

IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF VIRGINIA  
Alexandria Division

GLOBAL HUB LOGISTICS, et al.,	)	
	)	
Plaintiffs,	)	Civil No. 11-1113
	)	
VS.	)	February 2, 2012
	)	
TAMERLANE GLOBAL SERVICES, et al.,	)	
	)	
Defendants.	)	

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MOTIONS HEARING

BEFORE: THE HONORABLE GERALD BRUCE LEE  
UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR THE PLAINTIFF: DILWORTH PAXSON LLP  
BY: JOSHUA D. WOLSON, ESQ.

FOR THE DEFENDANT: KAUFMAN & CANOLES PC  
BY: FRANK A. EDGAR, JR., ESQ.  
JOHN BREDEHOFT, ESQ.

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OFFICIAL COURT REPORTER: RENECIA A. SMITH-WILSON, RMR, CRR  
U.S. District Court  
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1 (Thereupon, the following was heard in open  
2 court at 9:57 a.m.)

3 THE CLERK: 1:11 civil 1113, Global Hub  
4 Logistics, et al versus Tamerlane Global Services,  
5 Incorporated.

6 Would counsel please note your appearances  
7 for the record.

8 MR. EDGAR: Good morning, Your Honor. I'm  
9 Frank Edgar with Kaufman & Canoles from our Newport News  
10 office.

11 I'm joined at counsel table by my partner,  
12 John Bredehoft.

13 MR. WOLSON: Good morning, Your Honor. Josh  
14 Wolson from Dilworth Paxson on behalf of the plaintiffs.

15 THE COURT: Good morning.  
16 I'm ready.

17 MR. EDGAR: Good morning, Your Honor. Thank  
18 you for hearing us this morning.

19 THE COURT: Mr. Edgar, what are the issues?

20 MR. EDGAR: Well, there's -- it's a six count  
21 case. I've moved to dismiss five of them, Your Honor.

22 The five --

23 THE COURT: The easy one is promissory  
24 estoppel, right? Everybody agrees --

25 MR. EDGAR: There is no --

1 THE COURT: -- in Virginia, promissory  
2 estoppel. That one's got to go.

3 MR. EDGAR: Right. That's exactly where I  
4 was going to start. Promissory estoppel is not a cause  
5 of action in Virginia. That's out.

6 THE COURT: Okay.

7 MR. EDGAR: Let's go to the second, what I  
8 call equitable claim, Count 5, the indemnification claim.

9 I don't believe that such a count exists  
10 under the law of Virginia in this context. There is  
11 what's known as equitable indemnification in joint  
12 tort-feasor scenarios.

13 THE COURT: In negligence cases.

14 MR. EDGAR: In negligence case.

15 THE COURT: What about in contract cases?

16 MR. EDGAR: No, the economic loss rule would  
17 prevent such a claim and you have this idea that -- well,  
18 the fact that it's not a negligence claim. It just  
19 doesn't exist.

20 THE COURT: What would the damages be if  
21 there were a claim for indemnification?

22 MR. EDGAR: Damages would be the same damages  
23 they're seeking under the breach of contract claim.

24 THE COURT: Can you have a recovery for tort  
25 based on a contract?

1 MR. EDGAR: Right. Which is just -- the law  
2 of Virginia abhors that process. So, indemnification  
3 doesn't exist.

4 The third claim is Count 6, unjust  
5 enrichment. That too seeks the same damages. That seeks  
6 to supplement if there's not a contract, there should be  
7 one and the law will imply one in certain conditions.

8 In this case, there is a contract. This is a  
9 contract dispute, Your Honor. The plaintiff has sued my  
10 client, Tamerlane, for not paying under the contracts.  
11 Tamerlane has --

12 THE COURT: Contracts and invoices, is that  
13 right?

14 MR. EDGAR: That's correct. The invoices  
15 come out of the performance of the contract. The  
16 payments should reflect what was done in the performance.  
17 So, there's a payment, lack of payment, lack of  
18 performance, dispute. That's the essence of Count 1, the  
19 breach of contract claim which I have not move to dismiss  
20 and the counterclaim from Tamerlane. So that's the --

21 THE COURT: So, it's a counterclaim based  
22 upon contractual agreement as well.

23 MR. EDGAR: That's correct. Tamerlane is  
24 alleging that Global doesn't deserve payment because they  
25 didn't perform under the terms of the contract.

