IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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GLENN SMILEY, CARMELLO C. CAPUTA and P&J TRUCKING, INC.,

Plaintiffs,

v.

SMOOTH OPERATORS, INC.,

Defendant.

OPINION AND ORDER

06-C-146-C

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This is a civil action for monetary and injunctive relief brought under 49 U.S.C. § 14704(a)(2). Plaintiffs Glenn Smiley, Carmello Caputa and P&J Trucking, Inc. allege that defendant Smooth Operators, Inc. has violated federal regulations applicable to leases between owners of trucking equipment and federally regulated motor carriers who lease the equipment for interstate shipping. Also, plaintiffs assert a breach of contract claim under Wisconsin law. Jurisdiction is present. 28 U.S.C. § 1331, 1367.

Presently before the court is a motion to determine the statute of limitations applicable to plaintiffs' federal law claims. Plaintiffs contend that no specific statute of limitations exists for actions brought under § 14704(a)(2); therefore, the default four-year

limitations period set out in 28 U.S.C. § 1658(a) is applicable. Defendant argues that the two-year limitations period found in § 14705(c) applies to plaintiffs' claims. The issue presented is close and counsel for both sides have made persuasive arguments. For the reasons stated below, I conclude that plaintiffs have the better of the argument. Accordingly, plaintiffs' federal law claims will be subject to the four-year limitations period in § 1658(a).

Before delving into the statutes and regulations that govern this case, I will provide a summary of the allegations in plaintiffs' complaint.

ALLEGATIONS OF FACT

A. Parties

Plaintiff Glenn Smiley is an adult resident of Fort Atkinson, Wisconsin. Plaintiff Carmello C. Caputa is an adult resident of Mayville, Wisconsin. Plaintiff P&J Trucking, Inc. is a corporation formed under the laws of South Carolina. Defendant Smooth Operators, Inc. is a corporation formed under the laws of Wisconsin. Defendant provides interstate transportation services to the public under authority granted by the Federal Motor Carrier Safety Administration.

Each of the plaintiffs is an "owner-operator" of motor vehicles leased to defendant for the purpose of shipping freight. Each of the plaintiffs entered into a written lease with defendant governing the use of their motor vehicles. Plaintiff Smiley leased his vehicle to

defendant beginning in 1999; plaintiff Caputa began leasing his vehicle to defendant in 2001; plaintiff P&J Trucking leased a motor vehicle to defendant in March 2004. Plaintiffs terminated their leases with defendant in March 2005.

B. Compensation Schedules

Plaintiffs were compensated on the basis of a percentage of the revenue defendant received from its customers. In addition to signing leases with defendant, each plaintiff executed a separate document known as a "Compensation Schedule." Defendant failed to provide plaintiffs copies of the "Compensation Schedule" and denies that the schedules ever existed.

C. Settlement Statements

Defendant issued each of the plaintiffs a "Settlement Statement," usually on a weekly basis. This document set out the amount of revenue defendant received from each of its customers. The statements indicated the percentage of revenue to which each plaintiff was entitled, along with a calculation of the amounts due each plaintiff, followed by deductions for expenses such as fuel and cash advances. Plaintiffs have received information suggesting that there were inaccuracies in the amounts reported on their "Settlement Statements" as gross revenues paid to defendant. They have requested copies of defendant's freight bills to

determine the accuracy of defendant's representations regarding the gross revenues it received from customers. At no time while the lease agreements were in effect did defendant provide plaintiffs with copies of freight bills or other documentation that would enable them to verify the accuracy of the revenue entries on the "Settlement Statements." Since the lease agreements were terminated, defendant has shown plaintiffs' counsel documents that reveal significant discrepancies between the amounts reported as gross revenues on the settlement statements and the amounts actually paid to defendant. Plaintiffs estimate that they have been underpaid in the following amounts since January 1, 2002: plaintiff Smiley - $21,898.40; plaintiff Caputa - $19,337.34; and plaintiff P&J Trucking - $9,929.36.

