UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

Ohio Star Transportation LLC,

Plaintiff,

v. **Case No. 2:09-cv-00261**

Roadway Express, Inc., **Judge Michael H. Watson**

Defendant.

OPINION AND ORDER

Plaintiff Ohio Star Transportation LLC ("Plaintiff") brings this federal question claim against Defendant Roadway Express, Inc. ("Defendant") for damages to a shipment of used computers transported by Defendant from Draper, Utah to Columbus, Ohio. The action is now before the Court on Defendant's Motion for Summary Judgment. (Doc. 22.) For the reasons that follow, the Court **GRANTS** Defendant's Motion for Summary Judgment.

I. FACTS

Plaintiff and Defendant contracted for Defendant to transport a shipment of used computers for Plaintiff. Plaintiff separated the computers onto two pallets and shrink-wrapped the pallets and computers before the shipment was picked up by Defendant. At the time it accepted the computers, Defendant issued Plaintiff a clean Bill of Lading that stated "ROADWAY'S TARIFFS LIMIT ITS LIABILITY. ALL FREIGHT RECEIVED IN GOOD ORDER AND SHRINKWRAP/BANDING INTACT UNLESS NOTED BELOW." (Def.'s Mot. for Summ. J. Ex. 1 Sub-Ex. D (Doc. 22-1).) There were no

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notes below indicating a problem with the packaging.

During shipment, some of the computers on one of the pallets broke through the shrink-wrapping and slid off the pallet. When Plaintiff's agent examined the shipment upon arrival in Columbus, Ohio, the agent took pictures of the strewn computers. The agent refused all 112 computers on the pallet with the torn shrink-wrap, but accepted the other pallet of computers.

Plaintiff then filed suit against Defendant, seeking to recover $34,681.92 for damage to all 112 computers on the refused pallet under 49 U.S.C. § 14706 (the "Carmack Amendment"). Defendant now moves for summary judgment pursuant to Federal Rule of Civil Procedure 56(c).

II. SUMMARY JUDGMENT

The standard governing summary judgment is set forth in Federal Rule of Civil Procedure 56(c), which provides:

> The judgment sought should be rendered if the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law.

FED. R. CIV. P. 56(c).

The Court may grant summary judgment if the opposing party fails to make a showing sufficient to establish the existence of an element essential to that party's case and on which that party will bear the burden of proof at trial. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). *See also Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 588 (1986); *Petty v. Metro. Gov't of Nashville-Davidson County*, 538 F.3d 431, 438-39 (6th Cir. 2008). It is "[o]nly disputed *material* facts, those 'that

might affect the outcome of the suit under governing law,' [that] will preclude summary judgment." *Daugherty v. Sajar Plastics, Inc.*, 544 F.3d 696, 702 (6th Cir. 2008) (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986)) (emphasis added).

When reviewing a summary judgment motion, the Court must draw all reasonable inferences in favor of the nonmoving party, who must set forth specific facts showing that there is a genuine issue of material fact for trial, and the Court must refrain from making credibility determinations or weighing the evidence. *Reeves v. Sanderson Plumbing Prods., Inc.*, 530 U.S. 133, 150–51 (2000); *Henderson v. Walled Lake Consol. Sch.*, 469 F.3d. 479, 487 (6th Cir. 2006). The Court disregards all evidence favorable to the moving party that the jury would not be not required to believe. *Reeves*, 530 U.S. at 150–51. Summary judgment will not lie if the dispute about a material fact is genuine; "that is, if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson*, 477 U.S. at 248; *Barrett v. Whirlpool Corp.*, 556 F.3d 502, 511 (6th Cir. 2009).

Thus, the central issue is "'whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law.'" *Hamad v. Woodcrest Condo. Ass'n*, 328 F.3d 224, 234–35 (6th Cir. 2003) (quoting *Anderson*, 477 U.S. at 251–52).

III. ANALYSIS

Defendant moves for summary judgment on Plaintiff's claim on three grounds. First, Defendant argues Plaintiff cannot prove the elements of a prima facie case for carrier liability for loss under the Carmack Amendment. Second, Defendant asserts that any damage to the shipment in question was caused by Plaintiff's own negligence

in the packaging, handling, and loading of the goods, and thus Plaintiff is precluded from recovering amounts for Defendant's alleged damaging of the computers. Third, Defendant asserts that summary judgment is proper as to the amount of any possible damages due to Plaintiff.

