Razipour v. Joule Yacht Transport, Inc. et al

2020 | Cited 0 times | M.D. Florida | August 20, 2020

UNITED STATES DISTRICT COURT MIDDLE DISTRICT OF FLORIDA TAMPA DIVISION SIROUS RAZIPOUR,

Plaintiff, v. Case No. 8:20-cv-729-T-33TGW JOULE YACHT TRANSPORT, INC., and

Defendants.

/ ORDER This matter comes before the Court upon consideration of Crossclaim-Defendant Dismiss Crossclaim (Doc. # 31), filed on June 10, 2020. Crossclaim-Plaintiff Service, LLC, responded on July 1, 2020. (Doc. # 35). Joule replied on July 21, 2020. (Doc. # 44). For the reasons set forth below, the Motion is GRANTED. I. Background On July 12, 2018, Plaintiff Sirous Razipour visited

M/V Che Jac, to his home city of Newport Beach, California. (Doc. # 1-1 at ¶ 7). prepare the vessel for shipping and Joule to transport the

vessel by truck from Naples, Florida, to Newport Beach. (Id. at ¶¶ 8-

the vessel on August 7, 2018. (Id. at ¶ 15). According to Thompson, transport would begin immediately, and the vessel would be delivered in Newport Beach no later than August 17, 2018. (Id. at ¶¶ 17-18). On August 14, 2018, Razipour received a voicemail from would be picked up for transport. (Id. at ¶ 19). Razipour that a representative from Joule had shown up to transport the vessel but did not have a truck able to move the vessel. (Id. at ¶ 20). Yet, Joule told Razipour that when it arrived, the vessel had not been properly prepared for transport. (Id. at ¶ 21).

removed and stored it for transport aboard the vessel. (Id. at ¶ 22). Thompson assured Razipour that the vessel would be picked up no later than August 22, 2018, and immediately transported directly to Newport Beach. (Id. at ¶ 24). On August 22, both Joule had picked up the vessel for transport. (Id. at ¶¶ 25-26). Thompson advised

Razipour that the vessel was en route to Newport Beach and would arrive by the following week. (Id. at ¶ 26).

However, on August 27, 2018, Thompson told Razipour that Joule had not begun transporting the vessel, which was sitting in a boatyard in Pinellas County, Florida. (Id. at ¶ 27). According to Razipour, t shipyard through the first few days of September 2018,

Florida), without connection to power to run her pumps, and with her drai (Id. at ¶¶ 28-29). The vessel ultimately arrived in Newport Beach on September 6, 2018, with a substantial amount of water in her hull and in a seriously damaged condition. (Id. at ¶¶ 30- 31). The vessel had and

her interior and several of her operating systems (Id. at ¶¶ 32-33). Razipour filed this action in the Sixth Judicial Circuit in and for Pinellas County, Florida, on February 21, 2020. (Doc. # 1-1). The complaint includes

for breach of contract and negligence (Counts I and III) and against Joule for breach of contract (Count II), negligence (Count IV), and violations of the Carmack Amendment (Count V). (Id.). On March 27, 2020, Joule removed the case to this Court on the basis of federal question jurisdiction. (Doc. # 1). On March 30, 2020, Joule moved to dismiss Counts II and May 29, 2020, dismissing Counts II and IV as preempted by the Carmack Amendment. (Doc. # 30 at 8-10).

O for contribution. (Doc. # 27). Joule now moves to dismiss the crossclaim for failure to state a claim. (Doc. # has responded (Doc. # 35), and Joule has replied. (Doc. # 44). The Motion is now ripe for review. II. Legal Standard

On a motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6), this Court accepts as true all the allegations in the crossclaim and construes them in the light most favorable to the crossclaim plaintiff. Jackson v. Bellsouth Telecomms., 372 F.3d 1250, 1262 (11th Cir. 2004); see also Williams v. Jet One Jets, Inc., No. 1:08-cv-3737-

TCB, 2009 WL 10682155, at *2 (N.D. Ga. Nov. 19, 2009) (applying the typical Rule 12(b)(6) standard on a motion to dismiss a crossclaim). Further, the Court favors the crossclaim plaintiff with all reasonable inferences from the allegations in the complaint. Human Servs., 901 F.2d 1571, 1573 (11th Cir. 1990). But,

[w]hile a [crossclaim] attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, a [crossclaim] to provide the grounds of his entitlement to relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do. Factual allegations must be enough to raise a right to relief above the speculative level. Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007) (quotations and accept as true a legal conclusion couched as a factual Papasan v. Allain, 478 U.S. 265, 286 (1986). The Court must limit its consideration to well-pleaded factual allegations, documents central to or referenced in the [crossclaim], and matters judicially noticed. La Grasta v. First Union Sec., Inc., 358 F.3d 840, 845 (11th Cir. 2004). III. Analysis

A.

crossclaim is preempted by the Carmack Amendment. (Doc. # 31 at 2-3). The Carmack Amendment, 49 U.S.C. § a uniform rule for carrier liability when goods are shipped Smith v. United Parcel Serv.,

