language contained in an arbitration clause, the Third Circuit has held:

Applying the Supreme Court's precedent, we conclude that the District Court erred in holding that [the plaintiff transportation worker's] exemption status under section 1 of the FAA preempts the enforcement of the arbitration agreement under [] state law. It is telling that the arbitration agreement itself envisioned the possibility that [plaintiff's] employment contract would be exempt from the FAA's coverage under section 1 of the Act. It provided for that contingency by including the following: "To the extent that the Federal Aviation Act is inapplicable, Washington law pertaining to agreements to arbitrate shall apply." We see no reason to release the parties from their own agreement.

Palcko v. Airborne Express, Inc., 372 F.3d 588, 596 (3d Cir. 2004). For the same reasons as expressed in the cited cases, the Arbitrator will apply New York law despite the fact that claimants' arbitration agreement is exempt from enforcement pursuant to the FAA.

Claimants argue that because a seaman has a statutory right to a trial by jury in a Jones Act claim, he cannot be compelled to pursue that claim in arbitration. Claimants mainly rely on the proposition that a "seaman may be required to arbitrate claims for which there is no statutory right to proceed in federal court." Claimants' Br. at 5-6 (citing O'Dean v. Tropicana Cruises Intern., Inc., No. 98 CIV. 4543 (JSR), 1999 WL 335381 (S.D.N.Y. May 25, 1999)). Claimants are mistaken. The requirement allowing the arbitration of claims in the absence of a statutory

procedural right does not equate to a prohibition against the arbitration of a claim that is subject to a statutory right to a jury trial. As stated in Kozur, a seaman can waive his or her statutory right to a jury trial. See Kozur v. F/V Atlantic Bounty, LLC, No. CV 18-08750 (JHR), 2020 WL 5627019, at *8 (D.N.J. Aug. 18, 2020) (emphasis added), which stated:

No language within the Jones Act leads to the conclusion that a Plaintiff may not waive the right to a jury trial. See Grooms v. Marquette Transportation Co., LLC, No. 14-CV-603-SMY-DGW, 2015 WL 681688, at *2 (S.D. Ill. Feb. 17, 2015) (“Congress did not express its intention that the rights afforded under the Jones Act be protected against waiver of the right to a judicial forum.”). **To the contrary, the Jones Act permits a seaman to, in effect, waive the right to a Jones Act jury trial by providing a claimant the choice to file a claim under Federal Rule of Civil Procedure 9(h). Importantly, “[b]y agreeing to arbitrate a statutory claim, a party does not forgo the substantive rights afforded by the statute; it only submits to their resolution in an arbitral, rather than a judicial, forum.” Mitsubishi, 473 U.S. at 628.** Plaintiff’s arbitration clause does not restrict his right to bring a Jones Act claim against his employer, and further does not inherently force Plaintiff to forgo any of his substantive rights. Furthermore, courts have found “the modern rule is that a court enjoys the same power to grant equitable relief in an admiralty case as in an ordinary civil action.” O’Dean v. Tropicana Cruises Int’l, Inc., No. 98 CIV. 4543 (JSR), 1999 WL 335381, at *2 (S.D.N.Y. May 25, 1999) (citing Farrell Lines Inc. v. Ceres Terminals Inc., 161 F.3d 115, 116–17 (2d Cir.1998); Pino v. Protection Maritime Ins. Co., 599 F.2d 10, 15–16 (1st Cir.1979)).

The enforceability of arbitration agreements under New York law is analyzed under general contract principles. Salvano v. Merrill Lynch, Pierce, Fenner & Smith, Inc., 623 N.Y.S.2d 790, 794 (1995). The burden rests on the proponent of arbitration to demonstrate that the parties agreed to arbitrate the dispute at issue. Here, the arbitration clause is clear, explicit and conspicuous, demonstrating the parties’ intent to arbitrate Claimants’ underlying claims. “[O]n a motion to compel or stay arbitration, a court must determine, ‘in the first instance ... whether parties have agreed to submit their disputes to arbitration and, if so, whether the disputes generally come within the scope of their arbitration agreement.’” Mozzachio v. Schanzer, 188 A.D.3d 873, 874 (2020) (citations omitted). Sea Harvest has met this burden.

