

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION**

NCL (BAHAMAS), LTD.,

CASE NO. 07-22176-CIV-KING

Plaintiff,

v.

FINE OF ART OF CRUISING, LTD.,

Defendant.

ORDER DISMISSING FOR LACK OF SUBJECT MATTER JURISDICTION

THIS CAUSE comes before the Court *sua sponte* to dismiss the above-styled action for lack of subject matter jurisdiction. During the scheduling conference conducted on May 6, 2008, the Court raised concerns about whether the subject Concessionaire Agreement is a maritime contract, such that this Court has admiralty jurisdiction. Both parties were asked to submit briefs regarding jurisdiction.

In NCL's Memorandum in Support of this Court Retaining Jurisdiction (D.E. #45), Plaintiff argues that this Court does have jurisdiction because the subject Concessionaire Agreement is a maritime contract as its primary purpose relates to commerce on the high seas. Additionally, Plaintiff contends that the Court should exercise ancillary jurisdiction over the tort claims in the case because these claims are based on "the same nucleus of operative facts as the contract claims."

Defendant FAOC submitted a Jurisdictional Memorandum (D.E. # 47) on May 23, 2008, claiming that there is no basis for admiralty jurisdiction in this case as the subject matter of the contract is not maritime in nature. Also, Defendant argues that the tort claims are not part of admiralty jurisdiction as the alleged torts neither occurred on navigable water nor relate to traditional maritime activity.

Federal courts have exclusive jurisdiction over admiralty matters. 28 U.S.C. §1333. Both parties agree that admiralty jurisdiction exists if the subject matter of a contract is maritime in nature. The 11th Circuit has held that admiralty jurisdiction exists only if a contract is wholly maritime in nature and its non-maritime elements are insignificant. *See E.S. Binnings, Inc. v. M/V Saudi Riyadh*, 815 F.2d 660, 665 (11th Cir. 1987). To be maritime in nature, an agreement must pertain directly to and be necessary for commerce or navigation. *Ambassador Factors v. RMS*, 105 F.3d 1397, 1399 (11th Cir. 1997). Also, while an activity covered by a contract may be important to a ship's operation, admiralty jurisdiction is conferred only if the activity is in fact "necessary" to the operation of the vessel. *Inbesa Am., Inc. v. M/V Anglia*, 134 F.3d 1035, 1036 (11th Cir. 1998).

Here, the subject matter of the Concessionaire Agreement is not maritime in nature. An agreement granting the right to conduct art auctions aboard a ship is arguably not important to a ship's operation and is certainly not "necessary" to the navigation of a vessel. Additionally, a contract to provide art auctions aboard a ship does not pertain directly to the maritime commerce engaged in by a cruise line and is unrelated to the ship's operation.

Plaintiff argues that the Court should exercise ancillary jurisdiction over the tort claims as they are based on the same nucleus of operative facts as the contract claims. However, because the Court has found that no jurisdiction exists regarding the contract claims, the tort claims must be analyzed separately.

As stated in Defendant's Memorandum, the United States Supreme Court has established two tests that must be satisfied for a tort claim to be part of admiralty jurisdiction. *Jerome B. Grubart Inc. v. Great Lakes Dredge & Dock Co.*, 513 U.S. 527, 531 (1995). Under the location test, the tort must have occurred on navigable waters or, if the relevant injury occurred, it must have been caused by a vessel on navigable water. *See Broughton v. Florida Int Underwriters, Inc.* 139 F.3d 861, 865 (11th Cir. 1998). Under the connection test, the injury must have a "potentially disruptive impact on maritime commerce" and the "activity giving rise to the incident must show a substantial relationship to traditional maritime activity." *Id.*

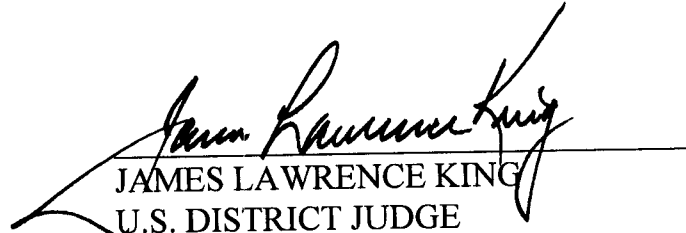
Here, the alleged torts did not occur on navigable waters. Some of the claims relate to communications that occurred with passengers once they had returned from the NCL cruise. The other claims refer to either the negotiation of the agreement or decisions made by the Plaintiff, both of which occurred at the Plaintiff's headquarters in Miami. Additionally, the alleged torts are unrelated to traditional maritime activities. Thus, because neither of the tests are met, the tort claims in the instant action are not within the Court's jurisdiction.

Accordingly, after a careful review of the record and the Court being otherwise

fully advised, it is

ORDERED, ADJUDGED, and DECREED that the above-styled action be
DISMISSED for lack of subject matter jurisdiction without prejudice to re-file in state
court.

DONE and ORDERED in chambers at the James Lawrence King Federal Justice
Building and United States Courthouse, Miami, Florida, this 30th day of June, 2008.


JAMES LAWRENCE KING
U.S. DISTRICT JUDGE
SOUTHERN DISTRICT OF FLORIDA

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