296 F.3d 1244, 1246 (11th Cir. 2002). Amendment is to protect shippers against the negligence of

searching out a particular negligent carrier from among the often numerous carriers handling an interstate shipment of Fine Foliage of Fla., Inc. v. Bowman Transp., Inc., 901 F.2d 1034, 1037 (11th Cir. 1990) (quoting Reider v. Thompson, 339 U.S. 113, 119 (1950)). of uniformity, the Carmack Amendment preempts state law claims arising from failures in the transportation and deliver Smith, 296 F.3d at 1246; see also Adams Express Co. v. Croninger, 226 U.S. 491, 505-06 (1913)

every detail of the subject is covered so completely that there can be no rational doubt but that Congress intended to take possession of the subject, and supersede all state

regulati The Carmack Amendment United Van Lines, Inc. v. Shooster, 860 F. Supp. 826, 828 (S.D. Fla. 1992); see also UPS Supply Chain Sols., Inc. v., Megatrux Transp., Inc., 750 F.3d 1282, 1289 (11th Cir. 2014) (preemptive effect of the Carmack Amendment [as] quite ; U.S. Aviation Underwriters, Inc. v. Yellow Freight Sys., Inc., 296 F. Supp. 2d 1322, 1339 (S.D. Ala. claim against a common carrier for damage to goods in interstate .

The crux of Carmack-Amendment preemption is whether the

arising from the delivery, loss of, or damage of goods. 1

See

1. C response (Doc. # 35 at 3-4), it does not matter for our purposes not a party to the bill of lading. See, e.g., Hubbard v. All States Relocation Servs., Inc., 114 F. Supp. 2d 1374, 1381 (S.D. Ga. 2000) (finding preempted claims for the loss of goods despite no bill of lading) a case from the District of Oregon for the proposition that state law claims are not preempted by the Carmack Amendment when made by non-parties to a bill of lading. (Doc. # 35 at 3-4). But the only reason the Carmack Amendment did not preempt a in that case was because the broker and carrier had a separate existing contractual agreement. See InTransit, Inc. v. Excel N. Am.

UPS Supply Chain Sols., 750 F.3d at 1291 (holding that the is not preempted by the Carmack Amendment because such fees are an issue of costs, not liability); see also Charleston & W. Carolina Ry. Co. v. Varnville Furniture Co., 237 U.S. 597, 603-04 (1915) (finding a state penalty assessed against a carrier for failure to pay a claim preempted by the Carmack

nly claims based on conduct separate and distinct from the delivery, loss of, or damage to goods escape Starr Indem. & Liab. Co. v. CSX Transp., Inc., No. 3:14-cv-1455-J-39JBT, 2015 WL 12861143, at *1 (M.D. Fla. May 11, 2015) (quoting Smith, 296 F.3d at 1248-49); see also Morris v. Covan Worldwide Moving, Inc., 144 F.3d 377, 383 (5th Cir. 1998) (finding preempted

; REI Transp., Inc. v. C.H. Robinson

Road Transp., Inc., 426 F. Supp. 2d 1136, 1141 (D. Or. 2006); accord Edwards Bros., Inc. v. Overdrive Logistics, Inc., 581 S.E.2d 570, 572 (Ga. Ct. App. 2003) (allowing a claim pursuant to a separate brokerage contract). Regardless of whether the Court should adopt this rule, there is no such agreement .

Worldwide, Inc., 519 F.3d 693, 698 (7th Cir. 2008) (holding that the Carmack Amendment does not preempt a freight broker from recovering against a carrier who withholds payment under a contract separate from that between the shipper and carrier as .

However, federal courts have found that some state law claims between two carriers are not limited by the Carmack Amendment. See, e.g., Compania Naviera Horamar v. Marine Gears, Inc., No. 04-20856-CIV-JORDAN, 2005 U.S. Dist. LEXIS 51171, at *4-5 (S.D. Fla. Mar. 21, 2005) (finding a state tort crossclaim arising between two carriers to the same shipment of goods not preempted); Mid-Evergreen Marine Corp., No. 87-c-2579, 1987 U.S. Dist. LEXIS 11734, at *5 (N.D. Ill. Dec. 14, 1987) (allowing a third- party complaint between two carriers). However, this exception exists only because the Carmack Amendment provides for it. See 49 U.S.C. § 14706(b) (carrier issuing the receipt or bill of landing under [this statute] or delivering the property for which the receipt or bill of lading was issued is entitled to recover from the carrier over whose

line or route the loss or injury occurred the amount required to b (emphases added)); see also 5K Logistics, Inc. v. Daily Exp., Inc., 659 F.3d 331, 335-36 (4th Cir. 2011) (explaining that Congress narrowly limited the application of apportionment as between carriers hoos[ing] not to extend the for example). Within this narrow exception, federal courts have determined that claims between carriers are to be apportioned according to common law negligence principles. See Compania, 2005 U.S. Dist. LEXIS 51171, at *4; see also Mid-Continent, 1987 U.S. Dist. LEXIS 11734, at *5- [the] position that suits between carriers are to be .

