UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 1:19-cv-21725-JLK

JAVIER GARCIA-BENGOCHEA,

Plaintiff,

v.

CARNIVAL CORPORATION d/b/a
CARNIVAL CRUISE LINE,

Defendant.
_____/

ORDER DENYING CARNIVAL CORPORATION'S
MOTION FOR CERTIFICATION FOR INTERLOCUTORY APPEAL

THIS CAUSE comes before the Court upon Defendant Carnival Corporation's Motion for Certification for Interlocutory Appeal, filed September 5, 2019 (DE 42) (the "Motion").[1]

I. BACKGROUND

On May 2, 2019, Plaintiff initiated this action against Carnival under Title III of the Helms-Burton Act, 22 U.S.C. § 6082(a)(1)(A), alleging that he is "the rightful owner of an 82.5% interest in certain commercial waterfront real property in the Port of Santiago de Cuba," that the property was confiscated by the Cuban Government in 1960, and that Carnival "trafficked" in the property in violation of the Act by using the docks for its commercial cruise line business. *See* Compl. ¶¶ 6–12, DE 1. Carnival moved to dismiss the action under Rule 12(b)(6), arguing that Plaintiff failed to allege ownership of a "claim" to the property as required by the Act because the certified claim attached as an exhibit to the Complaint was not in Plaintiff's name and only concerned "stock in a Cuban company, which in turn owned the docks." *See* Mot. Dismiss at 17–19, DE 14.

[1] The Court has also considered Plaintiff's Response (DE 46), and is otherwise fully advised.

On August 26, 2019, the Court denied Carnival's Motion to Dismiss. *See* Order Denying Mot. Dismiss, DE 41. The Court found that Plaintiff adequately alleged ownership of the certified claim attached to the Complaint, and that questions regarding how he acquired the claim involved factual determinations that were inappropriate at the motion to dismiss stage. *Id.* at 9. The Court also found that Plaintiff plausibly alleged a "claim" to the property based on his stock ownership in La Maritima, the Cuban company that owned the docks before they were confiscated. *Id.* at 10.

Carnival now asks the Court to certify its Order for interlocutory appeal under 28 U.S.C. § 1292(b) on the following issue:

> [W]hether Helms-Burton, contrary to normal principles of corporate law, gives a plaintiff a 'claim' to property when the plaintiff's relationship to that property is that he or she owned shares (or traces ownership of the claim to someone who owned shares) in a corporation that owned the property, and that corporation is a Cuban corporation.

See Mot. at 3, DE 46. Carnival claims certification is justified because this is "a purely legal issue about the proper interpretation of the Helms-Burton Act," *id.*, and because "[t]his is one of the first cases ever brought under Helms-Burton," *id.* at 4.

II. LEGAL STANDARD

Interlocutory appeals under 28 U.S.C. § 1292(b) serve as the "rare exception" to the general rule that appellate review is only appropriate after final judgment. *See McFarlin v. Canseco Servs., LLC*, 381 F.3d 1251, 1264 (11th Cir. 2004). As such, there is a "strong presumption" against such review. *OFS Fitel, LLC v. Epstein, Becker and Green, P.C.*, 549 F.3d 1344, 1359 (11th Cir. 2008). To qualify, (1) the order must involve a controlling question of law, (2) there must be substantial ground for difference of opinion, and (3) an immediate appeal may materially advance the ultimate termination of the litigation. *See* 28 U.S.C. § 1292(b). Even if all elements are satisfied, however, certification remains "wholly discretionary." *OFS Fitel, LLC*, 549 F.3d at 1359.

III. DISCUSSION

After careful consideration, the Court finds that an interlocutory appeal is not warranted in this case. First, the issue framed by Carnival does not involve a "pure or abstract question of law," but instead asks whether specific facts at issue in this particular case give rise to a claim for relief under Helms-Burton. As such, the issue "falls into the group of case-specific questions" for which interlocutory review is improper. *See Mamani v. Berzain*, 825 F.3d 1304, 1312 (11th Cir. 2016) (rejecting interlocutory appeal for order denying motion to dismiss Torture Victim Protection Act (TVPA) claims because "[i]nstead of asking [the court] to decide a pure or abstract question about the TVPA itself, the defendants ask [the court] to decide whether the specific facts alleged by these particular plaintiffs state eight claims for relief under the TVPA"); *see also In re Checking Account Overdraft Litig.*, No. 09-MD-02036, 2010 WL 3377592, at *2 (S.D. Fla. July 1, 2010) (noting that interlocutory review of orders denying motions to dismiss are "particularly inappropriate because final resolution of the issues before this Court requires a complete factual record").

The Court also disagrees with Carnival's argument that an immediate appeal is warranted because this case involves issues of first impression under Helms-Burton. *In re Checking Account Overdraft Litig.*, 2010 WL 3377592, at *3 ("[T]he mere existence of a question of first impression does not overcome the strong presumption against section 1292(b) certification."); *Nat'l Union Fire Ins. Co. of Pittsburgh v. Tyco Integrated Sec., LLC*, No. 13-CIV-80371, 2015 WL 11251735, at *3 (S.D. Fla. July 8, 2015) (noting that "uncharted legal territory does not automatically generate [] a substantial ground for difference of opinion") (internal quotation marks and citation omitted). As this Court has explained, interlocutory appeal is "not an appropriate vehicle for early appellate review of hard cases, and should be denied except in rare circumstances." *In re Checking Account Overdraft Litig.*, 2010 WL 3377592, at *2. This is not one of those circumstances.

IV. CONCLUSION

Accordingly, it is **ORDERED, ADJUDGED, and DECREED** that Defendant's Motion for Certification for Interlocutory Appeal **(DE 42)** be, and the same hereby is, **DENIED**.

DONE and ORDERED in chambers at the James Lawrence King Federal Justice Building and United States Courthouse, Miami, Florida, this 26th day of September, 2019.

JAMES LAWRENCE KING
UNITED STATES DISTRICT JUDGE

cc: All counsel of record