1 THE COURT: That's not the same as just  
2 saying that they can't prove breach of contract?

3 MR. EDGAR: That's correct, Your Honor.

4 The parties are entitled to have their rights  
5 heard and adjudicated under the terms of the contract  
6 that exists between them. Unjust enrichment cuts against  
7 that, and there is authority to dismiss it now.

8 THE COURT: Arguably, plaintiff could have  
9 pled unjust enrichment in the alternative; is that right?

10 MR. EDGAR: That's correct, Your Honor. But  
11 it's not pleaded that way in this case. The word  
12 alternative is not in the suit. It doesn't appear until  
13 the briefs.

14 And the fact there is again authority in  
15 Virginia to dismiss it at this stage because the parties  
16 are going to battle over the contract. There's no --  
17 neither party is running from the contracts.

18 THE COURT: So then you're saying that there  
19 won't be any argument down the road that the contract is  
20 invalid?

21 MR. EDGAR: No, Your Honor. There is going  
22 to be a lot of fighting about what the terms of the  
23 contracts are and whether each party met those terms, but  
24 that's the essence of a breach of contract case.

25 THE COURT: All right. Help me with the

1     defamation claim. Now --

2             MR. EDGAR: Your Honor --

3             THE COURT: Let me just focus you for a  
4     second. The amended complaint, I think it's paragraph  
5     29, quotes from an e-mail, and that e-mail arguably says  
6     that Mr. O'Brien falsely informed and it says "many of  
7     Global's truck drivers", which means there was  
8     publication to more than one person, right?

9             MR. EDGAR: There is a pleading in the  
10     written part of the complaint that says -- or in the  
11     amended complaint where it says that he informed many  
12     truck drivers and service providers or whoever, however  
13     it's described.

14             The e-mail itself is addressed to one  
15     individual who is not identified -- other than the two  
16     addressed in the e-mail -- is not identified as any  
17     particular individual or any particular truck driver.

18             The plaintiff is essentially saying here's an  
19     e-mail. I'm going to quote from the e-mail and that  
20     quote went to many truck drivers. But it takes the whole  
21     exhibit out of context.

22             The allegation -- there seems to be two  
23     sentences which the plaintiff itself describes as the  
24     defamatory statements. In the description right  
25     underneath the quote are the two sentences from the

1 e-mail to this unidentified individual.

2 THE COURT: Well, the e-mail is attached to  
3 the complaint; is that right?

4 MR. EDGAR: That's correct, Your Honor.

5 THE COURT: And the e-mail, it does have the  
6 name of whose address --

7 MR. EDGAR: It those have a name yes, Your  
8 Honor.

9 THE COURT: Four people -- at least four  
10 entities are --

11 MR. EDGAR: One or two of them are Tamerlane  
12 own's people. One of them actually has a Tamerlane  
13 address there in the CC line.

14 But, the main address -- in other words,  
15 there's not -- it's not addressed to many people at all.  
16 It's addressed to one person, CC to Tamerlane's own  
17 people.

18 THE COURT: Well, does defamation require  
19 that it be published to numerous individuals or could you  
20 state a claim that there's one or two people?

21 MR. EDGAR: You can state a claim if there's  
22 publication to 1/3 party.

23 THE COURT: All right.

24 MR. EDGAR: My -- the grounds of my motion  
25 are three fold. One, is that what he has -- what the



1 plaintiff hasn't pleaded is the allegation of intent,  
2 that Mr. O'Brien knew his statements were false when he  
3 sent them --

4 THE COURT: I'm sorry. I'm sorry. Do you  
5 have paragraph 29 there?

6 MR. EDGAR: I do, Your Honor.

7 THE COURT: The end of the first part of the  
8 paragraph, "O'Brien falsely informed many of Global's  
9 truck drivers in Afghanistan that". Isn't that  
10 sufficient to state that he made a false statement at  
11 that time and this is the false statement?

12 MR. EDGAR: I don't think -- I couldn't argue  
13 that it's not saying he made a false statement. What  
14 it's not saying is that he knew it was false when he sent  
15 it. That's my point and I know it's a minor point --

16 THE COURT: Wait a minute. I want to focus  
17 you for a second.

18 MR. EDGAR: Yes, Your Honor.

19 THE COURT: "O'Brien falsely informed many of  
20 Global's truck drivers". What does that mean to you?

21 MR. EDGAR: That the statement, the  
22 allegation is the statements he made are false, that he  
23 falsely informed.

24 THE COURT: All right. So, these statements  
25 are falsely made at the time identified here or were they

1 falsely made in the future?

