

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
SOUTHERN DIVISION**

OWNER-OPERATOR INDEPENDENT)
DRIVERS ASSOCIATION, INC., and)
HOWARD JENKINS, MARSHALL)
JOHNSON, SUSAN JOHNSON, and)
JERRY VANBOETZELAER,)
INDIVIDUALLY AND ON BEHALF)
OF ALL OTHERS SIMILARLY SITUATED,)

Plaintiffs,)

v.)

NEW PRIME, INC., d/b/a/ PRIME, INC.)
and SUCCESS LEASING, INC.,)

Defendants.)

No. 97-3408-CV-S-1



ORDER

Pending before the Court is Defendants' Motion for Summary Judgment. Plaintiffs have filed suggestions in opposition and Defendants have replied thereto. Defendants request that judgment be entered in their favor on Plaintiffs' claims based on lease agreements which terminated before enactment of the Interstate Commerce Commission Termination Act ("ICCTA"). For the following reasons, the Court GRANTS Defendants' motion.

Background

Plaintiffs are owner-operators of tractor-trailer rigs. They have filed suit against the defendants who are motor carriers claiming that agreements entered into between the parties violated the Truth-In-Leasing regulations as codified at 49 C.F.R. 376. Plaintiff Jerry Vanboetzelaer asserts claims arising from two leases. One claim arises out of an agreement entered on October 5, 1992 that was terminated on February 20, 1993. Another claim arises out

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of an agreement entered on February 20, 1993. Defendants' pending motion deals only with the former agreement.

Plaintiff Marshall Johnson has asserted claims arising from two agreements as well. One claim arises out of an agreement entered on July 12, 1994 that was terminated on October 18, 1994. Another claim arises out of an agreement entered October 18, 1994. Again, Defendants' motion seeks judgment only upon the former agreement.

Summary Judgment Standard

Summary judgment is appropriate if the movant demonstrates that there is no genuine issue of material fact and that the movant is entitled to judgment as a matter of law. See Celotex Corp. v. Catrett, 477 U.S. 317, 327, 106 S. Ct. 2548, 2254-55, 91 L. Ed. 2d 265 (1986). The facts and inferences therefrom are viewed in the light most favorable to the nonmoving party. See Fed. R. Civ. P. 56(c); Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586-90, 106 S. Ct. 1348, 1355-58, 89 L. Ed. 2d 538 (1986). The moving party must carry the burden of establishing both the absence of a genuine issue of material fact and that such party is entitled to judgment as a matter of law. See id. "Summary judgment procedure is properly regarded not as a disfavored procedural shortcut, but rather as an integral part of the Federal Rules as a whole, which are designed to secure the just, speedy and inexpensive determination of every action." Celotex, 477 U.S. at 327, 106 S. Ct. at 2555.

Discussion

Plaintiffs' claims for damages are brought under a provision of the ICCTA, specifically, 49 U.S.C. § 14704(a)(2) which reads as follows:

Damages for violations.--A carrier or broker providing transportation or service subject to jurisdiction under chapter 135 is liable for damages sustained by a person as a result of an act or omission of that carrier or broker in violation of this part.

49 U.S.C. § 14704(a)(2).

Defendant challenges the claims at issue because the agreements upon which they are based terminated before January 1, 1996, the effective date of the ICCTA. Defendant argues that Plaintiff cannot bring an action pursuant to 49 U.S.C. § 14704(a)(2) for damages based on a lease that terminated prior to the enactment of the ICCTA because the ICCTA was not intended to operate retroactively.

“Retroactivity is not favored in the law.” Bowen v. Georgetown Univ. Hosp., 488 U.S. 204, 208 (1988). In Landgraf v. USI Film Products, 511 U.S. 244 (1994), the Supreme Court provided the framework for the determination of whether a federal statute applies to conduct predating enactment. In Landgraf, the Supreme Court was faced with the question whether a right to recover compensatory and punitive damages along with a right to a jury trial applied to a Title VII case that was pending on appeal when those rights were created by The Civil Rights Act of 1991. Landgraf, 511 U.S. at 247. The Supreme Court reasoned as follows:

When a case implicates a federal statute enacted after the events in suit, the court’s first task is to determine whether Congress has expressly prescribed the statute’s proper reach. If Congress has done so, of course, there is no need to resort to judicial default rules. When, however, the statute contains no such express command, the court must determine whether the new statute would have retroactive effect, i.e., whether it would impair rights a party possessed when he acted, increase a party’s liability for past conduct, or impose new duties with respect to transactions already completed. If the statute would operate retroactively, our traditional presumption teaches that it does not govern absent clear congressional intent favoring such a result.

Id. at 280.

Plaintiffs concede that Congress has not expressly indicated that the ICCTA is to be applied retroactively. Thus, the charge of the Court is to determine whether § 14704(a)(2), has a retroactive effect. According to Landgraf, Section 14704(a)(2) has a retroactive effect if it

impairs rights possessed by a party when he acted, increases a party's liability for past conduct, or imposes new duties with respect to transactions completed. See id. at 280.

Prior to the ICCTA, the motor carrier industry was regulated by the Interstate Commerce Commission ("ICC"). See Owner-Operator Indep. Drivers Assoc., Inc. v. New Prime, Inc., 192 F.3d 778, 781 (8th Cir. 1999). The purpose of the ICCTA was to deregulate the industry. See id. The motor carrier provisions of the ICCTA eliminated certain functions of the ICC and transferred the remaining regulatory oversight functions to the Federal Highway Administration. See id. at 780.

