Iroquois Bio-Energy Company, LLC v. Vertex Railcar Corporation

2019 | Cited 0 times | E.D. North Carolina | September 18, 2019

UNITED STATES DISTRICT COURT EASTERN DISTRICT OF NORTH CAROLINA

SOUTHERN DIVISION

No. 7:19-CV-49-H(2)

IROQUOIS BIO-ENERGY COMPANY,) L L C ,) Plaintiff,) ORDER AND v .) M MEMORANDUM & RECOMMENDATION VERTEX RAILCAR CORPORATION,) D e f e n d a n t .)

This matter is before the court on Plaintiff's Motion for Prejudgment Attachment, Temporary Restraining Order, and Preliminary Injunction, filed August 22, 2019 [DE #17]. Plaintiff's motion has been referred to the undersigned by Senior United States District Judge Malcolm J. Howard for such disposition as may be appropriate pursuant to 28 U.S.C. § 636(b)(1). On September 13, 2019, a hearing was held, via telephone, on Plaintiff's motion. Plaintiff was represented at the hearing by Benton Louis Toups of Cranfill Sumner & Hartzog, LLP; and Defendant was represented by Michael Murchison of Murchison, Taylor & Gibson, PLLC. For the reasons set forth below, Plaintiff's motion for prejudgment attachment is granted and it is recommended that Plaintiff's motion for injunctive relief be denied.

BACKGROUND On March 11, 2019, Plaintiff Iroquois Bio-Energy Company, LLC ("Iroquois"), filed this diversity action against Defendant Vertex Railcar Corporation ("Vertex") for breach of contract, alleging the following facts.

2 Iroquois is a fuel ethanol producer and relies heavily on railcars to transport its ethanol from its plant in Indiana. Vertex, a Delaware corporation authorized to do business in the State of North Carolina, is a manufacturer of railcars with a facility in Wilmington, North Carolina. In 2016, Vertex and Iroquois entered into a sales contract pursuant to which Vertex agreed to manufacture and sell to Iroquois one hundred railcars at the price of $94,500 each. Vertex has failed to deliver the railcars under the terms of the contract and has therefore breached the terms of the parties' agreement, causing Iroquois to suffer monetary damages. (Compl. [DE #1].) Vertex answered Iroquois' complaint, admitting that it did not deliver any railcars to Iroquois and is not in a position to do so. However, Vertex denies the existence of a valid contract or its breach thereof. (Answer [DE #9].)

D DISCUSSION In the motion presently before the court, Iroquois seeks prejudgment attachment of assets belonging to Vertex and preliminary injunctive relief restraining and enjoining the removal,

destruction, or other disposition of property located at Vertex's manufacturing facility in Wilmington, North Carolina, as well as the transfer of any funds held by Vertex in any bank or financial institution to any foreign financial institution or foreign-held entity. In support of its motion, Iroquois has presented an affidavit of its attorney attesting to the following: Vertex is owned by three entities – 76% of its shares are owned by two companies based in China and 24% of its shares are owned by a

3 Massachusetts limited liability company. Vertex has discontinued its operations and has no insurance coverage available to satisfy any judgment should one be entered in Plaintiff's favor. Iroquois is informed that there is approximately $35.2 million worth of business equipment and supplies located at Vertex's leased facility in Wilmington, North Carolina. Since it discontinued operations, Vertex has employed security guards at the facility. However, Iroquois has recently received information that security has been or will be discontinued in the near future. Given the facility's proximity to the North Carolina State Port in Wilmington (approximately two miles), Iroquois is concerned that Vertex's owners wi ll ship its tangible property and transfer any funds located in domestic bank or financial institutions to a place outside the United States. Iroquois estimates it has incurred $5 million in damages as a result of Vertex's alleged breach and seeks to attach and enjoin any disposition of Vertex's "property, equipment or other assets [so th at it is not] faced with the daunting, financially prohibitive and potentially impossible, prospect of attempting to enforce and collect the judgment in a foreign country." (Aff. Benton L. Toups [DE #18] ¶ 17.) At the hearing of this matter, the court was informed that Vertex's financial accounts have been seized in partial satisfaction of a tax lien held by New Hanover County, North Carolina, and that the landlord of the Wilmington facility has a potential competing interest in Vertex's equipment and other property.

4 I I. Prejudgment Attachment Rule 64 of the Federal Rules of Civil Procedure provides that a litigant may avail itself of such prejudgment remedies as are available "under the law of the state where the court is located." Fed. R. Civ. P. 64. ("At the commencement of and throughout an action, every remedy is available that, under the law of the state where the court is located, provides for seizing a person or property to secure satisfaction of the potential judgment."). North Carolina law allows for prejudgment attachment ancillary to a pending action. The remedy is "in the nature of a preliminary execution against property . . . intended to bring property of a defendant within the legal custody of the court in order that it may subsequently be applied to the satisfaction of any judgment for money which may be rendered against the defendant in the principal action." N.C. Gen. Stat. § 1-440.1. Grounds for prejudgment attachment exist, inter alia, where a money judgment is sought and the defendant is a for-profit corporation organized under a law other than the law of State of North Carolina. N.C. Gen. Stat. §§ 1-440.2, 1-440.3. Iroquois has demonstrated that it is entitled to prejudgment attachment under North Carolina law. Iroquois initiated this action seeking a money judgment for damages incurred as a result of Vertex's a lleged breach of contract and has submitted an affidavit of its attorney in compliance with N.C. Gen. Stat. § 1-440.11(a). Records maintained by the State of Delaware, of which the court takes judicial notice, confirm that Vertex is a for-profit

