UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 19-23590-CIV-BLOOM

HAVANA DOCKS CORPORATION,

Plaintiff,

vs.

ROYAL CARIBBEAN CRUISES LTD.,

Defendant.
_____/

DEFENDANT'S *INDIVIDUAL* MOTION FOR SUMMARY JUDGMENT

Defendant Royal Caribbean Cruises Ltd. ("Royal Caribbean"), pursuant to Rule 56(a) of the Federal Rules of Civil Procedure, moves for the entry of summary judgment in its favor. The grounds for this motion are:

I. INTRODUCTION

The U.S. Government issued a general license authorizing Royal Caribbean to lawfully travel anywhere in Cuba, including Havana (Facts, ¶17).[1] Over a period of two years – and as authorized by that license – four of Royal Caribbean's cruise ships, from its Royal Caribbean International and Azamara brands, cruised to Cuba and, during those cruises, the ships called at Havana (Facts, ¶¶18-21). When the ships visited Havana, they docked at the Havana Cruise Port Terminal (the "Terminal"), which is sometimes referred to as the Sierra Maestra Terminal, because the Cuban authorities told Royal Caribbean that the Terminal was the ***only*** place in Havana that Royal Caribbean's ships were authorized to dock (Facts, ¶¶18-25).

Notwithstanding the fact that the U.S. Government licensed Royal Caribbean's travel to Havana, and notwithstanding that the Cuban authorities required Royal Caribbean's ships to dock at the Terminal when in Havana, Plaintiff has sued Royal Caribbean for alleged violations of the Cuban Liberty and Democratic Solidarity Act, 22 U.S.C. §§6021 *et seq.*, (the "Helms-Burton Act"

[1] Citations to "Facts" are citations to Royal Caribbean's *individual* statement of material facts as to which there is no genuine issue to be tried, which was filed contemporaneously with this individual motion for summary judgment.

or, sometimes, the "Act"). Plaintiff's single-count amended complaint seeks to recover approximately ***$750 million*** in damages from Royal Caribbean because, over the course of two years, four ships docked at the Havana Cruise Port Terminal when they called at Havana. And, Plaintiff seeks to recover that same amount of damages from three other cruise lines that Plaintiff has also sued under the Act.

As explained in the cruise line defendants' omnibus motion for summary judgment, Royal Caribbean and the other Defendants are entitled to summary judgment for four reasons. *First*, the only thing that Plaintiff owned at the Port of Havana was a time-limited concession to operate a cargo-services business *at* the Terminal, and thus the Terminal is not "confiscated property" that can form the basis of claim under the Act. *Second*, all of the cruise lines used the Terminal as part of lawful travel to Havana that was permitted and encouraged by the U.S. Government, which, under the terms of the Act, means that the use of the Terminal was not proscribed "trafficking." *Third*, Plaintiff lacks statutory standing to sue because its principal place of business is in Europe, not in the United States, thus making it statutorily ineligible to assert a claim under the Act. *Fourth*, even if Plaintiff could sue under the Act, its claim would violate the Defendants' constitutional rights by impermissibly imposing ruinous liability, far out of proportion to any compensatory harm, for conduct that was lawful at the time and only retroactively triggers liability.

This individual motion for summary judgment explains further facts and reasons that are specific to Royal Caribbean and entitle Royal Caribbean to summary judgment in its favor. *First*, Royal Caribbean cannot be held liable for trafficking in connection with the four cruises by Silversea Cruises that docked at the Terminal in 2019. *Second*, this motion further describes Royal Caribbean's lawful travel to Cuba, which travel falls within the Act's "lawful travel exclusion." *Third*, the element of scienter – which is an essential element of a claim under the Act – cannot be established here. *Fourth*, and although not necessarily specific to Royal Caribbean, Royal Caribbean's cruises to Havana, which began in 2017, did not traffic in Plaintiff's property because that property was a time-limited concession that was to expire in 2004.

II. ARGUMENT

A. Royal Caribbean Cannot Be Held Liable Under The Act For Its Subsidiary's Four Cruises To Havana That Docked At The Terminal.

