

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re: :
:
THE CONTAINERSHIP COMPANY :
(TCC) A/S, :
Debtor in a Foreign Proceeding. :
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16-cv-4913 (ALC)

THE CONTAINERSHIP COMPANY :
(TCC) A/S, acting by and through Jørgen :
Hauschildt, solely in his capacity as Foreign :
Representative thereof, :
Plaintiff, :
:
v. :
:
US PACIFIC TRANSPORT, INC. (CASA), :
Defendant. :
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16-cv-5210 (ALC)

THE CONTAINERSHIP COMPANY :
(TCC) A/S, acting by and through Jørgen :
Hauschildt, solely in his capacity as Foreign :
Representative thereof, :
Plaintiff, :
:
v. :
:
O.E.C. SHIPPING LOS ANGELES, INC., :
Defendant. :
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16-cv-5431 (ALC)

THE CONTAINERSHIP COMPANY :
(TCC) A/S, acting by and through Jørgen :
Hauschildt, solely in his capacity as Foreign :
Representative thereof, :
Plaintiff, :
:
v. :
:
O.E.C. SHIPPING LOS ANGELES, INC., :
Defendant. :
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THE CONTAINERSHIP COMPANY : 16-cv-5670 (ALC)
(TCC) A/S, acting by and through Jørgen :
Hauschildt, solely in his capacity as Foreign :
Representative thereof, :

Plaintiff, :

v. :

TRANSLINK SHIPPING, INC., :

Defendant. :

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THE CONTAINERSHIP COMPANY : 16-cv-5141 (ALC)
(TCC) A/S, acting by and through Jørgen :
Hauschildt, solely in his capacity as Foreign :
Representative thereof, :

Plaintiff, :

v. :

APEX MARITIME, CO., INC., :

Defendant. :

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THE CONTAINERSHIP COMPANY : 16-cv-5158 (ALC)
(TCC) A/S, acting by and through Jørgen :
Hauschildt, solely in his capacity as Foreign :
Representative thereof, :

Plaintiff, :

v. :

ARGOS FREIGHT, INC., :
d/b/a Agility Fragility, Inc., :

Defendant. :
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THE CONTAINERSHIP COMPANY : 16-cv-5652 (ALC)
(TCC) A/S, acting by and through Jørgen :
Hauschildt, solely in his capacity as Foreign :
Representative thereof, :

Plaintiff, :

v. :

TOPOCEAN, :
Defendant. :

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THE CONTAINERSHIP COMPANY : 16-cv-5600 (ALC)
(TCC) A/S, acting by and through Jørgen :
Hauschildt, solely in his capacity as Foreign :
Representative thereof, :

Plaintiff, :

v. :

PUDONG TRANS USA, INC., :
Defendant. :

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THE CONTAINERSHIP COMPANY : 16-cv-5723 (ALC)
(TCC) A/S, acting by and through Jørgen :
Hauschildt, solely in his capacity as Foreign :
Representative thereof, :

Plaintiff, :

v. :

U.S. UNITED LOGISTICS (NINGBO) :
INC., :
Defendant. :

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THE CONTAINERSHIP COMPANY : 16-cv-5711 (ALC)
(TCC) A/S, acting by and through Jørgen :
Hauschildt, solely in his capacity as Foreign :
Representative thereof, :

Plaintiff, :

v. :

UNIVERSAL SHIPPING, INC. (USI), :
Defendant. :

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THE CONTAINERSHIP COMPANY : 16-cv-5707 (ALC)
(TCC) A/S, acting by and through Jørgen :
Hauschildt, solely in his capacity as Foreign :
Representative thereof, :

Plaintiff, :

v. :

UNION LOGISTICS, INC., :
Defendant. :

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THE CONTAINERSHIP COMPANY : 16-cv-5453 (ALC)
(TCC) A/S, acting by and through Jørgen :
Hauschildt, solely in his capacity as Foreign :
Representative thereof, :

Plaintiff, :

v. :

ON TIME SHIPPING LINE LIMITED, :
Defendant. :
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THE CONTAINERSHIP COMPANY : 16-cv-5697 (ALC)
(TCC) A/S, acting by and through Jørgen :
Hauschildt, solely in his capacity as Foreign :
Representative thereof, :

Plaintiff, :

v. :

T-Z CARGO LIMITED, :

Defendant. :
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THE CONTAINERSHIP COMPANY : 16-cv-5423 (ALC)
(TCC) A/S, acting by and through Jørgen :
Hauschildt, solely in his capacity as Foreign :
Representative thereof, :

Plaintiff, :

v. :

