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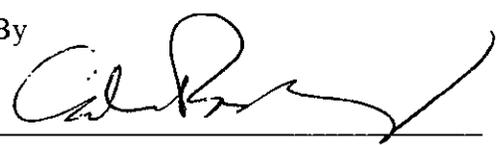
DNB EXPORTS LLC, and)	
AFI ELEKTROMEKANIK VE ELEKTRONIK SAN. TIC. LTD. STI.)	
)	
Complainants,)	
)	
v.)	
)	DOCKET NO
)	11-07
BARSAN GLOBAL LOJISTIKS VE GUMRUK MUSAVIRLIGI A. S.,)	
BARSAN INTERNATIONAL, INC., and)	
IMPEXIA INC.)	
)	
Respondents.)	

COMPLAINANTS' REPLY TO IMPEIXA INC.'S MOTION TO DISMISS

Complainants AFI Elektromekanik Ve Elektronik San. Tic Ltd. Sti. ("AFI") and DNB Exports LLC ("DNB"), by and through their attorneys, Rodriguez, O'Donnell, Gonzalez & Williams, P.C., hereby reply to Respondent Impexia Inc.'s Motion to Dismiss.

As discussed in further detail below, the motion is wholly without merit and should be dismissed in its entirety.

Respectfully submitted,

By 

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DNB EXPORTS LLC
AFI ELEKTROMEKANIK VE ELEKTRONIK
SAN. TIC. LTD. STI.

Dated in Washington, D.C. this twentieth day of June, 2011.

MEMORANDUM OF LAW

This Memorandum of Law is submitted in opposition to of Respondent Impexia Inc.'s ("Impexia") Motion to Dismiss filed on June 3, 2011.

Complainants AFI Elektromekanik Ve Elektronik San. Tic. Ltd. Sti. ("AFI") and DNB Exports LLC ("DNB") state a claim in the Complaint against Respondents Barsan Barsan Global Lojistik Ve Gumruk Musavirligi A. S. ("BGL"), Barsan International, Inc. ("Barsan Int'l"), and Impexia pursuant to Section 10(b)(13) of the Shipping Act of 1984, as amended by the Ocean Shipping Reform Act of 1998 (the "Shipping Act"), 46 U.S.C. §41103 (a), and pursuant to the Federal Maritime Commission's (the "Commission" or "FMC") authority under Section 11 (a) of the Shipping Act, 46 U.S.C. § 41301 (a). The Complaint alleged that Respondents BGL, Barsan Int'l, acting on their own behalf and as a mere shell of BGL, and Impexia as BGL's and Barsan Int'l's alter ego by knowingly disclosing, offering, soliciting and receiving information concerning the nature, kind, quantity, destination, shipper, consignee, and routing of the property tendered or delivered to Barsan Int'l by DNB and/or AFI, by, without the consent of DNB and/or AFI, using that information to the detriment and disadvantage of DNB and/or AFI, by unlawfully disclosing that information to Impexia as a competitor have violated Section 10 (b) (13) of the Shipping Act, 46 U.S.C. § 41103 (a).

The gravamen of Respondent Impexia's Motion to Dismiss are based on its assertion that Impexia is not a regulated person or entity under the Shipping Act; did not engage in conduct or behavior regulated by the Shipping Act or the FMC; and has not held itself out in any manner or capacity that would result in Commission oversight, and accordingly, the FMC lacks personal jurisdiction over Impexia. Impexia's Motion to

Dismiss at 3. Respondent Impexia argues, pursuant to Rule 502.73 of the Commission's Rules of Practice and Procedure (46 §502.73) and Rule 12(b)(2) of the Federal Rules of Civil Procedure that DNB and AFI's Complaint must be dismissed as to Impexia.

Complainants will demonstrate that their Complaint alleges sufficient facts, that when considered in the light of applicable law, would confer ample personal jurisdiction to the Federal Maritime Commission. Therefore, Respondent Impexia's Motion to Dismiss must be denied.

Preliminary Statement

Complainants filed this action, alleging Shipping Act violations against BGL, Barsan Int'l and Impexia Inc.

BGL and Barsan Int'l answered the Complaint and asserted the Counterclaim against DNB and AFI for payments of transportation services by alleging DNB and AFI's breach of a transportation contract.

