United States District Court
Southern District of Texas
ENTERED
November 01, 2024
Nathan Ochsner, Clerk

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

HAPAG-LLOYD (AMERICA), LLC,	§	
	§	
Plaintiff,	§	
	§	
v.	§	
	§	No. 4:24-cv-2752
AMERICAN CONTAINER LINE, INC.,	§	
	§	
	§	
Defendant.	§	
	§	

MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION ON PLAINTIFF'S MOTION TO REMAND AND DEFENDANT'S MOTION TO DISMISS[1]

This is a contract dispute over shipping container storage charges. Pending before this Court are Plaintiff Hapag-Lloyd (America), LLC's ("Plaintiff" or "HL") motion to remand under 28 U.S.C. § 1447(c), ECF No. 7, and Defendant American Container Line, Inc.'s ("Defendant" or "ACL") motion to dismiss under Rules 12(b)(1) and 12(b)(3) of the Federal Rules of Civil Procedure. ECF No. 4. Based on a careful review of the pleadings, motions, and applicable law, the Court finds the case was improperly removed from state court and therefore recommends granting Plaintiff's motion to remand and denying Defendant's motion to dismiss as moot.

[1] On August 15, 2024, the District Judge to whom this case is assigned referred all potentially dispositive motions to this Court for a report and recommendation in accordance with 28 U.S.C. § 636(b). Order, ECF No. 5.

I. BACKGROUND

Plaintiff originally filed this case in Harris County Civil Court on May 29, 2024, alleging breach of contract and quantum meruit. ECF No. 1-3 at 1, 4. Between November 2020 and February 2022, Plaintiff, a global liner shipping company, entered into a series of carriage contracts with Defendant, a full container worldwide service provider. *Id.* ¶¶ 6-8. The contracts required the "Merchant" to pay any demurrage charges resulting from use of the containers beyond the "free" time specified. *Id.* ¶ 9. In August 2020, Plaintiff shipped a container from Atlanta, Georgia to Hong Kong. *Id.* Although the container was delivered in September 2020, it remained unclaimed for six months, accruing demurrage charges. *Id.* Plaintiff seeks actual damages and reasonable and necessary attorneys' fees, as well as costs incurred in prosecuting this lawsuit. *Id.* ¶ 38.

On July 24, 2024, Defendant removed the suit to federal court, arguing that this Court has original, federal question jurisdiction over Plaintiff's contract claims. ECF No. 1 ¶ 3. Defendant subsequently filed a motion to dismiss, challenging the Court's subject matter jurisdiction to hear this case under Rule 12(b)(1) and seeking dismissal for improper venue under 12(b)(3).[2] ECF No. 4 at 5.

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[2] Because the Court determines that remand is warranted, it does not address the motion to dismiss. *Mem'l Hermann Hosp. Sys. V. Braidwood Mgmt., Inc.*, Civ. Action No. H–12–3453, 2013 WL 2152118, at *1 ("Because the Court concludes that the case must be remanded, it does not address the Motions to Dismiss.").

II. LEGAL STANDARDS FOR REMOVAL AND REMAND.

"Federal courts are courts of limited jurisdiction." *Gunn v. Minton*, 568 U.S. 251, 256 (2013) (quoting *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994)). They possess "only that power authorized by Constitution and statute." *Gunn*, 568 U.S. at 256 (quoting *Kokkonen*, 511 U.S. at 377). As a general matter, defendants may remove to federal court those state court civil actions over which the federal courts would have original jurisdiction. *See* 28 U.S.C. § 1441(a); *Barker v. Hercules Offshore, Inc.*, 713 F.3d 208, 228 (5th Cir. 2013). Two principal categories of cases over which district courts have original jurisdiction, and thus removal jurisdiction, are diversity and federal question cases. *See* 28 U.S.C. §§ 1331, 1332.

