

Maniaci v. Plycon Transp. Group

United States District Court for the Northern District of Texas, Dallas Division

September 2, 2021, Decided; September 2, 2021, Filed

CIVIL ACTION NO. 3:20-cv-3026-S

Reporter

2021 U.S. Dist. LEXIS 177952 *; 2021 WL 4190643

CARRIE MANIACI v. PLYCON TRANSPORTATION
GROUP

BACKGROUND

Counsel: [*1] For Carrie Maniaci, Plaintiff: Susan Lyons Kerr, LEAD ATTORNEY, The Law Office of Susan L. Kerr, Dallas, TX USA.

For Plycon Transportation Group, Defendant: Vic H Henry, Davinder Jassal, Emileigh Stewart Hubbard, Henry Oddo Austin & Fletcher PC, Dallas, TX USA.

For ADR Provider, Mediator: Cynthia F Solls, LEAD ATTORNEY, Cynthia F Solls Attorney at Law, Dallas, TX USA.

Judges: KAREN GREN SCHOLER, UNITED STATES DISTRICT JUDGE.

Opinion by: KAREN GREN SCHOLER

Opinion

ORDER

This Order addresses Defendant Plycon Transportation Group's Motion to Dismiss ("Motion") [ECF No. 5] pursuant to Federal Rule of Civil Procedure 12(b)(6). For the following reasons, the Court GRANTS the Motion.

This case stems from Plaintiff Carrie Maniaci's ("Plaintiff") move from Berkeley, California, to DeSoto, Texas. Plaintiff alleges that she arranged for Defendant Plycon Transportation Group ("Defendant"), a New York-based moving company, to transport her furniture and household goods for a fee of \$4,300. Compl. [ECF No. 1] at 2. Plaintiff alleges that Defendant picked up her belongings on May 14, 2019 but did not deliver her items until "more than two weeks" after the scheduled delivery date. *Id.* Plaintiff asserts that some of her items arrived in Texas "extremely damaged, [*2] destroyed, made irreparable or not usable," while others did not arrive at all. *Id.*

Plaintiff presented Defendant with a written claim on June 18, 2019, but asserts that Defendant refuses to resolve the matter or address whether it intends to pay her claim. *Id.*; *see also* Compl. Ex. A, "Standard Proof of Loss and Damage Claims Under Uniform Household Goods Bill of Lading." According to Plaintiff, the delay in delivery, damaged and missing goods, and Defendant's failure to compensate her for the value of the lost and damaged property has caused Plaintiff to suffer severe and ongoing emotional distress. *Id.*

Plaintiff seeks to recover at least \$58,420 for the actual loss of or damage to her property pursuant to the

Carmack Amendment to the Interstate Commerce Act ("Carmack Amendment"), 49 U.S.C. § 14706, *et seq.* *Id.* at 3. Plaintiff also asserts a state law claim for intentional infliction of emotional distress and seeks expenses and attorney's fees. *Id.*

Defendant filed the instant Motion, seeking to dismiss Plaintiff's claims for intentional infliction of emotional distress and attorney's fees on the grounds that those claims are federally preempted. Mot. 1, as well as its Notice of Supplemental Authority [ECF No. 14] on June 22, 2021 [*3] directing the Court to recent case law in support of its Motion. As of the date of this Order, Plaintiff has not responded to Defendant's Motion or sought an extension of time to respond.¹

II. LEGAL STANDARD

To defeat a motion to dismiss filed under Federal Rule of Civil Procedure 12(b)(6), a plaintiff must plead "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007); *Reliable Consultants, Inc. v. Earle*, 517 F.3d 738, 742 (5th Cir. 2008). To meet this "facial plausibility" standard, a

plaintiff must "plead[] factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S. Ct. 1937, 173 L. Ed. 2d 868 (2009). Plausibility does not require probability, but a plaintiff must establish "more than a sheer possibility that a defendant has acted unlawfully." *Id.* The court must accept well-pleaded facts as true and view them in the light most favorable to the plaintiff. *Sonnier v. State Farm Mut. Auto. Ins.*, 509 F.3d 673, 675 (5th Cir. 2007). However, the court does not accept as true "conclusory allegations, unwarranted factual inferences, or legal conclusions." *Ferrer v. Chevron Corp.*, 484 F.3d 776, 780 (5th Cir. 2007) (citation omitted). A plaintiff must provide "more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Twombly*, 550 U.S. at 555 (internal citations omitted). "Factual allegations must be enough to raise a right to relief above [*4] the speculative level . . . on the assumption that all the allegations in the complaint are true (even if doubtful in fact)." *Id.* (internal citations omitted).

The ultimate question is whether the complaint states a valid claim when viewed in the light most favorable to the plaintiff. *Great Plains Tr. Co. v. Morgan Stanley Dean Witter & Co.*, 313 F.3d 305, 312 (5th Cir. 2002). At the motion to dismiss stage, the court does not evaluate the plaintiff's likelihood of success. It only determines whether the plaintiff has stated a claim upon which relief can be granted. *Mann v. Adams Realty Co.*, 556 F.2d 288, 293 (5th Cir. 1977).

