

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

LOUISIANA NEWPACK SHRIMP, INC.	CIVIL ACTION
VERSUS	NO. 19-12948-WBV-KWR
OCEAN FEAST OF CHINA, LTD, ET AL.	SECTION: D (4)

Consolidated with

LONGHAI DESHENG SEAFOOD STUFF CO. LTD	CIVIL ACTION
VERSUS	NO. 20-782-WBV-KWR
LOUISIANA NEWPACK SHRIMP, INC., ET AL.	SECTION: D (4)

Consolidated with

OCEANA SEAFOOD PRODUCTS, LLC	CIVIL ACTION
VERSUS	NO. 21-00003-WBV-KWR
LOUISIANA NEWPACK SHRIMP COMPANY, ET AL.	SECTION: D (4)

ORDER and REASONS¹

Before the Court is Louisiana Newpack's Rule 12(B)(6) Partial Motion to Dismiss Ocean Feast's Counterclaims.² In the Motion, Louisiana Newpack Inc. ("Louisiana Newpack") seeks dismissal of Ocean Feast of China, Ltd.'s ("Ocean Feast's") counterclaims for fraud and conversion set forth in Ocean Feast's Answer

¹ All of the citations to the record in this Order refer to documents filed in the master file of this consolidated matter, 19-cv-12948.

² R. Doc. 156.

and Counterclaim Against Louisiana Newpack Shrimp, Inc.,³ as well as Ocean Feast's request for attorney's fees therein. Ocean Feast opposes the Motion.⁴

After careful consideration of the parties' memoranda and the applicable law, the Motion is **DENIED in part** and **DENIED as moot, in part**. To the extent Louisiana Newpack seeks dismissal of Ocean Feast's "counterclaim for fraud," the Motion is **DENIED as moot**. The Court has already determined, in ruling on Louisiana Newpack's Motion for Partial Summary Judgment,⁵ that the allegations of fraud in Ocean Feast's Answer and Counterclaim Against Louisiana Newpack, including Paragraph 179, "do not assert a separate cause of action for fraud against Louisiana Newpack."⁶

The Motion is also **DENIED** to the extent that Louisiana Newpack seeks dismissal of Ocean Feast's counterclaim for conversion. The Court finds that Ocean Feast has alleged sufficient facts to state a plausible counterclaim against Louisiana Newpack for conversion. Finally, the Motion is **DENIED** to the extent Louisiana Newpack seeks dismissal of Ocean Feast's request for attorney's fees, as Ocean Feast has asserted a breach of contract counterclaim against Louisiana Newpack and has alleged that Louisiana Newpack has acted with fraud and/or bad faith.⁷

³ R. Doc. 136 at pp.8-13.

⁴ R. Doc. 179.

⁵ R. Doc. 212.

⁶ R. Doc. 290.

⁷ R. Doc. 136 at ¶¶ 174 & 179. *See, Spurgeon v. Leleux*, Civ. A. No. 6:11-CV-01807, 2019 WL 138388, at *9-10 (W.D. La. Jan. 8, 2019) (Doughty, J.) (citing *Stutts v. Melton*, 2013-0557 (La. 10/15/13), 130 So.3d 808) ("The Louisiana Supreme Court has indicated that a plaintiff who has been defrauded in the performance of a contract is entitled to damages, including attorney's fees.").

Accordingly,

IT IS HEREBY ORDERED that Louisiana Newpack's Rule 12(B)(6) Partial Motion to Dismiss Ocean Feast's Counterclaims⁸ is **DENIED in part** and **DENIED in part, as moot.**

New Orleans, Louisiana, November 9, 2021.


WENDY B. VITTER
United States District Judge

⁸ R. Doc. 156.