Impeixa filed the Motion to Dismiss for the Commission's lack of personal jurisdiction on Impexia. Respondent Impexia, in its discussion of averments made in the Complaint ignores and denies the factual allegations of the Complaint. By ignoring the facts alleged in the Complaint, Impexia's Motion to Dismiss asserts that Complainants fail to carry their burden of making a prima facie showing that the Commission has personal jurisdiction over Impexia under the Shipping Act. Respondent asserts that Complainants, without any factual support, insert the terms "corporate shell" and "alter ego" liberally in the Complaint, in the hope that these accusations will blind the Commission to Complainants' failure to carry their burden and that the mere assertions will create a sufficient legal nexus between Impexia and BGL and Barsan Int'l (whose

activities are regulated by the Shipping Act) to provide jurisdiction over Impeixa. Impexia's Motion to Dismiss at 11. Additionally, Impexia alleges additional facts not in the pleadings to deny the factual allegations of the Complaint, which inclusion completely transgresses the required standards for a motion to dismiss. See Impexia's Motion to Dismiss at 10-11 and All Exhibits.

Impeixa's Motion to Dismiss completely ignores the standard of review on a motion to dismiss. This will also be further discussed in the Argument section below.

Arguments

The factual allegations in the Complaint are to be taken as true in a motion to dismiss. A motion to dismiss admits all the factual allegations in the Complaint and challenges the Complainants' right to any recovery on the basis of those facts. The Complaint must be construed in the light most favorable to the Complainants. *San Diego Unified Port District v. Pacific Maritime Association*, No. 03-12 (Fed. Mar. Comm'n Dec. 30, 2003) (Motion to Dismiss Complaint Granted with Prejudice) (*citing Fuhrer v. Fuhrer*, 292 F.2d 140 (7th Cir. 1961)).

Impeixa's Motion to Dismiss completely ignores the standard of review on a motion to dismiss. Pursuant to the standard of review, Impexia's Motion to Dismiss amounts to an answer to the Complaint in that it denies the factual allegations of the Complaint and alleges additional facts in order to rebut the factual allegations of the Complaint. Furthermore, based on Impexia's denials, and facts which it alleges, the Motion to Dismiss concludes that the Commission lacks personal jurisdiction over Impexia.

Pursuant to the Commission's precedents, assuming the factual allegations of the Complaint were true, corporate entities must be disregarded in that they are made the implement for avoiding a clear legislative purpose of Section 10(b)(13) of the Shipping Act, 46 U.S.C. §41103 (a). In the case at hand, failure to do so would aid in the perpetration of a fraudulent scheme as asserted in the Complaint as well as allow Respondent's circumvention of an applicable statute, Section 10(b)(13) of the Shipping Act, 46 U.S.C. §41103 (a). Provided that the factual allegations of the Complaint are taken as true, Respondents' use of separate corporate entities have definitely frustrated the remedial purposes of the Shipping Act, specifically the legislative purpose of Section 10(b)(13) of the Shipping Act, 46 U.S.C §41103 (a), and therefore, the Commission is entitled to look through corporate form and treat the separate entities as one and the same for purposes of regulation. Provided that the facts asserted in the Complaint are taken as true on Impexia's Motion to Dismiss, the Commission could pierce all Respondents' corporate veils and hold them jointly and severally liable for their violations of the Shipping Act. The FMC itself, and its predecessor agencies, have decided cases pertinent to the criteria required to pierce the corporate veil. The Complaint alleges sufficient facts, that when considered in the light of applicable law, to pierce all Respondents' corporate veils and hold them jointly and severally liable for their violations of the Shipping Act, and accordingly would consequently confer ample personal jurisdiction to the Federal Maritime Commission over Impexia.

I. The Commission Has Decided Cases Pertinent to the Criteria Required to Pierce the Corporate Veil.

The FMC itself, and its predecessor agencies, have decided cases pertinent to the criteria required to pierce the corporate veil. For example, the FMC has held that, “it is well established that where statutory purposes of the Shipping Act could be frustrated through the use of separate corporate entities, the Commission [FMC] is entitled to look through corporate form and treat the separate entities as one and the same for purposes of regulation.” *In the Matter of the Status of Matson Agencies, Inc. & Matson Freight Agencies, Inc.*, Docket 83-52, Order of Petition for Declaratory Order, served 3-13-84, Page 7; 22 SRR 752, 754 citing *General Telephone Company v. United States*, 449 F2d 846, 855 (5th Cir. 1971) and *Mansfield Journal Co. v. F.C.C.*, 180 F2d 28, 37 (DC Cir 1950).

