

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA**

**Case No. 20-cv-23715-BLOOM/Louis**

FNU ISANTO, as Personal Representative of the  
Estate of Fnu Pujiyoko, deceased,

Plaintiff,

v.

ROYAL CARIBBEAN CRUISES, LTD.,

Defendant.

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**ORDER**

**THIS CAUSE** is before the Court upon Defendant’s Motion to Compel Arbitration and Dismiss Plaintiff’s Complaint, ECF No. [4] (“Motion”). Plaintiff filed a Response to the Motion, ECF No. [6] (“Response”), to which Defendant filed a Reply, ECF No. [9] (“Reply”). The Court has considered the Motion, the Response, the Reply, the record in the case, the applicable law, and is otherwise fully advised. For the reasons set forth below, the Motion is granted in part and denied in part.

**I. BACKGROUND**

This matter stems from a lawsuit Plaintiff initiated in the Eleventh Judicial Circuit in and for Miami-Dade County, Florida against Defendant on May 4, 2020, ECF No. [1]. Defendant removed the case to this Court on September 4, 2020, pursuant to 9 U.S.C. § 205 and 28 U.S.C. §§ 1331, 1333. *Id.* at 4-5.

According to the Complaint, ECF No. [1-5], Fnu Pujiyoko (“Decedent”) was a seaman that worked aboard Defendant’s *Symphony of the Seas* vessel (the “Vessel”). *Id.* at ¶¶ 10-11. Plaintiff

is Decedent's father and the personal representative of Decedent's estate. *Id.* at ¶ 2. Decedent's employment contract and/or Collective Bargaining Agreement ("CBA") had a projected end date of March 21, 2020; however, his employment terminated on or about March 13, 2020. *Id.* at ¶¶ 12-14. In light of the COVID-19 pandemic, on March 14, 2020, passengers aboard the Vessel were disembarked while Decedent and other crewmembers were permitted to roam about the Vessel without limitations or restrictions between March 14, 2020 and March 28, 2020. *Id.* at ¶¶ 15-16; *see also id.* at ¶ 39 (Defendant suspended all of its future cruises on March 13, 2020 and the Centers for Disease Control and Prevention issued a No Sail Order on March 14, 2020). During this time, crewmembers allegedly were "encouraged to attend parties, shows, events and activities that took place aboard the ship which required crewmembers to be in close proximity, crowded spaces and stand in long lines." *Id.* at ¶ 17. *See also id.* at ¶ 39 (alleging that after March 14, 2020, Defendant's "management continued to hold large in-person meetings amongst crew members and failed to implement social distancing requirements/guidelines aboard the vessel").

Beginning on March 23, 2020, while aboard the Vessel, Decedent began to suffer from worsening flu-like symptoms, and on March 30, 2020, Decedent was medically disembarked from the Vessel and transferred to Broward Health Medical Center. *Id.* at ¶¶ 18-19. He passed away on April 11, 2020. *Id.* at ¶ 22. *See also id.* at ¶¶ 23-27 (alleging Defendant's "careless and continuous failure to protect its crewmembers assigned to work aboard the vessels from COVID-19 – despite [Defendant] having prior notice pertaining to the dangerous conditions and/or explosive contagiousness associated with COVID-19 aboard its vessels").

The Complaint alleges that Defendant implemented a social distancing requirement aboard the Vessel on March 29, 2020, after Decedent became ill. *Id.* at ¶ 39. "At all times material[], Decedent was a crewmember who worked for Defendant aboard Defendant's vessel and who

contracted COVID-19 and/or was at a heightened risk of exposure while working aboard” the Vessel. *Id.* at ¶ 41. In Plaintiff’s view, Decedent contracted the virus “as a result of Defendant’s negligence and/or gross negligence and/or intentional conduct.” *Id.* at ¶ 43. The Complaint alleges four counts: Jones Act wrongful death (Count I); unseaworthiness (Count II); failure to provide prompt, proper and adequate medical care (Count III); and failure to provide maintenance and cure (Count IV).

Defendant now moves to compel arbitration in accordance with the terms set forth in an arbitration provision in Decedent’s “Sign-On Employment Agreement,” ECF No. [4-1] at 4-5 (“SOEA”), and in the CBA, ECF No. [4-2] at 39-42 (collectively, “Employment Agreement”). In particular, the Employment Agreement provides that all grievances are to be resolved by arbitration under Bahamian law, as that is the law of the Vessel’s Flag State:

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 Seafarer’s service for the Owners/Company under the present Agreement, including but not limited to claims for personal injury/disability or death, no matter how described, pleaded or styled, and whether asserted against the Owners/Company, Master, Employer, Ship Owner, vessel or vessel operator shall be referred to and resolved exclusively by mandatory binding 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.