The ICCTA addressed dispute resolution within the industry. A report of the House Transportation and Infrastructure Committee states:

In addition to overseeing the background commercial rules of the motor carrier industry, the ICC currently resolves disputes that arise in such areas. There is no explicit statutory requirement to do so.... The ICC dispute resolution programs include household goods and auto driveaway carriers, brokers, owner-operator leasing, loss and damage claims, duplicate payments and overcharges, and lumping.

The bill transfers responsibility for all the areas in which the ICC resolves disputes to the Secretary (except passenger intercarrier disputes). The Committee does not believe that DOT should allocate scarce resources to resolving these essentially private disputes, and specifically directs that DOT should not continue the dispute resolution functions in these areas. The bill provides that private parties may bring actions in court to enforce the provisions of the Motor Carrier Act. This change will permit these private, commercial disputes to be resolved the way that all other commercial disputes are resolved--by the parties.

H.R.Rep. No. 104-311, at 87-88 (1995)(emphasis added), quoted in Owner-Operators Indep. Drivers Ass'n, Inc. v. New Prime, Inc., 192 F.3d 778, 781 (8th Cir. 1999). In other words, it appears that before the ICCTA disputes between carriers and owner-operators were settled by the ICC although there was no specific statutory authority for it to do so. The committee reasoned that section 14704 "expands the current law which only permits complaints brought under the Act to be brought before the ICC." H.R.Rep. No. 104-311, at 120-121 (1995) (emphasis added).

While the presumption against retroactivity is strong, changes in procedural rules may often be applied in suits arising before their enactment without raising concerns about retroactivity. Landgraf 511 U.S. at 275. This is because procedural rules regulate secondary rather than primary conduct. See id. The question, therefore, is whether the transfer of enforcement of the Truth-in-Leasing regulations from the ICC to the courts along with a private right to recover damages is the sort of procedural change regulating only secondary conduct.

In Landgraf, the Court dealt with the question of whether to apply amendments to Title VII to conduct occurring before their enactment. One amendment at issue gave plaintiffs a right to a jury trial and the second amendment allowed plaintiffs to recover compensatory and punitive damages for conduct in violation of Title VII. See Landgraf 511 U.S. at 247. The Supreme Court reasoned:

[t]he jury trial right . . . is plainly a procedural change of the sort that would ordinarily govern in trials conducted after its effective date. . . . However, because [the statute] makes a jury trial available only “[i]f a complaining party seeks compensatory or punitive damages,” the jury trial option must stand or fall with the attached damages provisions.

Landgraf 511 U.S. at 280-81. The Supreme Court then reasoned:

the new compensatory damages provision would operate “retrospectively” if it were applied to conduct occurring before [the provision’s enactment]. The introduction of a right to compensatory damages is . . . the type of legal change that would have an impact on private parties’ planning. . . . [I]f applied here, that provision would attach an important new legal burden to that conduct.

Landgraf 511 U.S. at 282-83.

The question, therefore, appears to be whether § 14704(a)(2) does more than simply change the forum in which the pending dispute was to be brought. If § 14704(a)(2) were to simply transfer disputes from the ICC to the courts, it would be analogous to providing a jury trial where none previously existed and thus regulates secondary conduct and can be applied

retroactively. If, however, the statute provides a cause of action or damages to which Plaintiff was not previously entitled, the statute would have an impermissible retroactive effect if applied to leases executed before its enactment.

The Court can find no authority pursuant to which owner-operators could pursue a private right of action for damages from a carrier arising from violations of the Truth-in-Leasing regulations, such as the pending action, prior to enactment of the ICCTA. What is clear, however, is that when Congress enacted the ICCTA, it removed any doubt by expressly granting parties injured in violation of the regulations, including the Truth-in-Leasing regulations, a private action for damages in court. See Owner-Operators Indep. Drivers Ass'n, Inc. v. New Prime, Inc., 192 F.3d 778 (8th Cir. 1999).

Plaintiffs counter that the ICCTA was not intended to change the “fundamental liabilities” of carriers under the Truth-in-Leasing regulations. Plaintiffs contend that owner-operators had the ability to sue for damages for violation of leasing regulations prior to the enactment of the ICCTA. As support for this assertion, Plaintiffs rely on two district court opinions where suits were brought against carriers for violations of regulations prior to enactment of the ICCTA. See Strickland v. Trucker Express, Inc., CV-95-62-M-RFC (D. Mont. Mar. 24, 2000); Jacobs v. Central Transport, Inc., 891 F. Supp. 1088, 1113 (E.D.N.C. 1995). In neither of the cases cited by Plaintiffs, however, did the Court address whether a private right of action for damages existed for violation of the Truth-in-Leasing regulations. These cases, therefore, are of little value.

The enactment of § 14704(a)(2) imposes liability for conduct where it appears none previously existed. As such, the Court finds that section § 14704(a)(2) may increase a party's liability for past conduct, or impose new duties with respect to completed transactions. The

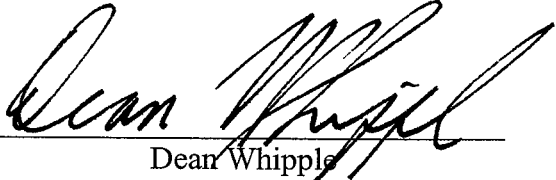
Supreme Court's holding in Landgraf therefore, dictates that the statute cannot be applied to conduct predating its enactment absent clear congressional intent. Such intent being absent, the Court must grant Defendants judgment on the contracts at issue in the pending motion.

Defendants have argued in the alternative that Plaintiffs' claims are barred by a statute of limitations. In light of the above analysis, the Court need not address this argument.

Therefore, the Court hereby GRANTS Defendant's Motion for Partial Summary Judgment.

IT IS SO ORDERED.

Date 1-22-02



Dean Whipple
United States District Judge