In another case, the FMC stated: “The reasons for separate incorporation are not controlling when the fiction of corporate entity defeats a legislative purpose.” *In the Matter of the Status of Matson Agencies, Inc. & Matson Freight Agencies, Inc.*, Docket 83-52, Order of Petition for Declaratory Order, served 3-13-84, Page 7; 22 SRR 752, 754 citing *Kavanaugh v. Ford Motor Company*, 353 F2d 710, 717 (7th Cir. 1965).

“Where a corporation is so organized and controlled, and its affairs are so conducted as to make it a mere sham, agent, or adjunct of another, its separate existence as a distinct corporate entity will be ignored, and the two corporations will be regarded in legal contemplation as one unit.” *In the Matter of Agreement 9597 Between Flota Mercante Gran Centroamericana, S.A., Continental Lines, S.A. and Jan C. Uiterwyk Co., Inc.*, Docket 67-8, served 5-27-68, 10 SRR 177, 192 citing *Southeast Airlines Agency*,

Compliance Proceeding, 25 CAB 89, 99 (1957).

“It is settled law that the corporate entity may be disregarded if failure to do so would aid in the perpetration of a fraud or the circumvention of an applicable statute.” *In the Matter of Agreement 9597 Between Flota Mercante Gran Centroamericana, S.A., Continental Lines, S.A. and Jan C. Uiterwyk Co., Inc.*, Docket 67-8, served 5-27-68, 10 SRR 177, 192 citing *American Airlines, Exemption*, 27 CAB 1112, 1113 (October, 1958).

“Corporate entities may be disregarded where they are made the implement for avoiding a clear legislative purpose.” *In the Matter of Agreement 9597 Between Flota Mercante Gran Centroamericana, S.A., Continental Lines, S.A. and Jan C. Uiterwyk Co., Inc.*, Docket 67-8, served 5-27-68, 10 SRR 177, 192 citing *Schenley Corp. v. United States*, 326 US 432, 437 (1945).

Pursuant to the Commission’s precedents, assuming the factual allegations of the Complaint are true, all Respondents corporate entities must be disregarded in that they are made the implement for avoiding a clear legislative purpose of Section 10(b)(13) of the Shipping Act, 46 U.S.C. §41103 (a). Provided that the factual allegations of the Complaint are taken as true, Respondents’ use of separate corporate entities has definitely frustrated the remedial purposes of the Shipping Act, specifically the legislative purpose of Section 10(b)(13) of the Shipping Act, 46 U.S.C. §41103 (a), and therefore, the Commission is entitled to look through corporate form and treat the separate entities as one and the same for purposes of regulation.

II. Complaint alleges sufficient facts, that when considered in the light of applicable law, would confer ample personal jurisdiction to the Federal Maritime Commission.

By ignoring the facts alleged in the Complaint, Impexia's Motion to Dismiss asserts that Complainants fail to carry their burden of making a prima facie showing that the Commission has personal jurisdiction over Impexia under the Shipping Act. Impexia asserts, without any factual support, Complainants insert the terms "corporate shell" and "alter ego" liberally in the Complaint, in the hope that these accusations will blind the Commission to Complainant's failure to carry their burden. Moreover, as previously noted, Impexia alleges additional facts to deny the factual allegations of the Compliant.

Notwithstanding Respondent's assertions, the Complaint alleges the following facts among others, with the supporting documents submitted, when taken as true, would warrant the Commission to pierce all Respondents' corporate veils and hold them jointly and severally liable for their violations of the Shipping Act:

- 1) Upon information and belief, Impexia is a mere corporate shell of BGL and Barsan Int'l for the purpose of obtaining and utilizing BGL's and/or Barsan Int'l's customers commercial proprietary information, which is routinely obtained for performing Barsan Int'l's NVOCC/freight forwarding/NVOCC services, with the purpose of engaging in the same business as Barsan Int'l's customers and to solicit import/export trading business from their customers' clients. Complaint ¶ 10.
- 2) Upon information and belief, Impexia was incorporated on March 11, 2010 in the State of New Jersey and acts as a trading company exporting electrical goods to Turkey and other ports and points using information obtained through invoices and other documentation provided to Barsan Int'l, and unlawfully soliciting DNB's and/or AFI's customers directly. Complaint ¶ 14
- 3) Upon information and belief, Impexia is a mere corporate shell of BGL and Barsan Int'l for the purpose of obtaining and utilizing BGL's and/or Barsan Int'l's customers commercial proprietary information, which is routinely obtained for performing Barsan Int'l's NVOCC/freight forwarding/NVOCC services, with the purpose of engaging in the same business as DNB and/or AFI and to solicit import/export trading business from DNB's and/or AFI's customers. Complaint ¶ 15