Still, other than in circumstances where the parties are both carriers, federal courts have found that the Carmack Amendment preempts state law claims arising from the delivery, loss of, or damage of goods. 2

See, e.g., Dominion

2. n arguing that its contribution claim is both not preempted by the Carmack Amendment and allowed under federal common law principles. (Doc. # 35 at 7- these cases all invoke the carrier-carrier exception and thus

Res. Servs., Inc. v. 5K Logistics, Inc., No. 3:09-cv-315, 2010 WL 679845, at *5 (E.D. Va. Feb. 24, 2010) (preempting a third-party claim filed by a broker against a carrier); United Van Lines, 860 F. Supp. at

828-29 (barring state tort counterclaims by a carrier against a shipper); Waltrous, Inc. v. B.P.T. Air Freight Forwarding, Inc., No. 89-c-7900, 1990 U.S. Dist. LEXIS 2592, at *5-6 (N.D. Ill. Mar. 6, 1990) preempted by the Carmack Amendment).

Here, holding Joule responsible for contribution to ould affect damages . Furthermore subject to the Carmack Amendment exception. (Doc. # 1-1 at ¶ 7). There is no exception to the Carmack Amendment for state

are not applicable here. See Compania, 2005 U.S. Dist. LEXIS 51171, at *4-5 (carrier-carrier exception); see also Gordon H. Mooney, Ltd. v. Farrell Lines, Inc., 616 F.2d 619, 625-26 (2d Cir. 1980) (allowing a contribution claim between an ocean carrier and an inland carrier); Hartog Trading Corp. v. M/V Presidente Ibanez, No. 90-2713, 1991 WL 33605, at *4-5 (E.D. La. Mar. 6, 1991) (involving two carrier crossclaims against another carrier); Tokio Marine & Fire Ins. Grp., 156 F. Supp. 2d 889, 897-99 (N.D. Ill. 2001) (citing to a case invoking the carrier-carrier exception and explaining that if one of the parties were a freight forwarder, rather than a carrier, no claim would be allowed under the Carmack Amendment).

law claims made by marina servicers against carriers.

crossclaim is directly Carmack Amendment claims against Joule.

viding

-13). Likewise, any

stored in a shipyar

or Id.), is directly related to failure to properly transport the vessel.

Thus crossclaim allegedly negligent transportation and delivery of the vessel

from Naples, Florida, to Newport Beach, California. itself

transaction or occurrence that is the subject matter of

(Doc. # 27 at 10).

Therefore, because crossclaim arises from the interstate shipment of goods, it is preempted by the Carmack Amendment and must be dismissed. See, e.g., Smith, 296 F.3d at 1247-48 (state tort claims that

; Tech Data Corp. v. Mainfreight, Inc., No. 8:14-cv-1809-T-23MAP, 2015 WL 1546639, at *2 (M.D. Fla. Apr. 7, 2015)(dismissing common law claims that were preempted by Carmack Amendment with prejudice); Am. Eye Way, Inc. v. Roadway Package Sys., Inc., 875 F. Supp. 820, 821 (S.D. Fla. 1995)(same).

B. Contribution Under Federal Common Law

liable for contribution under federal common law principles. (Doc. # 35 at 4 its crossclaim for contribution for contract and tort claims falls

the nature and subject matter of the contract being necessary for the operation of a Id. at 4-5), and because

navigable waterway is a traditional maritime activity to which maritime law applies. Id. at 6). Joule counters that the Court does not have admiralty or maritime jurisdiction the boat was [on land]. (Doc. # 44 at 3-4).

Nonetheless, crossclaim falls under maritime or admiralty law. Just as state contract and tort claims liability are preempted under the Carmack Amendment, courts also cannot supplement the Amendment with federal common law remedies. See, e.g., Cleveland v. Beltman N. Am. Co., 30 F.3d 373, 379-80 (2d Cir. 1994) (explaining that a federal common law claim for breach of the implied covenant of good faith

common law to supple); Morris, 144 F.3d at ; Bear MGC Cutlery Co. v. Estes Express Lines, Inc., 132 F. Supp. 2d 937, 946 (N.D. Ala. 2001) (citing to Cleveland for the proposition

that the Carmack Amendment does not allow for federal common law remedies); Commercial Union Ins. Co. v. Forward Air, Inc., 50 F. Supp. 2d 255, 257 (S.D.N.Y. 1999) the fact that no state law claims against carriers survive the enactment of the Carmack Amendment, no federal common law claim against a carrier). Therefore, under federal common law is irrelevant, as such a claim would

not be allowed under the Carmack Amendment.

Accordingly, it is ORDERED, ADJUDGED, and DECREED: (1) Crossclaim-

Motion to Dismiss (Doc. # 31) is GRANTED. (2) crossclaim is DISMISSED

with prejudice. DONE and ORDERED in Chambers, in Tampa, Florida, this 20th day of August, 2020.