Plaintiff's amended complaint alleges that Royal Caribbean "controls and operates . . . Silversea Cruises" and, on that basis, Royal Caribbean is liable under the Act for having

"knowingly and intentionally commenced, conducted, and promoted its commercial cruise line business to Cuba by using the [Terminal] by regularly embarking and disembarking its passengers on the [Terminal] without the authorization of Plaintiff or any U.S. national who holds a claim to the [Terminal]." [ECF No. 46, ¶¶2, 22]. Royal Caribbean is entitled to summary judgment on this aspect of Plaintiff's claim because Royal Caribbean's mere ownership of Silversea does not make it liable for Silversea's alleged conduct, and the undisputed evidence establishes that Royal Caribbean did not exercise total dominion over Silversea, as would be required to hold Royal Caribbean liable for its subsidiary's alleged conduct.

Royal Caribbean Cruises Ltd. acquired a two-thirds ownership interest in Silversea Cruise Holding Ltd. in June 2018 (Facts, ¶44). After the acquisition, Silversea operated four cruises between February and April 2019 that called on Havana and docked at the Terminal (Facts, ¶46).[2] It is hornbook that merely owning a stake in Silversea is insufficient to make Royal Caribbean liable for the alleged conduct of its subsidiary.

"A basic tenet of American corporate law is that the corporation and its shareholders are distinct entities." *See Dole Food Co. v. Patrickson*, 538 U.S. 468, 474 (2003); *see also U.S. v. Bestfoods*, 524 U.S. 51, 61 (1998) (citing Douglas & Shanks*, Insulation from Liability Through Subsidiary Corporations*, 39 Yale L.J. 193 (1929)) ("It is a general principle of corporate law deeply ingrained in our economic and legal systems that a parent corporation (so-called because of control through ownership of another corporation's stock) is not liable for the acts of its subsidiaries.'") (parenthetical in original) (internal quotation marks omitted). "'Ordinarily, a creditor has recourse only against the corporate entity incurring the liability, not against parent corporations, stockholders, or other parties connected with the entity . . . .'" *See Daughtry v. Jenny G. LLC*, 703 F. App'x 883, 886 (11th Cir. 2017) (quoting *Baker v. Raymond Int'l, Inc.*, 656 F.2d 173, 179 (5th Cir. 1981)); *see also Eitzen Chemical (Singapore) PTE, Ltd. v. Carib Petroleum*, 749 F. App'x 765, 770 (11th Cir. 2018) (citing *Baker*, 656 F.2d at 179) ("Under general principles of limited liability, creditors only have recourse against the corporate entity that incurred the liability, not against related corporations or the owner of a corporation.").

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[2] At the time that the acquisition was announced, Silversea had already developed and sold an October 2018 cruise that would call on Havana, but would not make any stops in the U.S. and would not carry any U.S. passengers or crew. Due to the anticipated acquisition, application was made to OFAC for a special license permitting that cruise to proceed as scheduled, and OFAC granted the application and issued a special license. (Facts, ¶45).

"The veil separating corporations and their shareholders may be pierced in some circumstances . . . . The doctrine of piercing the corporate veil, however, is the rare exception, applied in the case of fraud or other exceptional circumstances, and usually determined on a case-by-case basis." *See Dole Food*, 538 U.S. at 475 (internal citations omitted); *see also Daughtry*, 703 F. App'x at 886 (quoting *Baker*, 656 F.2d at 179) ("'Under exceptional circumstances' we may disregard the corporate form where the principal uses the corporation to perpetrate a fraud on investors or 'used a closed corporation as his personal business conduit.'") (internal brackets omitted). "'[T]he burden rests on the party seeking to pierce the veil,' and this burden is a 'significant one.'" *See Eitzen*, 749 F. App'x at 770 (quoting *Edwards Co., Inc. v. Monogram Indust., Inc.*, 700 F.2d 994, 999 (5th Cir. 1983)).