2 MR. EDGAR: I think there can be a pleading  
3 or a statement that a statement is false even though the  
4 speaker didn't know it was false at the time he sent it.  
5 And that's where the standard under intent is you have to  
6 know it when you send it.

7 THE COURT: Let's go back to paragraph 30.  
8 "The statements in O'Brien e-mails are false and  
9 misleading as O'Brien knew when he wrote the e-mail."

10 Is that sufficient?

11 MR. EDGAR: I see that in the second  
12 sentence, and I understand I'm -- this was the first  
13 point I was going to address with you. I know --

14 THE COURT: Well --

15 MR. EDGAR: I know --

16 I'm sorry, my fault, Your Honor.

17 THE COURT: No, I talk fast, too, sometimes.  
18 That's okay. The court reporter is used to me, but not  
19 you.

20 MR. EDGAR: Thank you, Your Honor.

21 I do believe that I am making a narrow  
22 argument, but I think it's a valid one.

23 The statement is not a clear statement that  
24 Mr. O'Brien knew the statements he made in that  
25 particular e-mail are false at the time he sent it.

1 THE COURT: Okay, let's focus then. Is there  
2 a -- I shouldn't say is there.

3 As you review the defamation claim, has  
4 plaintiff identified Mr. Rashad or is Roshan.

5 MR. EDGAR: Roshan, I understand.

6 THE COURT: Because it looks like paragraph  
7 29 is focused on statements about Global.

8 MR. EDGAR: I agree, Your Honor. I see  
9 nothing that references Mr. Roshan. The e-mail is not  
10 addressed -- doesn't contain that -- the sentences  
11 pleaded in -- you look at paragraph 29, it says "a copy  
12 of O'Brien's e-mail containing the foregoing defamatory  
13 statements is attached".

14 Those are the only statements that are  
15 identified in this pleading as being defamatory ones, and  
16 Mr. Roshan is not mentioned. Mr. Roshan is not mentioned  
17 in this. And the defamation claim brought by Mr. Roshan  
18 should be dismissed.

19 THE COURT: All right.

20 MR. EDGAR: And finally, Your Honor and I  
21 think you picked up on this, but I wanted to make the  
22 point.

23 The brief filed by Global mentions this  
24 campaign of misinformation. But the fact is they've  
25 pleaded two sentences from an e-mail that they've

1 identified as defamatory statements.

2 And I think as a matter of law, two sentences  
3 from an e-mail sent a day before the complaint was filed  
4 is not a campaign of misinformation.

5 And so, if the defamatory case survives, it  
6 should survive on the two sentences that they identify as  
7 defamatory, and the claim should be only Global's, not  
8 Mr. Roshan's.

9 THE COURT: All right, thank you.

10 MR. EDGAR: Finally, Your Honor, move to  
11 tortious interference. And in the tortious interference  
12 claim --

13 THE COURT: They've not identified the  
14 business expectancy or the actor; is that right?

15 MR. EDGAR: They have not, Your Honor.

16 THE COURT: Are they required to?

17 MR. EDGAR: I think they are, Your Honor.  
18 They have to be more specific than "many truck drivers"  
19 and "other service providers".

20 There has to be some identification of what  
21 the nature of the relationship is because all the  
22 different -- the three different ways to describe  
23 tortious interference under the law of the Commonwealth  
24 require -- says the contract not terminable at will. It  
25 requires a breach. There's no breach alleged.

1           If it's a contract terminable at will, or if  
2           it's a business expectancy, here they use the word  
3           "business relationship", there has to be an allegation  
4           that absent the defendant's conduct, the plaintiff would  
5           have -- there's a reasonable certainty that the plaintiff  
6           would have continued in the relationship. There's no  
7           such allegation in the amended complaint at all.

8           THE COURT: All right. I think I understand  
9           your position. I've asked you the questions that I have.  
10          Let me hear from plaintiff's counsel and I'll give you a  
11          chance to respond.

12          Thank you.

13          MR. EDGAR: Thank you, Your Honor.

14          MR. WOLSON: Good morning, Your Honor.

15          THE COURT: Good morning, Mr. Wolson.

16          MR. WOLSON: First of all, Your Honor, I  
17          think there's a couple of overarching factors that we  
18          ought to talk about that affect how we should be viewing  
19          Tamerlane's motion here.

20          One is that as Mr. Edgar just conceded the  
21          case is going to go into discovery no matter what.  
22          That's -- the parties have actually already served  
23          discovery on each other. We're in the process of meeting  
24          and conferring about some of that discovery.

