

Carnival Helms-Burton Case Sails Onward

AUGUST 29, 2019

In a surprise ruling to some, the complaint against Carnival Corporation (“Carnival”) under Title III of the 1996 Helms-Burton Act (“Helms-Burton” or “Title III”) survived a motion to dismiss on August 26, 2019. See *Garcia-Bengochea v. Carnival Corporation*, D. Fla 1:19-cv-21725-JLK. Many saw this case and this motion as significant because together they offer an early glimpse as to how courts will interpret certain questions, including affirmative defenses, under the long suspended right of action. The case’s survival may encourage a number of plaintiffs to bring claims, especially those related to travel. To this end, three additional cases were filed on August 27, 2019.

Since President Trump lifted the Title III suspension on April 17, 2019, there have been far fewer lawsuits than many originally predicted. Title III allows a private right of action against “any person that . . . traffics in property which was confiscated by the Cuban Government on or after January 1, 1959.” However, owners of such confiscated property have only slowly made their way to the courts.

The most recent development in the action against Carnival, that is, the survival of the motion to dismiss, demonstrates that these cases are likely here to stay and that more may follow.

Plaintiff in this case alleged that he owned an 82.5% interest in waterfront property in the Port of Santiago, Cuba, and that the Cuban government seized the property and nationalized the company in 1960. He alleged that Carnival, which owns the Carnival cruise lines, “trafficked” in the property by “regularly embarking and disembarking its passengers on the Subject Property.”

Carnival moved to dismiss on three grounds: first, that Helms-Burton barred the action under a “lawful travel” exception; second, that Plaintiff did not actually own a claim to the property based on the documents provided in the complaint indicating the property belonged to someone who was not Plaintiff; and third, even if Plaintiff did have ownership, Plaintiff did not own a “direct interest” because Plaintiff only owned stock in the company that owned the docks, and Plaintiff did not own the docks himself under corporate law.

The court, however, agreed with Plaintiff on all three arguments:

First, and significantly, the court found that the “lawful travel” exception is an affirmative defense, and therefore Plaintiff did not need to address it in the complaint. The “lawful travel” exception states that trafficking “does not include transactions and uses of property incident to lawful travel to Cuba, to the extent that such transactions and

uses of property are necessary to the conduct of such travel.” The court found that the placement of the lawful travel exception and the enumeration of different ways a defendant might use or benefit from the confiscated property indicated that the burden of proving the exception should fall upon the defendant as an affirmative defense.

Second, the court found that Plaintiff sufficiently alleged ownership of the claim to the property. Helms-Burton requires that a plaintiff “own[] the claim” to the property. The complaint alleged that Plaintiff owned an 82.5% interest in the company that owned and operated the docks at the time of seizure, but only produced documents demonstrating 32.5% interest in a different person’s name, and the additional alleged 50% ownership is based in an uncertified claim. However, the court found that there was sufficient time between the claim exhibit, dated 1970, and the time of filing the complaint for Plaintiff to have obtained ownership. Further, the court found that Carnival’s factual argument relied on determinations that exceed the four corners of the complaint, and could not be used to negate what was offered in the complaint.

Third, Helms-Burton requires that a plaintiff’s claim be a claim “to the [confiscated] property.” 22 USC § 6082(a)(1)(A). The court rejected Carnival’s attempt to construe the term “claim” in a strictly corporate sense, finding that the Congress intended it to be understood colloquially to embrace both direct and indirect ownership, including ownership of stock in the property owning the docks.

Notably, this ruling does not lay out a map for interpreting the “lawful travel” exception and the “necessary” and “incident” requirements. It merely establishes that the “lawful travel” exception is an affirmative defense that defendants bear the burden to demonstrate. However, as noted above, the case’s survival of the motion to dismiss may encourage a number of plaintiffs to bring claims under Title III. The additional three cases filed on August 27, 2019, are against three cruise lines: Royal Caribbean Cruises, Ltd., Norwegian Cruise Line Holdings. Ltd., and MSC Cruises SA Co and MSC Cruises USA Inc.

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