

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

LINDSAY, JAMIE, and MATTHEW	:	CIVIL ACTION
KESSLER, Minors by their parents and	:	
natural guardians, STUART and PAMELA	:	
KESSLER, h/w, and	:	
STUART and PAMELA KESSLER, h/w,	:	
individually and in their own right and all	:	
those similarly situated,	:	
Plaintiffs,	:	
	:	
v.	:	NO. 02-7974
	:	
ROYAL CARIBBEAN CRUISES, LTD.,	:	
Defendant.	:	

ORDER

AND NOW, this day of January, 2003, upon consideration of the Motion of Defendant Royal Caribbean Cruises, Ltd. to Transfer Venue to the United States District Court for the Southern District of Florida (“the Motion to Transfer Venue”), filed December 19, 2002, it is hereby ORDERED that the Motion to Transfer Venue is GRANTED for the following reasons.

In their Complaint, Plaintiffs generally allege that Defendant represented in its brochures and advertising, and on its web site, that a particular cruise aboard the Rhapsody of the Seas would include a two-day stop in Key West, Florida, when, in fact, the itinerary for the cruise provided for only a single day’s eight-hour visit. See Plaintiffs’ Complaint (“Pl.s’ Complaint”) at ¶ 1. Plaintiffs contend that these misrepresentations were intentionally made by Defendant to lure consumers into purchasing tickets for this cruise based upon a “superior itinerary,” and to “maximize the cruise line’s profits” by forcing passengers to remain on board the ship and utilize various on-board services and resources. Id. The Complaint sets forth three Counts: (1) a

violation of the Pennsylvania Unfair Trade Practices and Consumer Protection Law, 73 Pa. Cons. Stat. Ann. § 201-1 *et seq.* (2002) (“the UTPCPL”); (2) a claim for “Unjust Enrichment and/or Disgorgement”; and (3) a claim for “Breach of Implied Contract and Contractual Duty of Good Faith and Fair Dealing.” *Id.* at ¶¶ 25-43.

In its Motion to Transfer Venue pursuant to Federal Rule of Civil Procedure 12(b)(3), Defendant argues that venue in this matter is governed by a forum selection clause contained in the passenger ticket contracts issued to Plaintiffs. The forum selection clause states:

IT IS AGREED BY AND BETWEEN PASSENGER AND CARRIER THAT ALL DISPUTES AND MATTERS WHATSOEVER ARISING UNDER, IN CONNECTION WITH OR INCIDENT TO THIS CONTRACT SHALL BE LITIGATED, IF AT ALL, IN AND BEFORE A COURT LOCATED IN MIAMI, FLORIDA, U.S.A., TO THE EXCLUSION OF THE COURTS OF ANY OTHER STATE, TERRITORY, OR COUNTRY. PASSENGER HEREBY WAIVES ANY VENUE OR OTHER OBJECTION THAT HE MAY HAVE TO ANY SUCH ACTION OR PROCEEDING BRING BROUGHT IN ANY COURT LOCATED IN MIAMI, FLORIDA.

See Defendant’s Motion to Transfer Venue, Exhibit C.

It is well-established that federal law governs the enforceability of forum selection clauses within the context of a case in admiralty, such as the present case. Carnival Cruise Lines, Inc. v. Shute, 499 U.S. 585, 590 (1991). Within this context, federal law provides that forum selection clauses are “prima facie valid and should be enforced unless enforcement is shown by the resisting party to be ‘unreasonable’ under the circumstances .” The Bremen v. Zapata Off-Shore Co., 407 U.S. 1, 10 (1972).

Plaintiffs do not argue that enforcement of the forum selection clause would be unreasonable under the circumstances. In fact, Plaintiffs expressly concede, within the context of responding to Defendant’s Motion to Transfer Venue, “that the forum selection clause [would

be] enforceable if this were a tort or breach of contract action.” Response to Motion of Defendant Royal Caribbean Cruises, Ltd. to Transfer Venue to the United States District Court for the Southern District of Florida (“Pl.s’ Response”) at 2. Plaintiffs contend, however, that the forum selection clause does not apply to this particular action because (1) “the actions complained of occurred prior to entering the contract and receiving the ticket,” and (2) the action is brought pursuant to the UTPCPL, which “provides a cause of action separate from the contract itself,” such that “this action is not ‘in connection with or incident to the contract’ as stated in the passenger ticket,” but rather is “beyond the contract.” *Id.* at 2-3.¹

Plaintiffs’ first argument appears to be that, because this action involves alleged acts of misrepresentation by Defendant prior to the parties entering the contract in question, venue for the action should not be governed by the forum selection clause in the contract. Initially, the Court notes that Plaintiffs have failed to cite any authority for this argument. In addition, the

