UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED PERFUME INC., and NACA LOGISTICS (USA) INC. d/b/a VANGUARD LOGISTICS SERVICES d/b/a DIRECT CONTAINER LINE,

Plaintiffs,

- against -

EVERGREEN MARINE CORP. (TAIWAN) LTD. d/b/a EVERGREEN LINE

Defendant.

ORDER

15 Civ. 9296 (PGG)

PAUL G. GARDEPHE, U.S.D.J.:

In this admiralty action, Plaintiff United Perfume Inc. and Plaintiff NACA Logistics (USA) Inc. d/b/a Vanguard Logistics Services d/b/a Direct Container Line ("Vanguard Logistics") seek $161,424.00 from Defendant Evergreen Marine Corp. (Taiwan) Ltd. d/b/a Evergreen Line ("Evergreen") for damage to cargo. (See Cmplt. (Dkt. No. 1))

Evergreen has moved for summary judgment, arguing that United Perfume's claim is time-barred under the applicable one-year statute of limitations, and that Vanguard Logistics lacks standing as a result of assigning its claim to a non-party. (See Notice of Motion (Dkt. No. 24)) For the reasons stated below, Evergreen's motion for summary judgment will be granted.

BACKGROUND

I. FACTS[1]

A. The Contracts of Carriage for Shipment of United Perfume's Cargo

Plaintiff United Perfume Inc. is the owner of the cargo at issue: 340 boxes containing 24,072 bottles of perfume (the "Cargo"). (Def. Resp. to Pltf. R. 56.1 Counterstatement (Dkt. No. 28-1) ¶ 1) In 2014, United Perfume made arrangements for the Cargo – which was stored in a shipping container bearing the number EGSU9046210 (the "Container") – to be transported by ocean carrier from New York to the Colón Free Trade Zone in Panama. (Id.)

Shipment of the Container was effectuated through two separate contracts of carriage issued on June 5, 2014. (See De May Decl. (Dkt. No. 26-1) Exs. C-1, D-1) First, United Perfume contracted with Plaintiff NACA Logistics (USA) Inc. d/b/a Vanguard Logistics Services d/b/a Direct Container Line ("Vanguard Logistics") – a non-vessel operating common carrier.[2] (Pltf. Resp. to Def. R. 56.1 Stmt. (Dkt. No. 32) ¶ 3; Def. Resp. to Pltf. R. 56.1 Counterstatement (Dkt. No. 28-1) ¶ 2; De May Decl. (Dkt. No. 26-1) Ex. C-1) Vanguard

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[1] To the extent that this Court relies on facts drawn from a party's Local Rule 56.1 statement, it has done so because the opposing party has either not disputed those facts or has not done so with citations to admissible evidence. See Giannullo v. City of New York, 322 F.3d 139, 140 (2d Cir. 2003) ("If the opposing party . . . fails to controvert a fact so set forth in the moving party's Rule 56.1 statement, that fact will be deemed admitted.") (citations omitted). Where Plaintiffs dispute Evergreen's characterization of cited evidence, and have presented an evidentiary basis for doing so, the Court relies on Plaintiffs' characterization of the evidence. See Cifra v. Gen. Elec. Co., 252 F.3d 205, 216 (2d Cir. 2001) (court must draw all rational factual inferences in non-movant's favor in deciding summary judgment motion). Unless otherwise indicated, the facts cited by the Court are undisputed.

[2] A non-vessel operating common carrier ("NVOCC") "issue[s] a bill of lading to the shipper but does not undertake the actual transportation of the cargo. Instead, the NVOCC delivers the shipment to an ocean carrier for transportation." Sompo Japan Ins. Co. of Am. v. Norfolk S. Ry. Co., 762 F.3d 165, 168 n.2 (2d Cir. 2014).

Logistics agreed to undertake the "carriage" of the Container from New York to Panama and, to that end, issued bill of lading number NYCCFZ4353644D (the "Vanguard Bill of Lading") naming United Perfume as the shipper of the Container and identifying "Ever Reach/0638-108W" as the vessel that would transport the Container. (See De May Decl. (Dkt. No. 26-1) Exs. C-1, C-2) The Vanguard Bill of Lading provides, however, that

> [United Perfume] acknowledges that [Vanguard Logistics] is a non-vessel operating common carrier ("NVOCC"), and that it neither owns nor charters vessels, as a result of which [Vanguard Logistics] or any sub-carrier, connecting carrier[,] or substitute carrier (which may be a NVOCC) will be required to contract with an actual ocean carrier to accomplish the Carriage contemplated by this Bill of Lading and does so as the agent of [United Perfume].
>
> [United Perfume] further acknowledges that by identifying the carrying Vessel on the face side hereof, it knows or can determine the name of the actual ocean carrier and the terms and conditions of the actual ocean carrier's bill of lading and applicable tariff(s) and agrees to be bound thereby.

