UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO. 1:19-CV-23988-RNS

DANIEL A. GONZALEZ,

Plaintiff,

v.

AMAZON.COM, INC. a
Delaware Corporation, and
SUSSHI INTERNATIONAL, INC.,
a Florida Corporation d/b/a
FOGO CHARCOAL,

Defendants.
_____/

PLAINTIFF'S RESPONSE IN OPPOSITION TO DEFENDANT AMAZON'S MOTION TO DISMISS THE AMENDED COMPLAINT

Plaintiff, Daniel A. Gonzalez, ("Plaintiff"), hereby files his Response in Opposition to Amazon's ("Defendant" or "Amazon") Motion to Dismiss the Amended Complaint, (D.E. 36,) and states as follows:

INTRODUCTION

On or about March 24, 2020, Plaintiff filed his Amended Complaint. In his Amended Complaint, Plaintiff sufficiently remedied the two deficiencies identified in this Court's March 11, 2020 Order (D.E. 28) dismissing the initial Complaint. Specifically, the Plaintiff included additional facts sufficient to show that Plaintiff has an actionable ownership interest in the subject property. In addition, Plaintiff included additional allegations sufficient to demonstrate that Defendant Amazon knowingly and intentionally trafficked in the subject property[1].

[1] Defendant's unfounded assertion that the subject 2000-acre farmland is, somehow, classified as "residential" property rather than agricultural property is a factual issue not suitable for disposition on a motion to dismiss. *See also Havana Docks Corp. (holding* that arguments that call into questions a direct issue of fact in dispute is not suitable for disposition upon a motion to dismiss.)(*citing Int'l*

Notwithstanding the foregoing, on or about, April 17, 2020, Defendant Amazon filed its Motion to Dismiss the Amended Complaint. In its Motion, Defendant asserts that Plaintiff failed to cure the two deficiencies identified in its March 11, 2020 Order. That is, Defendant Amazon asserts that Plaintiff failed to plead sufficient facts that he has an actionable ownership interest in the subject property because it was not acquired prior to March 12, 1996. Defendant Amazon also asserts that Plaintiff failed to plead sufficient facts showing that it intentionally and knowingly trafficked in the subject property. As argued below, the Motion to Dismiss must be denied because the Amended Complaint sufficiently asserts an actional ownership interest in the property and that Defendant intentionally and knowingly trafficked in the subject property.

LEGAL STANDARD

Under Federal Rule of Civil Procedure 8(a)(2), a pleading must contain "a short and plain statement of the claim showing that the pleader is entitled to relief." Specifically, "[t]o survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal,* 556 U.S. 662, 678 (2009) (quoting *Bell Atlantic Corp.v. Twombly,* 550 U.S. 544, 570 (2007)). The plausibility standard is met where the facts alleged enable "the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* A plaintiff cannot rely on "naked assertion[s] devoid of further factual enhancement." *Id.* (alteration in original) (internal quotation marks omitted). Rather, a complaint must present sufficient factual matter, accepted as true, to "raise a right to relief above the speculative level." *Twombly,* 550 U.S. at 555. A plaintiff need not plead "detailed factual allegations," but must demonstrate "more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Id.*

Village Ass'n, Inc. v. AmTrust N. Am., Inc., 2015 WL 3772443 at *4 (S.D. Fla. June 17, 2015)("[Defendant's] contrary assertion…raises an issue of fact inappropriate on a motion to dismiss.").

MEMORANDUM OF LAW

I. Plaintiff Has an Actionable Ownership Interest in the Subject Property

A. Section 6082(a)(4)(B) Does Not Bar Plaintiff's Inheritance of a Title III Claim After March 12, 1996.

For its argument, Amazon asserts that, pursuant to 6082(a)(4)(B), Plaintiff must have acquired his claim prior to March 12, 1996. This issue, however, is not as simple as Amazon suggests. Amazon's interpretation requires the Court to review selected words in Title III in a vacuum, without consideration of the Act as a whole and the context and purpose of the law. Indeed, as used in section 6082(a)(4)(B), the term "acquires" is ambiguous with respect to its application to transfers of claims by operation of law, *e.g.* inherited claims. And the context of Title III confirms that section 6082(a)(4)(B) was not intended to bar recovery on inherited claims.