Under “New York law, in the absence of fraud or other wrongful conduct, a party who signs a written contract is conclusively presumed to know its content and to assent to them, and he is therefore bound by its terms and conditions.” Progressive Cas. Ins. Co. v. C.A. Reaseguradora Nacional De Venezuela, 991 F.2d 42, 46 (2d Cir. 1993) (citation omitted). Accordingly, Claimants are bound by their agreed upon and contracted for arbitration terms.

Even though Claimants recognize there is a strong public policy in favor of alternative dispute resolution, including arbitration, they nonetheless argue that enforcing their arbitration agreement would violate the public policy “in favor of allowing Jones Act seaman to assert a claim for personal injury against their employers in a judicial forum and to have those claims tried before a jury.” Claimants’ Br. at 10. Claimants rely on U.S. Bulk Carriers, Inc. v. Arguelles, 400 U.S. 351, 355-56 (1971), for the proposition that Sea Harvest’s arbitration agreement should not be enforced because it deprives Claimants of their right to bring their Jones Act claims in federal court. Id. at 10. As Sea Harvests correctly argues, however, Arguelles is distinguishable from the instant matter since the wage claims asserted in that case were subject to the Labor Management Relations Act where the Supreme Court addressed ambiguous language between two provisions in the Act. In Arguelles the Supreme Court ultimately concluded that a provision for a federal remedy to enforce grievance and arbitration did not abrogate a seaman’s right to sue for wages in federal court. Arguelles, 400 U.S. at 356-57. The Court expressly clarified: “We deal only with the seaman’s personal wage claims.” Id. at 357. Accordingly, Claimants’ reliance on Arguelles is misplaced. As noted above, numerous courts have held that the Jones Act permits a seaman to waive his or her right to a Jones Act jury trial.

Claimants further argue that the “ward of admiralty” doctrine and Federal Employers’ Liability Act (“FELA”) supports their public policy argument against enforcement. In particular,

Claimants argue that FELA prohibits “any contract, rule, regulation, or device whatsoever to deprive an injured worker of rights under FELA or the Jones Act” and, thus, the arbitration agreements at issue are unenforceable. See Claimants’ Br. at 13-14 (citing Boyd v. Grand T.W.R. Co., 388 U.S. 263, 265 (1949)). Claimants’ reliance on the ward of admiralty doctrine and FELA is misplaced. The District Court in Kozur decided Claimants’ argument when it addressed the same arbitration language that is at issue here. The Court wrote, “[t]he Jones Act, in providing that a seaman should have the same right of action as would a railroad employee, does not mean that the very words of the FELA must be lifted bodily from their context and applied mechanically to the specific facts of maritime events.” Kozur, 2020 WL 5627019, at *8 (quoting Cox v. Roth, 348 U.S. 207, 209 (1955)). As was the case in Kozur, Claimants’ arbitration clause does not restrict their right to bring a Jones Act claim against their employer, and further does not force Claimants to forgo any of their substantive rights.

The Arbitrator also notes that three subject areas have been recognized under New York law where arbitration is prohibited on public policy grounds: (1) child custody issues under New York’s Domestic Relations law; (2) disqualification of attorney from representation; and (3) state antitrust law. Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Benjamin, 1 A.D.3d 39, 44, 766 N.Y.S.2d 1, 6 (2003). The instant claims do not fall into any of these three areas.

[Moreover], because freedom of contract is itself a strong public policy interest in New York, we may void an agreement only after “balancing” the public interests favoring invalidation of a term chosen by the parties against those served by enforcement of the clause and concluding that the interests favoring invalidation are stronger. . . . Only a limited group of public policy interests have been identified as fundamental to outweigh a public policy favoring freedom of contract.... The fact that a contract term may be contrary to a policy reflected in the Constitution, a statute or a judicial decision does not render it unenforceable..., and the mere presence of a public interest does not erect an inviolable shield to waiver. Indeed, the courts of this State regularly uphold agreements waiving statutory or constitutional rights.

Matter of New Brunswick Theological Seminary v. Van Dyke, 184 A.D.3d 176, 183, appeal dismissed, 36 N.Y.3d 937 (2020), leave to appeal denied, 36 N.Y.3d 912 (2021) (internal citations and quotation marks omitted).