(Id., Ex. C-2 at § 3)

Second, Vanguard Logistics contracted with Defendant Evergreen – an ocean common carrier – for the actual shipment of the Container to Panama. (Pltf. Resp. to Def. R. 56.1 Stmt. (Dkt. No. 32) ¶ 4; Def. Resp. to Pltf. R. 56.1 Counterstatement (Dkt. No. 28-1) ¶ 3; De May Decl. (Dkt. No. 26-1) Ex. D-1) Evergreen issued sea waybill number EGLV450400184429 (the "Evergreen Sea Waybill")[3] naming Vanguard Logistics as the shipper of the Container. (See id.) The Evergreen Sea Waybill does not reference United Perfume or its interest in the Container.

The Evergreen Sea Waybill issued to Vanguard Logistics contains a provision incorporating the United States Carriage of Goods by Sea Act ("COGSA"):

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[3] "A sea waybill is like a bill of lading, except that bills of lading are negotiable, while waybills are not." Royal & Sun All. Ins., PLC v. Ocean World Lines, Inc., 612 F.3d 138, 141 n.5 (2d Cir. 2010).

> [n]otwithstanding anything to the contrary, if the carriage called for in this Bill is a shipment to or from the United States, the liability of the Carrier or its Sub-contractor shall be exclusively determined pursuant to COGSA[,] which is contractually incorporated into this Bill.

(De May Decl. (Dkt. No. 26-1) Ex. D-2 at § 5(A)) The COGSA contains a one-year statute of limitations for damage claims (see Pltf. Resp. to Def. R. 56.1 Stmt. (Dkt. No. 32) ¶ 6), and the Evergreen Sea Waybill likewise contains a provision establishing a one-year time bar for such claims:

> [u]nless notice of loss or damage and a general nature of such loss or damage be given in writing to [Evergreen] at the port of discharge or place of delivery before or at the time of delivery of the Goods, or, if the loss or damage be not apparent, within three consecutive days after delivery, the Goods shall be deemed to have been delivered as described in this Bill. In any event, . . . [Evergreen] shall be discharged from all liability in respect of non-delivery, mis-delivery, delay, loss[,] or damage unless suit is brought within one year after delivery of the Goods or the date when the Goods should have been delivered.

(Id. at § 8; see also Pltf. Resp. to Def. R. 56.1 Stmt. (Dkt. No. 32) ¶ 6) In accordance with these provisions, it is undisputed that a one-year statute of limitations applies to damage claims brought by Plaintiffs under the Evergreen Sea Waybill. (See Pltf. Resp. to Def. R. 56.1 Stmt. (Dkt. No. 32) ¶ 6)

B. Shipment and Delivery of the Container

On June 19, 2014, Evergreen delivered the Container to the Colón Free Trade Zone in Panama. (Pltf. Resp. to Def. R. 56.1 Stmt. (Dkt. No. 32) ¶ 5; see also De May Decl. (Dkt. No. 26-1) Ex. G) According to Plaintiffs, upon delivery, the Cargo was found to be "wetted" as a result of a hole in the Container, and United Perfume claimed damage to the Cargo.[4] (See Pltf. Resp. to Def. R. 56.1 Stmt. (Dkt. No. 32) ¶ 5; Def. Resp. to Pltf. R. 56.1

[4] While Evergreen admits that United Perfume claimed damage to the Cargo upon delivery in Panama (see Pltf. Resp. to Def. R. 56.1 Stmt. (Dkt. No. 32) ¶ 5), Evergreen denies that there was a hole in the Container or that the Cargo suffered water damage. (See Def. Resp. to Pltf. R. 56.1

Counterstatement (Dkt. No. 28-1) ¶ 4) Pursuant to the contracts of carriage and the COGSA, any lawsuit for recovery of damages would have to be commenced within one year of the delivery date – that is, by June 19, 2015. (See De May Decl. (Dkt. No. 26-1) Ex. C-2 at §§ 3, 20, Ex. D-2 at § 8)

C. Submission of Damage Claim to Evergreen

After the discovery of the alleged damage, United Perfume appointed W K Webster (Overseas) Ltd. to pursue claims against those parties responsible for the damaged cargo. (See Def. Resp. to Pltf. R. 56.1 Counterstatement (Dkt. No. 28-1) ¶ 5; Kenney Affirm. (Dkt. No. 30) ¶¶ 1, 3) W K Webster is not a party to this action.

