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The United States Supreme Court Enforces a Non-Negotiated Forum Selection Clause on a Cruise Ship Ticket

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er debtors from Chapter 11 coverage.

The Court disagreed with the lower court's opinion that allowing consumer debtors to proceed under Chapter 11 would flood the bankruptcy courts with reorganization plans. First, the cost and complexity of filing under Chapter 11 acts as a deterrent. Second, bankruptcy courts have the discretion to dismiss Chapter 11 cases if debtors do not have workable reorganization plans.

The Court also refused to adopt the argument that extending Chapter 11 to consumer debtors would run contrary to Congress's intent to prevent involuntary bankruptcy proceedings under Chapter 13. Congress's concern regarding Chapter 13 was that forcing a debtor, whose future wages were not exempt from the bankruptcy estate, into bankruptcy proceedings would violate the Thirteenth Amendment's protection against involuntary servitude. However, because Chapter 11 has no provision requiring a debtor to pay future wages to a creditor, the Court found the involuntary servitude concern irrelevant to Chapter 11 proceedings.

The Dissenting Opinion

Justice Stevens' dissent stated that a complete reading of the statute revealed no congressional intent to allow individual consumer debtors to reorganize under Chapter 11. The dissent relied on repeated references to business in both Chapter 11 language and the legislative history and also the difference between the chapter titles (Chapter 11 entitled "Reorganization" contrasted with Chapter 13 entitled "Adjustment of Debts of an Individual with Regular Income").

Further, the dissent noted that just because the statute states only a person eligible as a debtor under Chapter 7 may be a debtor under Chapter 11, it cannot be inferred that every person eligible under Chapter 7 is eligible under Chapter 11.

Finally, the dissent stated that individual consumer debtors could be forced into bankruptcy by creditors, since involuntary proceedings

could be instituted under Chapters 7 and 11. If an individual consumer debtor filed under Chapter 11, as allowed by the majority opinion, a creditor could begin involuntary proceedings against the debtor. The dissent found such proceedings inconsistent with Congress's protection of the same class of creditors under Chapter 13.

Stacy Feldman

The United States Supreme Court Enforces A Non-Negotiated Forum Selection Clause On A Cruise Ship Ticket

In *Carnival Cruise Lines v. Shute*, 111 S. Ct. 1522 (1991), the United States Supreme Court held that a non-negotiated forum selection clause, located on the back of a cruise ticket, was enforceable. The Court also held that this clause did not take away the passengers' right to a trial by a court of competent jurisdiction as required by The Limitation of Vessel Owners Liability Act, 46 U.S.C. App. 183c.

Background

Mr. and Mrs. Shute ("Shutes") were residents of Washington state. They purchased tickets for a cruise on a ship owned by petitioners, Carnival Cruise Lines ("Carnival"), headquartered in Miami, Florida. The reverse side of the tickets contained a forum selection clause typed in fine print. This clause provided that all disputes with Carnival were to be litigated in a Florida court. Additionally, it stated that by accepting the ticket, the purchaser was deemed to have agreed to all of its terms and conditions.

While on the cruise, Mrs. Shute was injured when she slipped on a deck mat. This accident occurred when the ship was located in international waters off the coast of Mexico. The Shutes filed suit against Carnival in the United States District Court for the Western District of Washington, alleg-

ing that Mrs. Shute's injuries were the result of negligence on the part of Carnival and its employees.

Carnival responded by contending that the forum selection clause on the Shutes' tickets dictated that the suit should have been filed in a Florida court. Alternatively, Carnival asserted that the district court lacked personal jurisdiction over the cruise line because its contacts with the State of Washington were insubstantial. The district court granted Carnival's summary judgment motion, holding that the cruise line's contacts with Washington were constitutionally insufficient to support the exercise of personal jurisdiction.

The Ninth Circuit's Decision

The Court of Appeals for the Ninth Circuit reversed the district court's ruling for two reasons. First, the Ninth Circuit determined that the cruise line's solicitation of business in Washington was sufficient contact to justify the district court's exercise of personal jurisdiction. Second, the court, relying on *The Bremen v. Zapata Off-Shore Co.*, 407 U.S. 1 (1972) ("*The Bremen*"), agreed with the Shutes' argument that the forum selection clause was unenforceable because it was not freely bargained for. Additionally, the Ninth Circuit refused to enforce the clause based on evidence that the Shutes were physically and financially incapable of pursuing the litigation in Florida. Thus, the enforcement of the clause would deprive them of their day in court and contravene the Supreme Court's holding in *The Bremen*.

Carnival appealed to the United States Supreme Court.

The Supreme Court's Decision

The Supreme Court examined the Ninth Circuit's analysis of *The Bremen*, since both parties relied on that case as support for their arguments.

