UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 20-cv-22471-DPG

NORTH AMERICAN SUGAR INDUSTRIES INC.,

Plaintiff,

v.

XINJIANG GOLDWIND SCIENCE & TECHNOLOGY CO., LTD., GOLDWIND INTERNATIONAL HOLDINGS (HK) LTD., DSV AIR & SEA INC., BBC CHARTERING USA, LLC, and BBC CHARTERING SINGAPORE PTE LTD.,

Defendants.
_____/

MOTION OF BBC CHARTERING SINGAPORE PTE LTD. TO DISMISS THE FIRST AMENDED COMPLAINT FOR LACK OF PERSONAL JURISDICTION AND MEMORANDUM OF LAW

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Defendant BBC Chartering Singapore Pte Ltd. ("BBC Singapore") moves under Federal Rule of Civil Procedure 12(b)(2) to dismiss the claims alleged against it in the *First Amended Complaint* (ECF No. 189) ("FAC") for lack of personal jurisdiction.[1]

Introduction

Plaintiff claims that two commercial ships owned and operated by *non-parties* it describes as "the Briese Group" (*see* FAC ¶¶ 21, 79, and 98) delivered cargoes from China to a Cuban port in which plaintiff claims an interest, thereby giving rise to plaintiff's "trafficking" claims against the five named defendants under the Cuban Liberty and Democratic Solidarity Act (LIBERTAD) Act, 22 U.S.C. § 6021, *et seq*. ("Helms-Burton Act" or "Act"). Plaintiff also (and improperly) asserts a common law conspiracy claim on the same alleged facts, contending that defendants "conspired" to engage in such trafficking.

There is no dispute that, if "trafficking" occurred, it occurred in Cuba – and not within this District. The substantive allegations of the FAC belie the cursory assertion that "this action arises from or relates to Defendants' activities in Florida or the United States, and Defendants have purposefully availed themselves of the benefits and protections of Florida or the United States." FAC ¶ 14. Plaintiff's own allegations show that BBC Singapore did *nothing* of substance within this District that gave rise to plaintiff's claims.

Notably, plaintiff consciously chose *not* to sue the ships' *owners or operator* (the "carrier") whose ships called at the Cuban port. Instead, plaintiff sued two small, separate companies – one based in Singapore (BBC Singapore) and the other in Texas (BBC USA) – that

[1] BBC Singapore and defendant BBC Chartering USA, LLC ("BBC USA") each is submitting its own motion to dismiss for lack of personal jurisdiction because there are significant factual differences concerning each entity's involvement (or complete lack thereof) in the two voyages involved in the case, and plaintiff relies alternatively on Fed. R. Civ. P. 4(k)(2) as to BBC Singapore but not as to BBC USA. However, where possible, this motion incorporates portions of the BBC USA motion to avoid duplication. *See* Court's notice at ECF No. 4.

merely provide certain services as *agents* to the carrier and played no role in the ships' one-day (or less) stops in the Port of Miami during their nearly two-month voyages from China to Cuba. Nor does plaintiff, incorporated in New Jersey and based in New York (FAC ¶ 17), have any connection with Florida. Yet, those two brief stops in Miami – which involved no loading or discharging of cargo and were only for the purpose of obtaining clearance from U.S. authorities for the cargoes to lawfully travel to Cuba with the cargoes – are the *only* basis on which plaintiff claims that the Court has personal jurisdiction over BBC Singapore.

BBC Singapore is a 40-person company, which only has an office in Singapore. It performs contractual services as agent for the carrier *only* in the Far East and has no offices, employees, or other connections with Florida or the U.S. It does not own or operate the ships and had no role in the ships' stops in Miami, which is outside its territory in the Far East. BBC Singapore did not: (a) make the decision for the ships to stop in Florida (or anywhere in the U.S.); (b) hire or direct Miami port agents in connection with those stops; or (c) prepare, approve, or submit the export license or customs forms on the basis of which the U.S. authorities cleared the cargoes for Cuba.