To the extent that federal common law governs the issue of piercing the corporate veil (because the single-count amended complaint purports to state a claim arising under federal law), the proponent of piercing bears the significant burden of proving these three elements:

> "(1) Control, not mere majority or complete stock control, but complete domination, not only of finances, but of policy and business practices in respect to the transaction attacked so that the corporate entity as to this transaction had at the time no separate mind, will or existence of its own;
>
> "(2) Such control must have been used by the defendant to commit fraud or wrong, to perpetrate the violation of a statutory or other positive legal duty, or a dishonest or unjust act in contravention of plaintiff's legal rights; and
>
> "(3) The aforesaid control and breach of duty must proximately cause the injury or unjust loss complained of."

See United Steelworkers of America, AFL-CIO-CLC, 855 F.2d 1499, 1506-07 (11th Cir. 1988) (quoting *United Paperworkers Intern. U. v. Penntech Papers*, 439 F.Supp. 610 (D. Me. 1977) *aff'd* 583 F.2d 33 (1st Cir. 1978)).

To the extent that Florida law governs the issue of piercing the corporate veil, "the Florida and federal common law standards for piercing the corporate veil and holding a shareholder of a corporation liable for the acts of the corporation are very similar." *See Korman v. Party Girl Enterprises, Inc.*, 2013 WL 12094631, at *2 (S.D. Fla. June 19, 2013); *see also Aldana v. Fresh Del Monte Produce, Inc.*, 2007 WL 7143959, at **5-6 (S.D. Fla. Aug. 30, 2007) (finding it "not necessary to resolve the choice of law issue" because courts "have interpreted Florida law as

requiring the same elements that federal common law requires to pierce the corporate veil," making "the determination [] the same under state law and federal common law"). Specifically,

> It is black letter law in Florida that to disregard the corporate fiction and hold the corporation's owners liable—to "pierce the corporate veil"— the plaintiff must prove that:
>
> > (1) the *shareholder* dominated and controlled the corporation to such an extent that the corporation's independent existence, was in fact non-existent and the *shareholders* were in fact alter egos of the corporation;
> >
> > (2) the corporate form must have been used fraudulently or for an improper purpose; and
> >
> > (3) the fraudulent or improper use of the corporate form caused injury to the claimant.

See Molinos Valle del Cibao, C. por A. v. Lama, 633 F.3d 1330, 1349 (11th Cir. 20110 (quoting *Gasparini v. Pordomingo*, 972 So.2d 1053, 1055 (Fla. 3d DCA 2008)) (emphasis in original).

Plaintiff cannot meet the "significant burden" required to hold Royal Caribbean liable for Silversea's four cruises to Havana because there is no evidence establishing any of these elements. For example, Royal Caribbean Cruises Ltd. did not operate any of the Silversea cruises that went to Havana in 2019 (Facts, ¶47).

Royal Caribbean Cruises Ltd.'s department of deployment and itinerary planning has the responsibility of "[g]enerally overseeing where the ships go and the types of itineraries they will operate and the detailed itinerary planning," and does so on a worldwide basis, including cruises to Cuba (Facts, ¶48). That department provides those services for the Royal Caribbean International and Azamara brands, but it did not provide those services for Silversea because Silversea did its own deployment and itinerary planning, including for its Cuba cruises (*Id.*).

Similarly, Royal Caribbean Cruises Ltd.'s global tour operations department creates, maintains, manages, and curates the shore excursions that cruise passengers can purchase (Facts, ¶49). That department provides those services for the Royal Caribbean International brand and, for a time, provided those services for the Azamara brand, but it did not provide (and never has provided) those services for Silversea because Silversea handled its own shore excursions, including its shore excursions for Cuba (Facts, ¶50).

Silversea's high degree of independence from Royal Caribbean Cruises Ltd. means there is no basis upon which to pierce the corporate veil and hold Royal Caribbean Cruises Ltd. liable for the handful of cruises to Cuba that Silversea operated (even if those cruises were somehow unlawful). Royal Caribbean is entitled to summary judgment on this aspect of Plaintiff's claim.

B. Royal Caribbean Did Not "Traffic" Because Its Use Of The Terminal Was Incident to Lawful Travel To Cuba, And Necessary To The Conduct Of Such Travel.