In contrast, the statutory interpretation advanced by Amazon is incompatible with the text and purpose of the Act, as well as its congressional intent. Under Amazon's theory, individual claimants—the overwhelming majority of claim owners—will be barred from recovering under the Act. Tethering the enforceability of Title III to the death of original claim holders, as Amazon urges this Court to do, would render the cause of action a nullity—a result strongly disfavored under Eleventh Circuit and Supreme Court precedent. *See United States v. Atl. Research Corp.*, 551 U.S. 128, 137 (2007); *Medberry v. Crosby*, 351 F.3d 1049, 1061 (11th Cir. 2003).

Plaintiff's interpretation of section 6082(a)(4)(B) also comports with long- standing Supreme Court precedent permitting takings claims to transfer "by operation of law," including through inheritance.

B. Section 6082(a)(4)(B) is Silent Concerning Claims Transferred by Inheritance.

Amazon urges this Court to cherry pick selected portions of the statutory text without consideration of the surrounding provisions and the purpose of the statutory scheme. But, "[t]he Supreme Court has described statutory construction as 'a holistic endeavor.'" *Wachovia Bank, N.A. v. United States*, 455 F.3d 1261, 1266-67 (11th Cir. 2006) (quoting *Koon Buicks Pontiac GMC, Inc. v. Nigh*, 543 U.S. 50, 60 (2004)). And reading Title III as a whole, it is clear that section 6082(a)(4)(B), including its use of the term "acquires," does not encompass claims transferred by operation of law after March 12, 1996, such as those passed through inheritance.

A word may be unambiguous in some contexts but nonetheless be ambiguous within a

particular statutory setting. *See id.* at 1267 ("A word is not a crystal, transparent and unchanged, it is the skin of a living thought and may vary greatly in color and content according to the circumstances and the time in which it is used.") (quoting *Towne v. Eisner*, 245 U.S. 418, 425 (1918) (Holmes, J.)); *Helvering v. Reynolds*, 313 U.S. 428, 433 (1941) (term "acquisition" was ambiguous as used in tax code). That is the case here.[2] The term "acquires" in section 6082(a)(4)(B) is ambiguous with respect to its application to transfers of claims by operation of law, *e.g.* inherited claims. The ambiguity derives from the practical reality of how claims are passed from one generation to another.

To begin, "[t]he text of [Title III] does not define the term ['acquires'] or contain any language suggesting that" it encompasses inheritance. *McCarthy v. Bronson*, 500 U.S. 135, 139 (1991). And whereas the traditional understanding of the word "acquires" connotes an affirmative action taken to obtain property, to inherit is to simply receive; it is a passive concept. *Compare* Black's Law Dictionary (10th ed. 2014) (defining "acquire" to mean "To gain possession or control of; to get or obtain."); Oxford Dictionary *available at* https://www.lexico.com/en/definition/acquire (last visited Dec. 10, 2019) (defining "acquire" to mean to "Buy or obtain (an asset or object) for oneself") *with* Black's Law Dictionary (10th ed. 2014) (defining "inherit" to mean "To receive (property) by bequest or devise.").

Yet the context of Title III confirms that section 6082(a)(4)(B) was not intended to bar recovery on inherited claims. *United States v. DBB, Inc.*, 180 F.3d 1277, 1283 (11th Cir. 1999) (courts "should 'consider the purpose, the subject matter and the condition of affairs which led to [a statute's] enactment, and so construe it as to effectuate and not destroy the spirit and force of the law'"). Confiscation occurred 36 years prior to the Act's passage in 1996, at a time when many original claimants had already died and their claims had passed to their heirs. Congress is thus reasonably presumed to have known that Title III would be largely enforced by the heirs of deceased claimants, both in 1996 and going forward. *See Bowen v. Massachusetts*, 487 U.S. 879, 896 (1988) (reciting the "well-settled presumption that Congress understands the state of existing law when it legislates").

C. Amazon's Interpretation of Section 6082(a)(4)(B) Would Render Title III a Nullity.

In determining a statute's meaning, courts must ensure that the chosen construction "produces a substantive effect that is compatible with the rest of the law." *Wachovia*, 455 F.3d at

[2] In every statutory interpretation, "the first step is to determine whether the statutory language has a plain and unambiguous meaning by referring to the language itself, the specific context in which that language is used, and the broader context of the statute as a whole." *Bautista v. Star Cruises*, 396 F.3d 1289, 1295 (11th Cir. 2005).