BBC Singapore did not own the cargoes delivered to Cuba and did not receive any of the freight or other fees that the shipper, Denmark-based DSV Air & Sea A/S ("DSV Denmark"), paid to the *carrier*. BBC Singapore's revenue, which is paid by its principal (the carrier), and is based on the cost of its Singapore-based operations, was unaffected by and would have been the same if the shipments had not occurred.

Plaintiff does not and cannot show any real connection among BBC Singapore, the ships' stops in Miami, and the claims; all plaintiff can point to are trivial and irrelevant emails showing that BBC Singapore, from its home in Singapore, merely monitored the voyages after they left the Far East, to enable it to keep the carrier's customer, non-party DSV Denmark, informed of

the ships' positions and estimated and actual port arrivals and departures. Indeed, plaintiff's claims would be *identical* had the brief stops in Miami never occurred. Plaintiff's summary of its claims against BBC Singapore underscores BBC Singapore's lack of connection to plaintiff's claims and – more importantly – to Florida. After eight months of exhaustive personal jurisdiction discovery, all plaintiff can claim is that:

- "BBC Singapore was … aware that U.S. trade laws other than the Helms-Burton Act imposed certain sanctions and licensing requirements that would make it necessary for the vessels to stop in the United States [notably, *not* "in Florida"] before continuing to Cuba to deliver the wind farm equipment …";
- "BBC Singapore participated in discussions of the shipping routes for the two vessels and corresponding licensing analyses"; and
- "its [BBC Singapore's] port agent in Florida [actually, it was the *carrier*'s port agent, *see* below] prepared and sent a 'lessons learned' checklist from the BBC Jade's stop in Miami to help facilitate the BBC Moonstone's subsequent voyage on the same route."

FAC ¶ 6(iv). This is a far cry from what is necessary to support the exercise of personal jurisdiction over BBC Singapore, and requires dismissal of the claims against it on that basis.

Jurisdictional Allegations and Facts [2]

BBC Singapore is incorporated in and has its principal and *only* place of business in Singapore. It does not have any offices, employees, bank accounts, telephone numbers, mailing addresses, or registered agents in Florida and it is not registered to do business in Florida or elsewhere in the U.S. It does not own or operate any ships. It employs about 40 persons. Its only business is to act as agent for a Germany-based affiliate, BBC Chartering Carriers GmbH & Co.

[2] The facts are as alleged in the FAC (and accepted as true only for purposes of this motion, except as controverted by the declarations) and as stated in the Declarations of BBC Singapore's Managing Director, Lars Schoennemann, signed on December 3, 2021 ("Schoennemann Decl."), and its exhibits, and of BBC USA's President, Per Petersen, signed on December 2 ("Petersen Decl."), and its exhibits, filed in support of BBC USA's separate motion to dismiss for lack of personal jurisdiction but also relevant, in part, to this motion to dismiss.

KG ("BBC Carriers"), which operates a fleet of ships, including the two ships involved in this case that lawfully carried wind turbine blades from China to Cuba: the "Jade" and the "Moonstone." BBC Singapore performs its services as agent to BBC Carriers within its contractually designated "Territory," the Far East, which includes Australia, Korea, China, Japan, and other Asian ports including and to the east of the southern tip of India. (FAC ¶ 22; Schoennmann Decl. ¶¶ 4-13.) BBC Singapore's Territory does not include the United States or the Caribbean – *e.g.*, Florida or Cuba.

BBC Singapore became involved in the two shipments to Cuba in March 2018, when it received an "Initial Email" from non-party DSV Denmark inquiring about a project of DSV Denmark to ship wind blades from China to Cuba (Schoennemann Decl. ¶ 19 and Ex. A). Because the cargoes were to be carried by ships operated by BBC Carriers (which eventually designated the Jade and Moonstone for this project) and the blades were to be loaded in a Chinese port within BBC Singapore's Territory, BBC Singapore provided services *within its Territory* as agent for BBC Carriers in connection with these shipments. (Schoennmann Decl. ¶¶ 23-32.)

As part of its services, BBC Singapore participated in the negotiation and preparation of: (a) the "Charter Agreement" between BBC Carriers (as the carrier) and DSV Denmark (as the merchant or customer), and (b) the carrier's bills of lading. BBC Singapore signed the Charter Agreement as agent for BBC Carriers. (*Id*. and Schoennmann Ex's B, C, and D.)

