

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNION PACIFIC RAILROAD COMPANY, Plaintiff,)	
)	Case No. 1:16-cv-8092
vs.)	
)	Magistrate Judge Sheila Finnegan
PACTRANS AIR & SEA, INC., KETTY Y. PON,)	(By Consent)
ALEXANDER PON, and CHANCE PON, Defendants.)	

PLAINTIFF’S COMBINED MOTIONS (1) TO AMEND THE COMPLAINT TO REMOVE COUNTS III, IV, AND VI AND THE INDIVIDUAL DEFENDANTS WITHOUT PREJUDICE, AND (2) FOR ENTRY OF A FINAL AND ENFORCEABLE JUDGMENT

Plaintiff Union Pacific Railroad Company, by its attorneys, requests the Court to enter an Order (1) permitting plaintiff to amend the complaint to remove counts III, IV, and VI and the individual defendants without prejudice, and (2) entering a final and enforceable judgment in favor of plaintiff and against defendant PacTrans Air & Sea, Inc. (“PacTrans”) in the amount of \$5,834,633.21 plus costs of suit. In support of this motion, plaintiff states as follows:

1. On August 15, 2016, plaintiff filed its initial complaint in this action under the Court’s diversity jurisdiction. (Exhibit 1). The complaint contained the following counts: (1) breach of fiduciary duty; (2) conversion; (3) breach of contract; (4) money had and received; (5) accounting; and (6) pierce the corporate veil. Counts I-V were brought against PacTrans, and count VI was brought against the individual defendants.

2. On December 20, 2017, the Court granted plaintiff’s motion for summary judgment on counts I, II, and V, and denied plaintiff’s summary judgment motion as to counts III, IV, and VI. (12/20/17 Mem. Op. and Order, exhibit 2). Defendants had not answered the complaint, nor had the parties conducted any discovery, prior to the summary judgment briefing or order.

3. Due to the Court's summary judgment award on counts I, II, and V, plaintiff now seeks (a) to amend the complaint to remove counts III, IV, and VI and the individual defendants without prejudice, and (b) the Court's entry of a final and enforceable judgment against PacTrans on counts I, II, and V. See *Swartz v. Wabash Nat'l Corp.*, 674 F.Supp.2d 1051, 1057 (N.D. Ind. 2009) ("generally, an attempt to voluntarily dismiss only certain counts of a complaint should be treated as a motion to amend the complaint rather than a motion to dismiss"); *Panduit Corp. v. All States Plastic Mfg. Co.*, No. 76-cv-4012, 1981 WL 66992, at * 1 (N.D. Ill. Mar. 20, 1981) (amended pleading which deletes less than all claims is treated as a motion to amend the complaint to drop those claims).

4. The amount plaintiff sought in its summary judgment papers was \$5,834,633.21. (Ex. 2, p. 7; see also 3/30/17 plaintiff's summary judgment brief, exhibit 3; 3/30/17 affidavit of Marcia Tauriella, exhibit 4). The Court's 12/20/17 Order reflected that amount, and granted the motion for summary judgment as to counts I, II, and V. (Ex. 2).

5. Accordingly, plaintiff seeks entry of a final and enforceable judgment in its favor and against PacTrans in the amount of \$5,834,633.21, plus costs of suit.


WHEREFORE, plaintiff requests the Court to enter an Order (1) permitting plaintiff to amend the complaint to remove counts III, IV, and VI and the individual defendants without prejudice, (2) entering a final and enforceable judgment in favor of plaintiff and against PacTrans on counts I, II, and V, and granting plaintiff any other just and appropriate relief.

DATE: January 26, 2018

Scott A. Schaefers
BROTSCHUL POTTS LLC
30 N. LaSalle St., Ste. 1402
Chicago, IL 60602
Phone: (312) 551-9003
Email: sschaefers@brotschulpotts.com

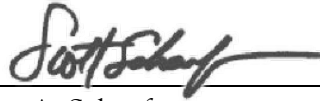
Respectfully submitted,

UNION PACIFIC RAILROAD COMPANY, plaintiff.

By: 
Scott A. Schaefers, one of its attorneys

CERTIFICATE OF SERVICE

I, Scott A. Schaefer, an attorney for plaintiff Union Pacific Railroad Company, pursuant to 28 U.S.C. § 1746(2) and subject to penalty of perjury, certify that on **January 26, 2018**, I served its **Combined Motions (1) to Amend the Complaint to Remove Counts III, IV, and VI and the Individual Defendants Without Prejudice, and (2) For Entry of a Final and Enforceable Judgment** on counsel of record via the Court's ECF system.



Scott A. Schaefer
BROTSCHUL POTTS LLC
30 N. LaSalle St., Ste. 1402
Chicago, IL 60602
Phone: (312) 268-6795
Email: sschaefer@brotschulpotts.com

Date: January 26, 2018