1268 (quoting *Koons*, 543 U.S. at 60); *Crandon v. United States*, 494 U.S. 152, 158 (1990) ("In determining the meaning of the statute, we look not only to the particular statutory language, but to the design of the statute as a whole and to its object and policy").

To that end, courts should not lightly assume that Congress intended to enact a statute that "serve[s] no function at all" and is "a complete dead letter." *Medberry v. Crosby*, 351 F.3d 1049, 1060-61 (11th Cir. 2003); *see also* Scalia & Garner, *Reading Law: The Interpretation of Legal Texts* 63-65 (2012) (describing the "Presumption Against Ineffectiveness"). Accepting Amazon's interpretation of section 6082(a)(4)(B) will ensure this result for Title III.[8]

Tying the enforceability of Title III to the death of original claim holders, as Amazon urges this Court to do, will render the cause of action a nullity. Indeed, the Court need look no further than the dockets of other cases pending in this district to illustrate the grave implications for Title III that would flow from prohibiting inheritance of claims after March 12, 1996. Many of the Defendant (including this case) have sought dismissal on claims brought by individuals on the basis that the claim was inherited after March 12, 1996. (*See Trinidad v. Expedia, Inc.*, 19-cv-22629, D.E. 35 at p. 20 (S.D. Fla. Nov. 25, 2019) (Moreno, J.); *Lopez Regueiro v. American Airlines Inc.*, 19-cv-23965, D.E. 28 at pp. 6-7, D.E. 30 at pp. 7-8 (S.D. Fla. Nov. 26, 2019) (Cooke, J.); *Garcia Bengochea v. Norwegian Cruise Lines Holdings, Ltd.*, 19-cv-23593, D.E. 26 at pp. 17-19 (S.D. Fla. Oct. 11, 2019) (King, J.); *Garcia Bengochea v. Royal Caribbean Cruises, Ltd.*, 19-cv-23592, D.E. 18 at Aff. Def. 2 (S.D. Fla. Oct. 4, 2019) (King, J.); *see also Sucesores de Don Carlos Nunez y Dona Pura Galvez, Inc. v. Societe Generale, S.A.*, 19-cv-22842, D.E. 29 at pp. 36-38 (S.D. Fla. Oct. 29, 2019) (Gayles, J.).) Congress could not possibly have intended to bar individual claimants from recovering under Title III.

The Court should reject Amazon's interpretation of section 6082(a)(4)(B), which "would reduce the number of potential plaintiffs to almost zero, rendering [Title III] a dead letter." *United States v. Atl. Research Corp.*, 551 U.S. 128, 137 (2007) (Thomas, J., for unanimous Court) (citing *Louisville & Nashville R. Co. v. Mottley*, 219 U.S. 467, 475 (1911) ("We must have regard to all the words used by Congress, and as far as possible give effect to them.")). Otherwise Title III will "never be used or applied" and "[a]ll of Congress's time and effort in enacting [it] . . . would have been a complete waste." *Medberry*, 351 F.3d at 1061. It is implausible to ascribe to our legislature such a "pointless" exercise. *Id.*; *Res. Trust Corp. v. Miramon*, 22 F.3d 1357, 1361-62 (5th Cir. 1994) ("[I]t simply makes no sense that Congress would establish a cause of action in one sentence and then render it a nullity in the next.").

This is particularly so considering Congress actually drafted Title III with an end date in mind. That date was decidedly not the death of the last claim owner. Congress provided that rights

granted under Title III "shall cease" upon a Presidential determination "that a democratically elected government in Cuba is in power." *Id.* § 6082(h)(1)(B). Thus, Congress intended Title III to terminate then—not once the last claim holder dies. Amazon's interpretation of section 6082(a)(4)(B) will render superfluous section 6082(h)(1)(B)'s termination clause, and the Court should decline such a construction of the Act. *Rubin*, 138 S. Ct. at 824 ("one of the most basic interpretive canons [is] that a statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant").

