

<b>Sitaras v Norwegian Cruise Line Ltd. (Bahamas)</b>
2008 NY Slip Op 32617(U)
September 22, 2008
Supreme Court, New York County
Docket Number: 0116967/2007
Judge: Barbara R. Kapnick
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: **BARBARA R. KAPNICK**

PART 12

Index Number : 116967/2007

SITARAS, JOHN

vs

NORWEGIAN CRUISE LINE

Sequence Number : 001

SUMMARY JUDGMENT

INDEX NO. 116967/07

MOTION DATE \_\_\_\_\_

MOTION SEQ. NO. 001

MOTION CAL. NO. \_\_\_\_\_

The following papers, numbered 1 to \_\_\_\_\_ were read on this motion to/for \_\_\_\_\_

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits \_\_\_\_\_

Replying Affidavits \_\_\_\_\_

PAPERS NUMBERED

Cross-Motion:  Yes  No

Upon the foregoing papers, It is ordered that this motion

**MOTION IS DECIDED IN ACCORDANCE WITH  
ACCOMPANYING MEMORANDUM DECISION**

**FILED**  
SEP 29 2008  
COUNTY CLERK'S OFFICE  
NEW YORK

Dated: 9/22/08

  
\_\_\_\_\_  
**BARBARA R. KAPNICK** J.S.C.

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION

Check if appropriate:  DO NOT POST  REFERENCE

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE  
FOR THE FOLLOWING REASON(S):

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART 12

-----X

JOHN SITARIS,

Plaintiff,

-against-

NORWEGIAN CRUISE LINE LIMITED  
(BAHAMAS), d/b/a NCL, d/b/a NCL  
AMERICA,

Defendant.

-----X

BARBARA R. KAPNICK, J.:

DECISION/ORDER  
Index No. 116967/07  
Motion Seq. No. 001

**FILED**  
SEP 29 2008  
COUNTY CLERK'S OFFICE  
NEW YORK

In this action, plaintiff seeks to recover damages for personal injuries he sustained on April 29, 2007 while he was a passenger on defendant Norwegian Cruise Line Limited (Bahamas) d/b/a NCL d/b/a NCL America's cruise ship, "Norwegian Spirit". At the time of plaintiff's accident, the ship was docked at 12<sup>th</sup> Avenue and 56<sup>th</sup> Street in Manhattan. Plaintiff claims that his left heel became stuck on a metal strip (on a doorway) which was sticking up and not properly nailed down.

Defendant now moves for an order pursuant to CPLR §§ 327(a) and 3212, and the general maritime law of the United States, granting summary judgment dismissing this action based on the forum selection clause in plaintiff's passenger ticket contract which provides, in relevant part, as follows:

**14. Venue and Governing Law.** Except as otherwise specified herein, this Contract shall be governed in all respects by the General Maritime Law of the United States and, only when not inconsistent with the provisions of this Contract or the U.S. maritime law, the laws of the State of Florida. It is hereby agreed that any and all claims, disputes or controversies whatsoever arising from, related to, or in connection with this Contract or the Guest's voyage, including any activities on or off the vessel or transportation furnished therewith, shall be commenced, filed and litigated, if at all, before the United States District Court for the Southern District of Florida in Miami, Florida, U.S.A., or as to those lawsuits for which the United States District Court for the Southern District of Florida lacks subject matter jurisdiction, before a court of competent jurisdiction in Miami-Dade County, Florida, U.S.A., to the exclusion of the Courts of any other country, state, city or county.

Plaintiff opposes the motion on the ground that New York was the situs of the accident and that defendant regularly docks its ship and conducts business in New York. In addition, plaintiff argues that to relocate this case to Florida would cause him to pay his treating physician in excess of the likely settlement value of the case.

However, it is "without question that State Courts are bound to apply Federal Maritime Law in resolving disputes involving a maritime contract (*Matter of Rederi*, 25 N.Y.2d 576, 579, ...)." *Mainzer v Royal Olympic Cruises, Ltd.*, 177 Misc2d 553, 554 (App. Term, 2nd Dep't 1998).

The United States Supreme Court has held that a "forum clause should control absent a strong showing that it should be set aside," such as "that enforcement would be unreasonable and unjust, or that the clause was invalid for such reasons as fraud or overreaching." *Bremen v Zapata Off-Shore Co.*, 407 US 1, 15 (1972).

It has been repeatedly held that "[a] forum is not necessarily inconvenient because of its distance from pertinent parties or places if it is readily accessible in a few hours of air travel." [citation omitted]. *Effron v Sun Line Cruises, Inc.*, 67 F3d 7, 10 (2nd Cir. 1995).

In *Carnival Cruise Lines, Inc. v Shute*, 499 US 585 (1991), the Supreme Court upheld a forum selection clause in a cruise line's passage contract ticket which required litigation of all disputes in Florida, finding that

a cruise line has a special interest in limiting the fora in which it potentially could be subject to suit. Because a cruise ship typically carries passengers from many locales, it is not unlikely that a mishap on a cruise could subject the cruise line to litigation in several different fora. [*Bremen v Zapata Off-Shore Co.*, *supra* at 13 and n.15; additional citation omitted]. Additionally, a clause establishing *ex ante* the forum for dispute resolution has the salutary effect of dispelling any confusion about where suits arising from the contract must be brought and defended, sparing litigants the time and expense of pre-trial motions to determine the correct forum and conserving judicial resources that otherwise would be devoted to deciding those motions. [citation

omitted]. Finally, it stands to reason that passengers who purchase tickets containing a forum clause like that at issue in this case benefit in the form of reduced fares reflecting the savings that the cruise line enjoys by limiting the fora in which it may be sued. [citation omitted].

*Carnival Cruise Lines, Inc. v. Shute*, supra at 593-594 (1991). See also, *Valenti v Norwegian Cruise Line*, 2005 WL 927167 (SDNY) which held that a Florida forum selection clause in a passenger ticket contract was enforceable; *Mainzer v Royal Olympic Cruises, Ltd.*, supra, which held that a forum selection clause in a passage ticket and contract indicating that any actions must be brought in Athens, Greece was enforceable; *Effron v Sun Line Cruises, Inc.*, supra, which held that a forum selection clause in a passenger's contract naming Greece as the forum was enforceable.

Accordingly, based on the papers submitted and the oral argument held on the record on July 23, 2008, this Court finds that plaintiff cannot meet his heavy burden of showing that the forum selection clause at issue herein should be set aside.

Defendant's motion is, therefore, granted and the action is dismissed without prejudice and without costs or disbursements. The Clerk may enter judgment accordingly.

This constitutes the decision and order of this Court.

Dated: September 22, 2008

  
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BARBARA R. KAPNICK  
J.S.C.

**BARBARA R. KAPNICK**  
J.S.C.

**FILED**  
SEP 29 2008  
COUNTY CLERK'S OFFICE  
NEW YORK