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**FRONT CARRIERS LTD., Plaintiff, -v- TRANSFIELD ER CAPE LTD.,
Defendant.**

Case No. 07 Civ. 6333 (RJS)

**UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
NEW YORK**

2010 U.S. Dist. LEXIS 13215

**February 12, 2010, Decided
February 15, 2010, Filed**

PRIOR HISTORY: *Front Carriers Ltd. v. Transfield ER Cape Ltd.*, 2009 U.S. Dist. LEXIS 97344 (S.D.N.Y., Oct. 20, 2009)

OPINION BY: RICHARD J. SULLIVAN

OPINION

COUNSEL: [*1] For Front Carriers Ltd., Plaintiff: Lissa Diane Schaupp, Michael J. Frevola, LEAD ATTORNEYS, Christopher Rocco Nolan, Holland & Knight LLP, New York, NY.

ORDER

RICHARD J. SULLIVAN, District Judge:

For Transfield ER Cape Ltd., Defendant: Eugene J. O'Connor, LEAD ATTORNEY, Andrew John Warner, Timothy Semenoro, Chalos, O'Connor and Duffy, LLP, Port Washington, NY.

For Societe Generale New York Branch, Garnishee: Richard Joseph Reisert, LEAD ATTORNEY, Clark, Atcheson & Reisert, North Bergen, NJ.

For Transfield ER Cape Ltd., Counter Claimant: Andrew John Warner, Timothy Semenoro, Chalos, O'Connor and Duffy, LLP, Port Washington, NY.

For Front Carriers Ltd., Counter Defendant: Lissa Diane Schaupp, Michael J. Frevola, LEAD ATTORNEYS, Holland & Knight LLP, New York, NY.

JUDGES: RICHARD J. SULLIVAN, UNITED STATES DISTRICT JUDGE.

By Order dated January 27, 2010, the Court ordered the release funds held in escrow by the parties in light of the Second Circuit's recent decision in *Shipping Corp. of India v. Jaldhi Overseas Pte Ltd.*, 585 F.3d 58 (2d Cir. 2009). On February 4, 2010, Plaintiff filed an order to show cause why a stay of that order pending appeal should not be granted, pursuant to [*2] *Federal Rule of Civil Procedure 62(c)*. In the alternative, Plaintiff asks the Court to grant a temporary stay while it seeks a stay from the Second Circuit. The Court directed Defendant to respond by February 8, 2010, which Defendant did.

When considering a request under Federal *Rule 62(c)*, the Court must consider "(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies." *In re World Trade Ctr. Disaster Site Litig.*,

503 F.3d 167, 170 (2008) (quoting *Hilton v. Braunskill*, 481 U.S. 770, 776, 107 S. Ct. 2113, 95 L. Ed. 2d 724 (1987)). Courts treat these factors as a "sliding scale" and the required likelihood of success will vary according to the Court's assessment of the other factors. See *Thapa v. Gonzales*, 460 F.3d 323, 334 (2d Cir. 2006).

After reviewing the parties' submission, the Court concludes that Plaintiff does not have a substantial likelihood of success on the merits. For the reasons stated in the January 27, 2010 Order, the Court concludes that *Jaldhi* [*3] fully applies to the case now before it. With regard to Plaintiff's other principle argument, that Defendant is insolvent, Plaintiff has provided a declaration stating that it has had difficulty locating other property of Defendant to attach, and alleging, through hearsay, that Defendant ceased some of its operations. (See Brautzaaset Decl. PP 17-21.) Defendant disputes these allegations with its own declaration, explaining that the evidence relied upon by Plaintiff relates to a separate company unaffiliated with Defendant. (See Kong Decl. PP 18-22; Second Semenoro Decl. P 6.) Additionally, the

Court agrees with Defendant that the amount of funds attached, in excess of \$ 15 million, presents a substantial hardship to Defendant. Accordingly,

IT IS HEREBY ORDERED THAT Plaintiff's request that the Court stay its January 27, 2010 Order releasing the escrow funds is DENIED.

IT IS FURTHER ORDERED THAT the Court's January 27, 2010 Order is stayed until February 23, 2010 so that Plaintiff may seek a stay from the Second Circuit.

SO ORDERED.

Dated: New York, New York

February 12, 2010

/s/ Richard J. Sullivan

RICHARD J. SULLIVAN

UNITED STATES DISTRICT JUDGE