25          That's significant here because in *Twombly*

1 what the Supreme Court was focused on was the cost of  
2 discovery and how it can be imposed upon the parties.  
3 That was the animated concern that the Supreme Court had.  
4 It's not present here.

5 We're going into discovery about the core  
6 nucleus of facts. All of the claims in this case arise  
7 out of the same operative set of facts. So there's going  
8 to be discovery about them no matter what.

9 And, I think that point needs to sort of be  
10 overlaid on top of the motion, and it needs to sort of  
11 impact the way we view the motion.

12 The second issue is that what we're really  
13 talking about here for the most part are not,  
14 particularly with the defamatory count that you were just  
15 talking about, they're not fundamental issues of law.  
16 They're questions about pleading specificity.

17 THE COURT: Well, *Bell Atlantic versus*  
18 *Twombly* is about pleading specificity; isn't it?

19 MR. WOLSON: Yes, absolutely, it is.

20 THE COURT: Help me focus on the defamatory  
21 claim since you started there.

22 MR. WOLSON: Okay.

23 THE COURT: Your claim appears to be based  
24 upon your quotation from the e-mail; is that right?

25 MR. WOLSON: Well, the claim is based on the

1 e-mail. I don't think I would limit it to say it's just  
2 the excerpt from the e-mail. The claim is based on the  
3 e-mail which is why we attach the e-mail to the  
4 complaint.

5 THE COURT: All right. What is the  
6 defamatory statements that you're complaining of?

7 MR. WOLSON: There are multiple defamatory  
8 statements in the e-mail that we're complaining about.  
9 And again, the law is that the e-mail has to be read as a  
10 whole. You can't pick and choose specific statements in  
11 the e-mail in isolation. You have to read it as a whole.

12 But to go through the e-mail, there's several  
13 things that we're complaining about. One is the  
14 statement that Mr. Roshan and others associated with  
15 Global were going to be arrested by sheriffs. A  
16 second --

17 THE COURT: That's not in your complaint,  
18 though, is it?

19 MR. WOLSON: Well, it's -- the e-mail is  
20 attached to the complaint and it's therefore a part of  
21 the complaint. It's an exhibit to the complaint.  
22 It's --

23 THE COURT: It certainly is. But you have  
24 paragraph 29 in front of you, too, right?

25 MR. WOLSON: I do have paragraph 29 in front

1 of us, Your Honor.

2 THE COURT: All right. After the quotation,  
3 the e-mail it says "a copy of O'Brien's e-mail containing  
4 the foregoing defamatory statements is attached hereto as  
5 Exhibit C".

6 And then 30 it says what we just talked  
7 about, "the statements of Mr. O'Brien's e-mail are false  
8 and misleading".

9 And then it says, "As O'Brien knew when he  
10 wrote the e-mail, Global complied with its obligation to  
11 Tamerlane".

12 So there's no mention of Mr. Roshan and these  
13 allegations about the sheriff being called --

14 MR. WOLSON: There's no specific reference to  
15 it in the text of the complaint.

16 THE COURT: Well, Mr. Roshan is a plaintiff,  
17 correct?

18 MR. WOLSON: Mr. Roshan is a plaintiff. I  
19 would go back to the e-mail. There are specific  
20 references to Mr. Roshan in the e-mail.

21 THE COURT: If there are, I have it  
22 highlighted. Securing the court warrant. These warrants  
23 will be served soon. Money going into his personal bank  
24 account. He will be arrested if he entered the United  
25 States.



1           They certainly arguably could be defamatory  
2 if they were false when made.

3           MR. WOLSON: Right.

4           THE COURT: But my focus is the way you've  
5 written the complaint it does not necessarily suggest  
6 that Mr. Roshan is a subject matter of these statements.  
7 You focused only on the other aspect.

8           MR. WOLSON: We focused on this excerpt. We  
9 also focused -- I would also point out in paragraph 30  
10 that we also focused on the allegation that Global was  
11 trying to steal Tamerlane's contracts with the military  
12 which is another one of the defamatory statements in the  
13 e-mail and that is in paragraph 30.

14           THE COURT: Right, but you're referring to  
15 Global.

16           MR. WOLSON: Yes, that's as to Global.

17           I think the statements about Mr. Roshan are  
18 specifically in the e-mail that was attached. They're  
19 not specifically exerted in the complaint.

20           My understanding is that because the e-mail  
21 is attached to the complaint, it's incorporated into the  
22 complaint. It -- there's -- you know, it's a question --  
23 it's simply a question of the specificity of wording in  
24 the complaint.

