UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

ASPEN AMERICAN INSURANCE COMPANY, Tessco Technologies Inc.,

Plaintiff,

v. Case No. 3:21-cv-578-BJD-LLL

LANDSTAR RANGER, INC.,

Defendant.
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ORDER

THIS CAUSE is before the Court on Defendant's Motion to Dismiss (Doc. 6; Motion) filed June 30, 2021, Plaintiff's Response (Doc. 12) filed August 4, 2021 and Defendant's Reply (Doc. 18) filed August 27, 2021.

A. Background

Plaintiff sues Defendants for negligence relating to an instance of cargo loss by an interstate motor carrier. (Doc. 1 at ¶¶ 7–8; 18–20). According to the Complaint, Defendant is considered a transportation broker as defined under 49 C.F.R. § 371.1. Id. at ¶ 6. Defendant was retained by Plaintiff's insured to arrange for the transportation of goods from Colorado to Maryland. Id. at ¶ 7. Accordingly, Defendant arranged for another motor carrier to transport the shipment. Id. at ¶ 8.

Plaintiff alleges through a series of decisions made by Defendant, Plaintiff's shipment was given to a fraudulent carrier. Id. at ¶¶ 8–17. As a result, Plaintiff alleges its shipment was stolen and never recovered. Id. at ¶¶ 18–19.

Defendant argues in its Motion that Plaintiff failed to state a claim because its claims are preempted as a matter of law under the Federal Aviation Administration Authorization Act (FAAAA).[1] (Doc. 6 at 3). Plaintiff argues the FAAAA does not preempt its claims and that the safety exception of the FAAAA allows Plaintiff's claims to proceed in this Court. (See generally Doc. 12).

B. Discussion

The Federal Rules of Civil Procedure require that a complaint contain "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). An action fails to state a claim for which relief may be granted, and may be subject to dismissal, if it fails to include such a short and plain statement. See Harper v. Lawrence Cnty., Ala., 592 F.3d 1227, 1232–33 (11th Cir. 2010) (citing Fed. R. Civ. P. 8(a)(2), 12(b)(6)). A complaint must contain "sufficient factual matter, accepted as true, to 'state a

[1] 49 U.S.C. § 14501 is referred to as either the Federal Aviation Administration Authorization Act (FAAAA) or the Interstate Commerce Commission Termination Act of 1995 (ICCTA). See generally Ameriswiss Tech., LLC v. Midway Line of Ill., Inc., 888 F. Supp.2d 197, 204 n. 7 (D.N.H. 2012). This Court will be referring to the statute as the FAAAA.

claim for relief that is plausible on its face.'" Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting Bell Atlantic Corp v. Twombly, 550 U.S. 544, 570 (2007)). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Iqbal, 556 U.S. at 678. "The plausibility standard is not akin to a 'probability requirement,' but it asks for more than a sheer possibility that a defendant has acted unlawfully." Id.

Pursuant to Federal Rule of Civil Procedure 12(b)(6), a district court may dismiss a complaint for "failure to state a claim upon which relief can be granted." When reviewing a motion to dismiss, the Court must take the complaint's allegations as true and construe them in the light most favorable to the plaintiff. Rivell v. Private Health Care Sys., Inc., 520 F.3d 1308, 1309 (11th Cir. 2008). The Court is required to accept well-pleaded facts as true at this stage, but it is not required to accept a plaintiff's legal conclusions. Chandler v. Sec'y of Fla. Dep't of Transp., 695 F.3d 1194, 1199 (11th Cir. 2012). It is insufficient for a plaintiff's complaint to put forth merely labels, conclusions, and a formulaic recitation of the elements of the cause of action. Twombly, 550 U.S. at 555.

Defendants argue this case should be dismissed because 49 U.S.C. § 14501(c)(1) expressly preempts each count in Plaintiff's complaint. (Doc. 6 at 1). § 14501(c)(1) provides a State "may not enact or enforce a law, regulation,

or other provision having the force and effect of law related to a price, route, or service of any motor carrier . . . or any other motor private carrier, broker, or freight forwarder with respect to the transportation of property."

