

JUN 03 2009

Manila Indust. v. Ondova Ltd. Co., No. 07-55232

TALLMAN, Circuit Judge – concurring in the judgment

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

I agree that the claims against Ondova were properly dismissed. However, I disagree that the Bulk Registration Agreement governs this conflict. I write separately only to note that I would find that the Customer Registration Agreement is applicable as opposed to the Bulk Registration Agreement. The Bulk Registration Agreement contains language stating that it governs disputes “arising out of or resulting from” the Agreement. This language is not broad enough to find that the dispute “relates in some way” to that contract. *Manetti-Farrow, Inc. v. Gucci Am., Inc.*, 858 F.2d 509, 514 (9th Cir. 1988).

The Customer Registration Agreement states that its forum selection clause governs “[a]ny action relating to this Agreement.” The dispute between Ondova and Manila most certainly “relates in some way” to the rights and responsibilities set forth in the Customer Registration Agreement. *Id.* Though Manila argues that the Bulk Registration Agreement governs whenever there is a conflict between that Agreement and the Customer Registration Agreement, I fail to see any conflict.

I would affirm the judgment on the alternative ground that the applicable contract is the Customer Registration Agreement. *See Dietrich v. John Ascuaga’s Nugget*, 548 F.3d 892, 896 (9th Cir. 2008) (“We . . . may affirm on any ground supported by the record.”).