25           THE COURT: Right. Well -- let me just -- if

1 fairness to you, in paragraph 40, you say these false --  
2 first in 39 you said both have been libeled and  
3 slandered.

4 MR. WOLSON: Right.

5 THE COURT: And then 40 you say these false  
6 and defamatory statements were made in writing to  
7 business partners of Global and Roshan.

8 MR. WOLSON: Right.

9 THE COURT: I think that as you can hear from  
10 my questions to you and to opposing counsel, I think that  
11 where you have separate plaintiffs there needs to be  
12 separate pleadings.

13 MR. WOLSON: If you think that's necessary,  
14 Your Honor, I mean, I guess I would tell you that I would  
15 ask for leave to replead. I think that --

16 THE COURT: We're going to take up the motion  
17 today. And what happens after that is a separate  
18 process.

19 Let's focus on the next issue.

20 MR. WOLSON: Okay.

21 THE COURT: So, what is your theory of  
22 indemnification here?

23 MR. WOLSON: The theory for indemnification,  
24 Your Honor, is that the -- and I don't think -- I heard  
25 Mr. Edgar says that it's the same damages that are at

1 issue in the contract. I don't think that's quite right.

2 The contractual claim is based on nonpayment  
3 by Tamerlane to Global. The indemnification claim is  
4 based on the fact that because Global -- because Global  
5 was not paid, Global in turn was not able to pay the  
6 truckers with whom it had contracted in Afghanistan.

7 Those truckers have in turn initiated actions  
8 against Global in Afghanistan.

9 THE COURT: Civil lawsuits?

10 MR. WOLSON: Civil lawsuits. The line is not  
11 as clear between civil and criminal lawsuits in  
12 Afghanistan. They, as I understand it, have something  
13 akin to debtor's prisons. And breach of contract is a  
14 jailable offense in Afghanistan.

15 But the claims are proceeding initiated by  
16 the truckers against --

17 THE COURT: Well, let's focus for a second.  
18 So to be clear then what you're saying is, that as a  
19 result of this contract, and where Tamerlane did not pay  
20 its bills that the truck drivers who did the work were  
21 not paid.

22 MR. WOLSON: Right, right. There was an  
23 understanding that when Tamerlane paid Global, Global  
24 would, in turn, pay the truckers. Tamerlane had that  
25 understanding. Global had that understanding.

1 THE COURT: So you're talking about  
2 consequential damages above and beyond the contract  
3 damages?

4 MR. WOLSON: That's right.

5 THE COURT: Were the consequential damages at  
6 the contemplation of the parties at the time the contract  
7 was entered into?

8 MR. WOLSON: I think we will have a debate  
9 about that in this case. Certainly our position will be  
10 that they were because they understood that this was  
11 going to be -- part of the deal was that when they paid  
12 us, we would be in a position to pay the truckers.

13 THE COURT: I understand, but what you're  
14 saying is more. You're saying that there are additional  
15 damages beyond payment of the invoices. Is that right?

16 MR. WOLSON: That's right, that there is  
17 resulting legal action. I think that's clearly  
18 foreseeable.

19 THE COURT: What damages would be seeking if  
20 you were allowed to go forward with the indemnification  
21 claim, beyond payment of the invoices?

22 MR. WOLSON: I think we would be seeking fees  
23 and expenses incurred in Afghanistan in connection with  
24 the legal disputes that have arisen against Global there.

25 THE COURT: Legal fees?

1 MR. WOLSON: Legal fees, for example, other  
2 costs to the business.

3 Again, the process is somewhat different.  
4 One of Global's employees was actually briefly imprisoned  
5 as a result of this and has been subsequently involved  
6 with the Afghan authorities.

7 THE COURT: The invoice contemplates all of  
8 this, that they would be liable for all of this? That's  
9 in the invoice?

10 MR. WOLSON: I don't know that it's in the  
11 invoice, Your Honor.

12 THE COURT: Well, I'm just focusing on basic  
13 contract --

14 MR. WOLSON: But I think that --

15 THE COURT: Basic contract --

16 MR. WOLSON: I understand.

17 THE COURT: Let me just make my point.

18 Basic contract law is that the parties  
19 entered into an agreement. And typically, the damages  
20 are the difference between what you bargained for and  
21 what you received.

22 It seems to me that what you're saying is not  
23 only is Global entitled to payment of the invoices, but  
24 you're also entitled to recover these fees, legal fees in  
25 Afghanistan legal proceedings and any damages beyond the

1 payment of the invoice to the truck drivers.