The Supreme Court has held "when judicial interpretations have settled the meaning of an existing statutory provision, repetition of the same language in a new statute indicates, as a general matter, the intent to incorporate its judicial interpretations as well." Merrill Lynch, Pierce, Fenner & Smith Inc. v. Dabit, 547 U.S. 71, 85 (2006). The Court "interpreted the pre-emption provision in the Airline Deregulation Act of 1978" (ADA) in Morales v. Trans World Airlines, Inc., 504 U.S. 374 (1992). Rowe v. New Hampshire Motor Transp. Ass'n., 552 U.S. 364, 370 (2008). Congress "copied the language of the air-carrier pre-emption provision of the Airline Deregulation Act of 1978" in writing the FAAAA. Id. Accordingly, the pre-emption interpretation provided in Morales properly governs the pre-emption interpretation this Court should apply to the FAAAA. See id. at 370–71.

In Morales, the Court evaluated whether the ADA pre-empted states from regulating airline fare advertisements. The Court determined the ADA expressly pre-empts "the States from enacting or enforcing any law, rule, regulation, standard, or other provision having the force and effect of law relating to rates, routes, or services of any air carrier." Morales, 504 U.S. at 383 (punctuation omitted). As the issue in Morales dealt with regulating air

fare advertisements, pre-emption interpretation focused on defining the phrase "relating to" within the statute. Id. at 383–84. Accordingly, the Court determined "State enforcement actions having a connection with or reference to airline 'rates, routes, or services' are pre-empted under the ADA." Id. at 384.

Notably, in Morales, the Court determined "federal law might not pre-empt state laws that affect fares in only a 'tenuous, remote, or peripheral . . . manner,' such as state laws forbidding gambling." Rowe, 552 U.S. at 371 (citing Morales, 504 U.S. at 390). The Court "did not say where, or how, 'it would be appropriate to draw the line,' for the state law before it did not 'present a borderline question.'" Id. (citing Morales, 504 U.S. at 384).

The Court again interpreted the pre-emption clause of the ADA in American Airlines, Inc. v. Wolens when it determined whether the ADA prohibited a state court suit challenging the airline's retroactive changes in terms and conditions of one of the airline's services. 513 U.S. 219, 221–22 (1995). The Court concluded that the ADA's pre-emption prescription "bars state-imposed regulation of air carriers, but allows room for court enforcement of contract terms set by the parties themselves." Id. at 222. The Court so concluded because the ADA's pre-emption clause, when read with the Federal Aviation Act's saving clause "stops States from imposing their own substantive standards with respect to rates, routes, or services, but not

from affording relief to a party who claims and proves that an airline dishonored a term the airline itself stipulated." Id. at 232–33.

"Complete preemption is a rare occurrence." Hentz v. Kimball Transp. Inc., Case No.: 6:18-cv-1327-Orl-31GJK, 2018 WL 5961732, at *3 (M.D. Fla. 2018). "The Supreme Court and the Eleventh Circuit have found complete preemption under only three statutes: (1) Section 301 of the Labor Management Relations Act; (2) Section 502 of the Employee Retirement Income Security Act of 1974 (ERISA); and (3) Sections 5197 and 5198 of the National Bank Act." Id. (referencing Beneficial Nat. Bank v. Anderson, 539 U.S. 1 (2003)).

To find complete preemption, the Court must "identify the domain expressly pre-empted." Lorillard Tobacco Co. v. Reilly, 533 U.S. 525, 541 (2001). The Court determined the FAAAA expressly pre-empts state trucking regulation. See Hentz, 2018 WL 5961732, at *3 ("Fortunately, the Supreme Court has already identified the domain preempted by this statute. The FAAAA preempted state trucking regulation because Congress found 'state governance of intrastate transportation of property had become unreasonably burdensome to free trade, interstate commerce, and American consumers.'") (citing Dan's City Used Cars, Inc. v. Pelkey, 569 U.S. 251, 256 (2013)).

Congress enacted § 14501(c)(1) because it was "[c]oncerned that state regulation 'impeded the free flow of trade, traffic, and transportation of

interstate commerce,' [so] Congress resolved to displace 'certain aspects of the State regulatory process.'" Pelkey, 569 U.S. at 263 (citing sections of the FAAAA). Congress did so to prevent "a State's direct substitution of its own governmental commands for competitive market forces in determining (to a significant degree) the services that motor carriers will provide." Rowe, 552 U.S. at 372.