In *The Bremen*, the Supreme Court addressed the enforceability of a forum selection clause in a contract between two business corporations. The case discussed a number of factors that made enforcement of such a clause reason-

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Cruise Ship Ticket

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able and stated that, absent any fraud or undue influence, a forum selection clause was valid. After analyzing the Ninth Circuit's application of *The Bremen*, the Court concluded that the lower court had ignored important differences in a contract between businesses and a contract between a consumer and a business.

The Court began by rejecting the Ninth Circuit's conclusion that a non-negotiated forum selection clause was never enforceable because it was not the subject of bargaining. Instead, the Court stated that this particular clause was permissible for several reasons. First, because of the likelihood that its passengers would be from many locales, Carnival had a special interest in limiting the geographical locations of courts in which it potentially could be sued. Second, the clause establishing the forum for any future litigation had the beneficial effect of dispelling any confusion about where the dispute must be brought and defended. This certainty spared time, expense, and judicial resources. Finally, the Court reasoned that when the cruise line limited the courts in which it could be sued, it saved money which was passed on to the passengers in the form of reduced fares.

Next, the Court addressed the Shutes' assertion that litigating their claim in Florida would be inconvenient. The Court noted that here, as in *The Bremen*, the party claiming inconvenience had a heavy burden of proof. Using this standard, the Court found that the Shutes did not meet the burden needed to set aside a forum selection clause on the grounds of inconvenience. Since the district court made no findings of fact regarding physical and financial impediments derived from litigation in Florida, the Ninth Circuit's conclusion of inconvenience had no basis in the record and, therefore, was not valid.

The Court also found that the Ninth Circuit misinterpreted the statement in *The Bremen* that, "the serious inconvenience of the con-

tractual forum to one or both of the parties might carry greater weight in determining the reasonableness of the forum clause." 407 U.S. at 17. The Court noted that this statement contemplated a hypothetical agreement between two Americans to resolve their local disputes in a remote, alien forum. In the instant case, however, Florida was not a remote forum nor was the dispute an essentially local one, since Mrs. Shute was injured in international waters. Therefore, the litigation was not inherently more suited to resolution in the state of Washington than Florida.

The Court then determined that the forum selection clause was fair; it found no evidence that Carnival selected Florida as the forum in an attempt to discourage passengers from pursuing legitimate claims. The Court based this conclusion on the facts that Carnival's principal place of business was Florida and that many of its cruises departed from and returned to Florida ports. Similarly, the Court found no evidence indicating that Carnival obtained the passengers' approval of the forum selection clause by fraud.

Finally, the Court addressed the Shutes' contention that enforcement of the clause violated 46 U.S.C. App. 183c, which proscribes a right to trial by a court of competent jurisdiction. The forum selection clause, the Court noted, specifically designated that all actions be brought in a Florida court. Since Florida courts are courts of competent jurisdiction, no violation of 46 U.S.C. App. 183c existed.

The Dissenting Opinion

In their dissenting opinion, Justices Stevens and Marshall concluded that the forum selection clause should not be enforceable since passengers did not have notice of the clause until after they purchased the tickets. Further, the dissenters concluded that, even if the passengers had received prominent notice of the forum selection clause before they committed to the cost of the cruise, the clause was void under The Limitation of Vessel Owners Liability Act, 46 U.S.C. App. 183C, which invali-

dates express limitations on a shipowner's liability for negligence. Further, traditional admiralty law prohibits exculpatory clauses in passenger tickets because they are typically the product of disparate bargaining power between the carrier and the passenger and undermine the strong public interest in deterring negligent conduct.

Kathrine Schmitt Hilder

Expert Testimony Required To Prove Negligent Approval of Fraudulent Credit Card Application

In *Beard, et al. v. Goodyear Tire & Rubber Company, et al.*, 587 A.2d 195 (D.C. 1991), the District of Columbia Court of Appeals held that, due to lack of expert testimony as to the standard of care in the retail industry, a consumer had failed to show negligence on the part of merchants approving unauthorized credit card applications in his name. The court further found that the consumer had no cause of action under consumer protection regulations requiring retail sellers to register with the Office of Consumer Protection because no actual injury occurred.

Background

Ms. Roberts ("Roberts"), a former girlfriend of Eugene Beard ("Beard"), applied for and obtained credit cards in his name from several department stores. The department store companies included May Department Stores, Inc. ("Hecht's"), Saks Fifth Avenue, Inc., and Woodward & Lothrop, Inc. among others.

This case began as a debt collection suit brought by Hecht's against both Beard and Roberts. Beard counterclaimed against Hecht's and the other department stores that issued fraudulent credit cards in his name, or jointly in his and Roberts' names. He argued that the cards had been issued negligently without verification of the application information. Beard claimed no knowledge of or con-