2 And I don't see that pled here. And you're  
3 saying that you brought a suit under an invoice. So,  
4 unless the invoice says that, it may be that these are  
5 consequential damages which are not in the contemplation  
6 of the parties at the time the agreement was entered.

7 Do you have a response to that?

8 MR. WOLSON: I think my view is that it is  
9 within the contemplation of the parties. I think it's a  
10 question of how these arrangements are made between the  
11 parties. Much of it is oral and --

12 THE COURT: Wait a minute. It's either the  
13 invoice or it's oral contract here.

14 You've pled invoices, haven't you?

15 MR. WOLSON: I believe we pled agreements. I  
16 don't know that we specifically pled written invoices  
17 and --

18 THE COURT: I thought it was referenced to  
19 e-mail exchange with Global --

20 MR. WOLSON: There were --

21 THE COURT: -- where Tamerlane said we are  
22 reviewing the invoices and we'll get back to you. I  
23 thought that meant that there was some document.

24 MR. WOLSON: I think there are --

25 THE COURT: Yes, on paragraph 27, "O'Brien

1 sent e-mail messages in which he expressly acknowledged  
2 receipt of Global's invoices".

3 MR. WOLSON: That's right. The invoices are  
4 invoices for payment. I don't think what we're talking  
5 about here are the formal forms that you might see in  
6 other context. I certainly don't think that there's any  
7 kind of integrated agreement here.

8 THE COURT: The invoice can be an agreement  
9 if it's personal acts on you, delivered services.

10 I think that -- I think I've asked you the  
11 questions I have about it. But I wanted to make sure I  
12 gave you a chance to tell me your theory of  
13 indemnification. So I understand that.

14 MR. WOLSON: Okay.

15 THE COURT: Help me with the issue of  
16 tortious interference with business relationships. Are  
17 you required to identify the relationships and the  
18 expectancy?

19 MR. WOLSON: I think that we required to  
20 identify them sufficiently so that they have, you know,  
21 notice of who were claimed they interfered with, and I  
22 think we've done that.

23 The reason, the very reason that Tamerlane  
24 contracted with Global in the first place in Afghanistan  
25 is because Global has relationships with a universe of

1 truckers there.

2 THE COURT: Describe that in a little bit  
3 more detail for me.

4 MR. WOLSON: Global has relationships with  
5 specific truckers with whom it has ongoing business  
6 relationships who was --

7 THE COURT: Does that mean that they have a  
8 contract with Global, the truck driver, individual truck  
9 driver?

10 MR. WOLSON: Some do. Some don't have  
11 written -- have formal agreements is my understanding.

12 THE COURT: Okay.

13 MR. WOLSON: But, they have all ongoing  
14 relationships. So, whether it is -- and, to the extent  
15 that -- I guess I would go back to the extent that what  
16 we're talking about whether they're at-will contracts,  
17 whether they're business expectancies, the issue is  
18 whether or not there has been a pleading of wrongful  
19 conduct.

20 That's what's necessary, wrongful means in  
21 the case of tortious interference with an expectancy or  
22 an at-will contract.

23 I think we've pled that because we plead  
24 defamation which is a recognized form of wrongful means  
25 for tortious interference with an expectancy or with an



1 at-will contract.

2 And so, therefore, that claim -- that  
3 universe of people is identified. To the extent that  
4 there are specific names that need to be identified, we  
5 can do that. Although I would certainly point out, too,  
6 that if you go back to the e-mail that I was talking  
7 about with respect to defamatory, Exhibit C to the  
8 complaint, the person to whom the e-mail is addressed is  
9 Shafie Noorzai.

10 Mr. Noorzai was the representative -- is the  
11 representative for the truckers with whom Global does  
12 business in Afghanistan. That's the very reason that  
13 Tamerlane sent the e-mail to him.

14 THE COURT: Okay. So then Mr. Noorzai, is he  
15 in charge of the truckers? Is there a company --

16 MR. WOLSON: He doesn't have a company. My  
17 understanding is he doesn't have a company. This is more  
18 an informal arrangement than it is a formal corporate  
19 entity, Your Honor.

20 THE COURT: All right.

21 I think I've asked you the questions that I  
22 have. Is there anything further you want to say that  
23 you've not been given a chance to say?

24 MR. WOLSON: The only two things I would add,  
25 Your Honor, one is that I do think that much of what

1 we're talking about here is just a question of pleading  
2 specificity.