Additionally, "one conspicuous alteration—addition of the words 'with respect to the transportation of property'—significantly limits the FAAAA's preemptive scope." Pelkey, 569 U.S. at 252. For a state law to "relate to the 'price, route, or service' of a motor carrier in any capacity; the law must also concern a motor carrier's 'transportation of property.'" Id. "Title 49 defines 'transportation,' in relevant part, as 'services related to th[e] movement' of property, 'including arranging for ... storage [and] handling.'" Id. (citing 49 U.S.C. § 13102(23)(B)).

Here, in its Complaint, Plaintiff alleges that through a series of decisions made by Defendant, Plaintiff's shipment was given to a fraudulent carrier. Id. at ¶¶ 8–17. The difference between the negligence claim in Pelkey and the negligence claims in the instant case is that in Pelkey, the negligence claims were not related to the movement of his car. See Pelkey, 569 U.S. at 252 ("Pelkey seeks redress only for conduct occurring after the car ceased moving."). In Pelkey, plaintiff-respondent brought suit against a towing

company, alleging the company took custody of his car, did not notify him of the company's plan to auction the car, held an auction of the car, and eventually traded the car without compensating plaintiff-respondent. Id. at 254–55.

Here, the facts giving rise to Plaintiff's negligence claims are directly related to the movement of property, namely the lost goods. (See Doc. 1 at ¶¶ 7–8; 18–20); see also Pelkey, 569 U.S. at 252. Plaintiff alleges it was Defendant's negligence in arranging for a carrier that led to Plaintiff's loss in cargo. (See Doc. 1 at ¶¶ 8–17). The series of decisions made by Defendant, as alleged by Plaintiff, fall under the statutory definition of transportation. See 49 U.S.C. § 13102(23)(B) ("The term 'transportation' includes . . . services related to that movement, including arranging for, receipt, delivery . . . and interchange of . . . property."). Accordingly, this Court finds the claims raised by Plaintiff are pre-empted by the FAAAA.

Plaintiff argues the safety exception of the FAAAA would apply to its claim. (Doc. 12 at 14). Under 49 U.S.C. § 14501(c)(2)(A), the FAAAA "shall not restrict the safety regulatory authority of a State with respect to motor vehicles." Congress' intention in enacting the FAAAA was "to ensure that its preemption of States' economic authority over motor carriers of property . . . 'not restrict' the preexisting and traditional state police power over safety." City of Columbus v. Ours Garage and Wrecker Serv., Inc., 536 U.S. 424, 439

(2002) (citing 49 U.S.C. § 14501(c)(2)(A)). This police power is typically related to "the States' traditional ability to protect the health and safety of their citizens." Cipollone v. Liggett Grp., Inc., 505 U.S. 504, 544 (1992) (Blackmun, J., concurring in part and dissenting in part).

Here, Plaintiff's negligence claims against Defendant are centered on stolen goods. (See Doc. 1 at ¶¶ 18–19). When other courts have applied the safety exception of the FAAAA, they typically do so when the underlying negligence claim is centered on bodily injury. See e.g. Miller v. C.H. Robinson Worldwide, Inc., 976 F.3d 1016 (9th Cir. 2020) (applying the safety exception where a motorists sustained injuries related to a motor vehicle accident involving a motor carrier); Lopez v. Amazon Logistics, Inc., 458 F. Supp. 3d 505 (N.D. Tex. 2020) (applying the safety exception where a motorist died after a motor vehicle accident involving a motor carrier). This Court finds it would be inappropriate to extend the safety exception to the negligence claims Plaintiff brings forth related to their stolen goods.

Accordingly, after due consideration, it is

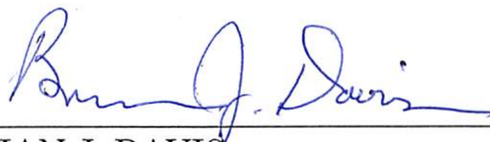
ORDERED:

Defendant's Motion to Dismiss (Doc. 6) is **GRANTED**.

1. This case is **DISMISSED without prejudice** for Plaintiff's failure to state a claim upon which relief can be granted.

2. The Clerk of Court shall enter judgment dismissing this case, terminate any pending motions, and close the case.

DONE and **ORDERED** in Jacksonville, Florida this 3RD day of FEBRUARY ~~January~~, 2022.



BRIAN J. DAVIS
United States District Judge

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Copies furnished to:

Counsel of Record