The Defendants' omnibus motion for summary judgment addresses at length the reasons that the cruise lines' use of the Terminal falls within the Act's "lawful travel exclusion," thus insulating the cruise lines from any liability for using the Terminal. *See* 22 U.S.C. §6023(13)(B)(iii) ("The term 'traffics' does not include . . . transactions and uses of property incident to lawful travel to Cuba, to the extent that such transactions and uses of property are necessary to the conduct of such travel."). That analysis will not be repeated here, but set out below are the facts specific to Royal Caribbean establishing that its use of Terminal is not trafficking under the Act.

The U.S. Government, in 2015, promulgated regulations containing a general license authorizing Royal Caribbean (and other cruise lines) to travel ***anywhere*** in Cuba. *See* 31 C.F.R. §515.565; 31 C.F.R. §515.572; 15 C.F.R. §740.15; 15 C.F.R. §746.2; *see also* 80 FR 56915 (Sept. 21, 2015); *id.* at 56916; 80 FR 56898 (Sept. 21, 2015); *id.* at 56899-01. Just before those regulations were promulgated, Royal Caribbean applied to the U.S. Government (the U.S. Office of Foreign Asset Control (OFAC) and U.S. Department of Commerce, Bureau of Industry and Security) for a license allowing Royal Caribbean to cruise to Cuba (Facts, ¶¶11-13). Royal Caribbean's applications were pending when the regulations were enacted, and the government agencies returned the applications "without action," explaining in a letter to Royal Caribbean that the intervening issuance of the regulations – which contained a general license to cruise to Cuba – meant there was no need for a specific license:

> A "general license" constitutes a blanket authorization for those transactions set forth in, and subject to the conditions of, the relevant provision. To the extent that your proposed transactions fall within the scope of the general license provisions in section 515.572 (or another general license in the regulations), you may proceed with such transactions without further OFAC authorization. OFAC's policy is not to grant specific licenses authorizing transactions for which the provisions of a general license apply. See 31 C.F.R. § 501.801(a). In light of the recent regulatory

> amendments, we are closing your application without action. (Facts, ¶¶16-17; *see also* Facts, ¶¶14-15).

The U.S. Government did not place any restrictions or qualifications on *where* in Cuba Royal Caribbean could cruise and, as authorized by the Government, Royal Caribbean's first cruise to Cuba docked in Havana on March 31, 2017, two years after the general license was issued (Facts, ¶¶14-18).

And, just as Royal Caribbean did not begin cruising to Cuba until after the U.S. Government issued the general license allowing cruises to Cuba, cruise ships operated by Royal Caribbean did not call in Havana (or anywhere else in Cuba) after June 5, 2019, which is when the regulations were amended to end commercial cruise travel to Cuba (Facts, ¶19). *See* 84 FR 25992 (June 5, 2019) (addressing the amendment to the OFAC regulations); 84 FR 25986 (June 5, 2019) (addressing the amendment to the BIS regulations).

During the time that Royal Caribbean was cruising to Cuba, it implemented policies and procedures to ensure compliance with the applicable regulations. Royal Caribbean Cruises Ltd.'s Guest Port Services department wrote a standard operating procedure regarding compliance with, and training for, the OFAC passenger certification requirements relating to cruises to Cuba. (Facts, ¶31).

Royal Caribbean International's and Azamara's Internet websites provided the public and prospective passengers with information regarding compliance with the government regulations and requirements for cruising to Cuba. (Facts, ¶32).

In order to board a ship that was cruising to Cuba, Royal Caribbean required passengers to complete certifications stating under which of the 12 categories the passenger was traveling or, if the passenger was traveling under a specific license, to provide the number of that license. (Facts, ¶33). The passengers were required to complete two copies of the certification—one copy was for the passenger to keep, and the other copy was kept, and continues to be kept, by Royal Caribbean Cruises Ltd. (Facts, ¶34).