There is a third category of cases where "[t]he district courts shall have original jurisdiction, exclusive of courts of the States," namely "[a]ny civil case of admiralty or maritime jurisdiction, saving to suitors in all cases all other remedies to which they are otherwise entitled." 28 U.S.C. § 1333. Despite the preceding "exclusive" language, the "saving to suitors" clause allows plaintiffs to "elect to bring such claims in state rather than federal court." *Ibarra v. Port of Hous. Auth. of Harris Cnty.*, 526 F. Supp. 3d 202, 211 (S.D. Tex. 2021) (emphasis added) (internal quotation marks omitted) (quoting *In re Eckstein Marine Serv., L.L.C.*, 672 F.3d 310, 315 (5th Cir. 2012)). Further, "because general maritime-law claims do not 'arise

under' the laws of the United States, *see Am. Ins. Co. v. 356 Bales of Cotton*, 26 U.S. 511, 512 (1828), the longstanding rule in this and other circuits has been that admiralty and general maritime claims filed in state court are removable only in the presence of diversity of citizenship or a federal question other than the maritime nature of the claims." *Ibarra*, 526 F. Supp. 3d at 211 (citing *Barker*, 713 F.3d at 219-20 (internal citation omitted)); *Clear Lake Marine Ctr., Inc. v. Leidolf*, Civ. Action No. H–14–3567, 2015 WL 1876338, at *1 (Apr. 22, 2015) (citing *Barker*, 713 F.3d at 219-20 (internal citation omitted)).

However, "[b]eginning with *Ryan v. Hercules Offshore, Inc.*, 945 F. Supp. 2d 772 (S.D. Tex. 2013), some courts in this circuit have interpreted Congress's 2011 clarification of [28 U.S.C. § 1441] as having changed this longstanding rule." *Clear Lake*, 2015 WL 1876338, at *1 (first citing *Wells v. Abe's Boat Rentals Inc.*, No. H–13–1112, 2013 WL 3110322 (S.D. Tex. June 18, 2013); then citing *Carrigan v. M/V AMC AMBASSADOR*, No. H–13–03208, 2014 WL 358353 (S.D. Tex. Jan. 31, 2014); and then citing *Exxon Mobil Corp. v. Starr Indem. & Liab. Co.*, No. H–14–1147, 2014 WL 2739309, at *2 (S.D. Tex. June 17, 2014)). The 2011 "clarification" or amendment eliminated the first sentence of the former § 1441(b) which stated: "Any civil action of which the district courts have original jurisdiction founded on a claim or right under the Constitution, treaties or laws of the United States shall be removable without regard to the citizenship or residence of the parties." 28 U.S.C.

§ 1441(b) (West 2006). "[T]he *Ryan* opinion concluded that the amendment…eliminated the requirement of a separate jurisdictional trigger for maritime cases." *Ibarra*, 526 F. Supp. 3d at 214 (citing *Figueroa v. Marine Inspection Servs.*, 28 F. Supp. 3d 677, 680 (S.D. Tex. 2014)). "In other words, the *Ryan* court concluded that, after the amendment, admiralty claims were removable, even in the absence of diversity of citizenship or some other federal question…" *Id.* (citing 945 F. Supp. 2d at 774-78).

But a "'growing chorus' of district courts, including several in [the Southern District of Texas] have rejected the reasoning in *Ryan* and have reaffirmed that general maritime claims are not removable absent some other independent basis for federal jurisdiction." *Clear Lake*, 2015 WL 1876338, at *2 (collecting cases); *Granite State Ins. Co. v. Chaucer Syndicate 1084 at Lloyd's*, Civ. Action No. H-20-1588, 2020 WL 8678020, at *4 (S.D. Tex. July 14, 2020) (quoting *Sangha v. Navig8 ShipManagement Priv. Ltd.*, 882 F.3d 96, 100 (5th Cir. 2018)) ("[T]he 'vast majority of district courts considering this question have maintained that such lawsuits are not removable.'"). "The majority of courts within the Southern District of Texas, including this court, no longer follow *Ryan*." *Granite State*, 2020 WL 8678020, at *4 (citing *Pelagidis v. Future Care, Inc.*, No. H-17-3798, 2018 WL 2221838, at *7–8 (S.D. Tex. May 15, 2018) (collecting cases)).

