UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

MARINELAND OF CANADA, INC.,

Plaintiff,

-vs- **Case No. 6:11-cv-1664-Orl-31KRS**

SEA WORLD PARKS & ENTERTAINMENT LLC,

Defendant.

ORDER

This cause comes before the Court without oral argument on an Emergency Motion for a Temporary Restraining Order (Doc. 18), filed by Plaintiff, Marineland of Canada, Inc. ("Marineland"); and the Response (Doc. 32), filed by Defendant, Sea World Parks & Entertainment, LLC ("Sea World").

I. Background

On November 16, 2006, Sea World and Marineland entered into a "Breeding Loan Agreement," under which Sea World agreed to loan to Marineland a male killer whale named "Ikaika." The Agreement contained the following termination provision permitting either party to terminate the Agreement at any time on 30 days' notice:

> 2. TERM. This Agreement shall remain in force, except as otherwise provided, for a term ending December 31, 2010. This Agreement shall be renewed automatically for one year terms thereafter unless or until terminated by either Party. Either Party to this Agreement may terminate this Agreement at any time with respect to some or all of the Specimens listed above by giving the other Party thirty (30) days' written notice prior to the effective date of the proposed termination.

(Doc. 32-1, Ex. A, ¶ 2). On December 31, 2010, Sea World provided written notice to Marineland that it intended to terminate the agreement, and repossess Ikaika. After Marineland refused to cooperate, Sea World "made application to the Ontario Superior Court" seeking an order requiring Marineland to comply. On July 27, 2011, the Superior Court of Justice in Ontario entered judgement for Sea World on the basis that it "properly terminated the Breeding Loan Agreement and is entitled to the possession of Ikaika." (Doc. 32-1, Ex. B, ¶ 21). The court then ordered Marineland to cooperate in the transport of Ikaika from Marineland back to Sea World. Marineland appealed to the Ontario Court of Appeal, which, on September 28, 2011, unanimously upheld the lower court's ruling. Finally, after Marineland's continued efforts to oppose the recovery of Ikaika, Sea World filed a action for contempt in the Canadian courts. At a hearing on November 10, 2011, a Canadian judge admonished Marineland for its attempts to frustrate earlier court rulings, and again, affirmed Sea World's right to recover the whale.

It is undisputed that the Breeding Loan Agreement controls the instant action. In both this case, and the Canadian case, however, Marineland contends, *inter alia*, that the Breeding Loan Agreement was not a complete expression of the parties intent.[1] Notwithstanding the merger clause in the Breeding and Loan Agreement, Marineland argues that the parties' true intent was to facilitate breeding for the life of the animal and that neither party could terminate the agreement absent clear conditions–which do not exist here.

Marineland filed this action on October 14, 2011. On October 24, 2011, it filed a Motion for preliminary injunction with this Court seeking to prevent Sea World's imminent recovery of Ikaika.

[1] Specifically, it argues for reformation, and that Sea World breach the implied duty of good faith and fair dealing when it terminated the agreement.

The Court set a hearing on the Motion for November 17, 2011. However, unbeknownst to the Court, Sea World intended to recover Ikaika on November 12, 2011. Marineland filed the instant emergency motion on November 10, 2011, pursuant to FED. R. CIV. P. 65(b) and Local Rule 4.05, asking the Court to enjoin the transportation of the whale until the November 17th hearing.

II. Discussion

With respect to the instant Motion, Marineland argues, *inter alia*, that the Canadian proceedings do not control because the arguments it raises in this case were not considered by the Canadian court. Thus, res judicata does not apply.[2] In response, Sea World argues that the Canadian courts have heard, and rejected Marineland's claims for contract reformation and implied duty. Further, Sea World points to *Daewoo Motor America, Inc. v. General Motors Corp*., which sets out three factors for a court to consider in determining whether to abstain from hearing a case on grounds of international comity:

> (1) whether the foreign court was competent and used "proceedings consistent with civilized jurisprudence," (2) whether the judgment was rendered by fraud, and (3) whether the foreign judgment was prejudicial because it violated American public policy notions of what is decent and just.' Courts also consider whether "the central issue in dispute is a matter of foreign law and whether there is a prospect of conflicting judgments."

459 F.3d 1249, 1258 (11th Cir. 2006) (citations omitted).

After careful consideration of the documents in this case, the Court concludes that Marineland has not met its burden of establishing a substantial likelihood of success on the merits. There is no evidence to suggest that the Canadian court system lacks jurisdiction to hear this case. Marineland is located in Canada, and Ikaika, the subject of the instant dispute, is located there. Although Marineland

[2] The merits of this argument require an examination of Canadian law which the Court is unable to accomplish in such a short time.

claims that the Canadian preceding was somehow inappropriate, there is no suggestion that it is "inconsistent with civilized jurisprudence" that it was rendered by fraud, or that it "violated American public policy notions of what is decent and just." *Id*. Moreover, on its face, the Breeding Loan Agreement includes a merger clause in paragraph 21 and allows either party to unilaterally terminate the agreement with only thirty days notice.

In light of the foregoing, Plaintiff, Marineland of Canada's Emergency Motion for Temporary Injunction (Doc. 18) is **DENIED**.

DONE and **ORDERED** in Chambers, Orlando, Florida on November 11, 2011.

GREGORY A. PRESNELL
UNITED STATES DISTRICT JUDGE

Copies furnished to:

Counsel of Record
Unrepresented Party