



## New York Court Clarifies Choice of Law for Deciding if Non-Signatory Parent Entity Must Arbitrate

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The U.S. District Court for the Southern District of New York has held that the issue of whether a non-signatory parent entity can be compelled to participate in arbitration over a failed ship purchase agreement will be governed by the choice of law provisions in the agreement, rather than the law of the parent entity's state of formation. The case stems from a 2009 ship purchase agreement for the sale of the oil products tanker *OVERSEAS REGINAMAR* by FR8 Singapore Ltd. to Albacore Maritime, a special purpose entity formed by PMC Holding Inc. through a chain of subsidiaries. After the Memorandum of Agreement was signed in April 2009, Albacore sought to back out of the agreement due to financing problems related to the global slump in shipping. Although FR8 brought a London arbitration against Albacore, Albacore was effectively "judgment proof" as a special purpose entity formed for the single purpose of holding title to the vessel. Accordingly, FR8 brought a complaint in New York seeking to compel the PMC parent entities to join in the arbitration.

The central issue in the case was deciding which law would apply in determining what FR8 would need to plead and prove to pierce the corporate veil and reach the parent entities: federal common law because the case was being brought under the Federal Arbitration Act, or English law because that was the law set out in the purchase agreement's choice of law clause. Resolving conflicting precedents from the Second Circuit, the court ultimately held that the choice of English law provisions should be enforced, on the theory that otherwise plaintiffs would be encouraged to forum shop as a way of avoiding their own choice of law terms. The court noted that its decision would likely cause FR8's case to fail, in light of the difficulty of piercing a corporate veil under English law. Nevertheless, the court has given the parties a month to brief the issue.

Subject to further guidance from the Second Circuit, the case clarifies the applicable law when parties seek to reach corporate parent entities. For those involved in preparing international contracts, the case underscores the critical importance of understanding the full consequences of choice of law terms, and the risks of "working without a net" when contracting with single purpose entities.

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