While performing its services, BBC Singapore learned that the ships were to stop in a U.S. port (later designated by others to be Miami) on their way from China to Cuba. As plaintiff admits, "[t]he Blade Manufacturer's identity as the subsidiary of a U.S. company … required stops *in the United States* in order to comply with U.S. trade laws[.]" FAC ¶ 50 (emphasis added). DSV Denmark so informed BBC Carriers and BBC Singapore in DSV Denmark's initial

email inquiry in March 2018 (Schoennmann Decl. ¶ 19). Thereafter, BBC Singapore participated in email communications that included discussions about the planned stop in Miami, which, plaintiff admits, "was not a regular port of call for BBC Carriers vessels." FAC ¶ 66. But, while participating in email communications about the vessels' travel path, BBC Singapore did not:

- make, propose, or approve the plan for the ships to stop in a U.S. port on their way to Cuba (Schoennmann Decl. ¶ 33);
- apply for the U.S. Department of Commerce export license (in which BBC Singapore is not named) that was presented to U.S. authorities in Miami for the purpose of clearing the cargoes for Cuba (*id*. ¶¶ 36-39);
- prepare, approve, or submit the "ISF" or "AMS" forms that also were presented to U.S. authorities in Miami (*id*. ¶¶ 51-53);
- hire or direct the Miami port agents that provided services to BBC Carriers and the ships during the Miami stops (*id*. ¶¶ 43-50); or
- make any decisions, give any directions, or take any actions regarding the Miami stops (*id*. ¶¶ 33-57).

BBC Singapore's substantive role ended once each ship left BBC Singapore's Territory. Its minimal involvement thereafter consisted of *communicating* with BBC Carriers, the ships' captains, and BBC Carriers' agents in ports beyond BBC Singapore's Territory (such as Miami and Cuba) for the purpose of keeping BBC Carriers' customer, non-party DSV Denmark, informed of the ships' positions and estimated and actual times of arrival at ports during the voyages. (Schoennmann Decl. ¶¶ 48-50.)

After examining many thousands of documents produced in discovery by BBC Singapore, the other defendants, and three nonparties on which plaintiff served subpoenas (*see* Procedural History, below), plaintiff cannot allege any *facts* that substantively "connect" BBC Singapore to Florida and plaintiff's claims. As plaintiff itself frames what happened, a DSV employee believed the vessels "were *merely making a stopover in a United States port*," FAC

¶ 63 (emphasis added), which highlights that the Miami stops had no substantive connection to plaintiff's claims.

Plaintiff's allegations specifically about BBC Singapore are based on trivial emails that are not only irrelevant to personal jurisdiction but also confirm that BBC Singapore played no role in the ships' stops in Miami, on which plaintiff's tenuous assertion of personal jurisdiction is entirely based. Plaintiff refers to the following in an effort to establish some connection among BBC Singapore, this forum, and plaintiff's claims, but all that these emails show is that personal jurisdiction is wholly lacking:

(a) **The "lessons learned" emails**. In early January 2019, after the Jade cleared U.S. Customs in Miami but before the Moonstone was to do so, BBC Singapore's chartering manager, Randall Sullivan, emailed one of *BBC Carriers*' Miami port agents asking "for a brief rundown of the timeline/events/involved parties" during the Miami stop, to "get a better idea" of those events "in case we find ourselves presented with this opportunity again" (Schoennemann Decl. ¶ 48 and Ex. H). This request for *information* about an event that had occurred, sent *from Singapore*, so that BBC Singapore could (and did) pass it on to its principal (BBC Carriers) and BBC Carriers' customer (DSV Denmark) (*id*. ¶¶ 49-50) is not even close to an *action* or other connection with Florida that could support the Court's assertion of personal jurisdiction over BBC Singapore.

