UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DUMITRU UNGUREANU d/b/a BRICKERVILLE AUTO SALES,	:	**ORDER GRANTING MOTION FOR SUMMARY JUDGMENT**
Plaintiff,	:	08 Civ. 8581 (AKH)
-against-	:	
M/V COURAGE, in rem, WALLENIUS WILHELMSEN LOGISTICS AS, and ALLROUND FORWARDING CO., INC., in personam,	:	
Defendants.	:	

ALVIN K. HELLERSTEIN, U.S.D.J.:

This case arises out of the theft of a 2004 BMW automobile that Plaintiff, a Pennsylvania automobile dealer, had arranged to be shipped to a customer in Beirut, Lebanon. Plaintiff alleges that Defendants, a booking agent and an ocean carrier, breached duties to Plaintiff by failing to ensure safe delivery of the car. Defendant Wallenius Wilhelmsen Logistics AS ("Wallenius"), the ocean carrier, moved for summary judgment on March 25, 2009. The motion is granted.

Plaintiff had retained Defendant Allround Forwarding Co., Inc. ("Allround"), the booking agent, to arrange carriage with Wallenius, the ocean carrier. Wallenius issued a freight charge and bill of lading to Plaintiff, which reflected receipt of the cargo at New York for an ocean voyage to Zeebrugge, Belgium. The bill of lading stated, in capital letters: "The merchant and carrier agree that the goods will be on-carried beyond Zeebrugge to Beirut by a third party. [Wallenius] will not perform or be responsible for such on-carriage and will only act as agent for the merchant in arranging the third party on-carriage." Ungureanu Decl. Exh. 1. In other words,

Wallenius would ship the car between the Ports of New York and Zeebrugge, and then arrange on-carriage, or further shipment, of the car by a third party. The car was shipped in September 2007, but the buyer in Beirut complained that it never arrived. Plaintiff learned that the car had arrived at Zeebrugge, and that Wallenius had arranged with a third party to truck the car from Zeebrugge to Antwerp, where it was placed in temporary storage awaiting further shipment by an ocean carrier hired by Wallenius. The car was stolen while in storage. See Van Der Steen Decl. ¶¶ 10-12.

To succeed on a motion for summary judgment, the moving party must show that "there is no genuine issue as to any material fact and that [it] is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). A "genuine issue" of "material fact" exists "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). The moving party bears the burden of "informing the district court of the basis for its motion" and identifying the matter that "it believes demonstrate[s] the absence of a genuine issue of material fact." Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). The burden then shifts to the non-moving party to come forward with competent evidence:

> When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of the adverse party's pleading, but the adverse party's response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against the adverse party.

Fed. R. Civ. P. 56(e). The court must "resolve all ambiguities, and credit all factual inferences that could rationally be drawn, in favor of the party opposing summary judgment." Roe v. City

of Waterbury, 542 F.3d 31, 35 (2d Cir. 2008) (citations omitted). However, "[m]ere speculation and conjecture is insufficient to preclude the granting of the motion." Harlen Assocs. v. Village of Mineola, 273 F.3d 494, 499 (2d Cir. 2001).

I find that no genuine issue of material fact exists as to whether Wallenius breached any duty to Plaintiff. Wallenius was no longer responsible for the car when it was stolen. The parties do not dispute that Wallenius was a freight forwarder with respect to the on-carriage contract, that is, an entity that "make[s] arrangements for the movement of cargo at the request of clients" but does not perform the "hands on heavy lifting" of actual shipping. Prima U.S., Inc. v. Panalpina, Inc., 223 F.3d 126, 129-30 (2d Cir. 2000). "[W]hen a freight forwarder selects someone to perform transportation services, that selection fulfills the forwarder's obligations in the absence of proof that the selection itself was negligent." Id. at 130. The disclaimer in the bill of lading, in which Plaintiff agreed that Wallenius would not "be responsible for such on-carriage and will only act as agent for the merchant in arranging the third party on-carriage" confirms that Wallenius was a forwarder with very limited liability. Ungureanu Decl. Exh. 1. Plaintiff asserts that Wallenius was negligent in selecting the third party shipper, because the method of on-carriage—trucking the cargo over land to Antwerp, and then temporarily storing it at Antwerp—subjected it to unexpected and unnecessary risks. However, Plaintiff has submitted no proofs whatsoever in support of this contention, and it finds no basis in the evidence offered by Wallenius. Plaintiff has offered nothing to controvert the showing by Wallenius that this chosen method was the only way to ship the car from Zeebrugge to Beirut. See Van Der Steen Supp. Decl. ¶ 4. In short, the disclaimer in this case created the typical limitation of liability enjoyed by freight forwarders, and Plaintiff has not made the showing of negligence required to survive a motion based in that limitation.

Accordingly, I grant summary judgment dismissing the first cause of action of Plaintiff's Complaint as against Wallenius, as well as against the M/V COURAGE, the vessel which transported the cargo from New York to Zeebrugge. Plaintiff's only remaining claims are against Allround, which has not yet appeared. Plaintiff may submit papers and evidence, by June 12, 2009, to show why judgment should not be granted dismissing its claims against Allround for the same reasons as those stated herein. If Plaintiff fails to make an adequate showing, those claims will be dismissed, and the case will be closed.

The Clerk shall mark the motion (Doc. #5 & #9) as terminated.

SO ORDERED.

Dated: May 21, 2009
New York, New York

ALVIN K. HELLERSTEIN
United States District Judge