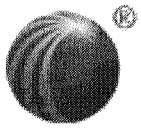

SHANE STRICKLAND v. TYSON SEAFOOD GROUP, INC.

No. 98-819975-NO

MICHIGAN, CIRCUIT COURT FOR THE COUNTY OF WAYNE

1999 AMC 2191

February 17, 1999

HEADNOTES:

CONTRACTS - 111. Choice of Law and Forum Provisions - JURISDICTION - 114. Jurisdiction by Agreement - PERSONAL INJURY - 112. What Law Governs - 144. Actions.

A forum selection clause in a seaman's employment contract, stipulating that venue for any lawsuit arising from the seaman's employment shall be exclusively in King County, Washington, is valid and enforceable, thereby requiring dismissal of the seaman's Jones Act action brought in a Michigan state court. Neither the Jones Act nor that portion of the FELA incorporated in the Jones Act voids the forum selection clause on public policy grounds and the plaintiff failed to establish that any principle of convenience mandated retention of venue in Michigan.

COUNSEL:

Dennis M. O'Bryan and Gary William Baun (O'Bryan Baun Cohen) for Strickland

Phillip G. Meyer for Tyson Seafood Group

OPINIONBY: MURPHY

OPINION:

[*2191] JOHN A. MURPHY, Ct.J.:

Plaintiff seeks to recover for negligence under the Jones Act and under the general maritime law of the United States. The question now is whether this suit belongs in the courts of this State. Defendant argues that it does not because the employment contract between Plaintiff and Defendant contained the following clause:

> CHOICE OF LAW: The parties agree that this Contract shall be interpreted according to the maritime law of the United States of America, and that the venue for any lawsuit arising from or related to Employee's employment by Employer shall be only in King County, Washington.

Both sides seem to agree that if the foregoing clause applies here, then the instant case belongs in King County.

However, Plaintiff argues that the clause should not apply because federal law incorporated into the Jones Act bars it.

Choice of Law

The first question here is what law to apply in determining whether the forum selection clause just cited is valid here.

[*2192] In the instant case, this question is easy. Admiralty claims in general are governed by federal law. Here the parties have attempted to choose what law will govern; however, they chose federal law, so such unquestionably applies. n1

n1 Admittedly, the complete analysis cannot be quite so straightforward. That is, were we to decide that Michigan law should apply here, our next question would be whether under Michigan law a choice-of-law clause in the instant context calling for application of federal law is enforceable. Such a choice-of-law clause is indeed enforceable under Michigan law: In *Chrysler Corp. v. Skyline Industrial Services, Inc., 448 Mich. 113 (1995),* the Michigan Supreme Court, in deciding whether a choice-of-law provision calling for the application of Michigan law should apply despite the fact the accident there happened in Illinois, held that the parties' choice of law via an express contractual provision should be respected unless the state so chosen lacks a "substantial relationship to the parties or the transaction" or "when there is no reasonable basis for choosing that state's law" or public policy considerations suggest otherwise. *Id. at 126.*

In the instant case, when the choice before us is federal law or Michigan law, we see no reason not to enforce the provision calling for application of federal law. We note that Plaintiff is moving in admiralty for recovery here under a federal act, and federal law would thus seem a reasonable choice.

Of course, it may seem incongruous to even think of applying Michigan law in the context of an admiralty suit, under a federal statute, that is, where federal interests are so obviously implicated: Carried through to its logical implications, this approach would allow a state to craft choice of law principles so as to entirely displace federal law in the context of admiralty. However, we must note that in *American Dredging Co. v. Miller, 510 U.S. 443, 1994 AMC 913,* Justice Scalia, in his opinion for the Court, seemed to believe that one of the applicable factors for determining when state law may displace federal law in the admiralty context is whether the state law to be applied has exclusive application in the admiralty context. *See, e.g., id.* Justice Scalia believed that state law applicable in contexts other than that of admiralty was more likely to prove an acceptable substitute to federal law. One supposes a state could justifiably argue that its governing choice-of-law principles are principles applicable outside the context of admiralty law alone.

The Jones Act and the FELA Act

There is nothing within the confines of the Jones Act itself that directly bars the parties here from adopting a forum selection clause; even Plaintiff seems to admit this. However, Plaintiff argues that the Jones Act incorporates the venue provisions of the Federal Employers Liability Act (FELA). These last provisions -- those under FELA -- would pose a problem for the forum selection clause because FELA has been interpreted to void forum selection clauses on the grounds of public policy. *See, e.g., Boyd v. Grand Trunk R.R. Co., 338 U.S. 263, 1950 AMC 26 (1949).*

It is true that the Jones Act has been deemed to incorporate much of FELA. *See 46 U.S.C.app. § 688* (1994). However, we believe that this [*2193] incorporation stops at the venue provisions. *See Pure Oil v. Suarez, 1965 AMC 2138, 346 F.2d 890* (5 Cir.), *aff'd, 384 U.S. 202 (1966).* The problem with incorporating FELA-style venue into the Jones Act is that the Jones Act has its own venue provisions. We thus cannot agree with Plaintiff that the forum selection clause is invalid here because of FELA incorporated through Jones.

The Validity of the Forum Selection Clause

But is the forum selection clause valid under the standards promulgated by the Jones Act itself? Actually, the venue provision under the Jones Act speaks only to venue when the suit is brought in federal court, not to venue when the suit is brought in state court. The U.S. Supreme Court has held that "venue [in state-court cases brought under Jones] should [be] determined by the trial court in accordance with the law of the state." *Bainbridge v. Merchants & Miners Transp. Co., 287 U.S. 278, 280-81, 1933 AMC 32, 33 (1932).*

This would seem to argue for using state law here. However, it is not clear that the question is answered so easily, at least in all cases. Forumselection clauses clearly relate to venue, since they determine where a suit will be brought, but they also may implicate matters of contract law. For instance, if a party were to argue that the forum-selection clause in a contract was invalid because the contract had been entered into under duress, which law would we apply: the state law of contracts or some form of federal law of contracts?

In the instant case, however, we need not reach this question. This is because whichever law we apply here -- federal or state -- we believe that the instant clause would stand. Moreover, Plaintiff here makes no argument that the forum-selection clause is invalid on grounds of contractual principles. Instead, besides his FELA argument, he argues that principles of forum non conveniens here demand that the clause be ignored. But it seems clear here that such arguments -- on grounds of forum non conveniens -- are really arguments from venue and are thus governed by state law. *See American Dredging Co. v. Miller, 510 U.S. 443, 453, 1994 AMC 913, 921 (1994)* ("Just as state courts, in deciding admiralty cases, are not bound by the venue requirements, so also they are not bound by the federal common-law venue rule (so to speak) of forum non conveniens."). We thus turn to state law to see if the forum selection clause may stand.

Under the law of Michigan, *see* MCLA 600.745, the burden is on Plaintiff to show that the forum selection clause should not apply because principles [*2194] of convenience mandate retaining venue in this State. We do not believe that Plaintiff meets this burden here. The accident in question happened in international waters off the State of Washington. The vessel in question is maintained partly in King County. Plaintiff has consulted with at least two Seattle-area doctors.

Plaintiff argues that the majority of his medical treatment occurred out-side the State of Washington. But even some of this treatment, Plaintiff admits, was at a pain institute in Las Vegas, not in this State. Plaintiff's case for keeping the case here on grounds of convenience is a weak one.

Accordingly, we grant Defendant summary.