Kargo Cap. Inc. v. Cohen

Docket No.: 26-509

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Case Information

Court: U.S. Court of Appeals for the Second Circuit

Date Decided: October 8, 2026

Judges: Circuit Judge Cabranes, Circuit Judge Lynch, Circuit Judge Bianco

Lower Court: U.S. District Court for the Northern District of New York (Judge Anthony J. Brindisi)

Parties and Attorneys

Plaintiffs-Appellants: Kargo Capital Inc., Kargo Holdings, LLC, Kargo Global LLC; Represented By: William E. Reynolds

Defendants-Appellees: Boaz Cohen, David Donnelly, Daniel King; Represented By: David G. Burch, Jennifer J. Hopkins

Overview

Issue: Whether allegations that defendants initiated arbitration contrary to a contractual forum-selection clause plausibly pleaded a present breach rather than a speculative future breach.

Lower Court Held: The district court dismissed Kargo's complaint because it viewed the alleged breach as speculative and unsupported by facts establishing a current violation.

What Was Overturned: The Second Circuit vacated the judgment dismissing the breach-of-contract claim and request for declaratory relief and remanded for further proceedings.

Why: Kargo alleged that initiating arbitration in the wrong forum itself breached the agreements and caused litigation expenses, regardless of the arbitration's outcome.

Background

Kargo acquired Betapond through agreements that included contingent payment notes and Subordination Agreements protecting a senior lender. The notes incorporated provisions requiring arbitration in Ireland; the Subordination Agreements required litigation of related disputes in Albany County, New York. After Kargo failed to pay the notes, former shareholders initiated Irish arbitration. Kargo sued, alleging that initiating arbitration breached the forum-selection clause.

Lower Court Decision

The district court dismissed under Federal Rule of Civil Procedure 12(b)(6) [dismissal for failure to state a claim], characterizing Kargo's allegations as conjecture about a future breach. It did not decide which agreement's dispute-resolution provision governed.

Second Circuit Reversal

Reviewing de novo and accepting the pleaded facts and favorable inferences, the Second Circuit held that Kargo sufficiently alleged a present breach: being forced to defend in the allegedly wrong forum, with resulting Irish counsel fees and other expenses. The complaint identified the contractual provisions allegedly violated. Dismissal of declaratory relief on the same ground was also erroneous. The Second Circuit declined to decide defendants' alternative argument that the arbitration provision controlled, leaving that question for the district court without suggesting that the Subordination Agreements necessarily applied.

Legal Significance

This non-precedential summary order distinguished the sufficiency of allegations of an existing forum-selection breach from the separate question whether that clause governed the dispute. It did not resolve the competing litigation and arbitration provisions.

Key Takeaway

Plead initiation of proceedings in the allegedly improper forum as the breach, identify the governing clause, and specify resulting expenses; be prepared separately to establish that the clause applies.

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