A. Establishment of a Prima Facie Case

Defendant asserts, and Plaintiff does not deny, that the claim in this case arises under the Carmack Amendment. To establish a prima facie case for carrier liability for loss under the Carmack Amendment, a plaintiff must present evidence of (1) delivery of goods to carrier in good condition, (2) arrival to the consignee in damaged condition, and (3) the amount of damages. *Plough, Inc. v. Mason & Dixon Lines*, 630 F.2d 468, 470 (6th Cir. 1980) (citing *Mo. Pac. R.R. Co. v. Elmore & Stahl*, 377 U.S 134, 138 (1964)); *Great W. Cas. Co. v. Flandrich*, 605 F.Supp. 2d 955, 966 (S.D. Ohio 2009) (citing *Mo. Pac. R.R. Co.*, 377 U.S. at 138). Defendant challenges the evidence presented for all the elements but focuses on the first element. Defendant asserts that despite requests for proof of the computers' good condition at time of delivery to Plaintiff, Plaintiff has not provided any documents showing the computers were in good condition at the time of delivery. (Def.'s Mot. for Summ. J. Ex. 1 ¶ 10.) Instead, Plaintiff presents the Bill of Lading provided at the deposit of goods with Defendant to prove the original condition of the computers at issue. But Defendant argues, and the Court agrees, that due to the packaging of the goods and the resultant inability of Defendant to inspect the computers at the time of deposit, this Bill of Lading does not constitute prima facie evidence of delivery of goods to Defendant in good condition.

As a general rule, a shipper's burden of proof that goods were delivered to a

carrier in good condition is met by the proffer of a clean bill of lading. *A.I.G. Uru. Compania de Seguros, S.A. v. AAA Cooper Transp.*, 334 F.3d 997, 1003 (11th Cir. 2003); *Travelers Indem. Co. of Ct. v. Cent. Transp., Inc.*, No. 2:07-cv-14096, 2008 WL 4793404, at *5 (E.D. Mich. Nov. 3, 2008) ("A 'statement in the bill of lading as to "apparent good order" [, however,] is prima facie evidence . . . that, as to parts which were open to inspection and visible, the goods were in good order at the point of origin.'' (alterations in original) (internal citations omitted)). This proffer, however, is only effective if the cargo at issue was packaged in a way that allowed its inspection by the carrier. *See Travelers Indem. Co. of Ct.*, 2008 WL 4793404, at *5; *Sec. Ins. Co. of Hartford v. Old Dominion Freight Line, Inc.*, 391 F.3d 77, 83 (2d Cir. 2004) ("A shipper's burden of proving that the goods were delivered to the carrier in good condition may be satisfied by the proffer of a clean bill of lading for the shipment, provided that the cargo was packaged in a way that permitted its inspection.").

In the case sub judice, Plaintiff has not shown the computers were packaged in a way that allowed for their inspection by Defendant. Indeed, Plaintiff does not deny the computers were delivered to the carrier pre-wrapped in shrink-wrap. The contents were not visible or open to inspection by the carrier. In such a situation, a clean bill of lading does not meet a plaintiff's burden of proof on the element of good condition at deposit; instead, a plaintiff must present additional evidence of the condition of the cargo. *Travelers Indem. Co. of Ct.*, 2008 WL 4793403, at *6; *Old Dominion Freight Line, Inc.*, 391 F.3d at 84; *AAA Cooper Transp.*, 334 F.3d at 1004 ("When the shipment at issue is a sealed container, . . . [t]he bill of lading, by itself, is never sufficient to establish a prima facie case."). In the instant case, Plaintiff presents only the clean Bill of Lading

provided by Defendant and an affidavit of Plaintiff's agent stating computers packaged on the other pallet were resold and, based on discussions with the purchaser, have operated without problems. This statement, however, does not provide evidence of the condition of the goods at issue at the time of deposit to Defendant; rather, the statement speaks to the condition of other goods post-delivery. Plaintiff presents no other evidence of the computers' condition at the time of tender to Defendant.