On October 17, 2014, Brian Kenney of W K Webster's Recoveries Department filed claims with Vanguard Logistics and Evergreen pursuant to the contracts of carriage issued by those entities. (Def. Resp. to Pltf. R. 56.1 Counterstatement (Dkt. No. 28-1) ¶ 5) In separate emails containing identical language, Kenney informed Vanguard Logistics and Evergreen that

> [w]e [W K Webster] are acting on behalf of cargo interests and [are] enclosing documents in support of the recovery aspect of th[is] . . . claim. We are satisfied that the attached documents indicate that the damage occurred while the goods were in your care and custody. We must therefore hold you fully liable.
>
> We ask that you please investigate this matter and respond at your earliest convenience with your comments and proposals for settlement.

Counterstatement (Dkt. No. 28-1) ¶ 4) According to Evergreen, the evidence Plaintiffs offer in support of these assertions is hearsay. (Id.) This Court need not resolve the hearsay issue, because the instant motion turns on whether United Perfume's claim is time-barred, and whether Vanguard Logistics has standing. The hearsay question is thus not germane to this Court's resolution of Evergreen's motion.

(Saville Affirm. (Dkt. No. 31) Ex. A-1 at 6, Ex. A-3 at 19)[5] W K Webster's subsequent recovery efforts focused primarily on Evergreen, because it had supplied the vessel that transported the Container from New York to Panama. (See Saville Affirm., Ex. A (Kenney Dep.) (Dkt. No. 31-1) at 39-40)

On October 29, 2014, Evergreen's Cargo Claim Department acknowledged receipt of W K Webster's notice of claim and requested copies of (1) Evergreen's contract of carriage for the Container; (2) W K Webster's "authorization letter"; (3) the subrogation receipt; (4) the salvage receipt; (5) color photographs of the Container; and (6) the initial claim notice. (Saville Affirm. (Dkt. No. 31) Ex. A-3 at 17, Ex. B-1 at 2)

On April 16, 2015, Kenney provided Evergreen with a copy of the Evergreen Sea Waybill as well as an authorization letter – signed by a representative of United Perfume – stating that W K Webster is "fully authorised by [United Perfume] to act on [its] behalf in any and all matters relating to the . . . claim, including but not limited to dealing with investigating, negotiating[,] and settling any and all aspects of the . . . claim." (Saville Affirm., Ex. A-3 (Dkt. No. 31-3) at 16; De May Decl., Ex. J (Letter of Authority) (Dkt. No. 26-1)) This letter also authorized W K Webster to "commence legal proceedings . . . in [United Perfume's] name [with] respect [to] . . . said claim." (De May Decl., Ex. J (Letter of Authority) (Dkt. No. 26-1)) That same day, Shane Peng of Evergreen's Cargo Claim Department acknowledged receipt of these documents, and stated that Evergreen was "still awaiting" the remaining items listed in Evergreen's October 29, 2014 letter. (See Saville Affirm., Ex. A-3 (Dkt. No. 31-3) at 15-16)

[5] Except as to deposition transcripts, all citations in this Order reflect page numbers assigned by this District's Electronic Case Filing system. Citations to deposition transcripts reflect the page numbers assigned by the court reporter.

On May 8, 2015, in light of the approaching deadline to bring suit under the Evergreen Sea Waybill, Kenney sent an email to Peng requesting an extension of time to bring suit:

> [W]e are currently working on obtaining the previously requested documentation, and will forward the same onto you when received.
>
> In the meantime, I would note that the time bar for this claim will run on or about [19] June 2015. In order to further both our interests in resolving this matter amicably, we would request you grant us and concerned cargo interests the courtesy of a three month extension of suit time up to and including 11 September 2015.

(Id. at 15) Peng responded later that day, stating that, "[c]onsidering there is still one month [before] the time bar of this claim, [Evergreen] would rather await until [W K Webster] prove[s] [that its] principal possess[es] the entitlement to bring the claim to Evergreen." (Id. at 14)

At his deposition, Kenney testified that he understood Peng's response to mean that – "because Vanguard Logistics was listed as the shipper on the Evergreen bill of lading rather than United Perfume" – "Evergreen was requesting a letter of assignment from a party to its bill of lading," which in this case was Vanguard. (See Saville Affirm., Ex. A (Kenney Dep.) (Dkt. No. 31-1) at 37-38)

In a May 30, 2015 email to Peng, Kenney again requested an extension of time to bring suit:

> [W]e are in the process of obtaining a letter of assignment of rights from Vanguard Logistics, the shipper on the Evergreen bill of lading in this case, and are currently working with them on the language of such a letter.
>
> However, in the meantime, I would note that the time bar for this claim will run on or about [19] June 2015. In order to further both our interests in resolving this matter amicably, we would request that you grant us and concerned cargo interests the courtesy of a three month extension of suit time up to and including 11 September 2015.

