

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 20-CV-60896-RAR

YORIEL AMPARO, et al.,

Plaintiffs,

v.

**CLASSICA CRUISE OPERATOR
LTD., INC.,**

Defendant.

/

**ORDER GRANTING DEFENDANT'S MOTION TO STRIKE, PROVIDING BENCH
TRIAL INSTRUCTIONS, AND DENYING PARTIES' MOTIONS *IN LIMINE* AS MOOT**

THIS CAUSE comes before the Court on Defendant Classica Cruise Operator, Ltd., Inc.'s (“Classica”) Motion to Strike Plaintiffs’ Jury Trial Demand [ECF No. 59] (“Motion”) and the Parties’ Motions *in Limine* [ECF Nos. 62 & 63]. The Court has considered the Motions, all related filings, and is otherwise fully advised. Accordingly, it is hereby

ORDERED AND ADJUDGED that Defendant’s Motion to Strike [ECF No. 59] is **GRANTED** and the Parties’ Motions *in Limine* are **DENIED as MOOT** as explained herein.

I. Motion to Strike

Federal Rule of Civil Procedure 38(e) removes the right of trial by jury in admiralty cases. Section 1333 provides the federal courts with original jurisdiction over any civil admiralty claim, “saving to suitors in all cases all other remedies to which they are otherwise entitled.” 28 U.S.C. § 1333. The “saving to suitors” clause allows a plaintiff to bring suit as an *in personam* claim in state court or as a diversity claim in federal court, rather than suing “in admiralty” in federal court. *Neenan v. Carnival Corp.*, No. 99-2658, 2001 WL 91542, at *1 (S.D. Fla. Jan. 29, 2001). “The ‘saving to suitors’ clause guarantees a plaintiff’s right to a jury trial in federal court when bringing

suit under diversity jurisdiction, a right which is denied if brought in admiralty.” *Id.* (citing 28 U.S.C. § 1333).

In their Motion, Plaintiffs claim “[t]he forum selection clause in the ticket takes away any right of the Plaintiffs to avail themselves of the ‘saving to suitors’ clause under 28 U.S.C. § 1333[,]” and that “Plaintiffs are thus wrongfully prohibited from having access to the right for a jury trial in cases of personal injury on the navigable waters.” Mot. at ¶ 3-4. These statements constitute a blatant misreading of the Forum Selection Clause in the ticket contract. The Clause states as follows:

Forum Selection Clause for all Lawsuits: Except as provided in paragraph 56 with regard to claims other than for personal injury, illness or death of a passenger, it is agreed by and between the passenger and the carrier that all disputes and matters whatsoever arising under, in connection with or incident to this agreement, passengers cruise, cruise tour, land tour or transport, shall be litigated, if at all, in and before the United States District Court for the Southern District of Florida located in Broward County, Florida, U.S.A., (or as to those lawsuits to which the Federal Courts of the United States lack subject matter jurisdiction, before a court located in Broward County, Florida, U.S.A.) to the exclusion of the courts of any other state, territory or Country. Passenger hereby consents to Jurisdiction and waives any venue or other objection that he may have to any such action or proceeding being brought in the applicable court located in Broward County, Florida.

Mot. at ¶ 3. While the Forum Selection Clause does require Plaintiffs to file their suit in the Southern District of Florida, it in no way precludes Plaintiffs from invoking diversity jurisdiction under 28 U.S.C. § 1332 as opposed to bringing the suit in admiralty.

As Plaintiffs voluntarily asserted this Court’s admiralty jurisdiction when diversity of citizenship clearly exists, they are “not entitled to a jury trial.” *Nat'l Union Fire Ins. Co. of Pittsburgh, P.A. v. Vinardell Power Sys., Inc.*, No. 19-20093, 2019 WL 1440383, at *4 (S.D. Fla. Apr. 1, 2019); *see also Caron v. NCL (Bah.), Ltd.*, 910 F.3d 1359, 1366 (11th Cir. 2018) (“The most salient difference that proceeding in admiralty creates is the absence of a right to a jury trial.”); *Carnival Corp. v. Stankovic*, No. 16-20353, 2016 WL 9274718, at *1 (S.D. Fla. Dec. 12,

2016) (“The well-settled rule in the Eleventh Circuit is that a defendant normally has no right to a jury trial where plaintiff has proceeded with an admiralty and maritime claim.”); *Zurich Ins. Co. v. Banana Servs., Inc.*, No. 84-1508, 1984 WL 1888, at *1 (S.D. Fla. Nov. 26, 1984) (“Where a plaintiff has denominated its claim as an admiralty and maritime claim under Rule 9(h), Fed. R. Civ. P., as Plaintiff has here, there is normally no right of the defendant to have a jury trial on any issue.”); *Underwriters Subscribing to Certificate of Ins. No. 98B1/800 including Certain Underwriters at Lloyd’s of London v. On the Loose Travel, Inc.*, No. 99-0200, 1999 WL 694212, at *1 (S.D. Fla. Mar. 23, 1999) (“No right to trial by jury exists with respect to claims brought under federal admiralty jurisdiction Rule 9(h) . . . ”).

Accordingly, Defendant’s Motion to Strike [ECF No. 59] is **GRANTED**.

II. Bench Trial Scheduling Order

As Plaintiffs’ Jury Trial Demand has been stricken, this case shall proceed as a bench trial. **The case remains set for bench trial during the Court’s two-week trial calendar beginning on November 22, 2021.** Counsel for all parties shall also appear at a calendar call at **11:00 a.m. on November 16, 2021**. Unless instructed otherwise by subsequent order, the trial and all other proceedings in this case shall be conducted in Courtroom 205C at the U.S. Courthouse, 299 E. Broward Boulevard, Fort Lauderdale, Florida.

Further, as this matter is now proceeding as a bench trial, by **November 16, 2021**, the parties shall submit a joint pre-trial stipulation and proposed findings of fact and conclusions of law. **No motions *in limine* or Daubert motions are permitted, given that this matter is set for a bench trial.** Consequently, the Parties’ Motions *in Limine* [ECF Nos. 62 & 63] are hereby **DENIED as MOOT**.

Trial Exhibits. All trial exhibits must be pre-marked. The Plaintiff’s exhibits must be marked numerically with the letter “P” as a prefix; the Defendant’s exhibits must be marked

numerically with the letter "D" as a prefix. The parties must submit a list setting out all exhibits by the date of the Calendar Call. This list must indicate the pre-marked identification label (e.g., P-1 or D-1) and include a brief description of the exhibit. The exhibit list shall refer to specific items and shall not include blanket statements such as *all exhibits produced during depositions* or *Plaintiff reserves the use of any other relevant evidence*. Exhibits omitted from the list will not be allowed at trial.

Settlement Notification. If this matter is settled, counsel shall inform the Court promptly via telephone (954-769-5560) and/or e-mail (ruiz@flsd.uscourts.gov). In addition, counsel must promptly file a stipulation of settlement.

DONE AND ORDERED in Fort Lauderdale, Florida, this 29th day of October, 2021.



RODOLFO A. RUIZ II
UNITED STATES DISTRICT JUDGE

cc: counsel of record