

Moraites v. Royal Caribbean Cruises, Ltd.

MEMORANDUM OPINION AND ORDER

CASTILLO, District Judge.

This action arises out of a personal injury sustained by plaintiff, John Moraites, while he was a passenger on one of defendant Royal Caribbean Cruises Ltd.'s cruise ships. Defendant has moved to dismiss under Rule 12(b)(6), claiming that venue is not proper in the Northern District of Illinois because the cruise ticket plaintiff purchased contains a forum-selection clause requiring that all disputes arising in connection with the cruise be litigated in a court in Miami, Florida. Specifically, the ticket states:

It is agreed by and between passenger and carrier that all disputes and matters whatsoever arising under, in connection with or incident to this contract shall be litigated, if at all, in and before a court located in Miami, Florida, U.S.A., to the exclusion of the courts of any other state, territory or country. Passenger hereby waives any venue or other objection that he may have to any such action or proceeding being brought in any court located in Miami, Florida.

Defendant argues in the alternative that the court should transfer this action to the United States District Court for the Southern District of Florida pursuant to 28 U.S.C. § 1406(a).

As a general rule, forum-selection clauses are "prima facie valid and should be enforced unless enforcement is shown by the resisting party to be unreasonable under the circumstances." *M/S Bremen v. Zapata Off-Shore Co.*, 407 U.S. 1, 10 (1972). Even where the forum clause establishes a remote forum for resolution of conflicts, the resisting party bears a "heavy burden of proof" of unfairness. *Id.* at 17.

In a case strikingly similar to this case, the Supreme Court upheld the enforceability of a forum-selection clause in *Carnival Cruise Line, Inc. v. Shute*, 499 U.S. 585 (1991). Like Mr. Moraites, the plaintiff in *Shute* purchased a ticket containing a clause selecting Florida as the forum, was injured on the cruise, and filed suit against the cruise line in her home state of Washington alleging negligence. The cruise line moved to dismiss for improper venue and the district court granted the motion. Following reversal by the court of appeals, the Supreme Court held that the court of appeals erred in refusing to apply the forum-selection clause. In doing so, the Court rejected the argument that a non-negotiated forum-selection clause is per se unenforceable. *Id.* at 593. Rather, the Court listed several justifications for permitting the cruise line to insert a reasonable forum clause in a form contract, including the cruise line's "special interest" in limiting the number of fora in which it potentially could be sued, the "salutary effect" of dispelling any confusion about where suits arising from the contract must be brought and defended, and increased benefits to passengers in the form of reduced fares reflecting the savings that the cruise line enjoys by limiting the fora in which it may be sued. *Id.* at 593-94.

The Court also held that the forum selection clause did not violate the Limitation of Vessel Owner's Liability Act, 46 U.S.C.App. § 183c which states:

It shall be unlawful for the ... owner of any vessel transporting passengers between ports of the United States or between any such port and a foreign port to insert in any rule, regulation, contract, or agreement any provision or limitation ... (2) purporting in such event to lessen, weaken, or avoid the right of any claimant to a trial by court of competent jurisdiction on the question of liability for such loss or injury, or the measure of damages therefor. All such provisions or limitations contained in any such rule, regulation, contract, or agreement are hereby declared to be against public policy and shall be null and void and of no effect.

As the Court explained, "the clause states specifically that actions arising out of the passage contract shall be brought 'if at all,' in a court 'located in the State of Florida,' which, plainly, is a 'court of competent jurisdiction' within the meaning of the statute." *Id.* at 596.

Plaintiff makes no effort to distinguish *Shute*. Rather, plaintiff claims that *Shute* no longer accurately reflects the law. Without citing any authority, he argues that the November 4, 1992 amendment of 46 U.S.C.App. § 183c by Pub.L. 102-587 changed the law so that § 183c now forbids the use of a forum-selection clause which limits an injured passenger's selection of judicial forum in any way. The November 1992 amendment substituted the words "any court" for the word "court." Under plaintiff's interpretation, the amendment prohibits the use of a forum-selection clause at all.

