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Cuban Port Case Against Norwegian Revived By Fla. Judge

By **Nathan Hale**

Law360 (April 15, 2020, 3:35 PM EDT) -- A Florida federal judge on Wednesday reversed her earlier order dismissing a former Havana port owner's claims against Norwegian Cruise Line for allegedly trafficking in stolen property while using the port, finding the ruling contained factual and legal errors.

Ruling on a motion for reconsideration, U.S. District Judge Beth Bloom said she agreed with plaintiff Havana Docks Corp. that she had too narrowly construed the liability created by Article III of the Helms-Burton Act, under which it brought its claims, when she **dismissed the case** on Jan. 7. She also rejected Norwegian's argument that an amended complaint would be futile, saying that Havana Docks can sufficiently allege a claim in light of her new analysis.

"Given the significant factual and legal errors contained within the NCL [dismissal] order, the court believes it necessary to vacate its NCL order in its entirety," Judge Bloom said in Wednesday's 29-page order reviving the case.

The case is one of four that Havana Docks brought against various cruise lines after the Trump administration announced last April that it was lifting a stay on implementation of Title III of the 1996 Helms-Burton Act, which lets American companies and individuals bring suits against companies that trade in wrongfully confiscated property in Cuba to which they have a claim.

In its complaints — brought against Carnival Corp., Norwegian Cruise Line Holdings Ltd., MSC Cruises SA and Royal Caribbean Cruises Ltd. — Havana Docks said it owned the commercial waterfront property in the Port of Havana, now known as the Havana Cruise Port Terminal, from 1917 until it was confiscated by the communist government of Fidel Castro on Oct. 24, 1960. The Cuban government retains possession of the property and never paid any compensation for it, according to the complaints.

In her Jan. 7 order, Judge Bloom reconsidered her previous denial of a motion to dismiss in the Carnival suit and found that Havana Docks had owned a time-limited leasehold interest on the property that expired in 2004, more than a decade before the cruise lines started using the port. Her order dismissed the claims against Norwegian and MSC, and Royal Caribbean Cruises subsequently moved for judgment as a matter of law, based on the ruling.

Havana Docks' motion for reconsideration of the MSC dismissal is still pending, according to Wednesday's order.

On reconsideration of Norwegian's dismissal, Judge Bloom said she agreed with Havana Docks that instead of accepting its well-pled allegations as true, as required, she made impermissible findings of fact and, based on the limited record before her at the time, erroneously determined that Havana Docks' concession with the Cuban government expired in 2004.

In her Wednesday order, she said the concession agreement showed that Havana Docks was issued a 99-year leasehold interest and that in certifying Havana Docks' claim, the Foreign Claims Settlement Commission did not place a time limit on the claim.

"The distinction between the language in the certified claim that the concession terms were to expire and the court's incorrect factual finding that the property interests at issue actually did expire in 2004 is critical, and this misinterpretation of the text of the certified claim served as the foundation for the court's resulting analysis in the NCL [dismissal] order," the judge said.

Judge Bloom also concluded in Wednesday's order that her misunderstanding about Havana Docks' interest led to her reaching a legal conclusion that is at odds with prior Eleventh Circuit rulings, which held that the Cuban government's confiscation of property extinguished ownership rights but that a certified claim through the FCSC would allow prior owners to memorialize the value of the properties interest they lost.

"This certified claim is not an interest in the confiscated property itself; rather, it represents the dollar amount that the victim has suffered by being deprived of its property interests — a point that NCL concedes," Judge Bloom said.

Based on that analysis, the Cuban government extinguished Havana Docks' ownership rights to the remaining 44 years on its concession agreement, and the company now owns an interest in the certified claim, which reflects its right to compensation for the value it lost due to the confiscation, the order said.

"The NCL [dismissal] order essentially forecloses any recovery under the [Helms-Burton] Act for trafficking because no trafficking could ever possibly occur in a claimant's property interest after confiscation — and thus complete extinguishment — of any interest in the property previously owned," Judge Bloom said of her Jan. 7 ruling.

"Limiting the allowable period of recovery to the term of the underlying property interest, in effect, nullifies Title III entirely because the Cuban government's confiscation extinguished all of plaintiff's property interests in the subject property."

As a result of these findings, Judge Bloom determined that her earlier ruling denying dismissal to Carnival was "consistent with the language and purpose" of the Helms-Burton Act, which she said Congress intended would create a "chilling effect" to discourage companies from seeking to profit from the illegally confiscated property and prevent the Castro regime from generating capital from it as well.

Certified claims obtained by Havana Docks and other similar plaintiffs would set an amount of monetary damages they could pursue that would not change depending on the timing of the trafficking, she said.

Counsel for Havana Docks declined to comment Wednesday. Counsel for Norwegian did not immediately respond to a request for comment.

Havana Docks is represented by Roberto Martínez, Stephanie A. Casey, Zachary A. Lipshultz and Aziza F. Elayan-Martinez of Colson Hicks Eidson PA, and Rodney S. Margol of Margol & Margol PA.

Norwegian is represented by Richard C. Lorenzo and Allen P. Pegg of Hogan Lovells.

The case is Havana Docks Corp. v. Norwegian Cruise Line Holdings Ltd., case number 1:19-cv-23591, in the U.S. District Court for the Southern District of Florida.

--Editing by Gemma Horowitz.