

STATE OF MAINE

YORK, ss.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. CV-13-45
JON-YOR-6/12/2013

BRIAN DALLAIRE and
DEBORAH DALLAIRE,

Plaintiffs

v.

ORDER

VIKING RIVER CRUISES, INC., et al.,

Defendants

After careful consideration of all the submitted materials and oral argument on Defendant Viking River Cruises, Inc.'s Motion to Dismiss, the Court concludes as follows:

The Dallaires entered into two contracts with Viking River Cruises. The first occurred on April 17, 2012 when Ms. Rogers called Viking's representative and made the reservation. At this time there was a valid oral meeting of the minds and each party at oral argument concedes that there was no Statute of Frauds requirement. Further the complaint indicates that paperwork confirming reservation and an itinerary were provided. This material did not include any ticket with the choice of forum language. There was sufficient agreement at this time to create an enforceable contract. *Sullivan v. Porter*, 2004 ME 861 A.2d 628.

The second contract with Viking River Cruises occurs after the issues regarding the loss of the first contract sum with a new travel date of September 15, 2013. This

would have included the issuance and acceptance of a ticket with the forum choice language.

The court concludes that the first contract occurred with offer and acceptance, but that no ticket was issued and provided to the Plaintiffs. Accordingly, the forum language was never adopted or ratified by the Plaintiffs as part of the contract terms.

Accordingly, the Court concludes that the forum clause while part of the second contract by acceptance of the ticket, never became part of the first.

The Motion to Dismiss is therefore denied.

Dated: June 18, 2013



John H. O'Neil, Jr.
Justice, Superior Court

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