IKON Transportation Services, Inc. v. Advanced Containment Systems, Inc. et al

2020 | Cited 0 times | W.D. Wisconsin | June 26, 2020

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF WISCONSIN

IKON TRANSPORTATION SERVICES, INC.,

Plaintiff, v. TEXAS MADE TRUCKIN, LLC a/k/a ALFREDO

Defendant.

OPINION and ORDER

19-cv-296-jdp

This case concerns a shipment of goods that was damaged when it fell off a flatbed truck while it was still on the property of the manufacturer and shipper, Advanced Containment Systems, Inc. Plaintiff IKON Transportation Services, Inc. is the transportation broker that arranged the shipment. IKON sued Advanced Containment Systems and trucking company responsible for the flatbed truck. Advanced Containment Systems has been dismissed from the case for lack of personal jurisdiction. So the issue now Freight must reimburse IKON the $91,615.00 it paid for the damaged cargo.

IKON has moved for summary judgment, asserting that it is entitled to judgment under both federal statutory law and its broker-carrier agreement . Dkt. 47. The summary judgment briefing left some legal issues unaddressed, so the court held a hearing on the motion on June 22, 2020. Now w IKON forfeited the federal claim by failing to plead it or

otherwise Freight on notice of it before - of-contract claim hinges on disputed issues of fact, which judgment. So the case -of-contract claim.

UNDISPUTED FACTS The following facts are undisputed. Plaintiff IKON Transportation Services, Inc. is a Wisconsin corporation with its principal place of business in Janesville, Wisconsin. It provides transportation brokerage services, which means that it arranges for transportation of goods for its customers. Defendant

liability company whose sole member is Alfredo Rodriguez, a citizen of Texas. Freight is a trucking company and licensed carrier of products for interstate shipment.

In 2017, IKON . Under their broker- generally agreed to assume liability for loss or damage Dkt. 50-2, ¶ 12. But there were exceptions to the general rule, mainly when freight was held up for reasons would liable only if it were negligent. Id. ¶ 11.

IKON enlisted to transport , which resemble large, reinforced dumpsters. Dkt. 50-3, at 14 16. The shipment was to be picked up at Advanced Containment Systems and delivered to a site in Kentucky for the United States Department of Defense. On March 13, 2018, Rodriguez arrived at Advanced Containment Systems loading dock in Houston, Texas with a semi- tractor and flatbed trailer. Employees of Advanced Containment Systems placed the containment systems onto the trailer. Freight. See Dkt. 50-1. After Rodriguez signed the bill of lading, he began the process of

securing the containment systems to the trailer. But before he could finish securing the load,

someone from Advanced Containment Systems directed him to move the truck to another location on the premises. Rodriguez protested, asserting that he needed to secure the shipment before moving the truck, but Advanced Containment Systems insisted. At that second location, the two unsecured containers slipped off the trailer, damaging them.

Advanced Containment Systems filed a claim with the Department of Defense and recovered the value of the cargo from the government. The government, in turn, issued a claim against IKON for $91,615.00. IKON paid that sum and then attempted to recover it from Systems. When those attempts failed, IKON filed suit against them in state court in Rock County, Wisconsin. Advanced Containment Systems removed the case to this court and moved to dismiss the claims against it for lack of personal jurisdiction. The court granted the motion, Dkt. 46, defendant.

This court has subject matter jurisdiction under 28 U.S.C. § 1332 because IKON is a citizen of Wisconsin, citizen of Texas, and the amount in controversy exceeds $75,000.

