UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

MATTHEW CHARLES MITCHELL, Petitioner, v. DAVID TILLETT, et al., Respondents.	Case No. 15-cv-04044-VC **ORDER DENYING MOTION TO DISMISS** Re: Dkt. No. 31

The motion to dismiss Mitchell's petition under the Federal Arbitration Act's statute of limitations is denied, because the FAA does not apply to the petition. The FAA does not "apply to contracts of employment of seamen," 9 U.S.C. § 1, and Mitchell agreed to the challenged arbitration as part of his contract for employment as a seaman.

The moving respondents don't seem to dispute whether Mitchell was a "seaman," and his allegations support an inference that he was. Under general principles of maritime law, *see Chandris, Inc. v. Latsis*, 515 U.S. 347, 355 (1995), "the essential requirements for seaman status are twofold," *id.* at 368. First, a seaman "must contribute to the function of the vessel or to the accomplishment of its mission." *Id.* This criterion is "very broad," covering "[a]ll who work at sea in the service of a ship." *Id.* Second, "a seaman must have a connection to a vessel in navigation (or to an identifiable group of such vessels) that is substantial in terms of both its duration and its nature." *Id.* Mitchell alleges that he was "Yacht Captain of the BAR yacht," which means that he "link[ed] what happened on the water with what happened on the land when the yacht started to race." Petition ¶57. Drawing all inferences in Mitchell's favor, *see Sharkey v. O'Neal*, 778 F.3d 767, 768 n.1 (9th Cir. 2015), this work seems substantial in both duration

and nature, and it clearly contributed to the BAR yacht's function and mission.

The respondents, correctly noting that the FAA's exclusionary clause is narrow, seem to imply that Mitchell can't trigger that clause unless he demonstrates that he was a "transportation worker," in addition to having been a "seaman." It's true that the FAA's exclusionary clause "exempts from the FAA only contracts of employment of transportation workers." *Circuit City Stores, Inc. v. Adams*, 532 U.S. 105, 119 (2001). But, in context, *Circuit City* stands for the proposition that a seaman is necessarily a "transportation worker" – not for the proposition that a seaman invoking the FAA's exclusionary clause must separately prove he is a transportation worker. *Circuit City* rejected an argument that would – by broadly construing the phrase "workers engaged in foreign or interstate commerce" – have expanded the FAA's exclusionary clause to "exclude all employment contracts from the FAA." *Id.* Instead, the Supreme Court applied the *ejusdem generis* canon to hold that the clause's reference to "workers engaged in foreign or interstate commerce" should "be controlled and defined by reference to the enumerated categories of workers which are recited just before it" – "seamen" and "railroad employees." *Id.* at 115. In other words, the FAA's exclusionary clause only applies to "workers engaged in foreign or interstate commerce" if they are transportation workers, like seamen or railroad employees. But this implies that seamen are categorically transportation workers – not that the FAA's exclusionary clause only applies to some subset of seamen who also work in transportation. As the Fifth Circuit has recognized, *see Brown v. Nabors Offshore Corp.*, 339 F.3d 391, 393-94 (5th Cir. 2003), *Circuit City* does not diminish the extent to which the FAA's exclusionary clause applies to seamen.

Because Mitchell's allegations support an inference that he was a seaman, and the FAA's exclusionary clause applies with full force to seamen, the next question is whether the arbitration agreement here was part of an employment contract. It was. The respondents note that the America's Cup Jury's arbitral authority arose out of the Protocol Governing the 34th America's Cup, *see* Petition, Ex. H, § 15, and argue that Mitchell's submission to the Jury's authority was "was based upon [his] status as a Competitor in the Regatta as opposed to his employment

contract with Oracle." The respondents, however, haven't identified any evidence that Mitchell was a party to the Protocol directly: the "competitors" that the Protocol binds are entire *teams*, not teams' individual members. *See id*. § 1.1(m), (p), (v); Petition, Ex. P., § 3. It appears that Mitchell only agreed to the Protocol as part of his employment contract with Oracle Racing, which required him to "comply with the rules of conduct and any procedures adopted by the America's Cup organizing authority." Petition, Ex. K, § 5.5. In other words, Mitchell only agreed to be bound by the Protocol in his employment contract.[1]

The respondents insist that the FAA must apply here because Mitchell "explicitly agreed to proceed under the FAA." By this, they really mean two things – neither of which withstands scrutiny.