Congress drafted Title III to deprive Cuba of "badly needed financial benefit" derived from "trafficking in confiscated property" in order to "protect the claims of United States nationals" and "bring democratic institutions to Cuba." 22 U.S.C. § 6081(6). None of these purposes are furthered by interpreting section 6082(a)(4)(B) to bar nearly every claimant from enforcing Title III's civil remedy due to an ancestor's untimely death. As explained above, such an interpretation would render the Act toothless. Without any plaintiffs to enforce Title III, there would be nothing to "deter" traffickers from "exploiting Castro's wrongful seizures." 22 U.S.C. § 6081(11). The communist Cuban Government and its *American* business partners, like Amazon, would profit with impunity from property stolen from American citizens, without any recourse to the heirs of those victims and the claims they hold.

Thus, consistent with precedent and legislative purpose, the Court should interpret section 6082(a)(4)(B) to permit transfers "by operation of law" and enable heirs of deceased claimants to vindicate familial rights under Title III.

II. Plaintiff Properly Pleads Facts to Show Amazon "Knowingly and Intentionally Trafficked in Confiscated Property.

As set forth in the Amended Complaint, Plaintiff adequately alleges that Amazon "knowingly" and "intentionally" trafficked in the Subject Property. Rule 9(b) provides that "[m]alice, intent, knowledge, and other conditions of a person's mind may be alleged generally." Fed. R. Civ. P. 9(b). This Rule "does not require a plaintiff to allege specific facts related to the defendant's state of mind." *Mizzaro v. Home Depot, Inc.*, 544 F.3d 1230, 1237 (11th Cir. 2008). But even so, "a complaint must include 'factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged,' and must include 'allegations plausibly suggesting (not merely consistent with)' the plaintiff's entitlement to relief." *Lisk v. Lumber One Wood Preserving, LLC*, 792 F.3d 1331, 1338-39 (11th Cir. 2015) (general allegation of intent satisfied Rules 8 and 9(b) pleading

standard) (citing *Iqbal*, 556 U.S. at 686-87 (noting that "generally" as used in Rule 9(b) "is a relative term")).

In relevant part, Plaintiff alleges that:

> 27. On information and belief, beginning on or about January 5, 2017 and continuing thereafter, the Defendants, Amazon.com and FOGO Charcoal, knowingly and intentionally commenced, conducted, and promoted the sale of marabu charcoal produced on the Subject Property without the authorization of Plaintiff. On information and belief, beginning on or about January 5, 2017 and continuing thereafter, the Defendants also knowingly and intentionally participated in and profited from the communist Cuban Government's possession of the Subject Property without the authorization of Plaintiff who holds a claim to the Subject Property. For example, on or about July 22, 2019, Plaintiff sent Defendant Amazon **written notice** by certified mail to cease and desist from trafficking in the Subject Property. While Defendant Amazon stopped selling the marabu charcoal on the U.S. version of its website, Defendant Amazon continued to (and continues to) traffick in the Subject Property by selling the marabu charcoal on various versions of its websites throughout the word. (See *e.g.*, Fig. 1, Amazon.com's website in Italy extolling the virtues of Cuban marabu charcoal). Thus, even with ***express written notice*** that it was trafficking in Plaintiff's property, Defendant Amazon.com knowingly and intentionally continued to (and continues to) traffick in the Subject Property on different versions of its website throughout the world.
>
> (emphasis supplied).

Paragraphs 27 sufficiently sets forth allegation that, in light of Plaintiff's *express written notice* that it was trafficking in Plaintiff's seized property, Amazon knowingly and intentionally trafficked in Plaintiff's property. Indeed, the allegation in the Amended Complaint clearly establish Amazon proceeded to traffic in Plaintiff's property even *after* receipt of Plaintiff's July 22, 2019 letter. The fact that Amazon knowingly and intentionally trafficked and continued to traffic in the subject property is indisputable. After receiving Plaintiff's letter, Amazon took down *only* the U.S. sales page for the marabu charcoal but continued to sell the marabu charcoal utilizing different packaging around the world in an attempt to deceive Plaintiff into believing that it was no longer selling the charcoal.

(Compl. at ¶ 27.) This is sufficient under Rule 9(b). *Mizzaro*, 544 F.3d at 1237 ("Rule 9(b) does not require a plaintiff to allege specific facts related to the defendant's state of mind"); *see also Roe v. Aware Woman Center for Choice, Inc.*, 253 F.3d 678, 684 (11th Cir. 2001) (state of mind may be

alleged "on information and belief" under Rule 9(b)).