Like the majority of courts in this district, this Court is not persuaded that the

2011 amendment brought such monumental change to maritime removal jurisdiction. "Absent controlling precedent to the contrary, the court is not inclined to infer that such a 'revolutionary procedural change ha[s] undesignedly come to pass.'" *Clear Lake*, 2015 WL 1876338, at *2 (quoting *Romero v. Int'l Terminal Operating Co.*, 358 U.S. 354, 369 (1959)).

A plaintiff who believes that a case has been improperly removed may ask the federal court to remand the matter to state court. 28 U.S.C. § 1447(c). The removing party bears the burden of establishing both the existence of federal subject-matter jurisdiction and that removal is otherwise proper. *Vantage Drilling Co. v. Hsin-Chi Su*, 741 F.3d 535, 537 (5th Cir. 2014); *Mumfrey v. CVS Pharmacy, Inc.*, 719 F.3d 392, 397 (5th Cir. 2013) (citing *Manguno v. Prudential Prop. & Cas. Ins. Co.*, 276 F.3d 720, 723 (5th Cir. 2002) (internal citation omitted)). This is "a heavy burden." *Sid Richardson Carbon & Gasoline Co. v. Interenergy Res., Ltd.*, 99 F.3d 746, 751 (5th Cir. 1996). Due to significant federalism concerns, removal statutes must be "construed 'strictly against removal and for remand.'" *Hicks v. Martinrea Auto. Structures (USA), Inc.*, 12 F.4th 511, 515 (5th Cir. 2021) (quoting *Eastus v. Blue Bell Creameries, L.P.*, 97 F.3d 100, 106 (5th Cir. 1996)). All "doubts regarding whether removal jurisdiction is proper should be resolved against federal jurisdiction." *Oesch v. Woman's Hosp. of Tex.*, Civ. Action No. H–11–770, 2012 WL 950109, at *5 (S.D. Tex. Mar. 20, 2012) (citing *Acuna v. Brown & Root, Inc.*,

200 F.3d 335, 339 (5th Cir. 2000)); *see also Oliva v. Chrysler Corp.*, 978 F. Supp. 685, 688 (S.D. Tex. 1997) ("If federal jurisdiction is doubtful, a remand is necessary." (internal quotation marks and citation omitted)).

III. REMAND IS REQUIRED BECAUSE REMOVAL IS IMPROPER.

Defendant justifies removal on the basis that "[t]his Court has federal question jurisdiction over Plaintiff's breach of contract and quantum meruit claims pursuant to 28 U.S.C. §§ 1331 and 1333." ECF No. 1 ¶ 3. According to Defendant, § 1333 "federal question jurisdiction" exists over Plaintiff's claims because of federal courts' "jurisdiction to 'make decisional law for the interpretation of maritime contracts.'" *Id.* ¶ 6 (citing *Norfolk S. Ry. Co. v. Kirby*, 543 U.S. 14, 23 (2004)). "Consideration of Plaintiff's claims will require interpretation of such maritime contracts and will necessarily require the application and interpretation of such contracts under federal maritime law…" *Id.* ¶ 8 (citations omitted). Regarding "federal question jurisdiction" under § 1331, Defendant states that "Plaintiff seeks to hold ACL liable for certain demurrage or detention charges. As such, Plaintiff's right to relief requires interpretation and resolution of a substantial question of federal law, namely, the Ocean Shipping Reform Act of 2022…" *Id.* ¶ 10.

With respect to Defendant's § 1333 argument, the Court agrees that federal courts have jurisdiction to "make decisional law for the interpretation of maritime

contracts." *Kirby*, 543 U.S. at 23.[3] That jurisdiction, however, is not dispositive here; the question before the Court is whether *removal* is proper. *Figueroa*, 28 F. Supp. 3d at 679 ("While this Court's maritime or admiralty jurisdiction would permit adjudication of Figueroa's claims *had he filed them here*, it is a different question whether Defendants have the right to remove those claims to this Court in disregard of Figueroa's chosen state forum." (emphasis added)).

