Jeanty v. Antillean Marine Shipping, Corp. et al

2023 | Cited 0 times | S.D. Florida | December 7, 2023

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF FLORIDA CASE NO. 22-cv-23721-ALTMAN/Reid JOHN JEROME JEANTY,

Plaintiff, v. ANTILLEAN MARINE SHIPPING, CORP.,

Defendant. _____/

ORDER Our Plaintiff, John Jerome Jeanty, has filed a Motion to Remand [ECF No. 42] which, after careful review, we now DENY. 1

THE FACTS In February 2018, Jeanty hired the Defendant, Antillean Marine Shipping Corp., to ship his 2002 Mack Truck from Florida to Haiti for $7,250. 2

See Amended State Court Complaint [ECF No. 1-2] ¶ 7. See Nancy Perez 3

Depo. at 21:25 22:6 [ECF No. 42- 1

The Motion to Remand is ripe for resolution. The Plaintiff filed his Motion to Remand on October 16, 2023. See [ECF No. 42]. On October 30, 2023, the Defendant filed a timely Response to the 48]. The Plaintiff replied to the Response (the on November 6, 2023. See [ECF No. 49]. 2 Jeanty says that he resided in Miami-Dade County, Florida, during the times in question. See Amended Complaint ¶ 1. Antillean is a Florida corporation doing business in Miami-Dade County. Id. ¶ 2. 3 3. It turns out, though, that she s See Nancy Perez Depo. at 8:24 9:1 s since been dismissed from the suit. See at 1 2 a carriage contract with Antillean, a carrier, there is no privity of contract between Plaintiff and Perez, who never signed the document nor is explicitly name see also Joint Stipulation of Dismissal [ECF No. 34]. After [its]

and inquired about . Id. ¶¶ 8 9. These inquiries went nowhere because the truck never made it to Haiti (for reasons . Id. ¶ 9. On November 9, 2020, Jeanty sued Antillean (and Nancy Perez) Judicial Circuit. See generally Original State Court Complaint [ECF No. 1-4]. He would eventually amend that Complaint on October 22, 2022, alleging six causes of action 4

and seeking a total of $184,000 in damages. 5

See generally Amended State Court Complaint. 6 On November 11, 2022, the Defendants timely

removed the case here. See Notice of Removal [ECF No. 1]. In doing so, they asked us to exercise our federal-question jurisdiction because (they said) , 46 U.S.C. § 30701 et. seq. transportation of goods by sea between the United States and foreign ports from the time they are

Id. ¶ 3. Accor regular form bill of lading, which incorporates the terms and conditions of COGSA through its Clause Paramount, making COGSA applicable to the entire time the cargo is in the custody of the carrier, including the period of time Id. ¶ 4.

disappeared at some point during transit to Haiti. See litigation commenced and throughout this lawsuit, Defendants have claimed that the truck was shipped

4 The six causes of action were: (1) breach of contract; (2) breach of covenant of good faith and fair dealing; (3) statute; (5) negligent misrepresentation (as to Nancy Perez only); and (6) civil theft. See generally Amended Complaint. 5 This represented the sum of the following claims: $42,250 for the value of the truck and the money paid to Antillean; $15,000 for lost sales; and $126,750 in treble damages for civil theft under FLA. STAT. § 772.11. Id. at 10 11. 6 refer (cleaned up)). Under such a scenario, Jeanty apparently agreed with the Defendants that COGSA applied. See id. ¶ 3

and foreign ports from the time they are loaded on or after the time they are discharged from the

Shortly after removing the case to federal court, the Defendants filed a Motion to Dismiss Counts II VI of the Amended Complaint. See Motion to Dismiss [ECF No. 3]. We granted that motion by default because Jeanty failed to respond. See January 18, 2023, Paperless Order [ECF No. 10]. That left us, then, with a single breach-of-contract claim worth (according to the Plaintiff) Ibid. We thus ordered the Defe Ibid. The Defendants responded to our order by making the same argument they had made in their

Notice of Removal. See generally Response to Order to Show Cause [ECF No. 11]. Specifically, the Defendants asserted that COGSA both and Id. ¶¶ 4 5.