(Saville Affirm., Ex. A-3 (Dkt. No. 31-3) at 13-14)

On June 2, 2015, Peng responded to Kenney's email as follows:

> We agree to grant a further consecutive time extension subject to [the] terms set out below:
>
> 1. The time extension shall be valid up to and including 11 September 2015;
>
> 2. The time extension is granted solely for the benefit of Vanguard Logistics under the Evergreen sea waybill no. 450400184429;
>
> 3. The time extension is granted on the basis that the alleged cargo claim has not already been time barred under the Evergreen sea waybill no. 450400184429;
>
> 4. The time extension is granted subject to Vanguard Logistics is entitled to bring their alleged claim in due course;
>
> 5. The time extension is granted on the basis of without admission of liability and without prejudice to our rights and defences.

(Id. at 12-13)

On June 5, 2015, W K Webster obtained a Letter of Assignment of Rights from Vanguard Logistics. (See Saville Affirm., Ex. A-1 (Dkt. No. 31-2) at 2-4, 9-10) The letter states:

> We, [Vanguard Logistics], hereby transfer and assign our claim rights in the above-referenced matter to [W K Webster] and confirm that [W K Webster] (and/or their agents or representatives) are fully authorised by us to act on our behalf in any and all matters relating to the above claim, including but not limited to dealing with investigating, negotiating and settling any and all aspects of the said claim.
>
> Furthermore, [W K Webster is] authorised at their discretion to commence legal proceedings and/or arbitration in our name in respect of the said claim, and to receive on our behalf any payment made in connection with the said claim by any third party(s) and to execute in their own name on our behalf any documents, releases or receipts which may be necessary for the prosecution and/or settlement of the said claim.
>
> [W K Webster] acting as agents only on behalf of United Perfume, Inc. hereby agrees to release and hold harmless [Vanguard Logistics] with regards to any claims regarding the above-referenced shipment.

(Id. at 10) That same day, Kenney forwarded a copy of the Letter of Assignment to Peng, along with color photographs of the Container. (Saville Affirm., Ex. A-3 (Dkt. No. 31-3) at 12)

On June 10, 2015, Kenney sent an email to Peng inquiring about the status of Evergreen's investigation of the claim. (Def. Resp. to Pltf. R. 56.1 Counterstatement (Dkt. No. 28-1) ¶ 16) In his response, Peng asked for a salvage receipt and clarification as to whether "[W K Webster's] principal[,] Vanguard Logistics[,] suffered any loss from this matter." (Saville Affirm., Ex. A-3 (Dkt. No. 31-3) at 10-12)

In a June 19, 2015 email, Kenney responded to Peng's inquiry about Vanguard's loss as follows:

> [W]e are representing both United Perfumes and Vanguard Logistics in this matter. United Perfumes filed a claim with Vanguard Logistics and Evergreen in this matter. As Evergreen requested we provide a letter of assignment from Vanguard Logistics, we obtained and provided the same to Evergreen. In this matter, United Perfumes suffered the loss and is claiming against master carrier Evergreen through Vanguard Logistics.

(Id. at 10)

As discussed in the email correspondence cited above – absent an extension of time – June 19, 2015 was the last day that suit could be commenced pursuant to the applicable one-year statute of limitations. Neither Plaintiffs nor W K Webster filed a lawsuit by that date, however. (See Pltf. Resp. to Def. R. 56.1 Stmt. (Dkt. No. 32) ¶ 8) Kenney testified that he understood that the extension of time agreed to by Evergreen on June 2, 2015 – although "granted solely for the benefit of Vanguard Logistics" (Saville Affirm., Ex. A-3 (Dkt. No. 31-3) at 12-13) – covered United Perfume's claim: "what I took it to mean is that if Evergreen is only going to listen to a claim from a party on its bill of lading, and that party is Vanguard Logistics, and we had the assignment of rights to their claim rights under that Evergreen bill of lading, then

this, these time extensions, would inure to the benefit of the true party in interest, United Perfume." (Saville Affirm., Ex. A (Kenney Dep.) (Dkt. No. 31-1) at 47)

In the ensuing weeks, Kenney exchanged correspondence with Peng concerning Evergreen's review of the claim, requests for additional documentation, and W K Webster's settlement proposal. (See Saville Affirm., Ex. A-3 (Dkt. No. 31-3) at 3-9) On July 23 and July 28, 2015, Peng informed Kenney that the "case [was] still under consideration," and that Evergreen was "discussing th[e] matter with [its insurer]." (Id. at 6-7)

In an August 5, 2015 email to Peng, Kenney requested a second extension of time, given Evergreen's ongoing review of the claim:

> [T]he time bar for this matter will run on 11 September 2015. In order to further both our efforts towards resolving this matter amicably, we would request you grant us and concerned cargo interests a further extension of suit time up to and including 11 December 2015.

