

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

OLIVER COWART

CIVIL ACTION

VERSUS

NO: 09-3572

**MEDITERRANEAN SHIPPING
COMPANY (USA) INC.**

SECTION: "S" (2)

ORDER AND REASONS

IT IS HEREBY ORDERED that Plaintiff's Motion to Strike Defenses of Defendant, Columbus Stainless LTD (Doc. #42), is **DENIED**.

BACKGROUND

Plaintiff, Oliver Cowart, filed this civil action against Mediterranean Shipping Company (USA) Inc. and Columbus Stainless LTD seeking damages for injuries he sustained when a truck that he was driving flipped onto its side because the cargo in the shipping container on the truck shifted. Plaintiff alleges that Mediterranean and Columbus were negligent in loading the container.

On August 16, 2010, Columbus filed an answer that included affirmative defenses. On October 14, 2010, plaintiff filed a motion to strike the following defenses asserted by Columbus: (1) lack of personal jurisdiction over Columbus; (2) improper venue; (3) insufficient process under

Rules 12(b)(4) and 4(f)(3) of the Federal Rules of Civil Procedure; (4) insufficient service of process on Columbus under Rules 12(b)(5) and 4(f)(3) of the Federal Rules of Civil Procedure; and, (5) failure to state a claim or cause of action against Columbus.


ANALYSIS

Rule 12(f) of the Federal Rules of Civil Procedure provides that the court may strike an insufficient defense “on a motion made by a party either before responding to the pleading or, if a response is not allowed, within 21 days after being served with the pleading.” Columbus electronically filed its answer on August 16, 2010, and plaintiff was immediately served via electronic mail. Plaintiff filed his motion to strike the defense more than 21 days later on October 14, 2010. Therefore, plaintiff’s motion to strike is untimely, and is DENIED.¹

CONCLUSION

IT IS HEREBY ORDERED that Plaintiff’s Motion to Strike Defenses of Defendant, Columbus Stainless LTD (Doc. #42), is **DENIED**.

New Orleans, Louisiana, this 9th day of November, 2010.



MARY ANN VIAL LEMMON
UNITED STATES DISTRICT JUDGE

¹ This denial is without prejudice to the court’s review of the legal sufficiency of the defenses upon a proper motion filed at the appropriate time.