(b) **The ISF and AMS filings**. On November 7, 2028, the day *after* DSV Denmark electronically filed the ISF and AMS forms with U.S. Customs, BBC Singapore's operations manager, Nicole Faubel, emailed Beverly Scott, a BBC USA documents specialist, forwarding DSV Denmark's email that included "screen dumps" of the forms that DSV Denmark had filed, and asked for any comments. Ms. Scott replied, "Everything looks good and correct to me." (Schoennemann Decl. ¶¶ 54-56 and Ex. I.) This after-the-fact communication between BBC

Singapore and BBC USA reflects no *action* by BBC Singapore (or BBC USA) in or directed to Florida, but is merely an example of BBC Singapore's monitoring of events and gathering of *information* (*id*. ¶¶ 54-57; Petersen Decl. ¶ 29).

(c) **Hiding the Moonstone's Cuba stop from McDermott**. The Moonstone carried an unrelated cargo for a U.S. customer ("McDermott") from the Far East to Port Arthur, Texas, along with the second cargo of blades for DSV Denmark from China to Cuba. The charter agreement between BBC Carriers and McDermott for that cargo stated that the "[v]essel should be able to transit the United States and should not have transited countries under US or UN embargo."[3] (Petersen Decl. ¶ 40.) For this reason, and also because owners of separate cargoes on the same ship are entitled to confidentiality (Schoennemann Decl. ¶ 82), BBC Singapore, along with its principal BBC Carriers, took steps to hide *from McDermott* the fact that the Moonstone was to stop, and did stop, in Cuba on its way to Port Arthur.

One such step was to create and give McDermott a fictitious "stow plan" (a drawing of how cargoes are stowed on a ship), which stated that the prior port before Port Arthur was Rio Haina (in the Dominican Republic) instead of the Cuban port (FAC ¶ 112; Schoennmann Decl. ¶ 82(a) and Ex. M). Another step was to ask the Moonstone's captain, if it could be safely and legally done, to turn off one or more satellite tracking systems while the ship was in or near Cuba, so that McDermott would not be able to trace the ship's movement in that area (FAC ¶ 114; Schoennmann Decl. ¶ 82(b) and Ex's O and P). And a third step was to ask BBC Carriers and BBC Singapore personnel, in early 2019, to communicate with BBC USA regarding the Port

[3] The purpose of this clause is to protect the cargo owner (McDermott) from the possibility that U.S. authorities would ban the vessel from calling on U.S. ports for six months after an unlawful stop in a country under U.S. sanctions. That could not and did not occur in this case because U.S. Customs explicitly authorized the delivery of the wind blades to Cuba based on the export license issued by the U.S. Department of Commerce. (Petersen Decl. ¶¶ 40-42 and Schoennemann Decl. ¶¶ 83-84.)

Arthur-bound cargo on the Moonstone "via PHONE ONLY." (FAC ¶ 113; Schoennmann Decl. ¶ 82(c) and Ex. Q).

Plaintiff focuses on these steps in order to portray BBC Singapore as deceitful. The BBC defendants deny that these actions were deceitful (*see* Schoennemann Decl. ¶¶ 83-84 and Petersen Decl. ¶¶ 40-42). But, even if they were, they would have been deceitful *only as to McDermott*, not as to plaintiff; and not as to "U.S. authorities," who were well aware, as evidenced by the U.S. Customs vessel clearance statements, that the wind blades cargoes were to be delivered to Cuba (Schoennemann Decl. ¶ 65 and Ex's J, K, and L; *see also id*. ¶¶ 58-67 (concerning the U.S. Customs clearance statements generally)). Furthermore, these events were unrelated to the ship's brief stop in *Miami*, which, again, is the only basis on which plaintiff asserts that the Court may exercise personal jurisdiction over BBC USA.

Procedural History

Plaintiff commenced this action in June 2020. All defendants jointly moved to dismiss for failure to state claim and each defendant moved to dismiss for lack of personal jurisdiction. Before plaintiff was due to respond to the personal jurisdiction motions, it moved for and the Court issued an order allowing plaintiff to take discovery on personal jurisdiction issues (*see* ECF No. 80). On August 24, 2021, the Court issued a decision on defendants' joint Rule 12(b)(6) motion, dismissing the complaint without prejudice as a "shotgun pleading" and authorizing defendants to renew their Rule 12(b)(2) motions after the jurisdictional discovery concluded. (ECF No. 145; 2021 WL 3741647 at *5).[4]

Jurisdictional discovery eventually spanned eight months, during which BBC Singapore:

- Responded to a set of 20 interrogatories;

[4] The decision is reported in Westlaw, *N. Am. Sugar Ind. Inc. v. Xinjiang Goldwind Science & Tech. Co.*, No. 20-cv-22471, 2021 WL 3741647 (S.D. Fla. Aug. 24, 2021) (Gayles, J.).