(Id. at 4) In an August 17, 2015 reply email, Peng agreed to an extension until November 30, 2015, subject to the same terms and conditions set forth in the first extension, including that the "time extension is granted solely for the benefit of Vanguard Logistics under the Evergreen sea waybill no. 450400184429," and that the "time extension is granted on the basis that the alleged cargo claim has not already been time barred." (Id. at 2)

The parties were not able to settle the claim, and the Complaint was filed on November 25, 2015.

II. PROCEDURAL HISTORY

In the Complaint, Plaintiffs seek $161,424.00 from Evergreen as a result of the alleged damage to United Perfume's cargo. (See Cmplt. (Dkt. No. 1)) In its Answer, Evergreen asserts as an affirmative defense that Plaintiffs' action is time-barred under the COGSA and

relevant provisions of the Evergreen Sea Waybill. (Answer (Dkt. No. 10) Sixth Affirmative Defense)

Evergreen has moved for summary judgment (Notice of Motion (Dkt. No. 24), arguing that United Perfume's claim is time-barred, because the time extensions Evergreen granted were solely for the benefit of Vanguard Logistics and do not apply to United Perfume. (Def. Moving Br. (Dkt. No. 25) at 20; Def. Reply Br. (Dkt. No. 28) at 3-5) According to Evergreen, United Perfume's claim lapsed on June 19, 2015. (Def. Reply Br. (Dkt. No. 28) at 3) Evergreen further contends that Vanguard Logistics' claim fails because, inter alia, Vanguard Logistics lacks standing. (See Def. Moving Br. (Dkt. No. 25) at 21-24; Def. Reply Br. (Dkt. No. 28) at 3-7).

DISCUSSION

I. LEGAL STANDARDS

A. Summary Judgment Standard

Summary judgment is warranted where the moving party shows that "there is no genuine dispute as to any material fact" and that it "is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). "A dispute about a 'genuine issue' exists for summary judgment purposes where the evidence is such that a reasonable jury could decide in the non-movant's favor." Beyer v. County of Nassau, 524 F.3d 160, 163 (2d Cir. 2008). "When no rational jury could find in favor of the nonmoving party because the evidence to support its case is so slight, there is no genuine issue of material fact and a grant of summary judgment is proper." Gallo v. Prudential Residential Servs., Ltd. P'ship, 22 F.3d 1219, 1224 (2d Cir. 1994) (citing Dister v. Cont'l Grp., Inc., 859 F.2d 1108, 1114 (2d Cir. 1988)).

In deciding a summary judgment motion, the Court "'resolve[s] all ambiguities, and credit[s] all factual inferences that could rationally be drawn, in favor of the party opposing summary judgment.'" Spinelli v. City of New York, 579 F.3d 160, 166 (2d Cir. 2009) (quoting Brown v. Henderson, 257 F.3d 246, 251 (2d Cir. 2001) (internal quotation marks and citation omitted)). However, a "'party may not rely on mere speculation or conjecture as to the true nature of the facts to overcome a motion for summary judgment. . . . [M]ere conclusory allegations or denials . . . cannot by themselves create a genuine issue of material fact where none would otherwise exist.'" Hicks v. Baines, 593 F.3d 159, 166 (2d Cir. 2010) (alterations in original) (quoting Fletcher v. Atex, Inc., 68 F.3d 1451, 1456 (2d Cir. 1995)).

B. Application of the COGSA's Statute of Limitations

"The statute of limitations under [the] COGSA is one year." BS Sun Shipping Monrovia v. Citgo Petroleum Corp., 509 F. Supp. 2d 334, 348 (S.D.N.Y. 2007) (citing Madu v. Kerr Steamship Co., No. 94 Civ. 8004 (LAK) (MHD), 1995 WL 322121, at *2 (S.D.N.Y. May 30, 1995)); see also 46 U.S.C. § 30701(3)(6) ("In any event the carrier and the ship shall be discharged from all liability in respect of loss or damage unless suit is brought within one year after delivery of the goods or the date when the goods should have been delivered[.]"). "The COGSA statute of limitations 'is one which extinguishes the cause of action itself, and not merely the remedy.'" Petroleos Mexicanos Refinacion v. M/T KING A, 554 F.3d 99, 104 (3d Cir. 2009) (quoting M.V.M., Inc. v. St. Paul Fire & Marine Ins. Co., 156 F. Supp. 879, 883 (S.D.N.Y.1957), rev'd on other grounds sub nom, St. Paul Fire & Marine Ins. Co v. U.S. Lines Co., 258 F.2d 374 (2d Cir. 1958)).