D. Base Plates

Defendant owes each of the plaintiffs refunds for base plates plaintiffs used while their lease agreements were in effect. Plaintiffs surrendered the base plates to defendant when the leases were terminated. Defendant was able to gain the benefit of the unused portions of the plates by assigning them to other vehicles in its fleet.

E. Funds in Escrow

Under the terms of the lease agreements, defendant required plaintiffs to deposit certain funds into escrow accounts. The weekly statements provided an accounting of the

escrow funds. Plaintiffs did not receive these funds after their leases with defendant were terminated and defendant never paid any interest on any of the funds held in escrow. Defendant continues to retain possession of the funds despite plaintiffs' repeated demands for an accounting of the funds and for payment.

OPINION

A. Background

Independent owner-operators lease truck equipment and provide driving services to federally regulated motor carriers. Owner-Operator Independent Drivers Ass'n, Inc. v. New Prime, Inc., 192 F.3d 778, 780 (8th Cir. 1999). These leases are governed by regulations promulgated by the Interstate Commerce Commission and known as "Truth in Leasing" regulations. Owner Operator Independent Drivers Ass'n, Inc. v. Swift Transportation Co., Inc., 367 F.3d 1108, 1110 (9th Cir. 2004). Among other things, these regulations require that leases between owner-operators and motor carriers be in writing and contain certain terms, such as the owner-operators' compensation and the length of the lease. The regulations are located at 49 C.F.R. Part 376.

In the present case, the parties agree that the leases between defendant and plaintiffs are subject to the regulations. Plaintiffs allege four violations. First, defendant violated 49 C.F.R. § 376.12(d) by failing to provide plaintiffs with compensation schedules. Second,

defendant's failure to pay plaintiffs the prorated value of the unused portions of their base plates violates 49 C.F.R. § 376.12(e). Third, defendant violated 49 C.F.R. § 376.12(g) by failing to provide plaintiffs copies of freight bills. Finally, defendant violated 49 C.F.R. § 376.12(k) by not paying interest on the funds held in escrow and by failing to return the unused funds to plaintiffs after the termination of their leases.

In 1995, Congress passed the Interstate Commerce Commission Termination Act, which abolished the commission and transferred its responsibility for regulating motor carriers to the Department of Transportation and the Surface Transportation Board. 49 U.S.C. § 13501. In addition, the act made private parties the primary vehicle for enforcement of the Truth in Leasing regulations by creating a private right of action through which owner-operators can obtain injunctive and monetary relief for violations of the regulations. 49 U.S.C. § 14704.

Plaintiffs bring their claims under 49 U.S.C. § 14704(a)(2), which provides a right of action for damages for persons injured by a carrier's violation of the regulations. New Prime, Inc., 192 F.3d at 785. The question raised by the parties concerns the statute of limitations applicable to claims brought under § 14704(a)(2). Plaintiffs terminated their leases with defendant in March 2005 but did not file their complaint in this court until March 2006. The court's decision concerning the correct limitations period will determine how far back in time plaintiffs may reach to recover damages.

B. Applicable Statutory Provisions

The parties disagree as to the correct limitations period for plaintiffs' claims. Plaintiffs contend that none of the limitations periods established in the Interstate Commerce Commission Termination Act apply specifically to actions brought under § 14704(a)(2) and that the court must look elsewhere for an applicable limitations period. In December 1990, Congress enacted a "catch-all" statute of limitations for actions brought under federal law, 28 U.S.C. § 1658(a). That provision states that

> Except as otherwise provided by law, a civil action arising under an Act of Congress enacted after the date of the enactment of this section may not be commenced later than 4 years after the cause of action accrues.

Because § 14704 was enacted in 1995, five years after § 1658(a), plaintiffs argue that § 1658(a)'s four-year limitations period is applicable.

