

PREPARED BY THE COURT

HANA TRADING CORP.,

Plaintiff,

v.

GUY CARDINALE, JUTALIA
RECYCLING, INC., WORLD
LOGISTICS USA, INC., WORLD
LOGISTICS USA, LLC., and OLYMPIAD
LINE, LLC,

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: BERGEN COUNTY

DOCKET NO.: **BER-L-8213-17**

Civil Action

OPINION

Argued: March 13, 2020
Decided: March 22, 2020

HONORABLE ROBERT C. WILSON, J.S.C.

Matthew Jeon, Esq. appearing on behalf of plaintiff Hana Trading Corp. (from Matthew Jeon, P.C.)

William D. Bierman, Esq, Thomas C. Martin, Esq. and Rick A. Steinberg, Esq. appearing on behalf of defendants World Logistics USA, LLC, and Olympiad Line, LLC (from Price, Meese, Shulman & D'Arminio, P.C.)

Richard L. Furman, Esq. appearing on behalf of defendants World Logistics USA, LLC, and Olympiad Line, LLC (from the Furman Law Offices, LLC)

PROCEDURAL HISTORY

THIS MATTER comes before the Court pursuant to a Motion for Summary Judgment, filed on or about February 14, 2020 by Price, Meese, Shulman & D’Arminio P.C. and the Furman Law Offices, LLC on behalf of defendants World Logistics USA, LLC and Olympiad Line, LLC (“Defendants”). Matthew Jeon, Esq. counsel for Plaintiff Hana Trading Corp. (“Plaintiff”) opposes this motion. Defendants Guy Cardinale and Jutalia Recycling, Inc. have defaulted in this matter.

FACTUAL BACKGROUND

Plaintiff Hana Trading Corp. (“Plaintiff”) is in the business of exporting scrap materials from the United States to Asia. Defendant World Logistics Group is a trade style¹ used to promote the services of the Defendants. Defendant World Inc. is a licensed interstate trucking company. It is not a freight forwarder and does not arrange for the shipment of cargo by water. Defendant World LLC is a property broker whose sole business activity is to arrange for interstate trucking of property on behalf of shippers engaged in interstate commerce. World LLC does not own or operate trucking vehicles or provide trucking services. Neither World Inc. nor World LLC was in physical possession of the goods at any time.

Defendant Olympiad is a non-vessel operating common carrier, licensed to act as a carrier of goods by water to and from the ports of the United States by the United States Federal Maritime Commission. Olympiad is not a freight forwarder and solely arranges for the shipment of cargo by maritime vessels. All services provided to Hana in connection with the ocean shipment of Hana’s Cargo were performed by Olympiad. Olympiad did not see or have physical

¹ A trading style is a term used when a business chooses to trade under a different name than the registered company name. The trading style is never officially registered, unlike a trademark.

control of the containers when picked up, delivered to Jutalia for loading and sealing or when delivered to Mahar Terminal when loaded.

In or around October 2016, Yong Tae Kim (“Kim”) was contacted by a company known as Jutalia Recycling (“Jutalia”) who offered to sell Hana scrap batteries. Hana had no prior dealings with Jutalia. Hana agreed to purchase these batteries for export to South Korea. The purchase price was \$0.36 per pound of batteries. Hana accepted the weight of batteries that Jutalia represented to them on trust. Jutalia and its agent, Guy Cardinale (“Cardinale”), misrepresented the contents of the containers. On October 21, 2016, Hana traveled to New Jersey to Jutalia’s yard to observe the batteries it was purchasing being loaded into containers, but instead Hana failed to actually observe the containers being loaded. Hana merely relied upon fraudulent invoices, packing slips and sales orders issued by Jutalia and Cardinale to pay Jutalia \$884,463.12. Hana wired an additional \$656,1111.96 to Jutalia’s TD Bank Account. On November 23, 2016, Hana again traveled to Jutalia’s warehouse in New Jersey to attempt to observe containers being loaded with batteries. Hana was again unable to observe it. Despite never seeing the batteries involved in the transaction, Hana purchased and paid for the batteries in forty-five (45) shipping containers.

At no point was Olympiad, World Inc. or World LLC present when any of the containers in question were loaded. Hana knew that once the containers were sealed, they could not be opened until delivered to the party to which the containers were shipped. Hana did not weigh the batteries itself. Jutalia hired Ace Drayage (“Ace”) to pick up the empty containers in which the batteries were to be loaded for shipment. The batteries were loaded into shipping containers by Jutalia. They were then sealed by Jutalia. After loading, Ace delivered the loaded sealed containers to Mahar Terminal. Olympiad did not see or have physical control of the containers

when picked up empty, delivered to Jutalia for loading and sealing, or delivery to Maher Terminal when loaded.