- Responded to a set of 48 document requests;
- Produced, in five batches, a total of 2,497 documents, comprising 10,620 pages; and
- Produced its Managing Director, Lars Schoennemann, for a Rule 30(b)(6) deposition that spanned four hours and covered 30 deposition exhibits.

Plaintiff also received documents from three non-parties on which it served subpoenas: each of the two port agents that *BBC Carriers* hired for the ships' brief stops in Miami ("USA Maritime" and "Seaport Hub"), and a Louisiana-based shipping company ("Dan-Gulf Shipping") to which BBC Singapore sent a single email concerning the Cuba shipments. Plaintiff also received written responses to interrogatories and document requests, as well as documents, and took Rule 30(b)(6) depositions from each of the other defendants.

Plaintiff filed the FAC on November 1, 2021 (ECF No. 189). Plaintiff summarily alleges that the Court has *specific* personal jurisdiction over BBC Singapore under the first two prongs of the Florida long-arm statute, § 48.193(1)(a), Fla. Stat.: subsection 1 ("carrying on a business … in this state") and subsection 2 ("Committing a tortious act within this state"). FAC ¶ 13. Plaintiff alleges alternatively that the Court has personal jurisdiction over BBC Singapore under Fed. R. Civ. P. 4(k)(2), which may apply when "the defendant is not subject to jurisdiction in any state's courts of general jurisdiction." (*Id.*)[5]

As discussed below, and as confirmed by the extensive evidence that plaintiff sought and obtained in discovery, the Court lacks personal jurisdiction over BBC Singapore.

[5] Plaintiff does not allege that the Court may exercise *general* jurisdiction over BBC Singapore under § 48.193(2), Fla. Stat. BBC Singapore therefore does not address whether it is subject to the Court's *general* jurisdiction, which it clearly is not. *See*, *e.g.*, *Daimler AG v. Bauman*, 571 U.S. 117, 137-39 (2014) (with very rare exceptions, a corporation is subject to general jurisdiction only where it is incorporated or has its principal place of busines).

Argument

I. Legal Standards

BBC Singapore adopts and incorporates "Section I – Legal Standards" at pages 10-11 of the *Motion of BBC Chartering USA, LLC to Dismiss the First Amended Complaint for Lack of Personal Jurisdiction and Memorandum of Law* ("*BBC USA's Motion*") filed concurrently herewith (*see* n.1 at p. 1 above).

II. The Court Lacks Personal Jurisdiction Over BBC Singapore Under the Florida Long-Arm Statute

A. Florida's long-arm statute sets a high bar, which plaintiff fails to meet

BBC Singapore adopts and incorporates "Section II.A – Florida's long-arm statute sets a high bar, which plaintiff fails to meet" at pages 11-12 of *BBC USA's Motion* filed concurrently herewith (*see* n.1 at p. 1 above). Plaintiff's tenuous allegations regarding BBC Singapore similarly fail to meet the requirements of Florida's long-arm statute because BBC Singapore did nothing within or directed toward Florida that was in any way related to plaintiff's claims.

B. BBC Singapore did not carry on any business in Florida related to plaintiff's claims

BBC Singapore does not and has not carried on a business in Florida *at all*, much less any business related to plaintiff's claims. "In order to establish that a defendant is 'carrying on business' for the purposes of the long-arm statute, the activities of the defendant must be considered collectively and show *a general course of business activity in the state for pecuniary benefit*." *Borchers v. Amazon.com, Inc.*, No. 18-cv-61537, 2019 WL 5196117, at *3 (S.D. Fla. Jan. 30, 2019) (Dimitrouleas, J.) (emphasis added) (quoting *Horizon Aggressive Growth, L.P. v. Rothstein-Kass, P.A.*, 421 F.3d 1162, 1167 (11th Cir. 2005)).

