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## 2001 Survey of Rhode Island Law: Cases: Tort/ Contract Law

Marjorie A. Connelly

*Roger Williams University School of Law*

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**Tort/Contract.** *Tateosian v. Celebrity Cruise Serv. Ltd.*, 768 A.2d 1248 (R.I. 2001). Cruise ticket that contained a time limitation for bringing cases and a forum selection clause was held valid due to timely notice and acceptance of the terms by payment.

#### FACTS AND TRAVEL

This is an appeal from a summary judgment ruling dismissing the negligence claim on the grounds that under the cruise contract there was a one year limitation for commencement of litigation and this case was not brought in one year.<sup>1</sup> The motion justice concluded that the forum selection clause was reasonable and valid.<sup>2</sup>

The plaintiffs received the embarkation coupon with a two page document that set forth the important contract clauses.<sup>3</sup> The plaintiffs did not have to pay until they signed the embarkation coupon.<sup>4</sup> The embarkation coupon would not be valid if the two page document had been detached before boarding.<sup>5</sup>

The plaintiffs purchased tickets for a cruise to begin on March 29, 1997.<sup>6</sup> While aboard the ship, the plaintiff became ill from food poisoning.<sup>7</sup> She was hospitalized for ten days and missed several weeks of employment.<sup>8</sup> The plaintiffs filed suit in October 1998, alleging negligence in food preparation for passenger meals.<sup>9</sup> On September 1999 Celebrity filed a motion for summary judgment.<sup>10</sup> The district court judge concluded that the issue of notice in forum selection clause cases is a question of law, and therefore there was no question of material fact remaining.<sup>11</sup>

#### ANALYSIS AND HOLDING

While forum selection clauses are subject to judicial scrutiny for fundamental fairness,<sup>12</sup> the court found that they are consid-

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1. *Tateosian v. Celebrity Cruise Serv. Ltd.*, 768 A.2d 1248, 1249 (R.I. 2001).
  2. *Id.*
  3. *Id.* at 1251.
  4. *Id.*
  5. *Id.*
  6. *Id.* at 1250.
  7. *Id.*
  8. *Id.*
  9. *Id.*
  10. *Id.*
  11. *Id.* at 1249-50.
  12. *Id.* at 1250.

ered prima facie valid.<sup>13</sup> The challenger to the fundamental fairness of the forum selection clause has a heavy burden of proof to meet.<sup>14</sup> A cruise line can shorten the time-limitation to not less than one year from date of injury.<sup>15</sup>

The court recited a two-prong test to the fundamental fairness of the forum selection clause.<sup>16</sup> The first prong is facial clarity of the clause on the ticket.<sup>17</sup> The next prong is that the passenger has the opportunity to become informed about the clause.<sup>18</sup>

In this case, the plaintiff did not have to pay until after signing the embarkation coupon and reading the material regarding limits on the right to sue. This was clear notice to the plaintiffs that such limitations existed.

The court went on to explain that even if the plaintiffs did not read the limitation at the time they purchased the ticket, they should have once they realized they had a cause of action.<sup>19</sup> If they did not have a copy, then they should have contacted the cruise line to obtain a copy of the limitations.<sup>20</sup> The cruise line, in a response to the notice of suit, notified the plaintiffs that their rights were limited by the cruise ticket.<sup>21</sup> The plaintiffs then should have followed up and found out what those limitations were.<sup>22</sup>

#### CONCLUSION

The plaintiffs had the opportunity to read the limitations on their rights before paying for the tickets and the tickets clearly stated that there were limitations. Based on these two factors the court up held the summary judgment.

Marjorie A. Connelly

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13. *Id.*

14. *Id.* (quoting *Carnival Cruise Lines, Inc. v. Shute*, 499 U.S. 585, 592 (1991)).

15. *Id.* (referring to 46 U.S.C.S. Appx. § 183(a)).

16. *Id.* at 1251.

17. *Id.*

18. *Id.*

19. *Id.*

20. *Id.*

21. *Id.*

22. *Id.*