UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 1:20-22133–CIV–MARTINEZ

RYAN MAUNES MAGLANA and FRANCIS KARL BUGAYONG on their own behalf and as class representatives of all other similarly situated Filipino crewmembers trapped aboard CELEBRITY cruise vessels,

Plaintiffs,

v.

CELEBRITY CRUISES INC.,

Defendant.
_____/

ORDER GRANTING DEFENDANT'S MOTION TO COMPEL AND DISMISS

THIS MATTER is before the Court upon Defendant's Motion to Compel and Dismiss Plaintiffs' Amended Complaint ("Motion") (DE 26). The Court has carefully considered the Motion, response and reply thereto, and is otherwise fully advised. For the reasons set forth below, the Court concludes that arbitration is required. Accordingly, Defendant's Motion is **GRANTED**.

I. BACKGROUND

In response to the outbreak of COVID-19 around the world and in the United States, Celebrity Cruises, Inc. ("Celebrity") suspended all of its cruises on March 13, 2020. (DE 19 ("Pl.'s Compl.") ¶ 29). The following day the CDC issued a No Sail Order. (*Id*. ¶ 31). During the timeframe relevant to this lawsuit, Celebrity's cruise vessels have remained at their respective destinations with all of their crewmembers on board. (*Id*. ¶¶ 33–34).

Plaintiffs Ryan Maunes Maglana and Francis Karl Bugayong are Filipino citizens and employees of Celebrity. Plaintiffs claim they were aboard Celebrity's vessels in their employment capacity when the COVID-19 pandemic struck. (*Id*. ¶¶ 2–3). They allege that "Defendant held,

and continues to hold, thousands of souls captive aboard its fleet, including the Plaintiffs, for months without wages or the ability to disembark the ship and return home, for no justifiable reason." (*Id*. at 40). Plaintiffs allege that they "have been held for weeks, and even months, without pay or a ticket home," (*id*.), and that there "are at least 1700 Filipino seafarers being held captive throughout Defendant's fleet, and nearly 7,000 between those employed by Royal Caribbean Cruise Line, Azamara Cruise Line, Celebrity Cruise Line, and the other minor subsidiary brands owned by the Royal Caribbean/Celebrity holding entity." [1] (*Id*. ¶ 31).

Thereafter, Plaintiffs filed a five-count complaint, individually and on behalf of similarly-situated Filipino employees asserting the following claims: "Preliminary Mandatory Injunction Requiring Repatriation of Defendant's Filipino Crewmembers" (Count I); "Intentional Tort of False Imprisonment" (Count II); "Employment Discrimination on the Basis of National Origin" (Count III); "Wages and Penalties Pursuant to 46 U.S.C. §10313" (Count IV); and "Intentional Infliction of Emotional Distress" (Count V). (Pl.'s Compl. ¶¶ 72–106). Celebrity now moves to compel arbitration and dismiss this action due to the existence of an arbitration clause in Plaintiffs' employment contracts. This matter is now ripe for adjudication.

II. LEGAL FRAMEWORK

A. The New York Convention and Federal Arbitration Act

In 1958, the United Nations Economic and Social Council adopted the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, more commonly known as the "New York Convention." *See generally Lindo v. NCL (Bahamas), Ltd.*, 652 F.3d 1257, 1262 (11th Cir.

[1] Subsequent to the filing of the lawsuit, it appears Plaintiffs were repatriated to the Philippines. (DE 10, 16-17).

2011). In 1970, the United States acceded to the treaty, which was later implemented by Chapter 2 of the Federal Arbitration Act ("FAA"), 9 U.S.C. § 201. *Id*.

Article II of the New York Convention states that "[e]ach Contracting State shall recognize an agreement in writing under which the parties undertake to submit to arbitration all or any differences which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not, concerning a subject matter capable of settlement by arbitration." *Lindo*, 652 F.3d at 1262 (emphasis omitted) (quoting New York Convention, art. II (1)). Section 201 of the FAA requires that "[t]he Convention on the Recognition and Enforcement of Foreign Arbitral Awards of June 10, 1958, shall be enforced in United States courts in accordance with this chapter." 9 U.S.C. § 201.

It is undisputed that Plaintiffs and Defendant executed a Sign-On Employment Agreement ("SOEA") and Philippine Overseas Employment Administration Contract of Employment ("POEA Contract") containing arbitration provisions. (Motion, Exhs. A, C, E, F). A party seeking to enforce arbitration agreements covered by the Convention may file an action to compel arbitration in accord with the terms of the agreement. 9 U.S.C. § 206; *Czarina, L.L.C. v. W.F. Poe Syndicate*, 358 F.3d 1286, 1290–91 (11th Cir. 2004). Defendant requests that this Court compel arbitration pursuant to the parties' employment agreements and dismiss the case.