3 To the extent, Your Honor is at all inclined  
4 to grant the motion, I think we've pled the claims  
5 adequately. To the extent Your Honor is inclined to  
6 grant the motion, I'd ask that you do it without  
7 prejudice and with leave to replead because I think the  
8 claims can easily be repled while we proceed in  
9 discovery.

10 THE COURT: Thank you.

11 Defense counsel.

12 MR. EDGAR: Your Honor, very briefly, we are  
13 on an amended complaint already, as I'm sure you know.  
14 So, he's already had a chance to plead these things  
15 twice.

16 First, the -- his first argument about the  
17 survivability of one claim somehow altering the Rule  
18 12(b)(6) analysis on the other claims I don't think  
19 applies under the law. There is no such concept that I  
20 know of.

21 And even if there was, a discovery required  
22 for a breach of contract case is much more narrow than  
23 the discovery required for tortious interference or  
24 defamatory, something like that.

25 Your Honor's questions drew out of him on the

1 indemnification. So much is not pleaded and -- but what  
2 is clear from his answers is he's seeking to expand  
3 contract damages beyond anything that's in an invoice or  
4 in a contract or even under the law of contract damages  
5 in Virginia.

6 Virginia is so tight on contract law and the  
7 separation between contract and tort as I know Your Honor  
8 is familiar. And so much of his answers show that's  
9 exactly what the plaintiff was trying to do.

10 And finally, the answers he gave to your  
11 questions about tortious interference, again, he  
12 identifies Mr. Noorzai standing at the podium, but  
13 Mr. Noorzai is not identified anywhere near that.

14 All you see in the complaint is Mr. Noorzai's  
15 name. Who knows who he is. He's not identified. There  
16 is not specific relationships.

17 And it is important under Virginia law, the  
18 law of the forum he chose to show what the nature of the  
19 relationships are that allegedly are being interfered  
20 with.

21 And then to plead that absent the defendant's  
22 conduct, there's a reasonable certainty to those  
23 relationships will either continue or be realized.

24 So, without those pleadings, I would ask the  
25 Court to dismiss the five claims we've sought.

1 THE COURT: Thank you very much.

2 MR. EDGAR: Thank you, Your Honor.

3 THE COURT: All right. Let the record  
4 reflect, this matter is before the Court on the  
5 defendant's motion to dismiss certain counts of the  
6 complaint.

7 The parties have briefed the matter, and I've  
8 reviewed all the submissions, and I'm prepared now to  
9 give you all a ruling from the bench.

10 First, concerning the issue of whether there  
11 is a claim under Count 4 for promissory estoppel under  
12 Virginia law, I think that both sides are clear that  
13 there is no such claim recognized by Virginia law. So  
14 that motion will be granted.

15 As it relates to the issue of Count 2 and  
16 that is whether plaintiffs Global and Roshan have pled  
17 sufficient facts to support their claim for defamatory,  
18 where according to the complaint, defendants Tamerlane  
19 and O'Brien sent a false e-mail implying that Global did  
20 not comply with its obligations to Tamerlane, although  
21 O'Brien knew that Global had indeed complied with its  
22 obligations.

23 I'm going to -- with respect to the claim  
24 for -- against Global, I will deny the motion because it  
25 seems to me that there is sufficient identification that

1 the statement was false. That's set forth in paragraph  
2 29 and that this statement is defamatory. And so,  
3 there's sufficient pleading of that claim.

4           However, as it relates to the claim for  
5 Mr. Roshan, I'm going to grant the motion to dismiss  
6 because plaintiffs have not set forth any alleged  
7 statements made by Mr. Roshan in the alleged defamatory  
8 e-mail that were false or that defendant O'Brien knew  
9 they were false when the e-mail was sent.

10           And secondly all these statements made in the  
11 e-mail alleged to be false are statements about plaintiff  
12 Global, not Roshan.

13           So, for that reason, it seems to me that the  
14 motion ought to be granted.

15           12(b)(6) is a review of the facts that have  
16 been submitted in support of a claim to determine if the  
17 plaintiff has set forth a plausible claim. And I do  
18 think that *Bell Atlanta versus Twombly* is focused on the  
19 specificity of the pleadings, and the Court is required  
20 to make some judgment at the outset.

21           As it relates to Count 3, tortious  
22 interference with business relationships and the motion  
23 to dismiss is there because the claim does not identify  
24 the individual relationships or identify that the  
25 relationship would have continued beyond without the

1 interference of the defendants. I'm going to grant the  
2 motion because I think the plaintiff has failed to set  
3 fourth specific facts to support their claim for tortious  
4 interference with business relationships.