MULTI-TRANS SHIPPING AGENCY, :
INC., :

Defendant. :
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THE CONTAINERSHIP COMPANY : 16-cv-5679 (ALC)
(TCC) A/S, acting by and through Jørgen :
Hauschildt, solely in his capacity as Foreign :
Representative thereof, :

Plaintiff, :

v. :

TT OCEAN LOGISTICS, LLC, :

Defendant. :
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: THE CONTAINERSHIP COMPANY : 16-cv-5327 (ALC)
: (TCC) A/S, acting by and through Jørgen :
: Hauschildt, solely in his capacity as Foreign :
: Representative thereof, :

Plaintiff, :

v. :

: CEVA FREIGHT LLC, :
: d/b/a CEVA Ocean Line, :

Defendant. :

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: THE CONTAINERSHIP COMPANY : 16-cv-5369 (ALC)
: (TCC) A/S, acting by and through Jørgen :
: Hauschildt, solely in his capacity as Foreign :
: Representative thereof, :

Plaintiff, :

v. :

: INTERGLOBO NORTH AMERICA INC., :

Defendant. :

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: THE CONTAINERSHIP COMPANY : 16-cv-5380 (ALC)
: (TCC) A/S, acting by and through Jørgen :
: Hauschildt, solely in his capacity as Foreign :
: Representative thereof, :

Plaintiff, :

v. :

: LCL LINES, :

Defendant. :
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THE CONTAINERSHIP COMPANY :
(TCC) A/S, acting by and through Jørgen : 16-cv-5293 (ALC)
Hauschildt, solely in his capacity as Foreign :
Representative thereof, :

Plaintiff, :

v. :

BARTHCO INTERNATIONAL, INC., :
d/b/a OHL-Int'l, :

Defendant. :

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THE CONTAINERSHIP COMPANY : 16-cv-5758 (ALC)
(TCC) A/S, acting by and through Jørgen :
Hauschildt, solely in his capacity as Foreign :
Representative thereof, :

Plaintiff, :

v. :

WAKO EXPRESS (HK) CO. LTD., :

Defendant. :

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THE CONTAINERSHIP COMPANY : 16-cv-5331 (ALC)
(TCC) A/S, acting by and through Jørgen :
Hauschildt, solely in his capacity as Foreign :
Representative thereof, :

Plaintiff, :

v. :

GLOBAL FORWARDING LTD., :

Defendant. :
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THE CONTAINERSHIP COMPANY : 16-cv-5340 (ALC)
(TCC) A/S, acting by and through Jørgen :
Hauschildt, solely in his capacity as Foreign :
Representative thereof, :
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 Plaintiff, :
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 v. :
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 HEADWIN GLOBAL LOGISTICS (USA), :
 INC., :
 :
 Defendant. :
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THE CONTAINERSHIP COMPANY : 16-cv-5566 (ALC)
(TCC) A/S, acting by and through Jørgen :
Hauschildt, solely in his capacity as Foreign :
Representative thereof, :
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 Plaintiff, :
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 v. :
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 PANTAINER LTD., :
 d/b/a Pantainer Express :
 :
 Defendant. :
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THE CONTAINERSHIP COMPANY : 16-cv-5637 (ALC)
(TCC) A/S, acting by and through Jørgen :
Hauschildt, solely in his capacity as Foreign :
Representative thereof, :
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 Plaintiff, :
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 v. :
 :
 SINICWAY INTERNATIONAL :
 LOGISTICS LTD., :
 :
 Defendant. :
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THE CONTAINERSHIP COMPANY :
(TCC) A/S, acting by and through Jørgen :
Hauschildt, solely in his capacity as Foreign :
Representative thereof, :

16-cv-5762 (ALC)

Plaintiff, :

v. :

WINAIR LOGISTICS, INC., :
d/b/a Airgoal Int'l USA, :

Defendant. :

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THE CONTAINERSHIP COMPANY :
(TCC) A/S, acting by and through Jørgen :
Hauschildt, solely in his capacity as Foreign :
Representative thereof, :

16-cv-5559 (ALC)

Plaintiff, :

v. :

ORIENT STAR TRANSPORT :
INT'L LTD., :

Defendant. :

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THE CONTAINERSHIP COMPANY :
(TCC) A/S, acting by and through Jørgen :
Hauschildt, solely in his capacity as Foreign :
Representative thereof, :

16-cv-5620 (ALC)

Plaintiff, :

v. :

SEAPASSION LOGISTICS, INC., :

Defendant. :

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THE CONTAINERSHIP COMPANY :
(TCC) A/S, acting by and through Jørgen :
Hauschildt, solely in his capacity as :
Foreign : Representative thereof, :

16-cv-5645 (ALC)

OPINION & ORDER

Plaintiff

v.