Hana itself provided Olympiad information as to the weights and quantities of the batteries being shipped through a series of emails sent to Olympiad. Olympiad relied upon information provided by Hana in describing Hana's cargo, its quantity, weight, and other particulars. The terms and conditions contained on Olympiad's bill of lading state in part that "the shipper, whether principal or agent, guarantees the accuracy, of the particulars, weights, marks and description of the goods furnished to the Carrier." As a condition for licensing, the Federal Maritime Commission ("FMC") require all NVOCC's to publish a tariff which sets forth, among other information, the NVOCC's terms and conditions. Olympiad relied on the accuracy and correctness of the information provided by Hana when preparing its bills of lading.

Hana had utilized the services of World Inc. for prior shipments of batteries over a period of five (5) years. In connection with the prior shipments, World Inc. provided trucking services for Hana. World Inc. did not provide any trucking services in connection with the battery shipments which are the subject of this complaint. Ace was the trucker that transported the containers in which Jutalia loaded the batteries. When the dangerous goods forms for the battery shipments were issued by Olympiad it mistakenly overlooked correcting the name of the "Haulier" on the template from World Logistics to that of Olympiad. Olympiad booked the shipments of the batteries with ocean carriers based on the information provided by Hana including the weight of the batteries to be shipped.

Olympiad issued Booking Confirmations which contained the specifics of the goods that were booked, including the weight information provided by Hana. Olympiad prepared ocean bills of lading based on the information provided by Hana as to the weights of the batteries,

among other pertinent details. The containers with the batteries, among other pertinent details. The containers with the batteries were delivered to Maher Terminal by Ace. When the containers were delivered to Maher Terminal by Ace, Maher Terminal issued trailer interchange receipts (TIRs) to the driver of the truck. The TIRs included the gross weight of the containers. They were then submitted to Ace's corporate office for invoicing. Olympiad did not receive copies. When the containers arrived in South Korea, Hana maintains the containers only contained a fraction of the batteries that were allegedly packed.

SUMMARY JUDGMENT STANDARD

The New Jersey procedural rules state that a court shall grant summary judgment “if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law.” R. § 4:46-2(c). In Brill v. Guardian Life Insurance Co., 142 N.J. 520 (1995), the Supreme Court set forth a standard for courts to apply when determining whether a genuine issue of material fact exists that requires a case to proceed to trial. Justice Coleman, writing for the Court, explained that a motion for summary judgment under R. § 4:46-2 requires essentially the same analysis as in the case of a directed verdict based on R. § 4:37-2(b) or R. § 4:40-1, or a judgment notwithstanding the verdict under R. § 4:40-2. Id. at 535-536. If, after analyzing the evidence in the light most favorable to the non-moving party, the motion court determines that “there exists a single unavoidable resolution of the alleged dispute of fact, that issue should be considered insufficient to constitute a ‘genuine’ issue of material fact for purposes of R. § 4:46-2.” Id. at 540.

RULE OF LAW AND DECISION

I. Defendants are Separate Legal Entities

Plaintiff's amended complaint combines Defendants World Inc., World LLC and Olympiad into one entity, World Logistics Group. World Logistics Group is not one entity, but rather just a marketing banner under which the three are grouped. Because defendants are not one legal entity, but rather three separated entities, one cannot be responsible for the other's duties or liabilities. Lyon v. Barrett, 89 N.J. 294, 300 (1982).

In order to pierce the corporate veil, the moving party must establish two elements: 1. the subsidiary was dominated by the parent corporation, and 2. That adherence to the fiction of separate corporate existence would perpetrate a fraud or injustice. Verni ex rel. Bernstein v. Harry M. Stevens, Inc., 387 N.J. Super 160, 199-200 (2003). Simply alleging that the companies are related is not sufficient to pierce the corporate veil.

World Inc., World LLC and Olympiad all set up separate corporate structures for separate business purposes. None of the defendants is a freight forwarder. World Inc. is a trucking company and has no authority under law to transport cargo by sea. Despite being an authorized forwarder by land, World Inc. did not provide trucking for the containers for the land transfer from Jutalia's warehouse to Maher Terminal.

World LLC is a domestic surface property broker. World LLC does not have a freight forwarding license of any kind. World LLC could not have rendered any ocean freight forwarding services on behalf of Plaintiff.

Olympiad acted in its capacity as non-vessel operating common carrier (“NVOCC”). NVOCC’s, among other capabilities, can issue bills of lading and other shipping documents, assist in clearing shipments with U.S customs, and leasing shipping containers. Olympiad was the only one of the three defendants that provided services in connection with the shipment of Hana’s batteries. However by defendant’s own admission, Olympiad did not load the batteries into the containers, nor did they have any ability to independently verify the weight of the containers.

