

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.

PAOLA ARBOLEDA NIEVES,

Plaintiff,

vs.

CELEBRITY CRUISES INC.,

Defendant.

NOTICE OF REMOVAL

Defendant, CELEBRITY CRUISES INC., (“Defendant”), by and through its undersigned counsel, hereby files this, its Notice of Removal, pursuant to 28 U.S.C. §1441, et seq., and 9 U.S.C. §202, et seq., and respectfully states as follows:

1. This is an action by Paola Arboleda Nieves (“Plaintiff”), a seaman from Colombia and former employee of Defendant, who alleges she suffered an injury during the course of her employment aboard the *Celebrity Solstice*.

2. At all times material to Plaintiff’s Complaint, the terms of Plaintiff’s employment were governed by a Sign on Employment Agreement between the parties. A copy of the Sign on Employment Agreement is attached hereto as Exhibit “A.”

3. Page 2 of the Sign on Employment Agreement, contains a provision concerning Arbitration. The Arbitration provision, provides, in pertinent part:

...All grievances and any other dispute whatsoever, whether in contract, regulatory, tort, or otherwise, including constitutional, statutory, common law, admiralty, intentional tort and equitable claims, relating to or in any way connected with the seafarer’s service for the Company, including but not limited to claims for personal injury or death, no matter how described, pleaded, or styled, and whether asserted against the Company, Master,

Employer, Ship Owner, vessel or vessel operator, shall be referred to an resolved exclusively by binding arbitration pursuant to the United Nations Conventions on Recognition and Enforcement of Foreign Arbitral Awards (New York 1958), 21 U.S.T. 2517, 300 UN.T.S. (“The Convention”).

4. The Sign on Employment Agreement expressly incorporates a Collective Bargaining Agreement (“CBA”), attached hereto as Exhibit “B,” and by signing the Sign on Employment Agreement, Plaintiff acknowledged and agreed to be bound by the terms and conditions of the CBA.

5. Article 32 of the CBA provides, in pertinent part, as follows:

All grievances and any other dispute whatsoever, whether in contract, regulatory, tort, or otherwise, including constitutional, statutory, common law, admiralty, intentional tort and equitable claims, relating to or in any way connected with the seafarer’s service for the Company, including but not limited to claims for personal injury or death, no matter how described, pleaded, or styled, and whether asserted against the Company, Master, Employer, Ship Owner, vessel or vessel operator, shall be referred to an resolved exclusively by binding arbitration pursuant to the United Nations Conventions on Recognition and Enforcement of Foreign Arbitral Awards (New York 1958), 21 U.S.T. 2517, 300 UN.T.S. (“The Convention”)....The arbitration referred to in this Article is exclusive and mandatory. Claims and lawsuits may not be brought by any seafarer or party, hereto, except to enforce arbitration or a decision of the arbitrator.

6. The Sign on Employment Agreement and incorporated CBA constitute an arbitration agreement falling under the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the “Convention”).

7. 9 U.S.C. §205 states:

Where the subject matter on 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 proceedings to the district court of the United States for the district and division embracing the place where the action or proceeding is pending.

8. Accordingly this suit is an action over which the United States District Court has original jurisdiction under the provisions of 9 U.S.C. § 202 et. seq., and one that may be removed to federal 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.

9. On or about June 28, 2011 Plaintiff served Defendant with a Complaint in state court in the Eleventh Circuit of Miami-Dade County, Florida, Case No. 11-18340 CA 13 asserting claims for Jones Act Negligence, Unseaworthiness, Failure to Treat/Inadequate Medical Care and Failure to Provide Entire Maintenance and Cure. A copy of the Complaint and all other pleadings, process, and orders in this case is attached hereto as Exhibit "C," pursuant to 28 U.S.C. §1446(a).

10. 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) Paola Arboleda Nieves is a seaman from Colombia. Defendant is a foreign Corporation, and the *Celebrity Solstice* is registered Malta.
- c) The underlying Sign on Employment Agreement incorporates a CBA which requires arbitration in a country which is a signatory to the Convention.
- d) 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. See 9 U.S.C. §202 et. seq.

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

12. Defendant files and presents herewith the sum of \$350.00 as required by 28 U.S.C. §1446.

WHEREFORE, Defendant, CELEBRITY CRUISES INC., 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 proceed therein.

CASE NO. _____

Respectfully submitted,

CELEBRITY CRUISES INC

1050 Caribbean Way
Miami, Florida 33132
(305) 539-6000 Tel.
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By /s/Amanda Jacobs
AMANDA L. JACOBS
Fla. Bar No.: 0846031

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via regular mail this 29th day of August, 2011, to: Bruce Margulies Esq., at RIVKIND PEDRAZA & MARGULIES at Concord Building – Suite 600, 66 West Flagler Street, Miami, Florida 33130.

/s/Amanda Jacobs
AMANDA L. JACOBS
Fla. Bar No.: 0846031