Instead, Plaintiff asserts that the condition of the goods at time of delivery to carrier is a question of fact to be established at trial. This assertion belies a misunderstanding as to the evidence that must be established as of the time of the motion for summary judgment. Discovery has occurred and closed; it is no longer sufficient for Plaintiff to allege, without evidence to present in support, that the computers were in good condition at deposit to Defendant. Rather, Plaintiff must provide evidence of the good condition of the computers which, when taken in the light most favorable to Plaintiff, could support a verdict by a reasonable jury in favor of Plaintiff. Plaintiff has not done so, and thus has failed to meet its burden as to the first element of a claim for carrier liability for loss. Because Plaintiff has not presented a prima facie case, Defendant is entitled to summary judgment on the claim. As Plaintiff's failure to establish the first element of the prima facie case is dispositive, Defendant's arguments regarding the other elements are rendered moot.

B. Defendant's remaining arguments

Defendant's remaining arguments are now moot, but even if Plaintiff had presented sufficient evidence for all elements of the claim, the claim would fail due to the "shipper defense". This affirmative defense precludes a plaintiff's recovery if the

damage to the shipment was caused by the plaintiff's own negligence in handling, packaging, and loading the goods. *See Mo. Pac. R.R. Co.*, 377 U.S. at 137 (Under the Carmack Amendment, a carrier is liable for damage to goods unless it can show the damage was caused by the act of God, the public enemy, an act of the shipper, public authority, or the inherent nature of the goods.); *accord Great W. Cas. Co.*, 605 F.Supp. 2d at 965. Defendant raises this argument, but Plaintiff does not respond, thereby waiving its ability to challenge the argument and effectively conceding the point. Thus, even if the Plaintiff met its evidentiary burden, Plaintiff's recovery would still be precluded.

Finally, Defendant argued that if the Court decided Defendant was liable for damage to the computers, which Defendant did not admit, then any recovery by Plaintiff must be limited to $312.50, and thus summary judgment is also appropriate as to the damages due. Plaintiff also fails to respond to this argument.

The agreement between Plaintiff and Defendant states that "[a]rticles which are subject to released or declared value provisions in the National Motor Freight Classification or any subsequent Classification applicable to release rates shall be considered to be released at the lowest released or declared value stated therein." (Def.'s Mot. for Summ. J. Ex. 1 Sub-Ex. A ¶ 17.) The computers were classified as NMFC Item # 116030-1, Class 92.5. (*Id.* at Sub-Ex. B.) The released value for this classification is $5.00 per pound. (*Id.* at Sub-Ex. C.) Defendant states, and Plaintiff does not contest, that the total weight of the 112 computers is approximately 1,750 pounds. Defendant concedes that four of the 112 computers were damaged. Plaintiff asserts that all the computers were damaged. Plaintiff offers that its agent took pictures

of the strewn computers and that this constituted an inspection of the computers which, combined with "common sense", provides evidence that all computers were damaged. The Court is not convinced. Such "common sense" is not evidence sufficient to withstand a summary judgment motion. Instead, the only inspection that presents evidence of certain damage is that of Defendant's expert, and that inspection found that only four of the 112 computers have definite damage.[1] These four computers constitute 3.57% of the total weight of the 112 computers, and thus have an approximate weight of 62.5 pounds. As a result, Defendant's liability, were it to have been found to be liable, would be limited to $312.50 (or $5.00 for every pound).

IV. DISPOSITION

Based on the above, the Court **GRANTS** Defendant's summary judgment motion. (Doc. 22). The Court **DISMISSES** Plaintiff's claims **WITH PREJUDICE**.

The Clerk shall remove Doc. 22 from the Court's pending motions list.

IT IS SO ORDERED.

MICHAEL H. WATSON, JUDGE
UNITED STATES DISTRICT COURT

[1] Plaintiff challenges this report stating that the report is merely a recitation of statements made by Defendant. However, upon inspection of the report, while the description of Plaintiff's refusal is merely a recitation of a statement made by Defendant, the finding that "[f]our computers show severe cabinet damages" appears to be the inspector's own findings. (Def.'s Mot. for Summ. J. Ex. 1 Sub-Ex. E.)