5 They failed to identified the specific  
6 business relationships which the defendants allegedly  
7 interfered with. And, they failed to identify a  
8 particular expectancy with which there has been  
9 interference.

10 And so, it seems to me that under Count 3,  
11 that the motion should be granted.

12 Count 5 has to do with indemnification and  
13 that is whether the plaintiff has set forth a claim for  
14 indemnification or equitable indemnification where,  
15 according to the amended complaint, Tamerlane and Global  
16 had a subcontractor relationship in which Tamerlane would  
17 pay Global to transport goods and materials into  
18 Afghanistan, and Global successfully transported the  
19 goods. And Tamerlane failed to pay Global approximately  
20 \$1.9 million for services performed. And that as a  
21 result of this, Global was unable to pay the Afghanistan  
22 truckers who subsequently filed complaints with  
23 Afghanistan authorities against Tamerlane, Roshan and  
24 other contractors.

25 I'm going to grant the motion because I am

1 not persuaded that this is a claim for equitable  
2 indemnification.

3 Typically under Virginia law, prerequisite to  
4 recover on equitable indemnification is an initial  
5 determination that the negligence of another person  
6 caused the damage.

7 Well, this is not a negligence case. This is  
8 a contract case. Plaintiff here has in oral argument  
9 identified damages beyond payment of the invoices that he  
10 claims would be recoverable under indemnification, for  
11 example, attorney's fees that might be incurred in  
12 Afghanistan defending the truck drivers' actions and  
13 other claims that the truck drivers may have against  
14 Global.

15 I'm not persuaded that the complaint  
16 sufficiently identifies that such a claim, even if it  
17 were within the contemplation of the parties, it would  
18 fall within the purview of contract not tort. And so,  
19 for those reasons, the equity adjust -- equity  
20 indemnification claim motion will be granted. It will be  
21 dismissed.

22 As it relates to Count 6, unjust enrichment,  
23 both sides agree this is a contract case. Their invoice  
24 is an agreement. And typically where there's an  
25 agreement you cannot have unjust enrichment claim where

1 there's explicit contract.

2 Of course, you can plead it in the  
3 alternative. Plaintiff has not pled unjust enrichment in  
4 the alternative. And it would appear that such a claim  
5 would be unnecessary in this case where plaintiff has  
6 asserted a claim for breach of contract and the defendant  
7 has filed a counterclaim for contract and the defendant  
8 has stated that there will be no claim that the contract  
9 is invalid.

10 So for those reasons, I'm going to grant the  
11 motion to dismiss the unjust enrichment claim as well.

12 So, to be clear, I'm granting the motions for  
13 dismissal of Count 3, 5, and 6 without prejudice.

14 Count 4 is dismissed with prejudice. And, if  
15 leave to amend is to be sought, then you are prepare a  
16 proper motion. Submit it to the other side for  
17 consideration. And if you all can meet and confer and  
18 agree to it, that's fine. If not, then the matter should  
19 be noticed and heard before a magistrate judge and under  
20 Rule 15, we'll decide it at that time when we see the  
21 amended complaint.

22 But we've given you a road map here,  
23 plaintiff's counsel. And so you've pled the case twice.  
24 Third time may not be -- we don't want to see this a  
25 third time. Put it that way.



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But, I understand pleadings is an art and they call this practice for a reason.

Thank you. You're excused.

MR. WOLSON: Thank you, Your Honor.

MR. EDGAR: Thank you, Your Honor.

THE COURT: Uh-huh.

(Proceeding concluded at 10:27 a.m.)

## 1 CERTIFICATE OF REPORTER

2  
3 I, Renecia Wilson, an official court  
4 reporter for the United State District Court of Virginia,  
5 Alexandria Division, do hereby certify that I reported by  
6 machine shorthand, in my official capacity, the  
7 proceedings had upon the motions in the case of Global  
8 Hub Logistics, et al vs. Tamerlane Global Services, et  
9 al.

10 I further certify that I was authorized and  
11 did report by stenotype the proceedings and evidence in  
12 said motions, and that the foregoing pages, numbered 1 to  
13 33, inclusive, constitute the official transcript of said  
14 proceedings as taken from my shorthand notes.

15 IN WITNESS WHEREOF, I have hereto subscribed  
16 my name this 23rd day of February, 2012.

17  
18 /s/  
19 \_\_\_\_\_  
20 Renecia Wilson, RMR, CRR  
21 Official Court Reporter  
22  
23  
24  
25