BBC Singapore conducts *no* business in Florida. It has no offices, employees, bank accounts, telephone numbers, mailing addresses, or registered agents in Florida and is not

registered to do business in Florida. Nor does it derive any "pecuniary benefit" from any activity in Florida; BBC Singapore derived no revenue at all from the shipments at issue. Most importantly, nothing that BBC Singapore did even distantly touching Florida related to plaintiff's claim of trafficking, which occurred in Cuba, or with any alleged conspiracy to traffic, which has nothing to do with Florida.

BBC Singapore did not hire or direct the actions of the port agents in Miami, which is outside its Territory in the Far East. That BBC Singapore employees were copied on emails among BBC Carriers, the Miami port agents, and the ships' captains – at its Singapore office and merely for informational purposes – falls far short of "carrying on a business" under section 48.193(1)(a)(1). *See Horizon*, 421 F.3d at 1167 (generally, "telephonic and electronic communications" from [defendant's] California offices into Florida cannot constitute 'conducting business' in Florida"). As the Eleventh Circuit has recognized, "[w]hile out-of-state communications can be sufficient to trigger Florida's long-arm statute, 'the cause of action must arise *from* the communications.'" *Estate of Scutieri v. Chambers*, 386 F. App'x 951, 956 (11th Cir. 2010)) (quoting *Wendt v. Horowitz*, 822 So. 2d 1252, 1260 (Fla. 2002)) (emphasis added). Here, plaintiff's cause of action "arise[s] from" the alleged use of a Cuban port. The happenstance of a one-day (or less) Miami port stop during each ship's nearly two-month voyage from the Far East to Cuba – planned and executed by persons *other than BBC Singapore* and for purposes of making the delivery of the cargoes to Cuba lawful – utterly fails to establish any connection among *BBC Singapore*, Florida, and plaintiff's claims.

C. BBC Singapore committed no tortious act in Florida

BBC Singapore adopts and incorporates "Section II.C – BBC USA committed no tortious act in Florida" at page 14 of *BBC USA's Motion* filed concurrently herewith (*see* n.1 at p. 1

above). The identical principles and arguments stated in that section apply to BBC Singapore, as to which personal jurisdiction is likewise lacking under Section 48.193(1)(a)(2).

D. The civil conspiracy claim does not create personal jurisdiction over BBC Singapore

BBC Singapore adopts and incorporates "Section II.D – The civil conspiracy claim does not create personal jurisdiction over BBC USA" at pages 15-16 of *BBC USA's Motion* filed concurrently herewith (*see* n.1 at p. 1 above). The identical principles and arguments stated in that section apply to BBC Singapore, as to which plaintiff's conspiracy claim likewise fails to create personal jurisdiction.

* * *

For all the above reasons, the Court may not exercise personal jurisdiction over BBC Singapore under the Florida long-arm statute.

III. The Court's Assertion of Personal Jurisdiction Over BBC Singapore Would Violate BBC Singapore's Due Process Rights

A. Plaintiff's allegations do not meet the Supreme Court's due process mandates

BBC Singapore adopts and incorporates "Section III.A – Plaintiff's allegations do not meet the Supreme Court's due process mandates" at pages 16-17 of *BBC USA's Motion* filed concurrently herewith (*see* n.1 at p. 1 above). The identical principles and arguments stated in that section apply to BBC Singapore.

B. Plaintiff's claims *do not relate* to BBC Singapore's trivial "contacts" with Florida

When a plaintiff relies on *specific* jurisdiction, as in this case, due process requires that the claim arise from or be closely related to the defendant's actions in the forum. *Ford Motor Co. v. Montana Eighth Jud. Dist. Court*, 141 S.Ct. 1017, 1024-25 (2021) (for specific jurisdiction to exist, plaintiff's claims "'must arise out of or relate to the defendant's contacts' with the forum") (quoting *Bristol-Myers Squibb Co. v. Superior Court of Cal., San Francisco Cty.*, 137 S.Ct. 1779, 1780 (2017), which in turn quoted *Daimler*, 571 U.S. at 127); *see also Oldfield,* 558 F.3d

at 1222 ("A fundamental element of the specific jurisdiction calculus is that plaintiff's claim must 'arise out of or relate to' at least one of defendant's contacts with the forum.") (quoting *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472 (1985)).