Because (the Defendants added) truck was to be transported pursuant to ocean carrier standard form bill of lading [which] incorporates the terms and conditions of COGSA through its Clause Paramount, . . . COGSA [was] applicable to the entire time the cargo [was] in the Id. ¶ 6. And, since they concluded, Id. ¶ 7.

On March 2, 2023, the Defendants responded to the Amended Complaint, denying all of J the only remaining cause of action (breach of contract). See generally Answer and Affirmative Defenses to Amended Complaint [ECF No. 18]. They also asserted five affirmative sented by the Plaintiff[ ] are subject to the terms, Id. at 3. 7

The trajectory of the case abruptly changed in Ju , rather, [he] received any explanation as to what

Ibid. says his previous discovery requests and depositions of the individuals who failed to ship and decided to sell the prop Id. ¶ 10.

On August 30, 2023, Jeanty deposed Perez. According to Perez, somebody delivered the truck See Perez Depo. at 23:7 9 (Q: testified,

paperwork . . . for us to be able to do the U.S. customs validation. They give us the shipping instructions and make payment. Customs validation takes about . . . 72 hours. Once the validation is Id. at 10:5 12. happen with this truck because We did not have a title for the Id. at 23:5 6. So, rather than process this truck for shipment, Antillean let the truck sit on its disposed of. Id. at 7:4 8; see also id. at 12:23 13:2 ([A]). Shortly after the truck was disposed of, Jeanty finally supplied the

7 - ; at 3. paperwork and perhaps the payment required to ship it (along with his other cargo). See id. at 25:18 and provides paperwork, uh- Perez then g, at which point

she learned that the truck had been disposed of. See id. at 27:24 Sometime after that, Perez claims that she notified Jeanty about what had happened to the truck. 8

Jeanty next deposed , Yeline said that [ECF No. 42-1] at 7:18, 9:3. According to

Valdes, i terms describe considered abandoned cargo. No payment was made [by Jeanty]. It was just considered abandoned

Id. at 13:18 21 (cleaned up). 9

, Perez Depo. at 37:14 21. And, indeed, this dock receipt (Warehouse Receipt as it s officially

8 If, when, and how Perez notified Jeanty about the sale of the truck is in dispute. See generally Perez Depo. at 61:10 69:16. relevant to the question of remand. 9 They, for instance, truck to Ramon Rodriguez. See Valdes Depo. at 8:22 ,

based on what Perez and Valdes have gleaned from the limited records they do have and what we have gleaned from their depositions it appears that the truck was sold to Rodriguez in September or October of 2019. See id. at 16:14 17:13 (discussing the date of this sale). Jeanty then supplied payment of some kind in November of 2019. See id. at 24:8 payment in November of 2019. . . . [T]hat was after I sold [the truck to Rodriguez] actually, the M called) for see [ECF No. 3-1], and was presented to Perez said: [the Mack truck] was delivered by a at 39:6 13. A bill of lading is a different story, though. When asked about a bill of lading, Perez

answered that she didn for deliveries of cargo [to Antillean]. A bill of lading is issued at Id. at 41:3 5. Valdes was more explicit when was no bill of lading issued, there is really no contract. It was ne 18.

She later reiterated this point, saying:

documentation to be able to go through customs first to valida Id. at 29:22 30:1.

On September 13, 2023, Antillean the lone remaining Defendant filed a Counterclaim [ECF No. 39], claiming in a single breach-of-contract count that Jeanty owed $945,523.25 of storage Counterclaim ¶ 18. Jeanty timely answered, denying all liability and asserting several affirmative

defenses. See generally Answer to Counterclaim [ECF No. 40].

