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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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WOLFES & VON ETZDORF
ASSECURANZBUREAU OHG a/s/o EXPOFRESH
S.A. and a/s/o NATURIFE FARMS IMPORTS, INC.

Plaintiff,

- against -

MSC MEDITERRANEAN SHIPPING COMPANY
S.A.

Defendant.
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19 Civ.

COMPLAINT

Plaintiff, WOLFES & VON ETZDORF ASSECURANZBUREAU OHG a/s/o EXPOFRESH S.A. and a/s/o NATURIFE FARMS IMPORTS, INC. by and through its attorneys, Casey & Barnett LLC, as and for its Complaint, alleges upon information and belief as follows:

JURISDICTION

1. This is an admiralty and maritime claim within the meaning of Rule 9(h) of the Federal Rules of Civil Procedure. Jurisdiction is predicated upon 28 U.S.C. §1333 and the provisions contained in the MSC bill of lading, which provides for jurisdiction in this District for cargo shipments that transit through the United States.

PARTIES

2. At all material times, WOLFES & VON ETZDORF ASSECURANZBUREAU OHG (hereinafter “WVE” or “Plaintiff”) was and is a corporation organized and existing by virtue of the laws of a foreign country with an office and place of business located at Oberhafenstrasse 1, Hamburg 20097, Germany, and is the subrogated underwriter of a consignment of Fresh Mandarins, as more specifically described below.

3. At all material times, EXPOFRESH S.A., (hereinafter “Expofresh” or “Plaintiff”) was and is a corporation organized and existing by virtue of the laws of a foreign country with an office and place of business located at 1643 Beccar, Buenos Aires, Argentina and was the owner/shipper of two consignments of Fresh Blueberries, as more specifically described below.

4. At all material times, NATURIPE FARMS IMPORTS, INC. (hereinafter “Naturipe” or “Plaintiff”) was and is a corporation with an office and a place of business located at 9450 Corkscrew Palms Circle, Esteros, Florida 33928, and was the owner/consignee of two consignments of Fresh Blueberries, as more specifically described below.

5. At all material times, defendant, MSC MEDITERRANEAN SHIPPING COMPANY S.A. (hereinafter “MSC” or “Defendant”) was and is a corporation organized and existing by virtue of the laws of a foreign state with an office and place of business located at 420 Fifth Avenue, New York, New York 100016, and at all relevant times, was and is still doing business within the jurisdiction of this Honorable Court as a common carrier of goods for hire.

6. Plaintiff brings this action on its own behalf and as agent and/or trustee on behalf of and for the interest of all parties who may be or become interested in the said consignments, as their respective interests may ultimately appear, and plaintiff is entitled to maintain this action.

RELEVANT FACTS

7. On or about October 22, 2018, a consignment consisting of 5,520 Boxes of Fresh Blueberries, laden in refrigerated container TEMU 9008230, then being in good order and condition, was delivered to MSC and/or its agents in San Antonio, Chile by cargo shipper Expofresh. The cargo was booked for transit on board the M/V MSC SHUBA B in San Antonio destined for Philadelphia, Pennsylvania, all in consideration of an agreed upon freight, and in consideration of MSC maintaining a supply air temperature of -5°C at all times, all pursuant to MSC bill of lading MEDUSG041834 dated October 22, 2018.

8. On or about October 22, 2018, a consignment consisting of 5,520 Boxes of Fresh Blueberries, laden in refrigerated container TEMU 91250877, then being in good order and condition, was delivered to MSC and/or its agents in San Antonio, Chile by cargo shipper Expofresh. The cargo was booked for transit on board the M/V MSC SHUBA B in San Antonio destined for Philadelphia, Pennsylvania, all in consideration of an agreed upon freight, and in consideration of MSC maintaining a supply air temperature of -5°C at all times, all pursuant to MSC bill of lading MEDUSG041834 dated October 22, 2018.

9. The cargoes of Fresh Blueberries were subject to a USDA protocol which requires that certain temperatures be maintained during the transit. MSC was aware of this USDA protocol and provided equipment to monitor the USDA temperature requirements during the transit. Moreover, MSC applied for, and received authorization from the USDA to transport cargo subject to the USDA protocol based upon certain and various representations MSC made to the USDA.

10. Thereafter the containers were loaded on board the M/V MSC SHUBA B on or about October 20, 2018, MSC bill of lading MEDUSG041834 was issued and the vessel sailed for her intended destination.

11. On October 29, 2018 the aforementioned containers were discharged from the M/V MSC SHUBA B in Cristobal, Panama for transshipment purposes.

12. On or about October 31, 2018 the aforementioned containers were loaded on board the M/V MSC WESER for transit to Philadelphia.

13. The containers arrived in Philadelphia and were released by MSC to the cargo owners on November 16, 2018.

14. At the time of delivery, it was determined that MSC had failed to maintain proper temperatures during transit; providing a supply air temperature of + $^{\circ}\text{C}$ 5 instead of the instructed supply air temperature of - $^{\circ}\text{C}$ 5 and this variance resulted in the cargo failing the USDA Cold Treatment Protocol. USDA placed a hold on the container pending completion of a proper cold treatment protocol.

15. On December 3, 2018 the containers were released by the USDA.

16. As a result of the temperature abuse and delay in transit, the consignment was not in the same good order and condition as when received by defendant, but instead had suffered physical damage while in said defendant's care, custody and control.

17. The damage to the cargo was not the result of any act or omission of the plaintiff but, to the contrary, was due solely as the result of the negligence, fault, neglect, breach of contract of carriage, and bailment on the part of the defendant and/or its agents.

18. The fair market value of the consignments at destination was \$270,480.00. Plaintiff was able to salvage the cargo for \$178,777.73, resulting in cargo damages in the amount of \$107,527.60, as Plaintiff incurred additional expenses in the amount of \$15,825.33 as a result of defendant's breach of contract and negligence.

19. As a result of the foregoing, Plaintiffs suffered damages in the amount of \$107,527.60.

20. At all times relevant hereto, a contract of insurance for property damage was in effect between Expofresh, Naturipe and WVE, which provided coverage for, among other things, loss or damage to the aforementioned consignments of Fresh Blueberries.

21. Pursuant to the aforementioned contract of insurance between Expofresh, Naturipe and WVE, monies have been expended on behalf of Expofresh, Naturipe to the detriment of WVE due to the damages sustained during transit.

22. As WVE has sustained damages as a result of said expenditures, expenditures rightly the responsibility of defendant, WVE has an equitable right of subrogation and is subrogated to the rights of its insured with respect to any and all claims for damages against the Defendant.

23. Expofresh and Naturipe have, in addition, assigned the deductible portions of the claim to WVE.

24. By reason of the foregoing, Plaintiff has sustained losses which will be shown with specificity at trial, no part of which has been paid, although duly demanded, which are presently estimated to be \$107,527.60.

AS AND FOR A FIRST CAUSE OF ACTION

25. Plaintiff repeats, reiterates and realleges each and every allegation set forth in paragraphs 1 through 24, inclusive, as if herein set forth at length.

26. Pursuant to the contract of carriage entered into by and between the parties, the Defendant owed contractual and statutory duties to the aforementioned cargo owner to carry, bail,

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