¹ Plaintiffs also note that “actual receipt of the ticket did not occur until just moments prior to boarding . . . , and therefore, there was no reasonable opportunity to elect to refuse to board to avoid the forum selection clause.” Pl.s’ Response at 2. Defendant has included an affidavit of a Documentation Supervisor averring that “[i]t is the normal custom and practice of [Defendant] to send the passenger ticket contract to a passenger’s travel agent shortly after printing” and that “[t]he passenger’s travel agent then delivers the passenger ticket contract to the passenger in a manner which it selects.” Motion to Transfer Venue, Exhibit B at ¶ 9. Plaintiffs do not dispute this contention, nor do Plaintiffs allege that the ticket, and the provisions therein, were unavailable for Plaintiffs’ review for a reasonable period of time prior to boarding. Therefore, Plaintiffs are charged with notice of the ticket provisions. See Hodes v. S.N.C. Achille Lauro ed Altri-Gestione, 858 F.2d 905, 911-12 (3d Cir. 1988) (holding that where individual purchases passenger ticket through agent who obtains and safeguards ticket until immediately prior to boarding, and where individual does not allege that agent would have refused a request to view the ticket had one been made, individual is charged with notice of ticket provisions).

contention that all of the acts by Defendant complained of by Plaintiffs in this action occurred prior to entering the contract is inaccurate.²

Most importantly, Plaintiffs expressly contend in their Complaint that Defendant's alleged misrepresentations (occurring prior to the parties entering the contract) were intended to lure consumers such as Plaintiffs into purchasing tickets (i.e., entering into a contract) for the cruise based upon a "superior itinerary." See Pl.s' Complaint at ¶ 1. Thus, the Court concludes that even the alleged acts by Defendant which did occur prior to entering the contract fall within the forum selection clause, which applies to "all disputes and matters whatsoever arising under, in connection with or incident to this contract." See Giordano v. Witzer, 558 F.Supp. 1261, 1264 (D.C. Pa. 1983) (holding that the forum selection clause, which stated that it applied to "disputes arising under the terms [of the Agreement]," was "not limited to actions for breach of contract," and that it applied to Plaintiff's tort action – alleging a conspiracy to defraud based upon alleged misrepresentations – because "several of the alleged overt acts done in the furtherance of the conspiracy relate to promises made in the agreement or to representations made during the negotiation of the agreement").

Plaintiffs' second argument appears to be that because this action is brought pursuant to the UTPCPL, which provides a private cause of action, the dispute does not "aris[e] under, in connection with or incident to" the contract in question. The single case cited by Plaintiff as

² Count II of Plaintiffs' Complaint (Unjust Enrichment and/or Disgorgement) alleges that, as a result of Defendant's misrepresentations, Plaintiffs were forced to purchase on-board goods and services during the extra day at sea. Pl.s' Complaint at ¶ 37. Count III of Plaintiffs' Complaint (Breach of Implied Contract and Contractual Duty of Good Faith and Fair Dealing) alleges that Defendant breached the contract with Plaintiffs "by providing an altered cruise itinerary, the attributes, features and properties of which were substantially less than what Plaintiff contracted to purchase." Pl.s' Complaint at ¶ 41. Such alleged acts by Defendant clearly occurred after entering the contract.

authority is simply inapposite.³ The fact that the UTPCPL provides the statutory basis for this cause of action (in a legal sense) has no bearing upon whether the particular dispute is one “arising under, in connection with or incident to” the contract in question (in a factual sense).

Plaintiffs have failed to persuade the Court that the forum selection clause in the contract in question should not govern this particular action (brought, in part, pursuant to the Pennsylvania UTPCPL) as it generally would in a tort or breach of contract action between these same parties. Plaintiffs having offered no other grounds for the Court to deny the Motion to Transfer Venue, the Motion must be granted. Accordingly, the Clerk of Court is directed to transfer this matter, together with exhibits and supporting memoranda of law, to the United States District Court for the Southern District of Florida. This is a final judgment. The Clerk is directed to statistically close this matter.

BY THE COURT:

Legrome D. Davis

³ In Stone St. Services, Inc. v. Daniels, 2000 WL 1909373, (E.D. Pa. 2000), the Court was presented with a *choice of law* issue (as opposed to a venue issue), and the Court determined that Pennsylvania choice of law rules applied. See id. at *3-4. The Court proceeded to state that Pennsylvania choice of law rules provide that courts should generally enforce choice of law provisions in contracts between the parties so long as (1) the contract bears a reasonable relation to the state whose law is chosen to govern and (2) application of the chosen law does not violate a strong public policy that would otherwise protect a party. See id. at *4. This case does not, as Plaintiffs appear to contend, support the notion that, under the present circumstances, the Court should consider whether Pennsylvania’s interests in enforcing the UTPCPL outweigh the choice of forum clause in the contract in question. The Court also notes that transferring this matter to a federal district court outside of Pennsylvania will not necessarily preclude Plaintiffs’ claim under the Pennsylvania UTPCPL. See id. at *4-6 (wherein the District Court for the Eastern District of Pennsylvania denied a motion to dismiss a claim brought under the Kansas Consumer Protection Act because Kansas law was found to apply to the claim).