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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

PERSONAL COMMUNICATIONS DEVICES, Plaintiff, v. PLATINUM CARGO LOGISTICS, INC., Defendant.	Case No. SACV 09-00516 DDP (ANx) **ORDER GRANTING DEFENDANT'S PARTIAL MOTION FOR SUMMARY JUDGMENT AND DENYING PLANTIFF'S MOTION TO DISMISS** [Motion filed on 7/09/2010 and 8/2/2010]

Presently before the court is Defendant Platinum Cargo Logistics' ("Platinum") Partial Motion for Summary Judgment and Plaintiff Personal Communications Devices("PCD)'s Motion to Dismiss. After reviewing the materials submitted by the parties and hearing oral argument, the court grants the partial motion for summary judgment, denies the motion to dismiss, and adopts the following order.

I. Background

On or around October 2, 2008, PCD tendered seven separate consigned shipments containing mobile phones to Platinum. (Compl. ¶ 9.) PCD alleges that, together, the seven shipments were worth

$7,692,149.60. (Id.) Prior to tendering the goods, PCD prepared an online bill of lading through Platinum's website, and signed an agreement setting forth Platinum's standard terms and conditions. (Compl. ¶¶ 27-28.) PCD elected a declared value of $35,000 for each shipment (totaling $245,000 for all seven shipments) on the bill of lading. (Compl. ¶ 28.) Platinum accepted the declared value of $35,000 in lieu of its standard limitation of liability of 50 cents per pound. (Id.) Rather than declare the actual value of each shipment and pay a higher freight rate, PCD obtained insurance of $5 million per truckload.

According to PCD, the parties agreed that each consigned shipment would be shipped "less than trailer load," i.e., that the shipments would not be consolidated without notification. (Compl. ¶ 10.) In contravention of the parties agreement, PCD contends, Platinum consolidated the seven shipments without providing notification. (Id.) Because PCD's shipping insurance policy contained a $5 million dollar per truckload limit, Platinum's consolidation of the shipment exposed PCD to considerable risk (approximately $2.6 million of uninsured exposure).

Platinum, the Complaint alleges, subcontracted carriage of the shipment to Defendant Celestial Freight Solutions, LLC ("Celestial"). (Compl. ¶ 14.) On October 2, 2008, two drivers from Celestial picked up the shipment to transport it from Carson, CA to Louisville, Kentucky. (Id.) On October 3, 2008, the two Celestial drivers reported the truck, trailer, and shipments stolen. (Compl. ¶ 16.) According to the Complaint, the truck and trailer were stolen from an unlocked truck yard in Santa Ana, CA,

where the drivers had, for reasons unknown, temporarily stored them. (Id.)

On October 4, 2008, the Pasadena Police Department recovered the truck, but not the trailer containing the shipment. (Compl. ¶ 17.) On November 4, 2008, the North Port (Florida) Police Department recovered the trailer. (Compl. ¶ 18.) The shipment was never recovered. (Id.)

PCD contends that the Celestial drivers were not properly trained, and that they failed to undertake the security precautions that Platinum guaranteed in the parties' agreement. PCD also contends that Platinum: (1) refused to provide PCD with a copy of its tariff; (2) failed to use care in selecting a motor carrier; (3) wrongfully held out personnel as experienced; and (4) failed to "abide by reasonable standards of conduct in all pre-shipment processes. (Opp'n 8:1-7.)

PCD submitted timely claims to its insurer, Fireman's Fund, but the claims were denied on the grounds that Platinum, and its agents, were responsible for the loss of the shipment. (Compl. ¶ 21.) Fireman's Fund subsequently sued PCD in federal district court seeking a declaration that PCD's insurance policy does not cover the loss of the shipment.[1] (Compl. ¶ 20.)

PCD brought the present action, naming Platinum, Celestial, and the two drivers (Lai Dang and Thuong Trong) as defendants, on May 1, 2009. The Complaint seeks $7,692,149 in damages and sets forth the following causes of action: (1) breach of contract

[1] The question whether the insurance policy covers PCD's loss is ultimately at issue in a related case, SACV 09-04916 DDP (Cwx)(the "Fireman's Fund case"), but is not currently before the court.

(against Platinum only); (2) breach of bailment obligations; (3) negligence, gross negligence, recklessness and/or wilfulness; and (4) conversion. On October 6, 2009, this court concluded that the Carmack Amendment preempts PCD's state law claims against Platinum and Celestial, and dismissed all state law claims. (Dkt. No. 37.) Platinum now moves for partial summary judgment, arguing that the Carmack Amendment limits Platinum's liability to $245,000, the declared value of the seven stolen shipments. (Dkt. No. 56.) PCD seeks to dismiss this case and resolve its dispute with Platinum as part of the related Fireman's Fund case. (Dkt. No. 61.)

II. Legal Standard

A motion for summary judgment must be granted when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). A party seeking summary judgment bears the initial burden of informing the court of the basis for its motion and of identifying those portions of the pleadings and discovery responses that demonstrate the absence of a genuine issue of material fact. See Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986).

Where the moving party will have the burden of proof on an issue at trial, the movant must affirmatively demonstrate that no reasonable trier of fact could find other than for the moving party. On an issue as to which the nonmoving party will have the burden of proof, however, the movant can prevail merely by pointing out that there is an absence of evidence to support the nonmoving

party's case. See id. If the moving party meets its initial burden, the non-moving party must set forth, by affidavit or as otherwise provided in Rule 56, “specific facts showing that there is a genuine issue for trial.” Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 250 (1986).

It is not the Court's task “to scour the record in search of a genuine issue of triable fact.” Keenan v. Allan, 91 F.3d 1275, 1278 (9th Cir. 1996). Counsel have an obligation to lay out their support clearly. Carmen v. San Francisco Sch. Dist., 237 F.3d 1026, 1031 (9th Cir. 2001). The Court "need not examine the entire file for evidence establishing a genuine issue of fact, where the evidence is not set forth in the opposition papers with adequate references so that it could conveniently be found." Id.