Two weeks later, Jeanty filed this Motion to Remand, arguing that COG here because and because Motion to Remand ¶¶ 5, 14, 19. 10

Instead, Jeanty contends that by Florida Statute § 83.806 Id. ¶ 18. In its Response, Antillean appears to concede that, by its own

terms, COGSA apply to this situation. Still, it notes that COGSA allows parties to

10 This obviously conflicts with what Jeanty alleged in his Amended Complaint, the ramifications of contractually extend application to an earlier point in time. See is well-settled that parties may agree to apply COGSA to other periods of transit . . . by so indicating

that, Antillean says, is exactly what it and Jeanty did here. According to t as noted, for

shipment to the indicated port, regular form Bill of Lading and Tariff Ibid. (quoting the Warehouse Receipt (emphasis in

original)). And (Antillean continues) its form [ ] Id. at 4 (quoting form

bill of lading).

With that background in mind, we turn to the question at hand: Is Jeanty bound by the terms even though he never received a specific bill of lading for his Mack truck? If he is, then we have subject-matter jurisdiction over this case

THE LAW A federal court should remand to state court any case that has been improperly removed. See 2 of establishing that jurisdiction. See McNutt v. Gen. Motors Acceptance Corp. of Ind., Inc., 298 U.S. 178, 189

the jurisdiction of the federal courts on removal, but the policy of the successive acts of Congress regu Shamrock Oil & Gas Corp. v. Sheets

independence of state governments, which should actuate federal courts, requires that they Healy v. Ratta, 292 U.S. 263, 270 (1934).

to hear only those cases within the judicial power of the United States as defined by Article III of the Constitution or Taylor v. Appleton, 30 F.3d 1365, 1367 (11th Cir. 1994) (cleaned ts jurisdiction over diversity actions and cases raising a federal question. If jurisdiction is based on either of these, the pleader must affirmatively allege facts e grounds Ibid. (quoting FED. R. CIV. P. 8(a)).

onstitution, laws, or treaties of the United

Smith v. GTE Corp., 236 F.3d 1292, 1310 (11th Cir. 2001) (quoting 28 U.S.C. § 1331). the well-plead Ibid. (quoting

Caterpillar, Inc. v. Williams, 482 U.S. 386, 392 (1987)). In other wor -pleaded complaint standing alone establishes either that federal law creates

substantial ques Baltin v. Alaron Trading Corp., 128 F.3d 1466, 1472 (11th Cir. 1997)

(quoting Franchise Tax Bd. of the State of Cal. v. Constr. Laborers Vacation Tr. for S. Cal., 463 U.S. 1, 27 28 (1983)).

Although courts continue to apply the well-pleaded-complaint rule, the Supreme Court has - -law claims between nondiverse pa ., 545 U.S. 308, 314 (2005). The Supreme Court has therefore Ibid.

Under the well-pleaded-complaint rule, a federal court generally cannot exercise federal- question jurisdiction over a case just because the defendant advances a federal defense to a state-law claim. See Cmty. State Bank v. Strong, 651 F.3d 1241, 1258 Vaden v. Discover Bank, 556 U.S. 49, 60

one main exception to this general rule doctrine, a complaint that (on its face) raises only state- statute wholly displaces the state-law cause[s] of action through complete pre-Poet

Theatricals Marine, LLC v. Celebrity Cruises, Inc., 2023 WL 3454614, at *3 (11th Cir. May 15, 2023) (quoting , 539 U.S. 1, 8 (2003)).

jurisdiction, we strictly construe the right to remove and apply a general presumption against the

exercise of federal jurisdiction, such that all uncertainties as to removal jurisdiction are to be resolved Scimone v. Carnival Corp., 720 F.3d 876, 882 (11th Cir. 2013) (cleaned up); see also Burns v. Windsor Ins. Co.