Defendant contends that the court should apply the two-year limitations period found in § 14705(c). Section 14705 establishes several limitations periods for actions brought by and against motor carriers, although none applies directly to actions brought under § 14704(a)(2). Section 14705(c) states that a person "must file a complaint with the Board or Secretary, as applicable, to recover damages under section 14704(b) within 2 years after the claim accrues." Although the language of § 14705(c) indicates clearly that it applies only to recovery of damages under § 14704(b), defendant argues that Congress intended § 14705(c)'s limitations period to apply to actions for damages brought under § 14704(a)(2)

and that its intent was frustrated by a drafting error that resulted in the codification of the right of action in § 14704(a)(2) instead of § 14704(b).

Section 14704 lists the remedies available to persons injured by licensed motor carriers. Relevant to this case are § 14704(a) and (b), which provide as follows:

> **(a) In general.**
>
> **(1) Enforcement of order.** A person injured because a carrier or broker providing transportation or service . . . does not obey an order of the Secretary or the Board . . . may bring a civil action to enforce that order under this subsection. A person may bring a civil action for injunctive relief for violations of sections 14102 and 14103.
> **(2) Damages for violations.** A carrier or broker proving transportation or service . . . is liable for damages sustained by a person as a result of an act or omission of that carrier in violation of this part.
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> **(b) Liability for damages for exceeding tariff rate.** A carrier providing transportation or service . . . is liable to a person for amounts charged that exceed the applicable rate for transportation or service contained in a tariff in effect under section 13702.

C. Analysis

"The general rule of statutory interpretation is that one must first look to the language of the statute and assume that its plain meaning 'accurately expresses the legislative purpose.'" United States v. Shriver, 989 F.2d 898, 901 (7th Cir. 1992) (quoting Park 'N Fly, Inc. v. Dollar Park and Fly, Inc., 469 U.S. 189, 194 (1985)). A long line of cases in this circuit cautions against wading into the waters of legislative history unless compelled to do

so by statutory ambiguity. E.g., McCoy v. Gilbert, 270 F.3d 503, 510 n.4 (7th Cir. 2001) ("We need never consider legislative history when interpreting an unambiguous statute."); United States v. Silva, 140 F.3d 1098, 1102 (7th Cir. 1998); In re McFarland, 84 F.3d 943, 947 (7th Cir. 1996) ("there is no need to examine legislative history where the words of a statute are clear"); United States v. Hudspeth, 42 F.3d 1015, 1022 (7th Cir. 1994) (en banc) (courts "may turn to the legislative history to interpret a statute only when the statute is ambiguous"); Meredith v. Brown, 833 F.2d 650, 654 (7th Cir. 1987) ("a court need not look beyond the words to interpret a statute if the language is clear and unambiguous"). Legislative history informs statutory construction "only when the statute is not clear or when the application of its 'plain language produces absurd or unjust results.'" Shriver, 989 F.2d at 901 (quoting Trustees of Iron Workers Local 473 Pension Trust v. Allied Products Corp., 872 F.2d 208, 213 (7th Cir.1989)); see also Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Lauer, 49 F.3d 323, 326-27 (7th Cir. 1995).

Currently, there is a split among district courts concerning whether § 1658(a) or § 14705(c) applies to actions brought under § 14704(a)(2). In Fitzpatrick v. Morgan Southern, Inc., 261 F. Supp. 2d 978 (W.D. Tenn. 2003), the court examined the legislative history of the Interstate Commerce Commission Termination Act and concluded that the statute contains a scrivener's error. The court noted that the private right of action in §14704(a)(2) had been codified as § 14704(b)(2) in drafts of the legislation introduced in

both houses of Congress and that § 14705(c) had referred specifically to § 14704(b)(2) in those early drafts. Id. at 983. A subsequent amendment to the House version of the bill moved the right of action to § 14704(a)(2) but did not make a corresponding change in the reference to § 14704(b)(2) in § 14705(c). Id. at 984-85. In addition, the court cited the Conference Report, which stated that § 14705(c) was intended to preserve pre-existing statutes of limitations and make them uniform for all types of carriers. Id. at 983. The court noted that prior to the Act's passage, the statute of limitations for a claim for damages against a carrier was two years. Id. at 984 (citing 49 U.S.C. § 11706(c)(1) (1994)). The court relied also on a footnote in an opinion issued by the Surface Transportation Board in which the board characterized the placement of a damages recovery provision in § 14704(a)(2) as a "technical error." Id. at 986. Convinced that Congress had made a mistake in the drafting process, the court applied the two-year statute of limitations in § 14705(c) to claims brought under § 14704(a)(2).