Plaintiff's interpretation is completely unsupported by the legislative history or the case law. On the contrary, recent decisions in this jurisdiction post-dating the November 1992 amendment indicate that *Shute* is alive and well. See, e.g., *Hugel v. Corporation of Lloyd's*, 999 F.2d 206, 210 (7th Cir.1993) (citing *Shute* in the context of a discussion stating that forum stipulation clauses are prima facie valid and routinely enforced absent a finding of unreasonableness); *CIT Group/Credit Finance, Inc. v. Lott*, No. 93 C 548, 1993 WL 157617 (N.D.Ill. May 13, 1993) (same).

Moreover, plaintiff's interpretation is refuted by the subsequent history of the statute itself. On December 20, 1993 Congress amended the statute again, see Pub.L. 103-206, this time to change the words "any court" back to "court." Thus, even if Congress had intended the November 1992 amendment to have the consequences attributed to it by plaintiff (an argument the court rejects), Congress had changed its mind by December 1993.

Because this case is governed by *Shute*, the court would be justified in dismissing the action for improper venue. However, rather than dismissal, the court believes justice would be better served by transferring the case to the United States District Court for the Southern District of Florida under 28 U.S.C. § 1406(a). See, e.g., *Benvenuti & Stein, Inc. v. Computer Software Specialists, Inc.*, No. 87 C 2507, 1987 WL 12699 (N.D.Ill. June 12, 1987) (court applied forum-selection clause in contract and transferred case to Florida pursuant to 28 U.S.C. § 1406(a)).

Plaintiff has tried to avoid this result by arguing that Chicago, Illinois is a more convenient forum in which to conduct this case than Miami, Florida. According to plaintiff, many of the witnesses reside in Illinois, plaintiff himself resides in Illinois, and plaintiff was treated for some of his injuries in Illinois. Defendant has countered with its own list of factors favoring transfer: defendant's corporate office is located in Florida, the documents relating to the accident are located in Florida, and the personnel aboard the cruise ship at the time of plaintiff's accident were employed in Florida. The accident itself occurred in the Pacific Ocean off the coast of Mexico.

The Supreme Court weighed many of these same factors in *Shute* and found them insufficient to override the forum-selection clause. Mrs. *Shute* resided in Washington, the defendant cruise line had its principal place of business in Florida, and the accident occurred off the coast of Mexico. The Court noted that "Florida is not a 'remote alien forum,' nor--given the fact that Mrs. *Shute's* accident occurred off the coast of Mexico--is this dispute an essentially local one inherently more suited to resolution in the State of Washington than in Florida." *Id.* at 594. Therefore, absent an allegation that Mrs. *Shute* lacked notice of the forum clause, the Court concluded that Mrs. *Shute* had "not satisfied the 'heavy burden of proof,' required to set aside the clause on grounds of inconvenience." *Id.* at 595.

The present facts compel the same result. Plaintiff has not alleged that he lacked notice of the forum clause or that he was induced to enter into the agreement by fraud, undue influence, or overweening bargaining power. Because there is no reasonable basis on which to find the forum-selection clause unenforceable, the "inconvenience" plaintiff claims is insufficient to satisfy the "heavy burden of proof" required to set aside the clause.

Finally, plaintiff cites *Joslyn Mfg. Co. v. Amerace Corp.*, 729 F.Supp. 1219, 1226 (N.D.Ill.1990), for the proposition that "[m]otions to transfer are not granted if they merely shift the inconvenience from one party to another." However, *Joslyn* is distinguishable because the parties there never stipulated to resolve their disputes in a particular forum. This critical distinction places this case squarely within the standards set forth in *Shute*, with the consequence that plaintiff cannot evade the plain terms of the forum clause requiring plaintiff to file his complaint "in any court located in Miami, Florida." Moreover, the court finds that the interests of justice will be served by transferring this matter to Florida because many of the relevant witnesses and documents in this case are located therein.

CONCLUSION

Defendant's motion to dismiss for improper venue is denied. Defendant's alternative motion to transfer is granted, and the Clerk of the Court is directed to transfer the file in this case to the United States District Court for the Southern District of Florida.