ANALYSIS Before getting to the heart of Motion to Remand, we must clarify whether he s still

prosecuting this case on the theory that he and Antillean entered into a contract to ship his Mack truck to Haiti. That his Amended Complaint. See Amended Complaint And, indeed, the only live claim Jeanty still has is his first breach-of-contract claim. See But less sure about what exactly Jeanty is alleging. See Motion to Remand ¶ 16

P]laintiff does not wish to abandon his claim. However, due to the deposition testimony of Yeline now believes that there was no contract, he should seek our leave either

to voluntarily dismiss his case (so he can start anew in state court) or to re-amend his Amended Complaint. See Flintlock Constr. Servs., LLC v. Well-Come Holdings, LLC, 710 F.3d 1221, 1228 (11th Cir. 2013) (noting that a plaintiff albeit in the summary-judgment context its complaint . . . without seeking leave of court pursuant to [FED. R. CIV. P.); see also Pensacola v. City of Pensacola, 2015 WL 12516688, at *3 (expand on their claims, Until Jeanty does that, though, we re left with no choice but to treat the allegations in the Amended Complaint as the operative ones. See Pensacola, . And, based on the

allegations as they appear t, we assume Jeanty and Antillean had entered into a contract to ship the Mack truck to Haiti.

A. COGSA explained COGSA Polo Ralph Lauren, L.P. v. Tropical Shipping & Constr. Co., Ltd., 215 F.3d 1217,

1220 (11th Cir. 2000) (quoting 46 U.S.C. § 1312 (1999)). Antillean is right that, when it applies, Response at 4. Indeed, Polo, 215 F. 3d at 1221. When COGSA applies, then, any claims advanced under theories of liability outside statutory scheme must be dismissed. See LIG Ins. Co. Ltd. v. Inter-Fla. Container Transp., Inc. , 495 (11th Cir. 2014) (noting (without issue) that, COGSA provides an exclusive remedy, the district . In other words, COGSA is completely preemptive. See, e.g., Miami Warehouse Logistics, Inc. v. Seaboard Marine, Ltd., 2018 WL 1093592, -law breach of contract and negligence claims); UTI, U.S., Inc. v. Bernuth

Agencies, Inc., 2012 WL 4511304, at *5 (S.D. Fla. Oct. 1, 2 Our question, then, is whether

COGSA applies here. COGSA jurisdiction is normally triggered when the cargo in question has been loaded onto See Polo ; see also Distribuidora N.Y. S. de R.L. v. Great White Fleet Liner

Serv., Ltd., 2019 WL 13141570, at *4 (S.D. Fla. Dec. 13, 2019) (Dimitrouleas, J.) (governs from the time the goods are loaded on the ship to the time they are discharged from the

. And the statute itself makes this clear. See 46 U.S.C § 30701, Stat. Notes § 13 apply to all contracts for carriage of goods by sea to or from ports of the United States in foreign see also id., Stat. Notes § 1 Mack truck was sold before it could be here is a bit more complicated. See Underwriters at Int

SeaTruck, Inc., 858 F. Supp. 2d 1334, 1338 (S.D. Fla. 2012) (Scola, J.) (noting that a theft of cargo from -to-delivery

By its own terms, COGSA empowers parties to a shipping contract to extend coverage to an earlier point in time. See 46 U.S.C. § 30701, Stat. Notes § 7 prevent a carrier or a shipper from entering into any agreement, stipulation, condition, reservation, or

exemption as to the responsibility and liability of the carrier or the ship for the loss or damage to or in connection with the custody and care and handling of the goods prior to the loading on and subsequent); see also Miami Warehouse, 2018 WL 1093592, by operation of law, the parties Sail Am. Found. v. M/V T.S. Prosperity, 778 F. Supp. 1282, 1286 (S.D.N.Y. 1991))). It has therefore become common practice tend COGSA to pre-loading . . . periods, Underwriters, 858 F. Supp. 2d at 1339.

B. Even though no specific the terms and

conditions of regular form bill of lading and thus COGSA apply. COGSA might apply to our case. But, to determine whether it does, we must decide whether the parties agreed to extend COGSA coverage to -shipment possession of the truck. Antillean exactly what happened. According to the company, when employee who received the truck handed the driver a Warehouse Receipt. See see also Perez Depo. at 38:3 23 (explaining that an Antillean employee, Juan Hernandez, signed the

Warehouse R albeit on the wrong line before providing it to the driver). That Warehouse R indicated port, of Lading and Tariff now in use. In accepting this warehouse receipt, the shipper, consignee and owner of the goods agree to be bound by all of the stipulations, exceptions and conditions, whether written, printed or stamped 4 (quoting the Warehouse Receipt). And regular form bill of lading to the provisions of [COGSA] in respect of carriage of goods to or from ports in the United States. .