ANALYSIS IKON contends that it is entitled to summary judgment on two grounds. First, it says the carrier. 49 U.S.C. § 14706(a)(1). -carrier agreement.

dispute as to any material fact and the mov Freight. Anderson v. Liberty Lobby,

Inc., 477 U.S. 242, 255 (1986). Freight based on the evidence in the record, then summary judgment is appropriate. Martinsville Corral, Inc. v. , 910 F.3d 996 (7th Cir. 2018) (citations omitted). A. Carmack Amendment claim

The Carmack Amendment, 49 U.S.C. § 14706, provides a nationally uniform scheme of carrier liability for goods lost or damaged in interstate transit. It was enacted in 1906 to d among the states, some of REI Transp., Inc. v. C.H. Robinson Worldwide, Inc., 519 F.3d 693, 697 (7th Cir. 2008) (citing Adams Express Co. v. Croninger, 226 U.S. 491, 505 (1913)). The Carmack Amendment establishes a

carrier for sustained in the course of the interstate

shipment. 49 U.S.C. § accurately gauge, and thus insure against, any liability it may face when it agrees to carry

REI Transp., 519 F.3d at 697.

Freight says that IKON forfeited the Carmack Amendment claim by failing to plead it or otherwise provide notice that it intended to seek relief under the Carmack

Amendment. Although IKON cited 49 U.S.C. § section of its amended complaint, Dkt. 15, ¶ 11, IKON did not mention or allude to any federal

statutory claim in enumerating the five counts it purported to assert against the various defendants then in the case, all of which were state-law causes of action. See id. ¶¶ 35 55 (pleading indemnification, negligent misrepresentation, unjust enrichment, and two counts of negligent breach of contract). Freight, which it styled as , and the paragraphs discussing it made clear s alleged breach of the broker-carrier agreement. See id. ¶¶ 35 38. raise the Carmack Amendment claim until its summary judgment brief.

Although a complaint need not identify specific legal theories, pleading is still vitally important to inform the opposing party of the grounds upon which a claim rests; a complaint Conner v. Ill. , 413 F.3d 675, Freight had adequate notice of the Carmack Amendment claim because the broker-carrier agreement was rights or remedies it provided. Dkt. not sufficient. As IKON acknowledged

at the motion hearing, -law causes REI Transp., 519 F.3d at 697. So when IKON pleaded a breach-of- Freight would have had no reason to know that IKON was also contemplating a claim under the Carmack to a show-cause order from this court regarding diversity of citizenship, Dkt. 41, IKON voluntarily dismissed the defendant (an insurer) whose

presence raised jurisdictional concerns. Dkt. 44. This suggested that, like defendants and the court, IKON was proceeding on the assumption that this cou solely on diversity rather than any federal cause of action. Freight with fair notice of the Carmack Amendment claim, so that claim is not properly in the case.

In a footnote to its reply brief, IKON asks for permission to amend its complaint to add the claim should the court conclude that IKON failed to adequately plead it. Dkt. 55, at 3 n.1. It say Freight d by the tardy assertion of a Carmack Amendment claim because it was able to address the claim in its opposition to summary judgment. But the test for liability under the Carmack Amendment differs from the test for -carrier agreement. See REI Transp., 519 F.3d at 699 Freight lacked notice that IKON was going to subject it to that test until summary judgment, giving it no prior opportunity to

prepare a defense and, perhaps, challenge the Carmack Amendment claim with its own motion for summary judgment. The court should but IKON has

forfeited any claim to relief under the Carmack Amendment by failing to provide notice of it until summary judgment. 1

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1 on it. A carrier can rebut the presumption of liability under the Carmack Amendment by showing that it was free from negligence and that the damage to the cargo was due to an act of the shipper. Allied Tube & Conduit Corp. v. S. Pac. Transp. Co., 211 F.3d 367, 369 n.2 (7th Cir. 2000). As explained below, these matters are disputed. A reasonable jury could conclude that the damage was due to a negligent act of the shipper: no one disputes that but for Advanced Containment Systems Freight would not have moved the truck with the cargo unsecured. Dkt. 57, ¶ 10.