Plaintiff also satisfies Rule 8 by plausibly alleging that Amazon's trafficking was knowing and intentional. Plaintiff holds a claim to the Subject Property. (Compl. at ¶ 27.) Amazon is alleged to have "knowingly" trafficked in the Subject Property since January 5, 2017 by commencing, conducting and promoting the sale of marabu charcoal produced on the subject property without Plaintiff's authorization. (*Id*. at ¶ 27.) Moreover, Amazon is alleged to knowingly participated and profited from the communist Cuban government's possession of the subject property without the authorization of Plaintiff. (*Id*. at ¶ 27.) "Knowingly" is defined by the Act to "mean[] with knowledge or having reason to know." 22 U.S.C. § 6023(9). As alleged, Plaintiff plausibly alleges that Amazon knowingly trafficked in the Subject Property without Plaintiff's authorization, even after receiving Plaintiff's July 22, 2020 letter (which Defendant has in its possession), which is more than sufficient to satisfy Rule 8. *Lisk*, 792 F.3d at 1338-39.

Similarly, the Complaint permits a plausible inference that Amazon's use of the Subject Property was "intentional." Indeed, since January 5, 2017, Amazon is alleged to have "intentionally" commenced, conducted and promoted the sale of marabu charcoal produced on the subject property without Plaintiff's authorization. (*Id*. at ¶ 27.) Moreover, Amazon is alleged to have intentionally participated and profited from the communist Cuban government's possession of the subject property without the authorization of Plaintiff. (*Id*. at ¶ 27.); *See* Black's Law Dictionary (10th ed. 2014) (defining "intentional" to mean "Done with the aim of carrying out the act."). In sum, Plaintiff sufficiently alleges that Amazon knowingly and intentionally trafficked in the Subject Property. *Lisk*, 792 F.3d at 1338-39; *Havana Docks Corporation* at 7 ("Plaintiff has sufficiently plead all such allegations").)

Significantly, this Court has concluded that another Title III plaintiff has sufficiently pled allegations under the Libertad Act having very similar language to the instant Complaint. *See Havana Docks Corp. v. Carnival Corp.*, No. 19-cv-21724 (S.D. Fla. Aug. 28, 2019) (concluding that Plaintiff

sufficiently alleged that "the [d]efendant 'knowingly and intentionally commenced, conducted, and promoted its commercial cruise line business to Cuba using the Subject Property by regularly embarking and disembarking its passengers on the Subject Property, and that such conduct "is trafficking as defined in 22 U.S.C. §6023(13)(A)."); *Compare with* (D.E. 29 ¶¶ 27 and 28). At the very least in the instant case, it is indisputable that Amazon knowingly and intentionally continued to traffick in the subject property that it irrefutably *knew* was confiscated following *express written notice* by way of Plaintiff's July 22, 2019 letter that it was trafficking in Plaintiff's confiscated property.

In addition, the issues raised by Amazon concerning Fig. 1 of the Complaint is a factual dispute not appropriate at this stage, as it calls into question a direct issue of fact in dispute. Such question is not suitable for disposition upon a motion to dismiss. *See Garcia-Bengochea v. Carnival Corp.*, No. 1:19-cv-21725-JLK, 2019 WL 4015576 (S.D. Fla. Aug. 26, 2019), at pp. 9 (*citing Twin City Fire Ins. Co. v. Hartman, Simons & Wood, LLP*, 609 F. App'x 972, 977 (11th Cir. 2015); *See also Havana Docks Corp. (holding* that arguments that call into questions a direct issue of fact in dispute is not suitable for disposition upon a motion to dismiss.)(*citing Int'l Village Ass'n, Inc. v. AmTrust N. Am., Inc*., 2015 WL 3772443 at *4 (S.D. Fla. June 17, 2015)("[Defendant's] contrary assertion…raises an issue of fact inappropriate on a motion to dismiss."). To the extent the Defendant disagrees with the allegations, it may deny it, and assert an appropriate affirmative defense.

CONCLUSION

The Court should deny Amazon's Motion to Dismiss. The Amended Complaint states a claim for relief that is plausible on its face because it alleges that Plaintiff has an actionable ownership interest in the subject property and that Amazon knowingly and intentionally trafficked in Plaintiff's confiscated property.

WHEREFORE, Plaintiff respectfully requests that the Court deny Amazon's Motion to Dismiss.

Dated: May 1, 2020

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 1st day of May, 2020, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system, which will send a notice of electronic filing to:

Respectfully submitted,

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