

DEC 19 2012

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

PACIFIC ASIAN ENTERPRISES, a
California corporation; et al.,

Plaintiffs - Appellants,

v.

CROSS CHARTERING NV, a foreign
limited liability company; et al.,

Defendants - Appellees.

No. 11-55805

D.C. No. 3:10-cv-01335-LAB-
WVG

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
Larry A. Burns, District Judge, Presiding

Argued and Submitted December 5, 2012
Pasadena, California

Before: WARDLAW, BEA, and N.R. SMITH, Circuit Judges.

Pacific Asian Enterprises (“PAE”) appeals the district court’s final order dismissing PAE’s claims and enforcing a contractual forum selection clause pursuant to Federal Rule of Civil Procedure 12(b)(3). We affirm.

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

The district court did not abuse its discretion when it enforced the forum selection clause. *See Kukje Hwajae Ins.Co., Ltd. v. M/V Hyundai Libtery*, 408 F.3d 1250, 1254 (9th Cir. 2005). It is clear from the face of the bill of lading that the parties intended that the Carriage of Goods by Sea Act, 46 U.S.C. § 30701, (“COGSA”) control this contract. Both parties’ experts testified that COGSA controls the terms of the contract in Antwerp; Cross Chartering has stipulated that COGSA controls in Antwerp; and the district court reached the same conclusion. Given that the court in Antwerp will interpret the contract under COGSA, we conclude that the substantive law the Belgium courts will apply will not be less favorable to PAE than the U.S. court’s application of COGSA. *Fireman's Fund Ins. Co. v. M.V. DSR Atl.*, 131 F.3d 1336, 1339 (9th Cir. 1997) (quoting *Vimar Seguros y Reaseguros, S.A., v. M/V Sky Reefer*, 515 U.S. 528, 538 (1995)) (holding that enforcement of a forum selection clause is unreasonable when “the substantive law to be applied will reduce the carrier’s obligations to the cargo owner below what COGSA guarantees”).

Affirmed.