559 F.3d 595, 606 (7th Cir. 2009) (district court did not abuse its discretion in declining to reach claim raised for the first time at summary judgment); Conner, 413 F.3d at 679 (same). B. Breach-of-contract claim

Parts of the -carrier agreement puts Freddy in the position of insurer, assigning it liability for any loss or damage to cargo occurring while that custody or control. See Dkt. 50-2, ¶ ; ¶ arrier shall be liable to

consignor/shippers, consignee/receivers, and/or owners of Freight for loss or damage to any Freight is delivered to the designated consig But there are important exceptions

to the general rule. As relevant here, the agreement provides that Freight is liable only for loss, damage, or delay occurring while the property is stopped and held in transit upon the request of consignor/shipper, owner, or party entitled to make such a request. Id.

The parties summary judgment Freight was negligent in driving across Advanced Containment Systems freight yard with

unsecured cargo. But under Wisconsin law, , 200

Wis. 2d 468, 478, 545 N.W.2d 843, 848 (Ct. App. 1996). 2

2 The broker- 50-2, ¶ 19, so the court applies Wisconsin law.

that this is one of those rare cases in which the court can decide negligence as a matter of law.

The circumstances of Advanced Containment Systems that Rodriguez move the truck the order? Who communicated it and how? Could Rodriguez realistically have refused to comply? Nor is there evidence sufficient to establish why exactly the containment systems fell off the truck. It appears from photos of the accident that the containment systems were heavy with stable, rectangular bases. See Dkt. 50-3, at 14 16, 18 22. It -evident that driving a short distance across a well-maintained freight yard would pose an unreasonable risk of such cargo falling off a flatbed, even if unsecured. An incident report in the record says support an inference that Rodriguez was

negligent in the way he operated the truck. Id. at 12. But the photos show the truck in a narrow corridor on the edge of the freight yard, not on a curve. Id. at 19. From the photos, it appears that the cargo may have tipped off the truck due to uneven terrain, see, e.g., id. at 20, which suggests negligent maintenance by Advanced Containment Systems. The court cannot conclude, with these many unknown facts, that s Freight was negligent as a matter of law.

So to summary judgment on a negligence-based theory. But what about the provisions of the contract that impose essentially strict liability for loss or damage occurring while the cargo is under its custody or control? Although IKON

listed these provisions in passing in its summary judgment brief, see Dkt. 48, at 6, neither party developed an argument about how the provisions apply in this case. The court asked the parties to address their application at the motion hearing.

At the hearing, Freight asserted that the strict liability provisions in the the accident. Rather, Advanced Containment Systems still had control of the containment

systems, as demonstrated by the fact that it assumed authority to order Freight what to do and where to go Freight also noted that the broker-carrier agreement the property is stopped and held in transit upon the request of the consignor/shipper, Dkt. 50-2, ¶ 11. When Advanced Containment Systems commanded Rodriguez to move the cargo to another location on its premises, a reasonable jury could find that the cargo was held at the direction of Advanced Containment Systems. If so, whether the broker-carrier agreement was breached turns again on the disputed matter of negligence.

IKON took the opposite position. It argued Freight took custody or control of the cargo when it signed the bill of lading, and that the exception in the broker- carrier agreement for damage occurring while the cargo is stopped and held in transit at the . signing the bill of lading indicates . See Dkt. 50-2, ¶ hall be exclusive evidence of the receipt of such goods by Carrier in good order and condition and stated count/quantity unless otherwise specifically noted on reasonable jurors could disagree about Freight actually The parties agreed that Rodriguez would not have moved the truck but for the order from Advanced Containment Systems, see Dkt. 57, ¶ 10, which suggests that Advanced Containment Systems was still wielding control over the cargo when the accident occurred.

On this evidentiary record, it is not established beyond genuine dispute that Freight was negligent, or that it would be subject to strict liability under the broker-carrier

agreement. Because law on its breach-of-contract claim, the matter will need to be decided at trial.

ORDER IT IS ORDERED that p summary judgment, Dkt. 47, is DENIED.

Entered June 26, 2020.

BY THE COURT: /s/ _____ JAMES D. PETERSON District Judge