"It is well-established[, however,] that [the] COGSA's one-year statute of limitations can be waived or tolled by an extension of time to sue granted by the carrier or the

ship." Ewig Int'l Marine Corp. v. Schelde, No. 95 Civ. 5602 (LAP), 1996 WL 389306, at *2 (S.D.N.Y. July 11, 1996) (citing United Fruit Co. v. J.A. Folger & Co., 270 F.2d 666, 667 (5th Cir. 1959); General Electric Co. v. M/V Gendiz, 720 F .Supp. 29, 30 (S.D.N.Y. 1989)). "Extensions of time in [such] circumstances . . . constitute contracts between the carriers who extend the time and the cargo owners," Cont'l Ins. Co. v. M/V OLYMPIC MELODY, No. 01 Civ. 2824 (RWS), 2002 WL 398691, at *3 (S.D.N.Y. Mar. 15, 2002), and "can be made subject to conditions" that must be fulfilled in order for the extensions to take effect. Ewig Int'l Marine Corp., 1996 WL 389306, at *3. "Contractual waivers of [the] COGSA's one-year time limitation are strictly construed." Cont'l Ins. Co., 2002 WL 398691, at *3. Indeed, "'[i]t is in the interest of all shippers and all carriers that when a steamship company grants an extension of time for suit, in writing, before the running of the statute, specifically limited to a fixed and reasonable time, that the parties be able to rely on the terms of their agreement.'" Id. (quoting United Fruit Co., 270 F.2d at 670).

"It is well established that a COGSA defendant can be equitably estopped from asserting a time-bar defense," however. Linmark Indus., Inc. v. M/V "RUHR EXPRESS", No. 89 Civ. 6976 (SWK), 1990 WL 102234, at *1 (S.D.N.Y. July 6, 1990); see also Tokio Marine & Fire Ins. Co. v. M/V YOU LIANG, No. 00 Civ. 2744, 2001 WL 1673697, at *2 (E.D. La. Dec. 20, 2001) ("In some circumstances, . . . a party, by [its] representations, promises, or conduct, may be estopped [from] assert[ing] the statute['s] [time bar defense]."). "'[T]he basic question in determining whether an estoppel exists is whether plaintiff has been justifiably misled by defendant's actions, whether defendant's actions have lulled plaintiff into a false sense of security and so induced him not to institute suit in the requisite time period." Linmark Indus., 1990 WL 102234, at *1 (quoting Austin, Nichols & Co. v. Cunard S. S. Ltd., 367 F. Supp. 947,

949 (S.D.N.Y. 1973)); see also Mikinberg v. Baltic S.S. Co., 988 F.2d 327, 331 (2d Cir. 1993) ("A defendant will be estopped from asserting the COGSA statute of limitations as a defense where a plaintiff can show that he was misled by the defendants into reasonably and justifiably believing that the statute of limitations would not be used as a defense or would be extended."); Ferrostaal, Inc. v. M/V SEA BAISEN, No. 02 Civ. 1900 (RJH) (DCF), 2004 WL 2734745, at *5 (S.D.N.Y. Nov. 30, 2004) ("A party is estopped from using the COGSA statute of limitations as a defense only where the opposing party can show that it 'reasonably and justifiably believ[ed] that the statute of limitations would not be used as a defense or would be extended.'").

"Summary judgment is . . . inappropriate [where the non-moving party] has raised a genuine issue of fact as to whether [the movant] is estopped from asserting the statute of limitations as a defense." Universal Ruma Co. v. Mediterranean Shipping Co. S.A., No. 99 Civ. 10880 (DLC), 2000 WL 991393, at *3 (S.D.N.Y. July 19, 2000) (denying summary judgment where "evidence raise[d] a material issue of fact as to whether [plaintiff] was misled into believing that [defendant] would settle its claims" and did not bring suit within limitations period on that basis); see also Austin, Nichols & Co., 367 F. Supp. at 949 (same).

II. ANALYSIS

The parties agree that Plaintiffs' claims against Evergreen are governed by the COGSA and that the one-year statute of limitations applies. (See Def. Moving Br. (Dkt. No. 25) at 15-18, 20; Pltf. Opp. Br. (Dkt. No. 29) at 11) There is likewise no dispute that (1) the COGSA's statute of limitations may be extended by agreement; (2) Evergreen agreed to extensions of time that moved the deadline for a cargo damage lawsuit from June 19, 2015 to November 30, 2015; and (3) the instant lawsuit was filed on November 25, 2015. (See Def.

Moving Br. (Dkt. No. 25) at 18-20; Pltf. Opp. Br. (Dkt. No. 29) at 11; Pltf. Resp. to Def. R. 56.1 Stmt. (Dkt. No. 32) ¶¶ 5-6, 10; Cmplt. (Dkt. No. 1))

What remains in dispute is whether United Perfume may claim the benefit of the time extensions granted by Evergreen, and whether Vanguard Logistics – given the assignment of rights to W K Webster – has standing.