III. ANALYSIS

Defendant asserts that Plaintiff's state and common law claims for intentional infliction of emotional distress and attorney's fees must be dismissed because they are preempted by federal law. Specifically, Defendant

¹ If Plaintiff opposed Defendant's motion, she was required to file a response within 21 days. See N.D. Tex. Local Rule 7.1(e). More than eight months have passed since Defendant filed its Motion, and Plaintiff has failed to respond. When a plaintiff fails to defend or pursue a claim in response to a motion to dismiss, the claim is deemed abandoned. *See Black v. N. Panola Sch. Dist.*, 461 F.3d 584, 588 n.1 (5th Cir. 2006) (holding plaintiff abandoned claim by failing to defend claim in response to motion to dismiss). However, given that Defendant's motion is dispositive, the Court will consider the merits of the issues raised therein. *See Webb v. Morella*, 457 F. App'x 448, 452 n.4 (5th Cir. 2012) (holding district court improperly granted motion to dismiss solely based on party's failure to file a response in opposition).

contends that because the liability of a carrier for damage to an interstate shipment must be determined under federal law, Plaintiff is limited to recovery for loss or damage to goods under the Carmack Amendment, which does not provide for attorney's fees. Mot. 8. Accordingly, Defendant maintains that Plaintiff cannot bring claims or seek damages under state or common law. The Court agrees.

The Carmack Amendment allows for recovery for the actual loss or damage to property caused by an interstate carrier that shipped [*5] the goods. 49 U.S.C. § 14706. The Carmack Amendment generally preempts all state law claims and federal common law remedies arising out of the shipment of goods by interstate carriers. *Distribuidora Mari Jose, S.A. de C.V. v. Transmaritime, Inc.*, 738 F.3d 703, 706 (5th Cir. 2013) (citing *Accura Sys., Inc. v. Watkins Motor Lines, Inc.*, 98 F.3d 874, 876 (5th Cir. 1996)); *Univ. Chill LLC v. Saia Motor Freight Line, LLC*, Civ. A. No. 5:14-cv-09002-FB, 2014 WL 12589581, at *2 (W.D. Tex. Nov. 14, 2014). The Fifth Circuit has held that the preemptive scope of the Carmack Amendment is "sweeping." *Tran Enters., LLC v. DHL Express (USA), Inc.*, 627 F.3d 1004, 1008 (5th Cir. 2010) (citation omitted).

A. Intentional Infliction of Emotional Distress

Courts have rejected nearly all state-law claims related to goods that have been lost or damaged in interstate shipping as preempted, including claims for intentional infliction of emotional distress. *See, e.g., Moffit v. Bekins Van Lines Co.*, 6 F.3d 305, 306-07 (5th Cir. 1993) (finding claims for the tort of outrage, intentional infliction of emotional distress, negligent infliction of emotional distress, breach of contract, breach of implied warranty, breach of express warranty, violation of the Texas Deceptive Trade Practices Act, slander, misrepresentation, fraud, negligence, gross negligence,

and violation of common carrier duties under state law were preempted by the Carmack Amendment); *Bobak v. D Lux Movers & Storage, Inc.*, Civ. A. No. 3 :05-cv-1515-B, 2005 WL 3157917, at *2 (N.D. Tex. Nov. 23, 2005) (finding state law claims for, *inter alia*, negligence, breach of contract, and attorney's fees were preempted by Carmack Amendment). Accordingly, Plaintiff's claim for intentional infliction of emotional distress is preempted by the Carmack Amendment and fails as a matter [*6] of law.

B. Attorney's Fees

Plaintiff also appears to seek attorney's fees under both the Carmack Amendment and either state or common law. *See* Compl. at 3-4 (seeking attorney's fees under 49 U.S.C. § 14706(b) and "reasonable costs associated with the defense of this case"). However, as Defendant points out, there is no provision in the Carmack Amendment that authorizes an award of attorney's fees. *Accura*, 98 F.3d at 876; *see also Patriot Signs, Inc. v. Sala Motor Freight Lines, LLC*, 616 F.Supp.2d 646, 649 (N.D. Tex. 2009) (holding that attorney's fees are not recoverable in a Carmack Amendment action). And as the Fifth Circuit has held, the Carmack Amendment preempts any state law basis for the recovery of attorney's fees. *Id.*; *see also Univ. Chill LLC*, 2014 WL 12589581, at *2. Accordingly, the Court finds that Plaintiff has failed to state a claim upon which relief can be granted.

C. Leave to Amend

Although a court may dismiss a claim that fails to meet the pleading requirements, "it should not do so without granting leave to amend, unless the defect is simply incurable or the plaintiff has failed to plead with particularity after repeated opportunities to do so." *Hart v. Bayer Corp.*, 199 F.3d 239, 248 n.6 (5th Cir. 2000).

Here, Plaintiff is represented by counsel and has not sought leave to amend the Complaint despite the obvious deficiencies raised by Defendant. Indeed, Plaintiff appears to have abandoned her claims by failing to respond to Defendant's Motion. "Under these circumstances, [*7] the Court is under no obligation to *sua sponte* grant leave to amend." *Ross v. Citimortgage Inc.*, Civ. A. No. 3:16-cv-0416-K-BK, 2016 WL 4440488, at *2 (N.D. Tex. July 8, 2016), *adopted by* Civ. A. No. 3:16-cv-0416-K, 2016 WL 4429460 (N.D. Tex. Aug. 20, 2016).

IV. CONCLUSION

For the reasons discussed above, the Court **GRANTS** Defendant Plycon Transportation Group's Motion to Dismiss [ECF No. 5]. Plaintiffs claims for (1) intentional infliction of emotional distress and (2) attorney's fees are **DISMISSED WITH PREJUDICE**.

SO ORDERED.

SIGNED September 2, 2021.

/s/ Karen Gren Scholer

KAREN GREN SCHOLER

UNITED STATES DISTRICT JUDGE

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