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Q1, LLC v. Assembly

United States District Court for the Middle District of Florida, Orlando Division

July 26, 2024, Decided; July 26, 2024, Filed

Case No. 6:22-cv-1212-RBD-LHP

Reporter

2024 U.S. Dist. LEXIS 132346 *

Q1, LLC, Plaintiff, v. MPR ASSEMBLY AND LOGISTIC SERVICES, LLC; and DSV ROAD, INC., Defendants.

Core Terms

crossclaim, attorney's fees, just reason, indemnity, preempted, cargo

Counsel: [*1] For DSV Road Inc., Defendant: Andrew Robert Spector, Marc Alan Rubin, Spector Rubin PA, Miami, FL; Yvette M. Pace, LEAD ATTORNEY, O'Connor & O'Connor LLC, Orlando, FL.

For MPR Assembly and Logistic Services LLC, Defendant: Yvette M. Pace, LEAD ATTORNEY, O'Connor & O'Connor LLC, Orlando, FL.

For Quality One Wireless LLC, Plaintiff: Lindsay Rose Abbondandolo, Ver Ploeg & Marino P.A., Miami, FL; Michal Meiler, Stephen A. Marino Jr., Ver Ploeg & Marino PA, Miami, FL.

Judges: ROY B. DALTON, JR., United States District Judge.

Opinion by: ROY B. DALTON, JR.

Opinion

ORDER

Before the Court are Defendants MPR Assembly and Logistic Services, LLC's ("MPR") and DSV Road, Inc.'s ("DSV") supplemental briefs (Docs. 111-12) on DSV's pending crossclaim (Doc. 46, pp. 12-14), and MPR's unopposed motion for a certificate of appealability (Doc. 114 ("Motion")).

BACKGROUND

In this Carmack Amendment ("Carmack") case, Plaintiff Q1 contacted DSV, a logistics broker, to arrange a shipment of cell phones from Florida to Indiana. (See Doc. 55-1, pp. 7-8.) DSV then contracted with MPR, a trucking company, to transport the phones. (See *id.* at 2; Doc. 55-7.) DSV's and MPR's very young business relationship was governed by a Broker-Carrier Agreement ("BCA") containing this clause: [*2]

CARRIER shall defend, indemnify, and hold DSV and its customer harmless from any attorney's fees, claims, actions or damages, arising out of its performance under this Agreement Neither Party shall be liable to the other for any attorney's fees, claims, actions or damages to the extent caused by the negligence or intentional wrongful act of the other Party or the shipper. The obligation to defend shall include all costs of defense as they accrue.

(Doc. 25-2, p. 2.)

The cell phones went missing in transit, so Q1 sued MPR for strict liability under Carmack and DSV for breach of contract. (Doc. 40, ¶¶ 31-45.) DSV filed a crossclaim against MPR for contractual indemnity under the BCA. (See Doc. 46.) Two summary judgment motions were filed: (1) DSV against Q1 (Doc. 53); and (2) Q1 against MPR (Doc. 55). DSV did not seek summary judgment on its crossclaim against MPR. The Court granted both motions, concluding that MPR was strictly liable to Q1 under Carmack and Q1's claim against DSV was time-barred. (Doc. 86.) The Court dismissed DSV's crossclaim against MPR as moot because DSV was not liable to Q1. (*id.* at 16.) After review, the Court reinstated the crossclaim and ordered DSV and [*3] MPR to file briefs (Docs. 111, 112) on whether the Carmack Amendment preempts DSV's crossclaim. (Doc. 106.) MPR then moved unopposed to certify Q1's Carmack claim as immediately appealable. (See Doc. 114.) The matters are ripe.

STANDARDS AND ANALYSIS

I. DSV's Crossclaim

MPR argues that Carmack preempts DSV's crossclaim for fees under the BCA because these fees do not arise from "separate and distinct conduct" from the cargo loss at issue, as required by the seminal case on this issue. (Doc. 111, p. 3.) DSV counters that the fees it seeks are recoverable because they *do* arise from "separate and distinct conduct" in that they do not bear on liability for the lost phones. (Doc. 112, pp. 5-6.) DSV's interpretation of "separate and distinct conduct" is correct.

"The Carmack Amendment embraces all losses resulting from any failure to discharge a carrier's duty as to any part of the agreed transportation. *Separate and distinct conduct rather than injury* must exist for a claim to fall outside the preemptive scope of the Carmack Amendment." *UPS Supply Chain Sols., Inc. v. MegatruX Transp., Inc.*, 750 F.3d 1282, 1289 (11th Cir. 2014) (cleaned up) (emphasis added). To determine if "separate and distinct conduct" exists, courts look to whether a claim turns on a party's liability for lost cargo. See *id.* at 1290-94 (collecting cases distinguishing "affecting [*4] liability for losses" and "the expense of recovery"). Conduct is separate and distinct if it includes contractual obligations independent from a specific shipment, such as those in an ongoing business relationship. See *id.* at 1293-95 (indemnity clause not preempted where the underlying breach was of a no-subcontracting clause "not for transportation of a specific item . . . but rather in connection with ongoing business dealings between two sophisticated parties"); cf. *Scotlynn USA Div., Inc. v. Titan Trans Corp.*, 555 F. Supp. 3d 1246, 1275 (M.D. Fla. 2021) (claim for attorney's fees arising out of enforcement of an indemnity clause for lost cargo was preempted).

Here, there is separate and distinct conduct apart from the cargo loss between DSV and MPR: the BCA governing their business relationship, which extends beyond any one shipment. (Doc. 25-2, p. 2.) The indemnity clause in the BCA is not impacted by either party's liability for Q1's shipment. See *UPS*, 750 F.3d at 1294 ("As the Supreme Court has held, attorney's fees do not enlarge or limit the responsibilities of the carrier for loss of property."). Rather, this indemnity clause would have MPR pay for DSV's defense costs as they accrue for any claims arising out of the BCA as soon as DSV was sued, regardless of any finding of liability.