A. Whether United Perfume's Claim Is Time-Barred

Evergreen argues that "United Perfume was not named in either of the extensions [of time] and . . . thus cannot benefit from them." (Def. Moving Br. (Dkt. No. 25) at 20) Evergreen notes that each time extension is "limited and conditional," and plainly states that it is "granted solely for the benefit of Vanguard Logistics under the Evergreen sea waybill no. 450400184429," and is "granted subject to Vanguard Logistics [being] entitled to bring their alleged claim in due course." (Def. Reply Br. (Dkt. No. 28) at 3-5; Saville Affirm., Ex. A-3 (Dkt. No. 31-3) at 2, 12-13) (emphasis added) According to Evergreen, because the extensions of time do not apply to United Perfume, and because United Perfume did not file this action within one year of the delivery date of June 19, 2014, United Perfume's claim is time-barred. (Def. Reply Br. (Dkt. No. 28) at 2-4) For the reasons explained below, this Court agrees that any claim that United Perfume has against Evergreen is time-barred.

As noted above, "[c]ontractual waivers of [the] COGSA's one-year time limitation are strictly construed." Cont'l Ins. Co., 2002 WL 398691, at *3; see also United Fruit Co., 270 F.2d at 670 (recognizing the commercial importance of enforcing time extensions "according to [their] terms," because if "the parties [are not] able to rely on the terms of their agreement . . . there will be no more extensions"); Cont'l Ins. Co. ex rel. J & F Steel Corp. v. M/V DAVIKEN, No. 02 Civ. 397, 2005 WL 884977 (N.D. Ind. Jan. 24, 2005) ("Courts should

be mindful that, because such extensions are an important method of facilitating international commerce, parties must be able to rely on the terms of their agreements. Thus, courts strictly construe the terms of such agreements." (internal citations omitted)). The extensions of time that Evergreen granted here explicitly state that they are "solely for the benefit of Vanguard Logistics." Those extensions do not reference United Perfume in any fashion. Given this clear and unambiguous language, and the obligation to "strictly construe[]" contractual waivers of the COGSA's one-year statute of limitations, this Court will not interpret the extensions of time to cover both Vanguard Logistics and United Perfume. See Italia Assicurazioni S.P.A. v. S/S St. Olga, 1974 A.M.C. 2209, 2211 (S.D.N.Y. July 8, 1974) (concluding that time extensions that only mentioned plaintiff did not apply to co-plaintiff; accordingly, co-plaintiff's claim was time-barred).

United Perfume argues, however, that it was a "third-party beneficiary" of the time extensions granted to Vanguard Logistics. (Pltf. Opp. Br. (Dkt. No. 29) at 16-18) "[C]ommon law third-party beneficiary principles may be applicable when interpreting bills of lading." In re M/V Rickmers Genoa Litig., 622 F. Supp. 2d 56, 72 (S.D.N.Y. 2009). A "third[-]party beneficiary will be found when it is appropriate to recognize a right to performance in the third party and the circumstances indicate that the promisee intends to give the third party the benefit of the promised performance." Trans-Orient Marine Corp. v. Star Trading & Marine, Inc., 925 F.2d 566, 573 (2d Cir. 1991) (citing Restatement (Second) of Contracts § 302 (1981)). While the "obligation to perform to the third party beneficiary need not be expressly stated in the contract," and a court may "look at the surrounding circumstances as well as the agreement" in discerning the obligor's intent, see id., the time extensions granted by Evergreen evince a clear and unambiguous intent that the extensions apply "solely for the benefit of Vanguard Logistics."

Plaintiff's contention that Evergreen intended the extensions of time to also benefit United Perfume cannot be squared with the express language used in the extensions of time.

United Perfume also argues that – even if Evergreen did not intend to make United Perfume a third-party beneficiary of the extensions of time – Evergreen should be estopped from asserting a statute of limitations defense. (Pltf. Opp. Br. (Dkt. No. 29) at 12-16) United Perfume argues that "Evergreen knew that the claim for the damage to the Shipment was being pursued [by W K Webster] on behalf of the cargo interests, and more specifically, [United Perfume,] the cargo owner." (Id. at 13) Accordingly, Brian Kenney of W K Webster's Recoveries Department was "justified and reasonable in his belief that since W K Webster was acting on behalf of [the] cargo interests and that Vanguard[Logistic's] claim had been assigned [to W K Webster], . . . the extension inured to the benefit of the assignee of Vanguard [Logistics], that is, the cargo interests." (Id. at 15) According to United Perfume, "[a]t the very least, [there exists] a question of material fact" as to whether Evergreen should be estopped. (Id. at 16)

United Perfume's arguments are not persuasive. Estoppel applies "where a plaintiff can show that he was misled by the defendants into reasonably and justifiably believing that the statute of limitations would not be used as a defense." Mikinberg, 988 F.2d at 331. Given that the extensions of time state in clear and unambiguous terms that they apply "solely for the benefit of Vanguard Logistics," and make no mention of United Perfume, the Court concludes that no reasonable jury could find that Evergreen "misled" United Perfume. See id. If W K Webster – as United Perfume's agent – wanted the extensions of time to apply to United Perfume's claim, it could have and should have proposed language that named United Perfume.