. . [COGSA governs] between the time of receipt of the Goods by the Carrier at the port of loading and the Id. at 4 (q regular form bill of lading (emphasis added)). In Antillea , then, COGSA from the time that the truck was delivered to Antillean[,] and the claims asserted by [Jeanty]

in this case are gove Ibid. most of this. Again, he asserts in his Amended Complaint that he Defendants entered into a contract, a true and correct copy of which is attached hereto as Composite Amended Complaint ¶ 13 (referencing the Warehouse Receipt). By adopting the Warehouse Receipt as a binding contract, Jeanty has saved us considerable work. We, for instance, 11

or whether the Warehouse Receipt which the driver (or by Jeanty) satisfies statute of frauds. 12

The parties do,

11 ntity, called the principal, authorizes another, called the agent, to act for it with more or less discretionary Sarmiento Lopez v. CMI Leisure Mgmt., Inc., 591 F. Supp. 3d 1232, 1238 (S.D. Fla. Mar. 8, 2022) (Bloom, J.) (quoting Econ. Research Analysts, Inc. v. Brennan, 232 So. 2d 219, 221 (Fla. 4th DCA 1970) (cleaned up)). -principal relationship existed, owledgment by the principal that the agent will act , 365 So. 3d 1242, 1246 (Fla. 1st DCA 2023) (quoting Robbins v. Hess, 659 So. 2d 424, 427 (Fla. 1st DCA 1995)). 12 Our contract probably does satisfy the statute of frauds. A contract to ship a truck be in statute of frauds. See generally FLA. STAT. §§ 725.01 08 (listing those contracts that do require a writing). And however, diverge on a central issue viz., whether the Warehouse Receipt for the Mack truck incorporated by reference the terms and conditions regular form bill of lading.

The contract must contain more than a mere reference to the collateral document, but it need not

Jenkins v. Eckerd, 913 So. 2d 43, 51 (Fla. 1st DCA 2005) (quoting Mgmt. Comput. Controls, Inc. v. Charles Perry Constr., Inc., 743 So. 2d 627, 631 (Fla. 1st DCA 1999)). While acknowledging this rule, the Eleventh Circuit has noted govern the actual dispute, not when . . . the collateral document simply clarifies the meaning of terms

Roman v. Spirit Airlines, Inc., 2021 WL 4317318, at *2 n.1 (11th Cir. Sept. 23, 2021). ccepted rule of contract law that, where a writing expressly refers to and sufficiently describes another document, that other document, or so Lowe v. Nissan of Brandon, Inc., 235 So. 3d 1021, 1026 (Fla. 2d DCA 2018) (quoting BGT Grp., Inc. v. Tradewinds Engine Servs., LLC, 62 So. 3d 1192, 1194 (Fla. 4th DCA 2011)).

something was incorporated into the Warehouse Receipt. In accepting this warehouse receipt, the shipper, consignee and owner of the goods agree to be bound by all s regular form bill of lading or a specific bill of lading

Steritech Grp., Inc. v. MacKenzie, 970 So. 2d 895, 898 (Fla. 5th DCA 2007). BPO Seidman, LLP v. Bee, 970 So. 2d 869, 874 (Fla. 4th DCA 2007). then Antillean is right, because as far as we can tell Antillean uses a regular form bill of lading that always has the same COGSA language. But, if it was the latter, Jeanty prevails corporate representative admitted that no specific bill of lading was ever issued. See Valdes Depo. at

13:16 was no bill of lading issued, there is really no contract. It was never sent to be .

