

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. _____ CIV-

JUAN R. SILVA,

Plaintiff,

vs.

CARNIVAL CORPORATION,

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. JUAN R. SILVA (“SILVA”) is a Peruvian seaman who alleges he was injured on or about January 23, 2009 while working for CARNIVAL on board the cruise ship CARNIVAL *GLORY*, a Panamanian-flagged vessel.

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

3. JUAN R. SILVA 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, Peru.

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

7. On January 5, 2012, SILVA served CARNIVAL with a Complaint in State Court in the Eleventh Circuit of Miami-Dade County, Florida, under Case No. 11-43766 CA 15, asserting claims for Jones Act Negligence, Unseaworthiness, Failure to Provide Maintenance and Cure, Failure to Treat and Wages and Penalties. 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 SILVA is a citizen of Peru.
- 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 Peru.
- 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.*

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 on this 25th day of January, 2012, I electronically filed the following documents with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following: Ricardo V. Alsina, Esquire, LIPCON, MARGULIES, ALSINA & WINKLEMAN, P.A., Attorneys for Plaintiff, One Biscayne Tower, Suite 1776, 2 South Biscayne Boulevard, Miami, Florida 33131.

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By s/ Mark A. Johnson
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 25th day of January, 2012, by MARK A. JOHNSON, ESQ., who is personally known to me and did not take an oath.



NOTARY PUBLIC

DONNA J. TRESTER

(print name)