The Court concludes that United Perfume's claim against Evergreen is time-barred. Evergreen's motion for summary judgment on that claim will be granted.

B. Whether Vanguard Logistics Has Standing

Evergreen argues that Vanguard Logistics cannot assert a claim in this action, because it "assigned away its 'claim rights' [to W K Webster]." (See Def. Reply Br. (Dkt. No. 28) at 5; see also Def. Moving Br. (Dkt. No. 25) at 23-24)

The Second Circuit has recognized that the "meaning of the term 'assignment' in contract law is not altered in the maritime context," and that courts "therefore apply familiar principles of contract law" in considering assignments in admiralty cases. See Saint John Marine Co. v. United States, 92 F.3d 39, 47 (2d Cir. 1996). "'An assignment of a right is a manifestation of the assignor's intention to transfer it[,] by virtue of which the assignor's right to performance by the obligor is extinguished in whole or in part and the assignee acquires a right to such performance.'" Id. (quoting Restatement (Second) of Contracts § 317(1) (1979)). It is well settled that "[a]n unequivocal and complete assignment extinguishes the assignor's rights against the obligor and leaves the assignor without standing to sue the obligor." Aaron Ferer & Sons Ltd. v. Chase Manhattan Bank, N.A., 731 F.2d 112, 125 (2d Cir. 1984); see also Compagnie Noga d'Importation et d'Exportation S.A. v. Russian Fed'n, No. 00 Civ. 0632 (WHP), 2008 WL 3833257, at *6 (S.D.N.Y. Aug. 15, 2008) ("A party that has assigned its entire interest in a claim lacks standing to bring suit on that claim."), aff'd, 350 Fed. Appx. 476 (2d Cir. 2009).

Where, as here, an NVOCC assigns its rights under a contract of carriage, that assignment extinguishes the NVOCC's rights and establishes privity of contract between the assignee and the counterparty on the contract of carriage. Cf. Atl. Forwarding, Ltd. v. MSL Int'l, LLC., No. 13 Civ. 209 (JPO), 2013 WL 5345346, at *3 (S.D.N.Y. Sept. 24, 2013) (the

"[NVOCC's] assignment of its rights on the bills of lading to Atlantic . . . established privity of contract between MSL and Atlantic"); see also Connecticut v. Physicians Health Servs. of Connecticut, Inc., 287 F.3d 110, 117 (2d Cir. 2002) ("Typically, the assignee, obtaining the assignment in exchange for some consideration running from it to the assignor, replaces the assignor with respect to the claim or the portion of the claim assigned, and thus stands in the assignor's stead with respect to both injury and remedy.").

Here, Vanguard Logistics executed the Letter of Assignment on June 5, 2015. (See De May Decl. (Dkt. No. 26-1) Ex. I) The Letter of Assignment provides, in relevant part, that

> We, [Vanguard Logistics], hereby transfer and assign our claim rights in the above-referenced matter to . . . [W K Webster] and confirm that [W K Webster] . . . [is] fully authorised by us to act on our behalf in any and all matters relating to the above claim.

(Id.)[6] As consideration for the assignment, W K Webster – "acting as agent[] . . . of United Perfume" – "agree[d] to release and hold harmless [Vanguard Logistics] with regards to any claims regarding the . . . shipment." (Id.)

The Court concludes that the Letter of Assignment constitutes an "unequivocal and complete assignment [that] extinguishes [Vanguard Logistics's] rights against [Evergreen] and leaves [Vanguard Logistics] without standing to sue [Evergreen]." See Aaron Ferer & Sons, 731 F.2d at 125.

Because Vanguard Logistics assigned its claim rights relating to the damaged cargo to W K Webster, Vanguard Logistics lacks standing to now bring suit against Evergreen.

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[6] In an affirmation submitted in opposition to Evergreen's motion, Brian Kenney of W K Webster states that he "mistakenly identified W K Webster instead of United [Perfume] as the assignee in the assignment." (See Kenney Affirm. (Dkt. No. 30) ¶ 6)

Accordingly, Evergreen's motion for summary judgment on Vanguard Logistics' claim will be granted.

CONCLUSION

For the reasons stated above, Defendant Evergreen's motion for summary judgment is granted. The Clerk of the Court is directed to terminate the motion (Dkt. No. 24) and to close this case.

Dated: New York, New York
August 7, 2017

SO ORDERED.

Paul G. Gardephe
United States District Judge