Four other district courts that have addressed this issue have concluded that the four-year limitations period in § 1658(a) is applicable. Owner-Operator Independent Drivers Ass'n, Inc. v. C.R. England, Inc., 325 F. Supp. 2d 1252, 1264-65 (D. Utah 2004); Owner-Operator Independent Drivers Ass'n, Inc. v. Bulkmatic Transport Co., No. 03-C-7869, 2004 WL 1151555, at *4-5 (N.D. Ill. May 3, 2004); Owner-Operator Independent Drivers Ass'n, Inc. v. Ledar Transport, No. 00-0258-CV-W-FJG, 2004 U.S. Dis. LEXIS 7869, *16-18

(W.D. Mo. Jan. 7, 2004); Owner-Operator Independent Drivers Ass'n, Inc. v. Heartland Express, Inc., No. 3-01-CV-80179, 2003 U.S. Dist. LEXIS 25284, *8-12 (S.D. Iowa Jan. 31, 2003). These courts have concluded that § 14704 is not ambiguous and that application of the four-year limitations period would not produce an absurd or unjust result. Bulkmatic Transport, 2004 WL 1151555 at *5; Heartland Express, 2003 U.S. Dist. LEXIS 25284, at *10-11.

Defendant argues that a court need not be confronted with ambiguity in a statute before turning to other sources of Congressional intent. Koons Buick Pontiac GMC, Inc. v. Nigh, 543 U.S. 50, 65 (2004) (Stevens, J., concurring) ("It would be wiser to acknowledge that it is always appropriate to consider all available evidence of Congress' true intent when interpreting its work product."). However, Justice Stevens's views did not command a majority in Koons and the Supreme Court has reaffirmed in a recent decision that a court's job is to enforce the language Congress has used in the absence of statutory language that is ambiguous or produces an absurd outcome. Arlington Central School Dist. Board of Education v. Murphy, --- S. Ct. ----, No. 05-18, 2006 WL 1725053 (June 26, 2006). Thus, although defendant's summary of the legislative history discussed in Fitzpatrick is reasoned and persuasive, I must decline its invitation to ignore or modify clear statutory language merely because the history suggests the existence of a drafting error. Defendant's argument falters at the outset because neither § 14704(a)(2) nor § 14705(c) are ambiguous on their

face. Section 14705(c) states that persons wishing to recover damages under § 14704(b) must file a complaint within two years after a claim accrues, but makes no reference to actions brought under § 14704(a)(2). In addition, application of the four-year limitations period would not produce an absurd or unjust result.

Finally, defendant notes that Congress attempted to amend § 14704 to fix the alleged drafting error. Specifically, as part of the Safe, Accountable, Flexible and Efficient Transportation Equity Act of 2003, Congress proposed transferring the right of action in subsection (a)(2) of § 14704 to subsection (b). Although the legislation failed to pass, defendant highlights it as further evidence of Congressional intent with respect to the issue in this case. I put a different gloss on Congress's action: it serves as a reminder that, under our Constitution, it is the province of the legislative branch to make changes to statutory language. Engine Manufacturers Ass'n v. Environmental Protection Agency, 88 F.3d 1075, 1089 (D.C. Cir. 1996) ("the court's role is not to 'correct' the text so that it better serves the statute's purposes, for it is the function of the political branches not only to define the goals but also to choose the means for reaching them").

ORDER

IT IS ORDERED that plaintiffs' claims brought pursuant to 49 U.S.C. § 14704(a)(2)

are subject to the four-year statute of limitations period set out in 28 U.S.C. §1658(a).

Entered this 6th day of July, 2006.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge