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Flores v. Am. Seafoods Co. United States Court of Appeals for the Ninth Circuit 335 F.3d 904 (Decided July 9, 2003)

Joe Tully '05

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FISHING AGREEMENTS UNDER 46 U.S.C. § 10601(a)

In order to meet the statutory requirements, fishing agreements must be in writing and must be signed by the master or someone in charge of the vessel. Also, the State's statute regarding awarding attorney's fees is pre-empted by the federal policy of not awarding them in maritime cases.

Flores v. Am. Seafoods Co.
United States Court of Appeals for the Ninth Circuit
335 F.3d 904
(Decided July 9, 2003)

Appellants, Elias Flores and Jose Toledo ("appellants"), each signed an employment contract with American Seafoods Company ("ASC") on January 11, 2000 at an orientation meeting in Seattle, Washington. Representing ASC at that meeting was Cathy Udoff ("Udoff"), who signed the employment contracts on behalf of ASC and the vessel masters, who had previously delegated to Udoff, via a written form, the authority to sign on their behalf. The appellant's complaints center around 46 U.S.C. § 10601(a), which at the time of the dispute provided that a "fishing agreement" must be "in writing" and signed by the "master."

Besides signing the employment contract, Udoff was also charged with explaining the compensation provided by its terms. By its terms, compensation would come primarily from a "crew share pool." The number of shares in the pool would be determined before the season began and the value of the pool would be calculated at the end of the season by multiplying the number of shares by a posted price for the fish, which was based on a good faith estimate made by ASC at the beginning of the season. The contract also provided for performance bonuses based on discretionary employee evaluations. Udoff orally explained how the evaluation ratings would be measured, how the total number of shares would be derived, and how the bonus pool would be valued at the orientation. Since the performance bonuses were based on the evaluation ratings, the number of shares and the value of those shares could not be determined until the fishing season was over.

Soon after the season had ended, the appellants filed suit, raising a number of claims. First they argued that the oral presentation of the bonus provision meant that the contracts were not "in writing." Second they argued that because the vessel masters had delegated the signing of the contracts to an agent, the contracts were not signed by the vessel masters, as required by statute. Appellants also raised two claims alleging breach of contract: that ASC had breached their contract by funding the bonus pool out of the "crew share pool" and that they had failed to make a good faith estimate of the "posted price" used in the "crew share" formula. Lastly, the appellants sought attorney's fees and expanded litigation costs as provided by Washington State Statute.

At trial, the district court found that ASC had breached the contract by failing to make a good faith estimate of the "posted price," but found the employees suffered no damages since ASC had made a post-season adjustment to cover any shortfall the employees suffered. It also found a breach resulted when ASC funded the bonus pool from the crew share pool and awarded damages and prejudgment interest. The court

rejected both claims made under § 10601(a). As for the attorney's fees, the court found that although a choice-of-laws provision in the contract provided federal law would apply to all disputes, the state statute awarding attorney's fees to the prevailing party in a wage dispute was not pre-empted by federal law.

Appellants appealed their claims under § 10601(a), while ASC cross-appealed, challenging the award of attorney's fees and the trial court's finding that the contract required ASC to fund the bonus pool independent of the crew share pool.

The Ninth Circuit first addressed the contract provisions regarding the two pools of funds. Giving effect to the choice-of-law provision in the contract, the court applied federal common law in interpreting the contract. Therefore, as required by federal law, the court read the contract "as a whole and every part interpreted in reference to the whole, with preference given to reasonable interpretations." Applying this standard, the court found the "crew share" provision was unambiguous and could only be understood as distinct from the "bonus pool." Supporting this conclusion was the distinct way shares were assigned in each pool, with the "crew share" number set at the beginning of the season and the bonus share pool, dependent as it was on the completion of the performance evaluations, being set at the end. Assessing the explanations provided by ASC of the compensation scheme at the orientation, the court found that these did not contradict the plain meaning of the statute and concluded a crewmember would still have every reason to believe the "bonus pool" was funded independent of the "crew share pool."

Next the court examined the appellant's claim that the bonus provisions, because they were discretionary, rendered the contracts illusory. The court found the discretion retained by ASC did not render the contracts illusory. Agreeing with the Third Circuit and the Restatement of Contracts, the court found that under federal law both parties to a contract have a duty to perform in good faith. Looking to the terms of the contract, the court found ASC was required to award bonuses when a seaman attained a favorable performance rating, which was to be assigned reasonably and in good faith; therefore this provision was not illusory.

The court then examined the appellant's claims raised under 46 U.S.C. § 10601(a). The first claim argued the contract was invalid since it was not "in writing." Since there was no precedent from the Supreme Court or the Ninth Circuit addressing this issue, the court examined the policy behind the "in writing" requirement. In *Seattle First National Bank v. Conway*, 98 F.3d 1195 (9th Cir. 1996), the same court said the provision is designed to protect seamen from "duress, coercion, or deception." The court found that although ASC and Udoff, as their representative, may have been careless in explaining the compensation system and, although their explanation was incomplete, ASC was not willfully deceptive. Only in cases where oral terms were imposed under duress or where coercion or deception was involved, the court said, should a fishing agreement which contains both oral and written terms be voided.

Next, the court addressed the appellant's argument that the vessel masters, by delegating to Udoff the authority to sign in their name, failed to sign the contract as required by § 10601(a). Applying the same standard it had in deciding the contract was indeed "in writing," the court found a master's delegation of authority to sign in his name did not protect him from the claims of seamen alleging duress, coercion, or deception. So

here, Udoff's signing of the contracts did not frustrate the goals of § 10601(a) and did not render the contract void.

Finally, the court addressed the issue of attorney's fees. Applying federal common law, the court looked to the Restatement (Second) of Conflict of Laws. Specifically, the court looked to § 187(2), which says the law chosen by the parties should apply unless: (a) "the chosen state has no relationship to the party or parties and there is no reasonable basis for the parties' choice" or (b) "application of the law of the chosen state would be contrary to the policy of a state which has a materially greater interest in the determination of the particular issue" Addressing subsection 2(a), the court found the United States has a substantial relationship to the parties; since traditionally maritime employment contracts have been governed by federal law and in this instance the appellants had sought relief under federal law. Under subsection 2(b), even if the State of Washington had a strong public interest in this matter, there was no showing that Washington had a materially greater interest than the U.S. Although to be effective, the choice-of-laws provision would only have to satisfy one of the two alternative requirements under § 187(2), the court found it had satisfied both. Since federal maritime law made no provision for attorney's fees, the court found that they should not be awarded here.

In concluding, the court addressed and discarded appellant's arguments why § 10601(a) should not apply. First, the court said the federal maritime choice-of-law principles, derived from the Supreme Court's decision in *Lauritzen v. Larsen*, 245 U.S. 571 (1953), did not apply in situations, such as here, where there was a choice-of-laws clause and furthermore, *Lauritzen* did not supercede § 187 as a matter of course. Next, the court found no basis in the record that the ASC' employment contract was an adhesion contract, which would preclude application of a choice-of-laws provision where substantial injustice would occur to the adherent. Lastly, the appellants contested the use of the Restatement in a matter involving a choice between federal law and the law of a particular state. Although acknowledging the Restatement was not meant to be applied in a situation involving federal-state preemption, the court found this was not the case here.

Joe Tully
Class of 2005