

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. _____ CIV-

BERTRAM JOSEPHS,

Plaintiff,

vs.

CARNIVAL CORPORATION, d/b/a
CARNIVAL CRUISE LINES, INC.,Defendant.
_____/**NOTICE OF REMOVAL**

COMES NOW Defendant, **CARNIVAL CORPORATION** (“CARNIVAL”), by and through undersigned counsel, and hereby files this, its Notice of Removal, pursuant to 28 U.S.C. § 1441, *et seq.*, and 9 U.S.C. §205, and respectfully states as follows:

1. BERTRAM JOSEPHS (“JOSEPHS”) is a Vincentian seaman who alleges he was injured in July 14, 2010 while working for CARNIVAL on board the cruise ship CARNIVAL IMAGINATION, a Panamanian-flagged vessel.

2. CARNIVAL is a Panamanian corporation with its principal place of business in Miami-Dade County, Florida.

3. JOSEPHS was employed by CARNIVAL under a “Seafarer’s Agreement” (hereinafter the “Agreement”), a copy of which is attached hereto as Exhibit “A”.

4. Paragraph 6 of the Agreement acknowledges that the Agreement constitutes a commercial legal relationship between the Seafarer and his employer, Carnival.

5. Paragraph 7 of the Agreement provides that any and all disputes arising out of or in connection with the Agreement shall be referred to and resolved by arbitration under the Arbitration Rules of the International Chamber of Commerce. The place of the arbitration shall be in London, England; Monaco; Panama City, Panama; or Manila, Philippines, whichever is closer to the Seafarer's home country, in this case, St. Vincent.

6. The Agreement constitutes an arbitration agreement falling under the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the "Convention").

7. On February 14, 2010, JOSEPHS served CARNIVAL with a Complaint in State Court in the Eleventh Circuit of Miami-Dade County, Florida, under Case No. 11-04448 CA 08, asserting claims for Jones Act negligence, Unseaworthiness and Failure to Provide Prompt and Adequate Maintenance and Cure. A copy of the Complaint and all other pleadings, process, and orders served on Defendant CARNIVAL in this case are attached hereto as Exhibit "B," pursuant to 28 U.S.C. §1446(a).

8. This suit is an action of which this Court has original jurisdiction under the provision of 9 U.S.C. § 202, *et seq.*, and one that may be removed to this Court under the provisions of 9 U.S.C. § 205, in that it is an action arising under the laws of the United States and relating to an arbitration agreement falling under the Convention. The grounds for removal are as follows:

- a. There has been no trial of the state court action.
- b. Plaintiff JOSEPHS is a citizen of St. Vincent.
- c. Defendant CARNIVAL CORPORATION is a Panamanian corporation with its principal place of business in Miami-Dade County, Florida.

- d. The underlying employment Agreement requires arbitration in London, England; Monaco; Panama City, Panama; or Manila, Philippines, whichever is closer to the Seafarer's home country of St. Vincent.
- e. Because the Agreement is between a foreign corporation and a foreign seaman and because the Agreement provides for arbitration, this dispute falls under the provisions of the Convention and may be removed to federal court. See 9 U.S.C. Section 202, *et seq.*
- f. Both the United States and Panama are signatories to the Convention and are bound by its arbitration provisions.

9. Accordingly, this Court has jurisdiction over this action, and this case is removed to the Southern District of Florida pursuant to U.S.C. Section 205.