corporation organized under the laws of Delaware. See

5 https://icis.corp.delaware.gov/Ecorp/EntitySearch/NameSearch.aspx (search "Entity Name" for "Vertex Railcar") (last visited Sep. 17, 2019). Thus, Iroquois is entitled to a writ authorizing the prejudgment attachment of Vertex's property located within this district pursuant to N.C. Gen. Stat. § 1-440.1 et seq. and Rule 64. II. P Preliminary Injunction Injunctive relief at the preliminary stages of litigation is an extraordinary remedy "involving the exercise of very far-reaching power to be granted only sparingly and in limited circumstances" wher e necessary to protect the legal rights of the movant pending the litigation. MicroStrategy, Inc. v. Motorola, Inc., 245 F.3d 335, 339 (4th Cir. 2001) (quoting Direx Israel, Ltd. v. Breakthrough Med. Corp., 952 F.2d 802, 816 (4th Cir. 1991)). It is only where the movant makes a clear showing as to the following four factors that preliminary injunctive relief may issue: (1) reasonable likelihood of success on the merits; (2) irreparable harm in the absence of preliminary relief; (3) the balance of hardships tips in its favor; and (4) issuance of an injunction is in the public interest. Winter v. Nat. Res. Def. Council, Inc., 555 U.S. 7, 20 (2008). The district court must then "'bal ance the competing claims of injury and must consider the effect on each party of the granting or withholding of the requested relief,'" Winter, 555 U.S. at 24 (quoting Amoco Prod. Co. v. Village of Gambell, 480 U.S. 531, 542 (1987)), "'pay[ing] particular regard for the public consequences in employing the extraordinary remedy of injunction,'" id. (quoting Weinberger v. Romero-Barcelo, 456 U.S. 305, 312 (1982)).

6 "[T]he main prerequisite to obtaining injunctive relief is a finding that plaintiff is being threatened by some injury for which he has no adequate legal remedy." 11A Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, FEDERAL PRACTICE AND PROCEDURE § 2942 (3d ed.). Thus, a preliminary injunction is generally not available to restrain a defendant's assets pending trial of an action for money damages in federal court. Grupo Mexicano de Desarrollo S.A. v. All. Bond Fund, Inc., 527 U.S. 308, 333 (1999) ("[T]he District Court had no authority to issue a preliminary injunction preventing petitioners from disposing of their assets pending adjudication of respondents' contract claim for money damages."); see also Rosen v. Cascade Int'l, Inc., 21 F.3d 1520, 1531 (11th Cir. 1994) ("Rule 64 commands that the proper pretrial remedy to ensure that a fund will be available with which to satisfy a money judgment, a writ of attachment, is available according to the provisions of the forum state's law."). In this case, Iroquois seeks money damages for an alleged breach of contract. It does not assert a claim for equitable relief, nor does it appear to assert any ownership or other property interest in the assets it seeks to restrain. Rather, Iroquois seeks to freeze Vertex's general assets simply to ensure there will be sufficient assets to satisfy a potential money judgment on its breach of contract claim. Such relief is simply not available under federal law. Accordingly, Iroquois' motion for a preliminary injunction should be denied.

7 C CONCLUSION For the foregoing reasons, the court GRANTS Plaintiff's motion for prejudgment attachment and ORDERS as follows: Upon Plaintiff's payment of a bond in the amount of $5,000 to the Clerk of Court, a writ shall issue commanding the United States Marshal to attach and levy upon any goods or other personal property of Defendant Vertex Railcar Corporation, within

the Eastern District of North Carolina sufficient to satisfy a judgment in the amount of $5,000,000.

It is further RECOMMENDED that Plaintiff's motion for preliminary injunction be denied. A copy of this Order and Memorandum and Recommendation shall be served on each of the parties or, if represented, their counsel. Each party shall have until O October 2, 2019, to file written objections to the Memorandum and Recommendation. The presiding district judge must conduct his or her own review (that is, make a de novo determination) of those portions of the Memorandum and Recommendation to which objection is properly made and may accept, reject, or modify the determinations in the Memorandum and Recommendation; receive further evidence; or return the matter to the magistrate judge with instructions. See, e.g., 28 U.S.C. § 636(b)(l); Fed. R. Civ. P. 72(b)(3); Local Civ. R. 1.1 (permitting modification of deadlines specified in local rules), 72.4(b), E.D.N.C.

A party that does not file written objections to the Memorandum and Recommendation by the foregoing deadline, will be giving up the right to review of

8 the Memorandum and Recommendation by the presiding district judge as described above, and the presiding district judge may enter an order or judgment based on the Memorandum and Recommendation without such review. In addition, a party's failure to file written objections by the foregoing deadline may bar the party from appealing to the Court of Appeals from an order or judgment of the presiding district judge based on the Memorandum and Recommendation. See Wright v. Collins, 766 F.2d 841, 846-47 (4th Cir. 1985).

This 18th day of September 2019. _____ KIMBERLY A. SWANK
U n i t e d S t a t e s M a g i s t r a t e J u d g e

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