STD LOGISTICS LTD.,

Defendant.

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ANDREW L. CARTER, JR., District Judge:

INTRODUCTION

Before the Court are Proposed Findings of Fact and Conclusions of Law (“Proposed Findings”) issued by United States Bankruptcy Judge James L. Garrity, Jr. addressing Cross Motions for Summary Judgment stemming from the adversary proceedings initiated by The Containership Company (TCC), A/S (hereinafter, “Plaintiff” or “TCC”) against various shippers (hereinafter, “Defendants”). Judge Garrity recommends that this Court grant Defendants’ Motion for Summary Judgment and deny Plaintiff’s Motion for Summary Judgment as they apply to each adversary proceeding.

PROCEDURAL HISTORY

On May 31, 2011, TCC’s court-appointed reconstructor, Jørgen Hauschildt (“Hauschildt”), filed a petition in the Bankruptcy Court under chapter 15 of the Bankruptcy code seeking recognition of TCC’s insolvency proceeding pending before the Bankruptcy Division of the Commercial and Maritime Court in Copenhagen, Denmark (the “Danish Insolvency

Proceeding”) as a foreign main proceeding. Proposed Findings of Fact and Conclusions of Law p. 4, ECF No. 1 (“FOF”). Following entry of the Recognition Order, Hauschildt, on behalf of TCC, filed seventy-six (76) Complaints against Defendants, each initiating an adversary proceeding. *Id.* p. 5. Each Complaint contained a single claim – breach of the Service Contract governing the relationship between TCC and the named shipper. *Id.*

On June 20, 2014, Plaintiff filed a Motion for Summary Judgment with respect to each Defendant’s liability. FOF p. 10. Defendants opposed Plaintiff’s Motion and filed a Cross-Motion for Summary Judgment on August 7, 2014. *Id.* pp. 10-11. On October 20, 2014, Plaintiff replied to Defendants’ Opposition and Opposed Defendants’ Cross-Motion. *Id.* On December 19, 2014, Defendants replied to Plaintiff’s Opposition. *Id.*

Judge Garrity issued his Proposed Findings on June 24, 2016. FOF p. 29. The Parties filed their respective Objections to Judge Garrity’s findings on May 12 and May 13, 2016. *See* ECF Nos. 2-3. Responses to the Objections were filed on June 10, 2016. *See* ECF Nos. 4-5. The Proposed Findings are considered fully briefed. After careful consideration, Judge Garrity’s Proposed Findings are hereby **AFFIRMED**.

BACKGROUND

I. Factual Background¹

In 2010, TCC operated a maritime cargo container shipping business operating between ports in the United States and China. FOF p. 5. TCC entered into services contracts (“Service Contracts”) with various shippers for the 2010-2011 contract year. *Id.* p. 6. Most of the Service Contracts carried an expiration date of April 30, 2011, and all contained a minimum quantity commitment (“MQC”). *Id.* p. 6. If a shipper failed to meet its MQC, the shipper would be required to pay the carrier, TCC, liquidated damages. *Id.* The Service Contracts also allowed

¹ For a more detailed recitation of the facts, see Judge Garrity’s Proposed Findings. ECF No. 1.

either party to terminate the contract with 30 days' notice. *Id.* p. 7. As an alternative to termination, the Service Contracts contemplated modification or restructuring. *Id.*

TCC began shipping voyages on April 17, 2010. FOF p. 8. Defendants claim that TCC's service was wrought with problems from the jump, including issues with the Shanghai International Port Group ("SIPG") pertaining to TCC's chosen port of origin. *Id.* The SIPG threatened to negatively impact shippers who conducted business with TCC. *Id.* Defendants also cite to additional problems such as shortages of cargo containers and truck power, as well as difficulties with booking, equipment, and delays. *Id.* pp. 8-9.

On April 8, 2011, three weeks prior to the April 30, 2011 termination date for most of the Service Contracts, "TCC voluntarily ended its trans-Pacific service and cancelled its four remaining scheduled sailings." FOF p. 9. As of that date, Defendants had yet to meet their MQCs as required by the Service Contracts. *Id.* On the date of termination, TCC initiated the Danish Insolvency Proceedings. *Id.*

After withdrawing all of its previously chartered vessels and terminating all of its employees, TCC sent demand letters to Defendants indicating that they had failed to meet their MQC. FOF p. 10. This litigation stems from Plaintiff's demands for liquidated damages for shortages in MQC requirements, as contemplated by the Service Contracts.