The federal rules of civil procedure explain that an “action shall not be dismissed at the plaintiff's instance save upon order of the court and upon such terms and conditions as the court deems proper.” Fed. R. Civ. P. 41(a)(2). The decision to allow dismissal rests in the Court's sound discretion. Hamilton v. Firestone Tire & Rubber Co., 679 F.2d 143, 145 (9th Cir. 1982).

III. Discussion

The Carmack Amendment to the Interstate Commerce Act of 1887 generally limits a carrier's liability under an interstate bill of lading to “the actual loss or injury to the property caused by” the carrier. 49 U.S.C. § 14706(a). However, a carrier such as Platinum may establish rates “under which the liability of the carrier . . . is limited to a value established by written or electronic declaration of the shipper or by written agreement between the

carrier and shipper if that value would be reasonable under the circumstances surrounding the transportation." 49 U.S.C. § 14706(c)(1)(A). The court agrees with Platinum that PCD's declaration of a $35,000 value per shipment, along with the written agreement between Platinum and PCD, limits Platinum's liability to $245,000, the declared value of the lost shipments.

To successfully limit its liability under the Carmack Amendment, a carrier must (1) give the shipper a reasonable opportunity to choose between levels of liability, (2) obtain an agreement as to the shipper's choice of carrier liability, and (3) issue a bill of lading prior to shipment. See, e.g. Hughes Aircraft Co. V. North Am. Van Lines, 970 F.2d 609, 611-12 (9th Cir. 1992); see also Atlantic Mut. Ins. Co. v. Yasutomi Warehousing and Distribution, Inc., 326 F.Supp.2d. 1123, 1126-27. (C.D. Cal. 2004).

Where a limitation of liability is unreasonable under the circumstances surrounding a shipment, this court has declined to limit liability under § 14706(c)(1)(A). See, e.g., Cons. Freightways Corp. of Del. V. Travelers Ins. Co., 2003 WL 2215968 at *5 (N.D. Cal. 2003) (finding no limitation of liability where carrier sought a limitation of less than 0.08 percent of actual loss and shipper had no reasonable opportunity to choose between levels of liability). Here, through active discussions with Platinum, PCD elected the $35,000 declared value on a bill of lading that PCD itself prepared. (Declaration of Rick Wohlberg In Opposition to Platinum Cargo Logistics, Inc.'s Motion for Partial Summary Judgement ¶¶ 4, 14.) Nevertheless, PCD now contends that $35,000 per shipment is not a reasonable value, and that the liability limitation of § 14706(c)(1)(A) does not apply. This

argument is not persuasive. PCD consciously elected *not* to seek liability for the actual value of the shipments because PCD (1) sought to avoid additional shipping costs and (2) had obtained insurance coverage sufficient to cover total loss.[2] (Wohlberg Dec. ¶ 5.) Under such circumstances, the $35,000 limitation of liability was not unreasonable.

PCD also argues that the $35,000 declared value was not a limitation of liability. This argument fails. Platinum's Terms and Conditions of Contract stated that "Platinum's liability, *in the absence of a higher declared value for carriage*, is limited to a minimum of $50.00 per shipment . . . ." (Declaration of Kelli Spiri in Support of Platinum Cargo Logistics Inc.'s Motion for Partial Summary Judgment ¶ 7 (emphasis added)). PCD selected the higher, $35,000 declared value for carriage rather than Platinum's standard limitation. The Terms and Conditions of Contract included an integration clause, which superseded any prior oral discussions that may have taken place. (Spiri Dec., Ex. C) PCD cannot now assert that it did not have notice of the $35,000 limitation when PCD itself, after discussions with Platinum, selected that figure.

Furthermore, this court has found that a shipper's acquisition of cargo insurance demonstrates that the shipper had notice of the carrier's limited liability. Yasutomi, 326 F.Supp. at 1128. "[T]he function served by notice of limited liability is accomplished if the shipper in fact purchases separate insurance, whether or not such notice is actually given." Id., citing Read-

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[2] As discussed above, the actual value of PCD's insurance coverage is not at issue here. See n.1, supra.

Rite Corp. v. Burlington Air Express, Ltd., 186 F.3d 1190, 1198 (9th Cir. 1999) (internal quotation marks omitted). Here, PCD selected an alternative limitation of liability and obtained insurance for its cargo. There is no issue of material fact as to the $35,000 per shipment limitation of liability.

PCD's remaining arguments are also unavailing. This circuit has never extended the admiralty concept of material deviation to Carmack Amendment cases. PCD's reliance on Coughlin v. Trans World Airlines, Inc., 847 F.2d 1432 (9th Cir. 1988) is misplaced. Coughlin did not concern a Carmack Amendment claim, and cannot support the proposition that material deviation should be extended to the Carmack context. To the contrary, the Ninth Circuit has applied Carmack Amendment limitations of liability even when a carrier fails to provide a special condition in the contract of carriage. See Hughes, 970 F.2d at 610-13.

PCD's allegation that Platinum wrongly refused to provide a copy of its tariff, as Platinum is required to do under U.S.C. § 14706()(1)(B), has no bearing on whether the liability limitation requirements of § 14706(c)(1)(A) have been met.

Accordingly, the court concludes that the Carmack Amendment limits Platinum's liability to $245,000.

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IV. Conclusion

For the reasons set forth above, the Court grants the Partial Motion for Summary Judgment. The court therefore denies the Motion to Dismiss as moot.

IT IS SO ORDERED.

Dated: September 3, 2010

DEAN D. PREGERSON
United States District Judge