Regarding Defendant's § 1331 argument relying on the Ocean Shipping Reform Act,"[4] the United States Supreme Court has held that general maritime law claims do not "arise under" the laws of the United States. *Romero*, 358 U.S. at 367; *Am. Ins. Co.*, 26 U.S. at 512. For this reason, and as echoed by the "growing chorus" of district courts—the majority in the Fifth Circuit, "admiralty and general maritime claims filed in state court are *removable only in the presence of … a federal question other than the maritime nature of the claim*." *Ibarra*, 526 F. Supp. 3d at 211 (emphasis added); *Waddell v. Edison Chouest Offshore*, 93 F. Supp. 3d 714, 720

[3] In *Kirby*, the Supreme Court determined that "The ICC and Hamburg Süd bills are maritime contracts because their primary objective is to accomplish the transportation of goods by sea from Australia to the eastern coast of the United States." 543 U.S. at 24. The nature of the contracts here is the same: "As Defendant requested, in August 2020 Plaintiff shipped one (1) container containing thirty-six (36) packages of nylon yarn from Atlanta to Hong Kong." ECF No. 1-3 ¶ 9.

[4] The Ocean Shipping Reform Act is of "maritime nature." *See Maersk, Inc. v. Int'l Intranco, Inc.*, No. 1:09-cv-635, 2010 WL 4394249, at *1 (E.D. Va. Sept. 13, 2010) ("…this being a civil case of admiralty or maritime jurisdiction…pursuant to the Ocean Shipping Reform Act of 1999…"). Defendant fails to cite which provisions of the Ocean Shipping Reform Act apply or how. Thus, its argument is waived. *Audler v. CBC Innovis Inc.*, 519 F.3d 239, 255 (5th Cir. 2008) (citing *Castro v. McCord*, No. 05–21034, 2007 WL 4467566, at *1 (5th Cir. Dec. 18, 2007)) ("A party 'waives an issue if he fails to adequately brief it.'").

(S.D. Tex. 2015) (citing *Serigny v. Chevron U.S.A., Inc.*, Civ. Action No. 14-0598, 2014 WL 6982213, at *4 (W.D. La. Dec. 9, 2014)); *Rutherford v. Breathwite Marine Contractors, Ltd.*, 59 F. Supp. 3d 809, 813 (S.D. Tex. 2014) ("[T]he 'savings to suitors' clause still presents an obstacle to removal, where no other basis of jurisdiction exists.").

Thus, the lack of a "federal question other than the maritime nature of the claim" defeats removal. *Ibarra*, 526 F. Supp. 3d at 211. Accordingly, Defendant's arguments are unavailing as removal is improper and remand is warranted. *Clear Lake*, 2015 WL 1876338, at *3; *see Parker v. U.S. Env't Servs., LLC*, Civ. Action No. 3:14–CV–292, 2014 WL 7338850, at *6 (S.D. Tex. Dec. 22, 2014) ("Because federal courts lack original jurisdiction over maritime claims filed by suitors in state courts, this case must be remanded.").

IV. CONCLUSION

Therefore, the Court **RECOMMENDS** that Plaintiff's motion to remand, ECF No. 7, be **GRANTED**, and Defendant's motion to dismiss, ECF No. 4, be **DENIED AS MOOT**.

The Parties have fourteen days from service of this Report and Recommendation to file written objections. 28 U.S.C. § 636(b)(1)(C); FED. R. CIV. P. 72(b). Failure to file timely objections will preclude review of factual findings or legal conclusions, except for plain error. *Quinn v. Guerrero*, 863 F.3d

353, 358 (5th Cir. 2017).

Signed at Houston, Texas, on October 30, 2024.

Dena Hanovice Palermo
United States Magistrate Judge