- 4) Upon information and belief, Mr. Jimmy Cuneyt Karadagli holds out as the owner of Impexia. Mr. Jimmy Cuneyt Karadagli, at all relevant times to this Complaint, is the husband of Ms. Burcin Karadagli, Accounting Manager of Barsan Int'l located at the New Jersey location. Complaint ¶ 17
- 5) Upon information and belief, Impexia and Barsan Int'l initially, upon the formation of Impexia, shared the same business address in New Jersey. See Exhibit 3., Impexia's Prior Web-sites and Impexia Invoice. Complaint ¶ 18
- 6) Upon information and belief, Impexia stopped indicating that its offices were located at the same location as Barsan Int'l when Respondents became aware that Complainant had obtained knowledge of Impexia and its unlawful scheme, on or about, December, 2010. At this time Respondents changed its address on its web-site. See Exhibit 4., Impexia's Current Web-site. Complaint ¶ 19
- 7) Impexia indicates on its web-site that it has three offices in New Jersey, Florida and Texas, which upon information and belief are close to Barsan Int'l's or BGL's offices in these three States. Further, Impexia only has one contact telephone no., i e. a New Jersey no., for the three offices. Exhibit 4., Impexia's Current Web-site. Complaint ¶ 20
- 8) Impexia used to display its business address in New Jersey as the same address as Barsan Int'l's address in its web-site. Mr. Jimmy Cuneyt Karadagli's full name was also displayed in the Impexis webpage. See Exhibit 3., Impexia's Prior Web-sites and Impexia Invoices. Complaint ¶ 21
- 9) Barsan Int'l's officers, President Ugur Aksu, Vice President, Sevgi Cebe and Export Manager Tugsan Uresin, also maintain a close relationship with Impexia. See Exhibit 5., Barsan Int'l's officers' Names and Pictures Listed as Mr. Cuneyt Karadagli's Friends at His Facebook page. Complaint ¶ 22

The above alleged facts are taken as true on a motion to dismiss. These facts, if proven, weave the story of Impexia's known officers having a close personal relationship with the senior officials of the forwarding company, and, in fact, the President of Impexia is married to a senior executive of Barsan Intl. Further, it is clearly alleged that the initial office of Impexia was identical to Barsan Intl. and that its other offices in Texas, and Florida are all in locations where Barsan Intl. maintains offices. It is also not to be overlooked that it is alleged that Impexia operates from one phone number allegedly at the same initial address as for Barsan Intl. in New Jersey. All of the above alleged facts are statistically improbable unless the companies are acting in unison as alleged by Complainants. When you add to the above cosmic soup the alleged facts that

Complainants' customers, their unique discreet commercial needs, and contact persons have been contacted and commercially exploited by Impexia with information provided to Barsasn Intl. and BGL with extreme confidence by Complainants to carry out their transport requirements, the fact remains that the alleged facts, if proven, would be dispositive of the case in favor of Complainants. Therefore, the Motion to Dismiss on the pleadings alone must fail.

Provided that the above factual allegations of the Complaint are taken as true, and the inferences that can be made from these, Respondents' use of separate corporate entities as alleged definitely frustrate the remedial purposes of the Shipping Act, specifically the legislative purpose of Section 10(b)(13) of the Shipping Act, 46 U.S.C. §41103 (a), and therefore, the Commission is entitled to look through corporate form and treat the separate entities as one and the same for purposes of regulation. And disposing of the Motion to Dismiss.

The Commission is warranted in piercing Respondents' corporate veils for the alleged violations of the Shipping Act pursuant to the Commission's precedents. However, those alleged facts are subject to the parties' proof and the ALJ's review and determination. It is the purpose of the discovery procedure to discover facts. Respondent Impexia's Motion to Dismiss serves the purpose of a response to the Complainant when it denies the factual allegations of the complainant and provides additional facts in the attached Affidavit with Exhibits beyond the facts as asserted in the Complaint. The Motion to Dismiss must fail.

Conclusion

For all the foregoing reasons, the Commission has personal jurisdiction over Respondent Impexia, and therefore, Respondent Impexia's Motion to dismiss must be denied.

Respectfully submitted,

By:



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Dated in Washington, D.C. this twentieth day of June, 2011.

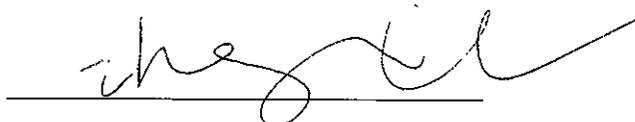
CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon the following individuals by first-class mail:

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