II. Judge Garrity's Findings of Fact and Conclusions of Law

Judge Garrity recommends that this Court find: (1) that the Service Contracts are not void for lack of consideration; (2) that the Defendants' performance was not excused by the force majeure provisions of the contracts; (3) that the filing of these adversary proceedings by TCC did not constitute a violation of the implied covenant of good faith and fair dealing under the contracts; (4) that genuine issues of material fact preclude summary judgment on the

Defendants' claims that TCC fraudulently induced the Defendants to enter into the Service Contracts or that TCC materially breached the contracts in the conduct of its shipping service; and (5) that, under the plain language of the Service Contracts, TCC's voluntary termination of its trans-Pacific service in April 2011 relieved the Defendants of their remaining MQC obligations. *See* FOF p. 2.

DISCUSSION

District Courts have the authority to refer civil proceedings arising under or related to cases under title 11. 28 U.S.C. §§ 157(a), 1334(a)-(b).² In non-core proceedings, those which are merely related to a case under title 11,³ it is typical practice for bankruptcy courts to submit proposed findings of fact and conclusions of law to the district court. 28 U.S.C. §§ 157(b)(1)-(c)(1); *see In re Tower Automotive, Inc.*, 361 B.R. 660, 665 n.1 (S.D.N.Y. 2007); *In re Coudert Brothers LLP*, 2017 WL 1944162, at *2 (S.D.N.Y. May 10, 2017). Upon receipt of a bankruptcy judge's proposed findings and conclusions, and, after reviewing *de novo* any matters to which a party timely and specifically objects, a district court can enter final judgments. *In re Lyondell Chemical Co.*, 467 B.R. 712, 718 (S.D.N.Y. 2012); *see* Fed. R. Bankr. P. 9033. Here, both Plaintiff and Defendants filed Objections to Judge Garrity's Proposed Findings.

On *de novo* review of the record, the Court adopts Judge Garrity's conclusion that summary judgment should be granted in favor of Defendants due to Plaintiff's voluntary cessation of its trans-Pacific service in April of 2011. Specifically, the Court agrees with Judge Garrity that Plaintiff effectively terminated the Service Contracts when it informed customers that service would be discontinued and no longer had the vessels necessary to transport goods in

² This case was referred to the Bankruptcy Court pursuant to Amended Standing Order of Reference, No. M10-468, 12 Misc. 00032 (S.D.N.Y. Jan. 31, 2012) (Preska, C.J.).

³ A "breach-of-contract action by a debtor against a party to a pre-petition contract, who has filed no claim with the bankruptcy court, is non-core." *In re Orion Pictures Corp.*, 4 F.3d 1095, 1102 (2d Cir. 1993).

accordance with the Service Contracts. FOF p. 20. Further this Court agrees with Judge Garrity's conclusion that Plaintiff deprived Defendants of the opportunity to meet their MQC requirements and thus excused Defendants from complying with any remaining MQCs as outlined in the Service Contracts. *Id.* p. 23.

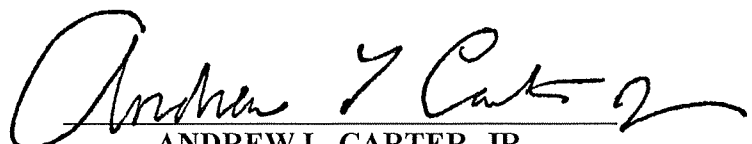
Neither set of Objections provide any basis to reject or alter any of Judge Garrity's findings or conclusions, nor do they highlight evidence not considered. While Plaintiff suggests that Judge Garrity erroneously interpreted various terms in the Service Contracts, this Court disagrees. Pl. Obj., ECF No. 3, p. 15. Plaintiff has failed to raise a genuine issue of material fact as to Defendants' obligations under the Service Contracts. As such, this Court is disinclined to acquiesce to Plaintiff's requests for a ruling that Defendants' performance was not excused by TCC's conduct, or, in the alternative, a trial. *Id.* pp. 34-35.

CONCLUSION

After conducting the required *de novo* review of the record and applicable law, the Court accepts Judge Garrity's Proposed Findings of Fact and Conclusions of Law in full. Plaintiff's Motion for Summary Judgment in each of these adversary proceedings is hereby **DENIED**. Defendants' Motion for Summary Judgment in each of these adversary proceedings is hereby **GRANTED**. The Clerk of Court is respectfully directed to enter judgment and close the case.

SO ORDERED.

Dated: September 17, 2019
New York, New York


ANDREW L. CARTER, JR.
United States District Judge