

United States District Court
For the Northern District of California

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

GEOGRAPHIC EXPEDITIONS, INC.,

No. C 08-04624 SI

Petitioner,

**ORDER DENYING PETITION TO
COMPEL ARBITRATION AND TO
STAY THE STATE COURT ACTION**

v.

THE ESTATE OF JASON LHOTKA by
ELENA LHOTKA, executrix; and SANDRA
MENEFEE,

Respondents.

On December 12, 2008, the Court heard oral argument on petitioner’s petition to compel arbitration and to stay the state court action. Having considered the arguments of the parties and the papers submitted, and for good cause shown, the petition is DENIED.

BACKGROUND

On July 14, 2008, respondents Sandra Menefee and the estate of Jason Lhotka filed a complaint in San Francisco Superior Court alleging claims against petitioner Geographic Expeditions, Inc. (“GeoEx”). GeoEx is a California company and has its principal place of business in San Francisco. Respondents’ underlying claims in state court arise from a series of events on Mount Kilimanjaro in Tanzania, Africa in October, 2007. Respondents allege that Jason Lhotka and his mother, Sandra Menefee, bought a trekking expedition from GeoEx to climb Mount Kilimanjaro, and that Lhotka died due to deficient equipment and medical care provided by GeoEx employees. See First Amended Complaint, Decl. of David Bennion in Supp. of Opp. to GeoEx Application for Order Shortening Time, at ex. 1. [Docket No. 17] Before leaving for Tanzania, Lhotka and Menefee signed agreements with

1 GeoEx that include the following provisions:

2 I agree that in the unlikely event a dispute of any kind arises between me and GeoEx, the
3 following conditions will apply: (a) the dispute will be submitted to a neutral third-party
4 mediator in San Francisco, California, with both parties splitting equally the costs of
5 such mediator. If the dispute cannot be resolved through mediation, then (b) the dispute
6 will be submitted for binding arbitration to the American Arbitration Association in San
7 Francisco, California; (c) the dispute will be governed by California law; and (d) the
8 maximum amount of recovery to which I will be entitled under any and all circumstances
9 will be the sum of the land and air cost of my trip with GeoEx. I agree that this is a fair
10 and reasonable limitation on the damages, of any sort whatsoever, that I may suffer.

11 *See* Petition of GeoEx to Compel Arbitration and Stay the State Court Action, at exs. A & B. GeoEx
12 argues that § b of this provision mandates that the dispute between respondents and GeoEx be referred
13 to arbitration, while respondents maintain that the arbitration cannot be compelled because the
14 agreement is procedurally and substantively unconscionable.

15 On September 15, 2008, GeoEx filed a motion in San Francisco Superior Court to dismiss the
16 complaint or to stay the action and compel arbitration. *See* GeoEx Application for Order Shortening
17 Time, at 2. [Docket No. 9] The motion was scheduled for hearing in state court on November 18, 2008.
18 *See id.* On October 6, 2008, GeoEx filed a petition in this Court to compel arbitration and stay the state
19 court action. [Docket No. 1] On October 13, 2008, GeoEx filed an application for an order from this
20 Court to shorten time on GeoEx's October 6 motion, in order for the motion to be heard in this Court
21 before the November 18, 2008 hearing in state court. [Docket No. 9] This Court denied GeoEx's motion
22 to shorten time and calendared it for hearing on December 12, 2008. [Docket No. 16]

23 At the November 18, 2008 hearing in state court on GeoEx's motion to dismiss or compel
24 arbitration, the Hon. Judge Patrick Mahoney adopted his tentative ruling and denied GeoEx's motion.
25 *See* Decl. of David J. Bennion in Opposition to GeoEx Mot. to Stay, ¶ 4 ("Bennion Decl."). [Docket No.
26 22] In his tentative ruling, Judge Mahoney found that the arbitration agreement is unconscionable and
27 that § b cannot be stricken because unconscionability permeates the substantive terms of the parties'
28 agreement. *See* Bennion Decl., at ex. G. [Docket No. 23]

Now before the Court is GeoEx's petition to compel arbitration and stay the state court action,
pursuant to § 4 of the Federal Arbitration Act, 9 U.S.C. § 1, *et seq.*

1 controversy cannot exceed \$16,831.² See Decl. of Sandra Menefee in Supp. of Resp. Opp. to GeoEx
2 Application to Shorten Time, at ex. 1 (invoice of Menefee’s payment to GeoEx of \$16,831 for herself
3 and Lhotka).


4 The anomaly in this case is that GeoEx argues that the parties’ contract is valid and mandates
5 arbitration, but also effectively asks the Court to ignore the provision of the same contract that limits
6 respondents’ recovery. The Court finds that GeoEx cannot both contend that the contract is valid and
7 enforceable but is not relevant to the Court’s determination as to whether it has jurisdiction. GeoEx
8 cites no authority establishing that in a petition to compel arbitration, the Court should not consider, in
9 addition to the complaint from the underlying dispute in state court, the materials submitted by the
10 petitioner in support of the petition. Accordingly, the Court finds that GeoEx has not met its burden of
11 establishing by a preponderance of the evidence that the amount of controversy in this case meets the
12 jurisdictional threshold.³

13
14 **CONCLUSION**

15 For the foregoing reasons and for good cause shown, the Court dismisses GeoEx’s petition for
16 lack of subject matter jurisdiction.

17
18 **IT IS SO ORDERED.**

19
20 Dated: 12/29/08

21 
22 _____
23 SUSAN ILLSTON
24 United States District Judge

25 _____
26 ² Respondents also seek recovery of attorneys’ fees, but GeoEx alleges no facts establishing why
27 attorneys’ fees in this case would exceed approximately \$58,000.

28 ³ The Court recognizes, as GeoEx argues, that the FAA is a “congressional declaration of a
liberal federal policy favoring arbitration agreements,” *see Moses Cone Mem’l Hosp.*, 460 at 24. The
parties agree, however, that the of merits GeoEx’s petition – whether the arbitration clause is
unconscionable – is a matter to be decided under California law. This Court certainly has no greater
expertise on that issue than the state court where respondents originally filed their complaint.