B. The Employment Agreements

The SOEA executed by Plaintiffs and Defendant for their employment on the vessel *Millennium* requires all disputes to be resolved by arbitration in the Philippines. In relevant part, the contract states:

> All grievances and any other dispute whatsoever, whether in contract, regulatory, statutory, common law, tort or otherwise relating to or in any way connected with the Seafarers service for the Owners/Company under the present Agreement . . . shall be referred to and resolved exclusively by mandatory arbitration pursuant to

> the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York 1958), 21 U.S.T. 2517, 330 U.N.T.S., ("The Convention"), except as provided by any government mandated contract.

(Motion at 3, and Ex. A, "ARBITRATION PROCEDURE," ¶ 4). In addition, the SOEA grants the arbitrator "exclusive authority to resolve any dispute relation to the interpretation, applicability, enforceability, or formation of this Agreement . . . ." (Motion at 4; Ex. A, "ARBITRATION PROCEDURE," ¶ 14).

The POEA Contract contains further provisions mandating arbitration of all "claims and disputes" asserted by Filipino seamen "arising from this employment." (Motion at 8, and Ex. D, §29).

III. ANALYSIS

Against this backdrop, the Convention applies if four jurisdictional prerequisites are satisfied: "(1) there is an agreement in writing; (2) the agreement provides for arbitration in the territory of a signatory of the Convention; (3) the agreement arises out of a legal relationship, whether contractual or not, which is considered commercial; and (4) a party to the agreement is not an American citizen, or the commercial relationship has some reasonable relation with one or more foreign states." *Montero v. Carnival Corp*., 523 Fed. Appx. 623, 626 (11th Cir. 2013) (alterations accepted) (quoting *Bautista v. Star Cruises*, 396 F.3d 1289, 1294 n. 7 (11th Cir. 2005))

"A district court must order arbitration unless (1) the four jurisdictional prerequisites are not met or (2) one of the Convention's affirmative defenses applies." [2] *Id*. (quoting *Bautista*, 396 F.3d at 1294-1295). "Affirmative defenses that apply in this context include where the agreement to arbitrate is 'null and void, inoperative or incapable of being performed.' *Id*. (quoting *Bautista*, 396 F.3d at 1301).

[2] Plaintiffs do not appear to contest jurisdictional prerequisites.

Here, Plaintiffs argue that the parties' agreement is inoperable, null and void. Plaintiffs further accuse Defendant of unclean hands. And finally, Plaintiffs claim this case cannot be arbitrated "under the convention, the federal constitution, and general maritime law." (DE 27: 3, 15). Each contention will be addressed in turn.

A. Whether the Agreement is Null and Void and Defendant has Unclean Hands

Plaintiffs' first two arguments are predicated on the notion that the arbitration provisions are invalid due to Defendant's contractual nonperformance. Specifically, Plaintiffs argue that when Defendant "deprived [Plaintiffs] of the benefits they reasonably anticipated, such as their wages, [Plaintiffs] will be excused of their obligation to perform the balance of their contractual obligations under contract law." (DE 27: 8). Plaintiffs make a similar argument invoking the equitable principles of unclean hands and estoppel, claiming that Defendant failed to act in good faith in executing their obligations under the contract, thereby excusing Plaintiffs from the agreement's arbitration requirement. *Id.*

However, these quarrels do not go to contract formation, but rather, contractual performance. And that is no defense to arbitration under Article II. "The limited scope of the Convention's null and void clause 'must be interpreted to encompass only those situations—such as fraud, mistake, duress, and waiver—that can be applied neutrally on an international scale.'" *Bautista,* 396 F.3d at 1302 (quoting *DiMercurio v. Sphere Drake Ins. PLC,* 202 F.3d 71, 79 (1st Cir. 2000)); *see also Suazo v. NCL (Bahamas), Ltd*., 822 F.3d 543, 546 (11th Cir. 2016) (recognizing the "limited set of defenses" prescribed by Article II); *Escobar v. Celebration Cruise Operator, Inc*., 805 F.3d 1279, 1286 (11th Cir. 2015) (reaffirming the precept that Article II's "null and void" defense is to be narrowly interpreted). Here, Plaintiffs' argument that Defendant failed

to pay wages "is no claim—much less any showing—of fraud, mistake, duress, or waiver" with respect to the formation of the employment contract. *Lindo*, 652 F.3d at 1276.