In sum, the arbitrator finds that the public policy in favor of freedom to contract outweighs any notion in Claimants' favor under the ward of admiralty doctrine. Accordingly, the arbitrator finds that public policy considerations do not preclude enforcement of the arbitration agreement.

Claimants also oppose arbitration of their claims on unconscionability grounds, arguing that the agreement at issue is a contract of adhesion. Claimants contend that they are in a particularly vulnerable position when faced with an employment contract containing an arbitration provision. They further argue that when they signed their contracts they were not represented by legal counsel and were not made aware of their rights under the Jones Act and general maritime law. Claimants also argue that due to their status as commercial fisherman, they lack bargaining power to negotiate employment terms. Claimants also urge the Arbitrator to consider the economic pressures and the context in which their agreements were signed. See Claimants' Br. at 15.

Sea Harvest counters that Claimants' argument on this point harkens back to historical times when seamen spent months or even years living onboard their ships—the roots of the doctrine of “ward of admiralty.” Sea Harvest correctly points out that the Supreme Court recently addressed and noted the limited role of the ward of admiralty doctrine in contemporary maritime law:

The doctrine has never been a commandment that maritime law must favor seamen whenever possible. . . . And, while sailors today face hardships not encountered by those who work on land, neither are they as isolated nor as dependent on the master as their predecessors from the age of sail. In light of these changes and of the roles now played by the Judiciary and the political branches in protecting sailors, the special solicitude to sailors has only a small role to play in contemporary maritime law.

The Dutra Group. v. Batterton, 139 S. Ct. 2275, 2287 (2019).

Claimants’ argument that their arbitration agreements are **contracts of adhesion** is belied by the facts in this matter. Under New York law, adhesion is found where the party seeking to enforce a contract used high pressure tactics or deceptive language in the contract and where there is gross inequality of bargaining power between the parties. Moreover, to support an adhesion defense it must be demonstrated that an agreement imposes substantial unfairness on the party with weaker power. See Matter of Ball (SFX Broad. Inc.), 236 A.D.2d 158, 161, 665 N.Y.S.2d 444 (1997) (citations omitted). **Here, Claimants do not contend that Sea Harvest used high pressure tactics or deceptive language in its contracts. It is undisputed that Claimants signed a new employment contract at the beginning of each voyage and each contract contained the same arbitration clause. Claimants had numerous opportunities to seek legal advice as to their rights prior to signing their contracts.**

Claimants’ unconscionability argument based on the “ward of admiralty” doctrine is also unavailing. To accept Claimants’ argument might render all employment contracts signed by commercial fisherman a contract of adhesion. This would undermine New York’s strong public policy interest favoring parties’ right to freedom of contract. Accordingly, the Arbitrator finds that the arbitration agreement is not unenforceable as a contract of adhesion.

Claimants argue that enforcing their arbitration agreements under state law would create a **lack of uniformity in federal maritime law**. The District Court in Kozur found the same argument to be unconvincing:

[T]he Supreme Court has held that “the Jones Act is to have a uniform application throughout the country unaffected by local views of common law rules.”... This requirement of uniformity is not, however, absolute.

....

Most notably, precedent provides that the uniformity requirement is relaxed when dealing with procedural doctrines—distinguishing substantive doctrines as those

**“upon which maritime actors rely in making decisions about primary conduct—
how to manage their business and what precautions to take.”**

Kozur, 2020 WL 5627019, at *9-10 (citations omitted). The Arbitrator agrees with Kozur.

Likewise, the arbitrator finds that the general requirement of uniformity with regard to maritime law does not blanketly prohibit application of state law to the issue of arbitration.

CONCLUSION

For the foregoing reasons, the arbitrator finds that the parties entered into a valid and enforceable arbitration agreement and that Claimants’ claims fall within the scope of the agreement. The arbitrator further finds that public policy, unconscionability and uniformity considerations do not render Claimants’ arbitration agreements unenforceable. Accordingly, Sea Harvest’s application to compel arbitration is GRANTED.

s/ Joel Schneider
Hon. Joel Schneider (Ret.)
Arbitrator

DATED: August 10, 2022