A defendant's claims-related contacts with the forum must also be *purposeful*. They "must be the defendant's own choice and not 'random, isolated, or fortuitous.'" *Ford*, 141 S.Ct. at 1025 (quoting *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 774 (1984)). The defendant must have "deliberately 'reached out beyond' its home – by, for example, 'exploi[ting] a market' in the forum State or entering a contractual relationship centered there." *Id*. (quoting *Walden v. Fiore*, 571 U.S. 277, 285 (2014)). As the Supreme Court underscored in *Ford*, "In the sphere of specific jurisdiction, the phrase 'relate to' incorporates real limits, as it must to adequately protect defendants foreign to a forum." *Id*. at 1026.

Plaintiff's allegations establish that it fails this test as to BBC Singapore, which: (i) did not own or operate either ship; (ii) did not decide that the ships would stop in Florida (or anywhere in the U.S.); (iii) did not apply for an export license, did not prepare or approve the ISF or AMS filings, and did not submit the license to or make those filings with U.S. Customs in Miami; (iv) did not enter into any contracts in Florida; and (iv) did not otherwise exploit the Florida market. Instead, BBC Singapore performed its limited agent's services in connection with the two voyages at issue from its only office in Singapore, within its Territory in the Far East, and merely monitored events during the remainder of the voyages outside its Territory. It did not "reach out beyond its home" in Singapore.

That plaintiff in this case is neither incorporated nor headquartered in Florida, has no offices in Florida, and did not sustain any injury in Florida further confirms that exercising specific jurisdiction over BBC Singapore would violate due process. As the Supreme Court explained in *Ford*, describing the Court's holding of lack of personal jurisdiction in *Bristol-*

Myers, the necessary connection with the forum State was lacking in *Bristol-Myers* because the plaintiffs "were not residents of California [the forum State]" and "they had not sustained their injuries in California." *Ford*, 141 S.Ct. at 1031. The equivalent is true here.

Both of plaintiff's claims – trafficking under the Act and conspiracy – concern alleged invasions of plaintiff's rights regarding property in *Cuba*. Nothing BBC Singapore did in or relating to the ships' stops in Miami relates to those claims, which means that plaintiff's claims do not arise from BBC Singapore's (non-existent) contacts with Miami. *See Consolidated Dev. v. Sherritt, Inc.*, 216 F.3d 1286, 1292 (11th Cir. 2000) ("*Sherritt*") ("cause of action [that] involves properties in Cuba, which were expropriated by the Cuban government, and which have allegedly been developed by the Canadian defendants" did not arise from the defendants' contacts in the United States).

C. The exercise of personal jurisdiction over BBC Singapore would violate the Supreme Court's "Effects Test"

In cases involving *intentional* torts, as in this case, the applicable test of whether the minimum contacts requirement is met is the "effects" test applied in *Calder v. Jones*, 465 U.S. 783 (1984). *See Oldfield*, 558 F.3d at 1220 n.28. The effects test "requires a showing that the defendant (1) committed an intentional tort (2) that was directly aimed at the forum, (3) causing an injury within the forum that the defendant should have reasonably anticipated." *Id*. (citing *Calder*, 465 U.S. at 789-90, and other cases). Plaintiffs' allegations fail this test.

Even if plaintiff had pled an actionable intentional tort (although it did not), the second and third requirements are absent. The second is lacking because BBC Singapore did not own or operate either ship; and it did not decide that the ships would stop in Miami, hire Miami port agents, or direct their or anyone else's actions in connection with the ships' stops Miami. And the third requirement is lacking because plaintiff sustained no injury "within the forum." It

sustained injury, if at all, in New Jersey, where it is incorporated, in New York, where it is based, or in Cuba, where the port that is the foundation of plaintiff's claim is located.