Passengers were given written instructions regarding the certifications. (Facts, ¶35). Passengers were given documents such as FAQs and checklists informing the passengers of the necessity of complying with U.S. government regulations and requirements regarding traveling to Cuba. (Facts, ¶36). While onboard the ship during cruises to Cuba, passengers were given written communications regarding compliance with the regulations for cruising to Cuba. (Facts, ¶37).

Royal Caribbean designed its shore excursions to meet the "people to people" requirements of the applicable regulations (Facts, ¶¶42-43). *See* 31 C.F.R. § 515.565(b) (Nov. 9, 2017) (people-to-people means a "full-time schedule of activities that enhance contact with the Cuban people, support civil society in Cuba, or promote the Cuban people's independence from Cuban authorities, and result in meaningful interaction with individuals in Cuba").

OFAC audited Royal Caribbean's compliance with the regulatory requirements applicable to cruises to Cuba (Facts, ¶38). After a thorough examination largely devoted to a review of compliance with recordkeeping requirements, OFAC did not determine that any aspect of Royal Caribbean's cruises to Cuba or Cuba-related programming violated the regulations or was unlawful (Facts, ¶¶39-41). OFAC sent Royal Caribbean a "Cautionary Letter" at the conclusion of the audit (Facts, ¶39). By providing only a Cautionary Letter – and not issuing a Finding of Violation – OFAC made clear that there was insufficient evidence of a violation or that a determination of a violation was not warranted under the circumstances. *See* OFAC's Economic Sanctions Enforcement Guidelines, Appendix A to 31 C.F.R. part 501, at II(C)-(D) (explaining the difference between a "Cautionary Letter" and a "Finding of Violation"). The Cautionary Letter was OFAC's "final enforcement response" and OFAC took no further action and made no additional findings (Facts, ¶41).

Royal Caribbean's use of the Terminal to dock it ships was also "incident to lawful travel to Cuba" and "necessary to the conduct of such travel," as those words are used in the Act. The Cuban Government required the Royal Caribbean ships calling on Havana to dock at the Terminal. The Cuban Government would not permit Royal Caribbean to anchor its ships offshore in Havana and "tender" passengers ashore and would not permit Royal Caribbean to dock its ships at other facilities in Havana or at other cities located nearby Havana (such as Matanzas), despite the fact that Royal Caribbean asked for permission to do so (Facts, ¶22).

The Cuban authorities informed Royal Caribbean, in writing, that in Havana (a) pilotage was compulsory and Cuban pilots would board the vessel, (b) the vessel would be taken by the Cuban pilots directly to the pier at the Terminal, and (c) cruise vessels are not allowed to anchor. (Facts, ¶¶23-24). In one written communication, when a Royal Caribbean ship sought to dock at the Terminal earlier than scheduled, the authorities informed Royal Caribbean that the Cuban pilots could anchor the ship in the harbor to await the scheduled docking time – at which point the ship would be moved to the Terminal – but the authorities told Royal Caribbean to "consider the

inconvenience that not any guest or crew member can go ashore while being in anchor possition (sic), remember that tender service is not allowed for cruise ship in Havana YET." (Facts, ¶25).

Royal Caribbean is entitled to summary judgment because its use of the Terminal is squarely within the "lawful travel exclusion."

C. Royal Caribbean Is Entitled To Summary Judgment Because The Element Of Scienter Cannot Be Established.

Even if Royal Caribbean's cruises to Havana were somehow not within the lawful travel exclusion, Royal Caribbean is nonetheless entitled to summary judgment for the additional and independent reason that Plaintiff cannot establish that Royal Caribbean acted with the requisite *mens rea*. In order to establish that Royal Caribbean trafficked in confiscated property so as to be liable under the Helms-Burton Act, Plaintiff bears the burden of proving scienter:

> As used in subchapter III, and except as provided in subparagraph (B), a person "traffics" in confiscated property if that person ***knowingly and intentionally***--
>
> (i) sells, transfers, distributes, dispenses, brokers, manages, or otherwise disposes of confiscated property, or purchases, leases, receives, possesses, obtains control of, manages, uses, or otherwise acquires or holds an interest in confiscated property,
>
> (ii) engages in a commercial activity using or otherwise benefiting from confiscated property, or
>
> (iii) causes, directs, participates in, or profits from, trafficking (as described in clause (i) or (ii)) by another person, or otherwise engages in trafficking (as described in clause (i) or (ii)) through another person,
>
> without the authorization of any United States national who holds a claim to the property.