Indeed, federal appellate courts have been clear that ordinary contractual defenses do not apply with respect to arbitration agreements under the Convention. *Bautista; Sauzo, supra.* And even if they did, a prior breach would not defeat an otherwise valid arbitration requirement anyway. *See, e.g., Solymar Invs., Ltd. v. Banco Santander S.A.*, 2011 WL 1790116, at *1 (S.D. Fla. Mar. 14, 2011) ("a defense to performance of the contract is part and parcel of the underlying dispute, which is a matter that only the arbitrator can address") (citing *Prima Paint Corp. v. Flood & Conklin Manufacturing Co.*, 388 U.S. 395 (1967)), *report and recommendation adopted*, 2011 WL 1791290 (S.D. Fla. May 10, 2011), *aff'd*, 672 F.3d 981 (11th Cir. 2012). Plaintiffs' affirmative defenses fail accordingly.

B. Whether the Arbitration Agreement is Unenforceable Under the Convention, Federal Constitution, and General Maritime Law

Plaintiffs' final argument is a combination of statutory, maritime and general federal principles asserting that their claims are either outside the scope of the arbitration clause or not subject to arbitration. The Court disagrees on both grounds.

In considering whether a dispute arises out of a seafarer's employment relationship sufficient to trigger arbitration under the Convention, the Eleventh Circuit has applied a "but for" test. *See Montero*, 523 Fed. Appx. at 627 (stating that "[b]ut for [plaintiff's] service on the vessel, none of [his] claims would have been viable"). Applying this guidance here, it is plain that Plaintiffs' claims for injunctive relief, tort[3], and employment discrimination would not be viable

[3] The torts alleged by Plaintiffs (false imprisonment and intentional infliction of emotional distress), in the particular circumstances here, are indisputably connected to their duties for Defendant, in contrast to the cases cited by Plaintiffs. *Cf. Doe v. Princess Cruise Lines, Ltd.*, 657 F. 3d 1204 (11th Cir. 2011) (rape occurring after hours and while off-duty); *Rutledge v. NCL*

but for their service as employees on the Defendant's vessels. Indeed, the language of the arbitration clause here is extremely broad and provides that "***[a]ll grievances and any other dispute whatsoever***, whether in contract, regulatory, statutory, common law, tort or otherwise ***relating to or in any way connected with the Seafarers service*** for the Owners/Company under the present Agreement" ***shall be subject to mandatory arbitration***. (Motion at 3 (emphasis added)). This includes actions in equity or based upon employment discrimination.

Moreover, assuming Plaintiffs have the right to assert claims arising under U.S. statutory law in arbitration, which is doubtful given their choice of Maltese law, they have not made a showing, nor cited any authority, demonstrating that the arbitral forum would be an ineffective substitute for a judicial forum regarding their discrimination claim, as they suggest. Indeed, employment discrimination claims are routinely arbitrated. *See, e.g., Brown v. ITT Consumer Financial Corp.*, 211 F.3d 1217, 1221 (11th Cir. 2000) (agreement to arbitrate "any dispute" between the parties found to encompass Title VII employment discrimination claim).

But more significantly, even if they could make such a showing, in the unique backdrop of the Convention, public policy considerations are not authorized defenses to arbitration in any event. *See, e.g., Suazo*, 822 F.3d at 545 ("Our New York Convention precedent suggests . . . that a party may only raise this type of public-policy defense in opposition to a motion to enforce an arbitral award *after* arbitration has taken place, and not in order to defeat a motion to compel arbitration.") (emphasis in original); *Paucar v. MSC Crociere S.A.*, 2013 WL 1345403, at *3 (S.D. Fla. Apr. 3, 2013) (concluding that a seaman's potentially limited remedies under Panamanian law could not defeat arbitration with a cruise line under the Convention), *aff'd*, 552 Fed. Appx. 872

(Bahamas) Ltd., 2015 WL 458133, at *5 (S.D. Fla. Feb. 3, 2015) (concerning sexual harassment and sexual assault). A detention/quarantine in response to a public health emergency arises out of Plaintiffs' employment on a cruise ship.

(11th Cir. 2014). Consistent with these authorities, the "strong presumption in favor of freely-negotiated contractual choice-of-law and forum-selection provisions," particularly "in the field of international commerce," must be respected. *Lindo,* 652 F.3d at 1275.

IV. CONCLUSION

Based upon the foregoing, it is

ORDERED AND ADJUDGED that Defendants' Motion to Compel and Dismiss Plaintiff's Amended Complaint (DE 26) is **GRANTED**. The parties are **DIRECTED** to arbitrate this dispute. This action is **DISMISSED**. The Clerk shall mark this case **CLOSED**.

DONE AND ORDERED in Chambers at Miami Florida, this 7th day of October, 2020.

JOSE E. MARTINEZ
UNITED STATES DISTRICT JUDGE