First, they mean that Mitchell has previously taken the litigating position that the FAA applies. This seems to be an argument for judicial estoppel, which "generally prevents a party from prevailing in one phase of a case on an argument and then relying on a contradictory argument to prevail in another phase." *New Hampshire v*. *Maine*, 532 U.S. 742, 749 (2001). But Mitchell never prevailed on any argument that the FAA applied here. S*ee id*. at 750-51. Moreover, it's hard to say that Mitchell's prior position is "clearly inconsistent," *id*. at 750, with his position now. The respondents cite a complaint that Mitchell lodged with the International Sailing Federation, in which he argued that the Jury violated the FAA. According to that complaint, the FAA "shows that an arbitrator's refusal to hear pertinent and material evidence

[1] Even if Mitchell had agreed to the Protocol directly (rather than through his employment contract with Oracle Racing), it's not obvious that the Protocol itself wouldn't be a contract concerning his employment as a seaman. Mitchell's job was to compete in the America's Cup. Oracle Racing – doing business as Oracle Team USA – hired Mitchell specifically for the America's Cup; the America's Cup competition defined the entire scope of Mitchell's employment with Oracle Racing. Thus, even if the America's Cup had been organized by an entity that was completely separate from Oracle Team USA, it's possible that entity would be Mitchell's secondary or joint employer. Moreover, the entity that organized the America's Cup (and promulgated the America's Cup Protocol) was *not* completely separate from Oracle Team USA. The Protocol was produced by agreement between the Golden Gate Yacht Club and Club Nautico di Roma. Petition, Ex. H, Background. The Golden Gate Yacht Club "ha[d] sole responsibility to organize and manage the" America's Cup. *Id*. § 4.1(a). And Oracle Team USA – which was indisputably Mitchell's employer – is the Golden Gate Yacht Club's racing team.

amounts to misconduct." McKenzie Decl., Ex. A, at 20-21. But a plaintiff is free to argue that the respondent violated a defendant-friendly standard, without waiving the argument that a different, less defendant-friendly standard should actually govern. To the extent that Mitchell has previously taken the position that the FAA applies, more is required before he's estopped from correcting himself now.

Second, they mean that Mitchell agreed (via his employment contract with Oracle Racing) to adhere to the America's Cup Protocol, which provides that "[t]he Jury proceedings shall be governed by the U.S. Federal Arbitration Act." Petition, Ex. H, § 15.12. But to the extent that Mitchell agreed to proceed under the FAA as a matter of contract, that contractual provision is contrary to the public policy embodied by the FAA's exclusionary clause, and is thus void. The FAA's exclusionary clause is a blanket prohibition, not a default rule: it provides that "nothing [in the FAA] shall apply to contracts of employment of seamen," not that the FAA shall not apply unless the parties agree otherwise. Allowing parties to opt out of the FAA's exclusionary clause would frustrate Congress's objective in enacting that clause. Congress deliberately excluded seamen's employment contracts from the FAA, because other statutes already governed those contracts. *See Circuit City*, 532 U.S. at 120-21. Moreover, the special statutes that have governed seamen's employment – statutes like the Shipping Commissioners Act of 1872, 17 Stat. 262, and the Jones Act, 46 U.S.C. § 30104 – are part of a legal tradition treating seamen "as a favored class," *Bainbridge v. Merchants' & Miners' Transp. Co.*, 287 U.S. 278, 282 (1932), entitled to "heightened legal protections," *Chandris*, 515 U.S. at 354. Members of a class that Congress has singled out for special protection may agree to arbitration, but this "in no way suggests that they may be forced by those with dominant economic power to surrender the statutorily-mandated rights and benefits that Congress intended them to possess." *Graham Oil Co. v. ARCO Products Co.*, 43 F.3d 1244, 1247 (9th Cir. 1995).

In holding that the FAA does not apply to the arbitration agreement at issue here, the Court expresses no view on what law does apply. It's possible that the respondents could move to dismiss Mitchell's petition under laws other than the FAA. For example, the statute

implementing the Convention on the Recognition and Enforcement of Foreign Arbitral Awards applies to seamen, notwithstanding the FAA's exclusionary clause. *Rogers v. Royal Caribbean Cruise Line*, 547 F.3d 1148, 1154-55 (9th Cir. 2008). But the respondents have not moved to dismiss Mitchell's petition under the Convention or any other potentially applicable law, and their sole reference to the Convention thus far – made in a footnote in their reply – is insufficient to demonstrate that the Convention applies here.

For purposes of this motion, the only question is whether the arbitration agreement at issue is subject to the FAA. Because that agreement was part of a seaman's employment contract, it is not. Accordingly, the motion to dismiss for failure to bring the action within the FAA's limitations period is denied.

IT IS SO ORDERED.

Dated: June 7, 2016

VINCE CHHABRIA
United States District Judge