(Doc. 25-2, [*5] p. 2.) As this contractual relationship between sophisticated parties is independent of the specific loss at issue, it falls outside Carmack preemption. See *UPS*, 750 F.3d at 1294 ("[A] claim for attorney's fees [does not] pose an obstacle to the accomplishment of [Carmack's] purpose."); see also *REI Transp., Inc. v. C.H. Robinson Worldwide, Inc.*, 519 F.3d 693, 698 (7th Cir. 2008) (rejecting blanket Carmack preemption of broker-carrier claims as it would "bar a jilted carrier from pursuing any claim against a shipper if the case involved damaged goods"). So DSV's crossclaim under the BCA is not preempted by the Carmack Amendment, which means the crossclaim proceeds.¹

II. Certificate of Appealability

MPR also moves unopposed to certify the portion of the Court's summary judgment Order (Doc. 86) and judgment (Doc. 88) addressing Q1's Carmack claim against MPR as immediately appealable. (Doc. 114.) The Motion is due to be granted.

"When an action presents more than one claim for relief . . . the court may direct entry of a final judgment as to one or more, but fewer than all, claims . . . only if the court expressly determines that there is no just reason for delay." *Fed. R. Civ. P. 54(b)*. Courts use a two-part analysis to determine whether a judgment should be certified under *Rule 54(b)*. *Curtiss-Wright Corp. v. Gen. Elec. Co.*, 446 U.S. 1, 7, 100 S. Ct. 1460, 64 L. Ed. 2d 1 (1980). First, the court must determine that its order [*6] is both: (1) "final," that is, an ultimate disposition of an individual claim entered in the course of a multiple-claim action; and (2) a "judgment," in the sense that it is a decision on a cognizable claim for relief. See *id.* at 7-8. Second, the court must determine if there is any "just reason" to delay appeal of the final judgment, considering judicial administrative interests and the equities involved to discourage piecemeal litigation and ensure that the appellate court will not decide the same issues more than once. See *id.* at 8.

As to the first prong, the portion of its summary judgment Order relating to Q1's Carmack claim against MPR was both final and a judgment in that it decided a cognizable claim and ultimately disposed of it. See *id.* at

¹As DSV's crossclaim is not preempted by the Carmack Amendment, the Court need not address DSV's argument that MPR waived preemption as a defense. (See Doc. 112, pp. 1-5.)

7. Specifically, the Court decided that MPR was strictly liable for Q1's lost cargo under Carmack and entered judgment accordingly. (See Doc. 86, pp. 13-15; Doc. 88.) So it is a final judgment for purposes of [Rule 54\(b\)](#). See [Curtiss-Wright, 446 U.S. at 7-8](#).

As to the second prong, several case-specific factors guide the Court's discretionary analysis of whether there is a just reason for delay:

- (1) The relationship between the adjudicated and the unadjudicated claims;
- (2) the possibility that [*7] the need for review might or might not be mooted by future developments in the district court;
- (3) the possibility that the reviewing court might be obliged to consider the same issue a second time;
- (4) the presence or absence of a claim or counterclaim which could result in set-off against the judgment sought to be made final;
- (5) miscellaneous factors such as delay, economic and solvency considerations, shortening the time of trial, frivolity of competing claims, expense, and the like.

[Christoff ex rel. Galexa, Inc. v. Inglese, No. 2:20-cv-546, 2022 U.S. Dist. LEXIS 233504, 2022 WL 17987070, at *2 \(M.D. Fla. Apr. 22, 2022\)](#) (cleaned up). As explained above, DSV's crossclaim is not impacted by MPR's liability for Q1's loss, so it will not affect the Eleventh Circuit's review of Q1's Carmack claim on appeal. See *UPS*, 750 F.3d at 1294. So there is no just reason to delay MPR's appeal of Q1's claim. See [Christoff, 2022 U.S. Dist. LEXIS 233504, 2022 WL 17987070, at *2](#).

With both prongs met, the Court will certify its portion of the summary judgment Order on Q1's claim as immediately appealable under [Rule 54\(b\)](#). (See Doc. 86, p. 16, ¶ 3.)

CONCLUSION

Accordingly, it is **ORDERED AND ADJUDGED**:

1. MPR's Motion (Doc. 114) is **GRANTED**. The Court **CERTIFIES** under [Federal Rule of Civil Procedure 54\(b\)](#) that there is no just reason to delay the entry of a final appealable judgment. The Clerk is **DIRECTED** to enter an amended judgment under [Federal Rule of Civil Procedure 54\(b\)](#) on the portion of this Court's [*8] summary judgment Order pertaining to Q1's motion for summary judgment against MPR (Doc. 86, p. 16, ¶ 3; see

Doc. 88).²

2. By **Wednesday, August 14, 2024**, DSV and MPR are **DIRECTED** to file any dispositive motions related to DSV's crossclaim. By **Wednesday, August 28, 2024**, DSV and MPR may file responses.

DONE AND ORDERED in Chambers in Orlando, Florida, on July 26, 2024.

/s/ Roy B. Dalton, Jr.

ROY B. DALTON, JR.

United States District Judge

End of Document

²The judgment should take the following form: "Pursuant to the Court's Order certifying the judgment for immediate appeal under [Federal Rule of Civil Procedure 54\(b\)](#), judgment is entered in favor of Q1 and against MPR on Count 1 of the Second Amended Complaint in the amount of \$968,660.00, for which sum let execution issue."