Subject to the exception noted in Section 4, the seat of any arbitration and the venue for the final hearing of any arbitration shall take place in the Flag State of the vessel, or in any location agreed by the Owners/Company and the Union or the representative of the Seafarer. The laws of the Flag State shall govern over any dispute in arbitration without regard to any Flag State conflict of law principles and the parties to this Agreement recognize that Flag State law will apply to all disputes, notwithstanding and without regard to any provision of Flag State law that may be construed to preclude the application of Flag State law to non-resident Seafarers.

SOEA at 4 ¶¶ 1, 3; CBA at 39-40 ¶¶ 1, 3.

The Employment Agreement, likewise, delegates certain authority to the arbitrator such

that:

The arbitrator, not any federal, state or local court or agency shall have the exclusive authority to resolve any dispute relating to the interpretation, applicability, enforceability or formation of this Agreement including, but not limited to any claim that all or any part of this agreement is void or voidable and as to choice of law. The arbitrator shall also have the power to provide any remedies necessary to address the dispute such as, but not limited to, damages, specific performance, and injunctive relief.

SOEA at 5 ¶ 14; CBA at 42 ¶ 14.

According to Defendant, its records, which include a punch-in and punch-out time detail report, reflect that Decedent continued to work until March 23, 2020, and there is no indication that his employment had been terminated at any time before his medical sign-off on March 30, 2020. ECF No. [4] at 3 (citing ECF No. [4-4] at 9). In its view, Plaintiff's claims arise out of Decedent's employment and are subject to the arbitration terms of the Employment Agreement.

*Id.* at 4.

Defendant makes five overarching points in support of compelling arbitration. First, federal law favors arbitration, particularly with respect to international commercial transactions. *Id.* at 4-5. Second, all conditions are met to compel arbitration under the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the "Convention"), which is implemented by Chapter 2 of the Federal Arbitration Act ("FAA"), 9 U.S.C. § 201 *et seq.* *Id.* at 5-8. Third, the United States Court of Appeals for the Eleventh Circuit and district courts have consistently enforced seamen's arbitration agreements. Fourth, other courts have enforced arbitration agreements similar to the Employment Agreement at issue. *Id.* at 8-9. And fifth, Plaintiff's efforts to avoid arbitration by alleging that Decedent's employment terminated on March 13, 2020 and that the arbitration clause "expired" are unconvincing and contrary to the

record. *Id.* at 10.<sup>1</sup> Defendant, thus, requests the Court compel arbitration and dismiss the case.

Plaintiff responds that the matter should be remanded and that under the facts as alleged, there is no valid and binding arbitration clause at issue. ECF No. [6]. He makes six main arguments. First, the Court's review should be limited to the four corners of the Complaint and should not include a review of Defendant's time detail report. *Id.* at 3. Second, the case should be remanded because the Court lacks subject matter jurisdiction. *Id.* at 3-7. Third, there is no federal policy favoring arbitration if the applicability of the agreement itself is at issue. *Id.* at 7-8. Fourth, Defendant fails to cite binding law in this circuit, and the Eleventh Circuit authority Defendant cites is inapplicable. *Id.* at 8-9. Fifth, the Jones Act, 46 U.S.C. § 30104, prohibits removal of Jones Act claims to federal court. *Id.* at 10-13. Finally, the arbitration provision is unenforceable. *Id.* at 13-14.

Defendant replies that the issues Plaintiff raises in the Response are for the arbitrator to decide, not the Court, and that Plaintiff fails to show how the jurisdictional requirements under the Convention are not satisfied. ECF No. [9]. It makes five points. First, Plaintiff's objections to arbitration are for the arbitrator to decide. *Id.* at 2-3. Second, the broad language in the arbitration agreement shows that it is valid, enforceable, and intended to survive expiration. *Id.* at 3-6. Third, federal law gives this Court jurisdiction to enforce an international arbitration agreement. *Id.* at 6-7. Fourth, the Motion is founded on binding precedent, and Plaintiff's authorities are inapplicable. *Id.* at 7-8. Finally, arbitration agreements are enforceable so long as the remedies available are fundamentally fair, and the instant arbitration agreement is enforceable. *Id.* at 8-10.

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<sup>1</sup> The Complaint alleges that "[j]ust shy of the projected end date for Decedent's last employment contract, or about March 13, 2020, RCCL terminated Decedent's contract. Therefore, no arbitration provision in Decedent's employment contract and/or CBA is applicable because Decedent's contract had expired." ECF No. [1-5] at 6 ¶ 13.

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