King Ocean Serv. de Venezuela, S.A., 2000 WL 33956708 (S.D. Fla. June 13, 2000) (Moore, J.), is

instructive. The shipper there contracted with a carrier to ship a container from Florida to Venezuela. Id. at *1. After the carrier took control of the container but before the container was loaded onto armed men broke into the container and stole its contents. 13

Ibid. The shipper liable as a common carrier of Id. at *3. But the carrier

would have issued had the cargo

not been lost prior to being loaded aboard the vessel, [and] (2) the bill of lading incorporated [COGSA] Ibid. is well settled in this Circuit that the bill of lading that would have issued in the ordinary course of business

represents the contract governing the relationship between the shipper and carrier even if it was not Ibid. In so holding, the court quoted from a 1928 Fifth Circuit 14

case for the proposition that

13 Thieves broke into the container while it was being transported by a third-party trucking company , 2000 WL 33956708, at *1. 14 In Bonner v. City of Prichard, 661 F.2d 1206, 1209 (11th Cir. 1981) (en banc), the Eleventh Circuit adopted as binding precedent all decisions of the former Fifth Circuit handed down before October 1, 1981.

[the carrier] was required by law to issue a bill of lading. . . . [The shipper] is presumed to know the law, and therefore must have known the terms and conditions on which the goods were received and would be transported would be contained in a bill of lading to be issued later. . . . [A]n implied understanding arose from common business experience that the carrier would issue such a bill of lading as it was custom to issue to shippers in the usual course of its business. . . . [A] shipper, in the absence of a special contract, must be presumed to deliver his goods on the terms and conditions usually and customarily imposed by the carrier in the regular course of business. Id. at *4 (quoting Luckenbach S.S. Co. v. Am. Mills Co., 24 F.2d 704, 705 (5th Cir. 1928)).

Our case is just the same. As in AAA, we dispute between a shipper and a carrier who had previously done business together. As in AAA, regular form bill of lading triggered COGSA coverage when the carrier took control of the freight. As in AAA, the freight in , but before it had vessel. And, as in AAA, a specific bill of lading had not yet been issued when the cargo was lost. Finding

AAA e now regular form bill of lading governs this dispute, even though no specific bill of lading was ever issued.

And this seems to be the well-settled rule in our Circuit. See, e.g., Distribuidora, 2019 WL It is well settled that, as long as a bill of lading would have been issued in the ordinary course of business, the bill of lading serves as a contract governing the relationship of a shipper and carrier even if it was not actually issued. Ironfarmers Parts & Equip. v. Compagnie Generale Mar. et Financiere, 1994 WL 730895, at *2 (S.D. Ga. June 3, 1994))); N.H. Ins. Co. v. Seaboard Marine, Ltd., 1992 WL 33861, at *3 (S.D. Fla. Jan. 2, 1992) (Ryskamp, J.) (applying the reasoning of Luckenbach S.S. and finding that the terms of a bill of lading issued after cargo was damaged still governed even though ier). 15

15 if (1) Jeanty and Antillean had never done business before and (2) Antillean issued the Warehouse Receipt that specifically mentioned the form bill of lading scenario would present a more complicated question. In Montaze Broz, LLC v. Global Ocean Line, Inc., for example, the court found (at the motion-to-dismiss stage) We therefore hold that the terms and conditions of regular form bill of lading (1) the Warehouse Receipt so specified and (2) Jeanty was on notice standard business practice. And, regular form bill of lading applies, so too does COGSA along w contract claim.

*** After careful review, therefore, we hereby ORDER and ADJUDGE Motion to Remand [ECF No. 42] is DENIED.

DONE AND ORDERED in the Southern District of Florida on December 7, 2023.

_____ ROY K. ALTMAN UNITED STATES DISTRICT JUDGE cc: counsel of record

pick-up truck that occurred before embarkation because the shipper at least according to his Complaint received any documentation from the carrier that mentioned a bill of lading. See [c]omplaint further alleges Lading or any other written contract pursuant (quoting the complaint (emphasis added)). And there was no indication in the opinion that the shipper and carrier had a prior history of working together as a result of which the shipper would have been on notice . See generally ibid.