For the reasons stated above, defendant’s motion for Summary Judgment as to World Inc. and World LLC must be granted.

II. The Defendants Did Not Breach Their Fiduciary Duty to Hana

In order to establish a claim for breach of fiduciary duty, plaintiff must demonstrate: (a) defendants owed it a duty of care, (b) defendants breached that duty, (c) plaintiff was injured by defendants’ breach, and (d) the defendants caused the injury. Namerow v. Pediatricare Accocs., LLC, 461 N.J. Super. 133, 218 A.3d 839 (Ch. Div. 2018).

Contracting parties do not owe each other a general duty of care or fiduciary duty unless that duty is independently imposed by law. Saltiel v. GSI Consultants, Inc., 170 N.J. 297, 309; 788 A.2d 268 (2002). This rule has been specifically applied to NVOCC’s.

Hana itself did not ensure that it was receiving the correct quantity of batteries that it was purchasing for Jutalia. Hana twice traveled to New Jersey in an attempt to confirm that the numbers given to it by Jutalia were accurate. Despite being at Jutalia’s facility, Hana itself failed to observe the containers being packed. Hana cannot then transfer the responsibility for confirming that it was receiving the correct amount of batteries onto the Defendants who had no ability or obligation to do so.

Olympiad had no way of knowing that the information it had received from Hana was false. Olympiad did not have any prior access to the containers when they were loaded by Jutalia and they were then transported by Jutalia's trucker and loaded onto the vessel. The fact that Olympiad did not receive the gate tickets that would have shown a weight discrepancy between what Hana paid for and what was actually on the ship is not evidence of a breach of fiduciary duty.

a. Bill of Lading Contracts are Enforceable as Written

Olympiad issued bills of lading and other shipping documents, which described the quantity, weight, and other particulars of Hana's cargo. The front of the bills of lading contain a legend which states that the goods being shipped are subject to terms and conditions written on the bill of lading. One of the terms and conditions contained on the bill of lading state that the shipper is guaranteeing the accuracy of the goods furnished to the carrier. Hana was identified as the shipper on the bill of lading. Olympiad's tariff also contains its bill of lading terms and conditions as required by the FMC.

Federal law also sets out the liability relationship between shipper and carrier. The Carriage of Goods by Sea Act ("COGSA") states that:

The shipper shall be deemed to have guaranteed to the carrier the accuracy at the time of shipment of the marks, number, quantity, and weight, as furnished by him; and the shipper shall indemnify the carrier against all loss, damages, and expenses arising or resulting from inaccuracies in such particulars. The right of the carrier to such indemnity shall in no way limit his responsibility and liability under the contract of carriage to any person other than the shipper.

46 U.S.C. § 1303(5).

The interpretation of maritime contracts for the transportation of goods is governed by federal law. A bill of lading is the contract that governs that transportation. Norfolk Southern Railway Co. v. Kirby, 543 U.S. 14, 22-23 (2004). The purchase of a

bill of lading is a commercial transaction between professional parties. CIA Int'l de Seguros, S.A. v. Barber Lines, 1989 A.M.C. 824, 827 (S.D. Fla. 1988). The Federal Maritime Commission requires that the terms and conditions located on the bill of lading are also written on the tariff, which has the force of law. Southern New England Telephone Co. v. Global NAPs Inc., 624 F.3d 123 (2d Cir. 2010). The tariff binds both the carrier and the shipper by its terms. Pittsburgh C.C. v. St. L. R. Co. v. Fink, 250 U.S. 577, 581 (1919). Tariffs exclusively lay out the rights and liabilities of the contracting parties. Marcus v. AT&T Corp., 138 F.3d 46, 56 (2d Cir. 1998).

In the instant case, both the bill of lading and the tariff set out the responsibilities and liabilities of each party. The bill of lading and tariff both state that Olympiad has no liability if the weights are incorrect and that they are relying solely on the measurements provided to them by Hana Trading. Hana as the purchaser did not independently verify the information it received from Jutalia. At no point did any of the defendants involved in the instant motion have the ability to verify the weight of the containers and they were not involved in the loading, sealing or transportation of the containers. Olympiad relied on the accuracy of the information provided by Hana when preparing its bills of lading.

The only time prior to arriving in Korea that the discrepancy in weight was noted was on the In Gate tickets obtained by Ace Drayage. Ace never relayed this information to Olympiad. There was no way for Olympiad to be aware of the discrepancy in weight and therefore Olympiad did not breach any duty to Hana.

For the aforementioned reasons, Defendants Motion for Summary Judgment is hereby **GRANTED.**