10. CARNIVAL files and presents herewith the sum of \$350.00 as required by 28 U.S.C. Section 1446.

MEMORANDUM OF LAW

The removal jurisdiction of federal district courts extends to cases over which they have original jurisdiction. *Francisco v. Stolt Achievement MT*, 293 F.3d 270, 272 (5th Cir. 2002)(*citing* 28 U.S.C. § 1441(a)). "Any civil action of which the district courts have original jurisdiction founded on a claim or right arising under the Constitution, treaties or laws of the United States shall be removable without regard to the citizenship or residence of the parties." *Id.* (*citing* 28 U.S.C. § 1441(b)). "Under § 203 of the Convention Act, '[a]n action or proceeding falling under the Convention shall be deemed to arise under the laws and treaties of the United States, notwithstanding the savings to suitors clause, under §205 of the Convention Act: Where the subject matter of an action or proceeding pending in a State court relates to an arbitration agreement or award falling under the Convention, the defendant or the defendants may, at any time before the trial

thereof, remove such action or proceeding to the district court of the United States for the district and division embracing the place where the action or proceeding is pending.” *Id.*

A party’s request to a federal district court to compel arbitration must be granted where 1) there is an agreement in writing to arbitrate the dispute; 2) the agreement provides for arbitration in the territory of a signatory of the Convention; 3) the agreement to arbitrate arises out of a commercial legal relationship; and 4) there is a party to the agreement who is not an American citizen. 9 U.S.C. §§ 201-208; *Francisco v. Stolt Achievement MT*, 293 F.3d 270, 272 (5th Cir. 2002); *Thomas v. Carnival Corp.*, _____ *WL* _____ (S.D. Fla. Jan. 4, 2008) (Lenard, J. – copy attached as Exhibit “C”).

Therefore, the elements necessary to invoke the Convention and to compel arbitration are met: JOSEPHS, a foreign citizen and Vincentian national, signed a written employment contract stating that all claims and disputes arising from his employment, including personal injury claims, were subject to arbitration in Panama. The employment contract states that it shall be governed by the law of the Flag State. Panama and the United States are both signatories to the Convention. *See*, 9 U.S.C. § 201 note (notes following text of Convention indicating signatories); *Francisco*, 293 F.3d at 273. As arbitration is proper, this Court has jurisdiction pursuant to the Convention and CARNIVAL’s removal of this action from state court is proper and valid.

Accordingly, this Court has jurisdiction over this action, and this case is removed to the Southern District of Florida, pursuant to 9 U.S.C. § 205.

CARNIVAL files and presents herewith the sum of \$350.00.

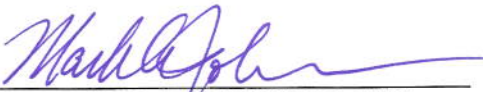
WHEREFORE, Defendant, CARNIVAL CORPORATION, moves this Court for an Order that the action now pending against it in the Eleventh Judicial Circuit, in and for

Miami-Dade County, described above, be Removed to this Court and thereafter this action proceed therein.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished via telefax & U.S. Mail this 14th day of March, 2011 to: Julio J. Ayala, Esq., Crewmember & Maritime Advocacy Center, 66 W. Flagler Street, Suite 200, Miami, Florida, 33131 and to Brill, Rinaldi, Garcia, The Law Firm, 17150 Royal Palm Boulevard, Suite 2, Weston, Florida, 33326.

MARK A. JOHNSON, ESQ.
CARNIVAL CRUISE LINES
Attorney for Defendant
3655 N.W. 87th Avenue
Miami, Florida 33178-2428
Tel. (305) 599-2600 Ext. 18026
Direct Line: (305) 406-4784
Facsimile: (305) 406-4732
Federal Court Fax No. (305) 406-5347

By 
MARK A. JOHNSON, ESQ.
FLA. BAR NO. 0699470

VERIFICATION

STATE OF FLORIDA)
) SS.
COUNTY OF DADE)

MARK A. JOHNSON, ESQ., being first duly sworn, states that he is counsel for CARNIVAL CORPORATION, and that all the allegations in the Notice of Removal are true and correct to the best of his knowledge and belief.



MARK A. JOHNSON, ESQ.

STATE OF FLORIDA)
) SS:
COUNTY OF MIAMI-DADE)

The foregoing was acknowledged before me on this 14th day of March, 2011, by MARK A. JOHNSON, ESQ., who is personally known to me and did not take an oath.



NOTARY PUBLIC



MARIA T. RODRIGUEZ
(print name)