See 22 U.S.C. §6023(13)(A) (emphasis added).

This scienter requirement – that the defendant must act "knowingly and intentionally"[3] – modifies and applies to *more* than the verbs set out in the definition of trafficking; that is, Plaintiff must prove more than Royal Caribbean knowingly and intentionally docked at the Terminal. Instead, a clear and plain reading requires that the defendant "must know that the property was

[3] "The term 'knowingly' means with knowledge or having reason to know." *See* 22 U.S.C. §6023(9).

confiscated by the Cuban government and intend that the property be the subject of their commercial behavior." *See Glen v. American Airlines, Inc.*, 2020 WL 4464665, at *6 (N.D. Tex. Aug. 3, 2020); *see also Gonzalez v. Amazon.com, Inc.*, 2020 WL 1169125, at *2 (S.D. Fla. Mar. 11, 2020) *aff'd* 835 F. App'x 1011 (11th Cir. 2021) (the plaintiff failed to state claim under the Helms-Burton Act because the complaint "does not demonstrate that the Defendants knew the property was confiscated by the Cuban government nor that it was owned by a United States citizen"); *Glen v. Trip Advisor LLC*, 2021 WL 1200577, *10 (D. Del. Mar. 30, 2021).

Most recently, the *Trip Advisor* court

> [found] persuasive the analyses of numerous other courts that have interpreted statutes having specific knowledge requirements as *requiring knowledge of all the elements listed in the statute*. Also persuasive are the recent decisions of other courts concerning the scienter requirement of the Helms-Burton Act in particular, which have reached the same conclusion as the Court does now.

See id.

Plaintiff's theory, as alleged in the amended complaint, is that Royal Caribbean's constructive and/or actual knowledge of confiscation arises from the Certified Claim (Am. Compl., DE 46, ¶¶24-25). It is undisputed that Royal Caribbean first learned of Plaintiff's Certified Claim – and of the confiscation on Plaintiff's property – on February 11, 2019, when it received a letter from Plaintiff's attorney (Facts, ¶30). Royal Caribbean is entitled to summary judgment because no one reading the Certified Claim would know or have reason to know that the Cuban Government confiscated anything belonging to Plaintiff that extended beyond 2004.

The Certified Claim states that "[t]he terms of the concession granted by the Cuban Government [to Plaintiff] were to expire in the year 2004, at which time the corporation had to deliver the piers to the government in good state of preservation." (Facts, ¶¶5, 8-10). Royal Caribbean cruised to Havana between March 31, 2017 and June 5, 2019 (Facts, ¶¶18-19). The Certified Claim would not give anyone reading it before or during that period knowledge or reason to know that the Cuban Government confiscated anything belonging to Plaintiff that extended beyond 2004. There were no Court decisions or other guidance existing before or during 2017-2019 that provided, or even suggested, that using the Terminal in 2017 could constitute trafficking in light of the Certified Claim's statement that Plaintiff's concession was to expire in 2004, at which time Plaintiff was required to deliver the piers to the Cuban Government.

Indeed, this Court itself – when presented with this issue of first impression in the quartet of Havana Docks cases – reached different conclusions on this issue. First, the Court ruled that the time-limited nature of Plaintiff's concession did not affect whether trafficking could occur after 2004. *See Havana Docks Corp. v. Carnival Corp.*, Case No. 19-21724-CIV-BLOOM (S.D. Fla.) (DE 47). Then, the Court reconsidered and ruled that "because the Certified Claim was predicated on Plaintiff's time-limited leasehold interest, Havana Docks could not, as a matter of law, state a claim for relief under the Act based on trafficking that occurred after Plaintiff's leasehold interest expired." *See Havana Docks Corp. v. Royal Caribbean Cruises Ltd.*, 2020 WL 1905219, *4 (S.D. Fla. Apr. 17, 2020); *see also Havana Docks v. MSC Cruises SA Co.,* 2020 WL 59637 (S.D. Fla. Jan. 3, 2020); *Havana Docks Corp. v. Norwegian Cruise Line Holdings, Ltd.,* 2020 WL 70988 (S.D. Fla. Jan. 7, 2020). Last, the Court reconsidered again and ruled that its initial ruling was correct. *See Royal Caribbean*, 2020 WL 1905219, at *12.