D. The exercise of personal jurisdiction over BBC Singapore would also violate the "fairness test"

BBC Singapore is not based in Florida or anywhere else in the United States, and its Territory does not include the United States or the Caribbean. The "fairness test" recognizes that a defendant may only be burdened with litigation "where his conduct and connection with the forum are such that he would reasonably anticipate being haled into court there." *Oldfield*, 558 F.3d at 1220 (citing *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980)). The "fairness test" is especially concerned with the burden placed on a foreign defendant called to defend itself in a foreign legal system. *Id.* at 1221 (citing *Asahi Metal Indus. Co., Ltd. v. Superior Court*, 480 U.S. 102, 114 (1987)).

By performing its services as agent within its Territory in the Far East, and merely being "aware" that the ships would stop in Miami on their way to Cuba and participating in trivial emails that discussed those stops, BBC Singapore could not reasonably have anticipated being haled into a Florida court. The unfair burden it would place on BBC Singapore, a 40-employee company, to litigate in this forum a case in which plaintiff seeks over $97 million plus interest, treble damages and attorneys' fees (*see* FAC ¶ 170; Prayer for Relief at 65), is obvious, and would violate its due process rights.

IV. The Court Lacks Personal Jurisdiction Over BBC Singapore Under Rule 4(k)(2)

Plaintiff alleges "alternatively" that the Court has personal jurisdiction over BBC Singapore under Federal Rule of Civil Procedure Rule 4(k)(2) (FAC ¶ 13), which states:

> For a claim that arises under federal law, serving a summons or filing a waiver of service establishes personal jurisdiction over a defendant if: (A) the defendant is not subject to jurisdiction in any state's courts of general jurisdiction; and (B) exercising jurisdiction is consistent with the United States Constitution and laws.

Both requirements must be met. *Oldfield,* 558 F.3d at 1219. Plaintiff cannot meet (B).

Sherritt is dispositive. Because plaintiff's claims concern defendants' alleged use of property outside the United States – a Cuban port – personal jurisdiction over BBC Singapore would lie under Rule 4(k)(2) only if BBC Singapore were subject to *general* personal jurisdiction in this state, which is the exact issue the Eleventh Circuit addressed in *Sherritt* in rejecting an argument identical to plaintiff's here. The plaintiff companies, whose oil concessions and leases were expropriated by Cuba in 1959, sued Cuba, four Cuban corporations, and two Canadian corporations and their affiliates, claiming that the defendants had wrongly exploited its Cuban properties. The Eleventh Circuit affirmed the dismissals of the claims against the Canadian companies and their affiliates for lack of personal jurisdiction:

> Although Appellants strenuously argue that we need only find the minimum contacts required for *specific* jurisdiction, it is clear to us that the applicable due process requirements are the more restrictive ones of *general* jurisdiction. The allegations in this complaint *do not arise* out of any contacts the Canadian defendants have with the United States. Rather, *the cause of action involves properties in Cuba*, which were expropriated by the Cuban government, and which have allegedly been developed by the Canadian defendants. Thus, we must find the basis of the district court's exercise of personal jurisdiction, if any, under the stricter standard of general jurisdiction.

216 F.3d at 1292 (emphasis added). Here, plaintiff has not even attempted to *allege* general jurisdiction, which clearly is lacking. *See* note 5 at p. 9 above.

The result would be the same even if the Court were to consider whether *specific* jurisdiction lies under Rule 4(k)(2). That is because the same due process analysis applies under Rule 4(k)(2) as under the Florida long-arm statute, discussed above, except that the applicable forum for purposes of Rule 4(k)(2) is the United States rather than Florida. *Oldfield*, 558 F.3d at 1220. That does not change the analysis because plaintiff does not (and could not) allege that BBC Singapore had any contacts with the U.S., other than its trivial emails regarding the ships' stops in Miami, that had anything to do plaintiff's claims. Therefore, exercising personal

jurisdiction under Rule 4(k)(2) would not be "consistent with the United States Constitution and laws" for the same reasons stated above.

Conclusion

For the foregoing reasons, the Court should dismiss the complaint as to BBC Singapore for lack of personal jurisdiction.

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