

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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MaVal Capital., IAM &AL Group and
Maxim Ostrovskiy,

Plaintiffs,

-against-

Marine Transport Logistics, Inc., Royal
Finance Group, Inc., and Car Express &
Import Inc., Alelsandr Solovyev and Dimitry
Alper,

Defendants.

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TOWNES, United States District Judge,

MEMORANDUM AND ORDER
~~12-cv-5632 (SLT) (RLM)~~
13 cv 7110 (SLT)

Maxim Ostrovskiy, and his companies, MAVL Capital, Inc. and IAM & AL Group Inc., (collectively, "Plaintiffs") bring this maritime action against (1) Marine Transport Logistics, Inc., ("MTL"), and its director, Dimitry Alper, and (2) Aleksandr Solovyev his companies, Royal Finance Group, Inc. and Car Express & Import Inc., (collectively, "Defendants"). Plaintiffs are is the business of exporting cars to Europe. Defendants are in the business of financing and shipping the cars. Plaintiffs claim that Defendants have taken some of Plaintiffs' cars and car parts hostage in an attempt to extort payment for "an unlawful debt conjured up by Defendants" in violation of maritime law. (Pl.'s Br. at 7.) Plaintiffs sought a preliminary injunction directing Defendants to immediately release the cargo. At an April 22, 2014 hearing before District Judge Sandra L. Townes, Plaintiffs voluntarily withdrew their application for a preliminary injunction. The parties indicated at the hearing that they are negotiating a bond to release the liens on Plaintiffs' cargo. The matter is respectfully referred to Magistrate Judge Mann for all pretrial matters including the outstanding issue of setting the bond amount.

BACKGROUND

A. The Parties

Plaintiffs are in the business of purchasing vehicles from within the United States and from abroad, and then exporting those vehicles to customers in Europe. Defendants are in the business of financing the purchase of vehicles, storing vehicles, and shipping them to foreign ports, including the Port of Kotka, Finland. Specifically, Defendant MTL, of which Defendant Alper is the director, is a licensed Non-Vessel Operating Common Carrier regulated by the Federal Maritime Commission. MTL arranges for cargo to be delivered to one of its United States storage facilities, consolidates the cargo, and then retains ocean carriers to perform the overseas carriage. Defendant Solovyev is principal of Royal Finance Group, Inc., which finances the purchase of vehicles, and Car Express & Import Inc., which purchases used and salvaged cars from auctions and dealerships for sale to its customers. MTL and Car Express have a mutual referral arrangement.

B. The Dispute

Between January and August of 2013, Plaintiffs engaged MTL to ship cars abroad. According to Plaintiffs, the financing arrangement/ownership status of each car was one of the following: (1) Plaintiffs owned some of the cars outright; (2) foreign customers had already paid Plaintiffs, in whole or in part, for some of the cars; and (3) Defendant Royal Finance Group provided financing for some of the cars and, in exchange, MTL was to be the exclusive shipping agent for those cars. Plaintiffs agreed to pay for shipping and delivery, inclusive of all freight and charges. In addition, for cars financed by Defendants, Plaintiffs agreed to pay a flat fee of 2.5% of the amount financed at the time of delivery.

Sometime in August 2013, the parties' relationship soured. The parties disagree as to what caused this. Plaintiffs imply that they worked out a more favorable arrangement with another shipping company, and maintain that the problems began after they notified Defendants of their intent to wind down their relationship. Defendants claim that they require – as spelled out expressly in each bill of lading – that all outstanding charges for MTL's services be fully paid before releasing any cargo and they are simply collecting on outstanding shipping and storage charges. Regardless of the cause, the result of the souring was that in August of 2013, when some of Plaintiffs' cars and car parts were in Defendants' possession, Defendants demanded that Plaintiffs promptly pay certain outstanding shipping, freight, storage, and other charges. When Plaintiffs did not pay, Defendants refused to release that cargo.

Plaintiffs contend that Defendants do not have a valid lien on the vehicles because Plaintiffs have already paid Defendants "in full for all shipping and storage charges." (Pl.'s Br. at 7.) Defendants dispute this allegation. They allege that they have valid (both maritime and contractual)¹ liens on the cargo due to Plaintiffs' current and prior debts. (Defs.' Br. at 17; *see also* Alper Decl., Exs. F, H, J, K and L.)

C. Plaintiffs' Complaint

By complaint filed December 12, 2013, Plaintiffs commenced this action seeking to recover "in excess of" \$1 million in compensatory and punitive damages. The complaint principally alleges federal question jurisdiction, stating that this action is brought pursuant to the Carriage of Goods by Sea Act ("COGSA"), 46 U.S.C. § 30701, the Shipping Act of 1984, 46

¹ *See The Bird of Paradise*, 72 U.S. 545, 554 (1866); *In re World Imports, Ltd. Inc.*, 498 B.R. 58, 63-64 (Bankr. E.D. Pa. 2013) (citing *Tienshan, Inc. v. Tianjin Hua Feng Transport Agency Co., Ltd.*, 2011 WL 7144007, at *17 (Mar. 9, 2011, F.M.C.) (emphasis added); *see also N.H. Shipping Corp. v. Freights of S/S Jackie Hause*, 181 F. Supp. 165, 169 (S.D.N.Y. 1960); *Maersk-Sealand v. Eurocargo Express, LLC*, CV 02-3230 MLG, 2004 WL 1950372, at *3-5 (C.D. Cal. Apr. 8, 2004).

U.S.C. §40101, et seq., and “the court’s original jurisdiction in maritime matters.” (Compl. at ¶ 29.) Plaintiffs’ pleading focuses largely on the maritime aspects of the case. Plaintiffs assert that they paid the amounts due for the shipping, and that Defendants should have released the cars. Plaintiffs claim that the failure to do so violated the Shipping Act of 1984 by, in effect, imposing an unlawful tariff and breached the fiduciary duties that Defendants owed to Plaintiffs as agents. Plaintiffs further allege various state-law causes of action (conversion, civil conspiracy, tortious interference with business relations, action to pierce the corporate veil, breach of contract, common-law fraud and a violation of N.Y. Gen. Bus. Law § 349). Finally, Plaintiffs allege a Civil RICO violation.

D. Bond Dispute

Defendants are amenable to releasing the liens on Plaintiffs’ cargo if Plaintiffs post a bond. However, the parties have not reached agreement on the amount of the bond. Defendants request \$86,558. Plaintiffs suggest \$1,960. The issue of setting the appropriate bond amount is respectfully referred to Magistrate Judge Mann.

CONCLUSION

The matter is respectfully referred to Magistrate Judge Mann for all pretrial matters, including determination of an appropriate bond.

SO ORDERED

/s/(SLT)

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SANDRA L. TOWNES
United States District Judge

Dated: Brooklyn, New York
April 22, 2014