The undisputed evidence also demonstrates that Plaintiff's own president, Mickael Behn, who is the great-grandson of the corporation's founder, expressed to a shareholder that the Certified Claim is not "clear-cut" as to whether the "waterfront lease" "expired" or had "run out." (Facts, ¶51). And this is no historical sentiment either; Mr. Behn expressed this in 2018, during the midst of Royal Caribbean's cruises to Havana and not too long before the February 11, 2019 letter that Plaintiff's attorney sent to Royal Caribbean informing Royal Caribbean of the Certified Claim (Facts, ¶¶30, 51).

All of this shows that there simply is no factual or legal basis upon which to premise a determination that anyone could ***know***, from reading the Certified Claim on or before February 11, 2019, that the Cuban Government confiscated anything belonging to Plaintiff that extended beyond 2004. Plaintiff's theory that the Certified Claim provided actual or constructive knowledge that Plaintiff had rights extending beyond 2004 fails because the Certified Claim says that "[t]he terms of the concession granted by the Cuban Government [to Plaintiff] were to expire in the year 2004, at which time the corporation had to deliver the piers to the government in good state of preservation." That language would not give anyone the requisite knowledge that docking at the Terminal between 2017 and 2019 is trafficking in Plaintiff's property. Summary judgment should be entered in favor of Royal Caribbean.

D. Cruises Between 2017 and 2019 Were Incapable Of Trafficking In A Time-Limited Concession That Expired in 2004.

Plaintiff owned a concession to provide cargo-related services at the Terminal (Defendants' Omnibus Statement Undisputed Material Facts, ¶1). The documents granting and constituting the concession stated that it was to run for ninety-nine years beginning in 1905. The Foreign Clams Settlement Commission wrote in the Certified Claim that "[t]he terms of the concession granted by the Cuban Government were to expire in the year 2004 [99 years after 1905], at which time the corporation had to deliver the piers to the government in good state of preservation." (Facts, ¶¶5, 8-10).

It is thus undisputed that Plaintiff's time-limited property interest was to expire in 2004. It is equally undisputed that Royal Caribbean's ships first docked at the Terminal in 2017 – thirteen years later (Facts, ¶18). As Royal Caribbean argued in prior briefing – which arguments it adopts here – Royal Caribbean's use of the Terminal cannot constitute trafficking for the purposes of the Act because Royal Caribbean's first use of Terminal occurred *after* 2004 [ECF Nos. 26, 39, 40, 47, 64]. Royal Caribbean recognizes that the Court's last Order on this issue disagreed with this argument [ECF No. 45], but Royal Caribbean respectfully submits that summary judgment in favor of Royal Caribbean is warranted on this basis "because the Certified Claim was predicated on Plaintiff's time-limited leasehold interest, [thus] Havana Docks could not, as a matter of law, state a claim for relief under the Act based on trafficking that occurred after Plaintiff's leasehold interest expired." *See Havana Docks Corp. v. Royal Caribbean Cruises Ltd.*, 2020 WL 1905219, *4 (S.D. Fla. Apr. 17, 2020); *see also Havana Docks v. MSC Cruises SA Co.,* 2020 WL 59637 (S.D. Fla. Jan. 3, 2020); *Havana Docks Corp. v. Norwegian Cruise Line Holdings, Ltd.,* 2020 WL 70988 (S.D. Fla. Jan. 7, 2020).

III. CONCLUSION

For these reasons, and the reasons stated in the Defendants' omnibus motion for summary judgment, summary judgment should be entered in favor of Royal Caribbean on the claim in Plaintiff's amended complaint.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 20th day of September 2021, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF System.

By: /s/ Scott D. Ponce