United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 19-5056 **September Term, 2019**

FILED ON: February 4, 2020

GLOBAL TROPICAL IMPORTS AND EXPORTS LLC,
APPELLANT

v.

DAVID LONGLY BERNHARDT, IN HIS OFFICIAL CAPACITY AS SECRETARY OF THE U.S. DEPARTMENT OF THE INTERIOR; AND UNITED STATES FISH AND WILDLIFE SERVICE,
APPELLEES

Appeal from the United States District Court
for the District of Columbia
(No. 1:18-cv-01341)

Before: GRIFFITH, SRINIVASAN, and KATSAS, *Circuit Judges*.

J U D G M E N T

This case was considered on the record from the United States District Court for the District of Columbia and the briefs of the parties. The Court has accorded the issues full consideration and has determined that they do not warrant a published opinion. See D.C. CIR. R. 36(d). For the reasons set out below, it is

ORDERED and **ADJUDGED** that the decision of the district court be **AFFIRMED**.

Global Tropical Imports and Exports LLC ("Global") imported almost 200 live reptiles—three-horned chameleons, spiny-tailed lizards, and black-throated monitors—from a Tanzanian company, Majoka Venom Supply ("Majoka"). International and federal law heavily regulate traffic in these creatures. First, the Convention on International Trade in Endangered Species of Wild Fauna and Flora (the "Convention") forbids importation of certain protected species without an "export permit." 27 U.S.T. 1087, 1096 (Mar. 3, 1973). Second, the Endangered Species Act (ESA) prohibits "any trade in any specimens contrary to the provisions of the Convention." 16 U.S.C. § 1538(c)(1). And third, federal regulations implementing the ESA require importers to acquire permits. *See* 50 C.F.R. §§ 23.13, 23.20(e). Relevant here, a valid permit "must contain" the "applicant's signature," *id.* § 23.23(c)(2), and "any person holding" such a permit "assumes all liability and responsibility for the conduct of any activity conducted under [it]," *id.* § 13.50.

In this case, Fish and Wildlife Services (FWS) found that Global violated the ESA by failing to present a valid permit when its shipment of live reptiles arrived at Miami International Airport. Specifically, Global's permit "was not signed by the exporter [Majoka], as required by 50 C.F.R. 23.23(c)(2)." D.A. 78. Instead of seizing the animals, FWS assessed a $20,000 civil penalty for the violation. Global exhausted its administrative remedies, then filed suit in the District Court for the District of Columbia, arguing that FWS wrongly fined Global for Majoka's failure to sign the permit. The district court granted summary judgment in the agency's favor, and Global timely appealed.

We affirm. The ESA imposes strict liability on Global for its failure to present a valid permit. Under that statute, FWS may assess a civil penalty against (1) "[a]ny person who *knowingly* violates" or (2) "any person engaged in business as an importer [of wildlife] who *violates*" the ESA. 16 U.S.C. § 1540(a)(1) (emphases added). Global concedes that it is a commercial importer. Global Br. 4. Global also concedes that its permit failed to include Majoka's signature, as the regulations require. *Id.* at 4-5; D.A. 40; *see* 50 C.F.R. § 23.23(c)(2). Therefore, FWS lawfully penalized Global for failing to present a valid permit.

Global responds that FWS wrongly held Global "vicariously liable" for Majoka's wrongdoing. Global Br. 6-8 (citing *Meyer v. Holley*, 537 U.S. 280, 286 (2003), which holds that that Congress must speak clearly to impose "more extensive vicarious liability" than "background tort principles" would allow). But FWS did not penalize Global for the "actionable conduct" of Majoka based on "the relationship between the two parties." *Vicarious Liability*, BLACK'S LAW DICTIONARY 934 (8th ed. 2004). Instead, FWS penalized Global for violating its *own* duty to present a valid permit. The ESA prohibits Global from importing these reptiles "contrary to the provisions of the Convention," 16 U.S.C. § 1538(c)(1), and the Convention compels Global to obtain an "export permit," 27 U.S.T. 1087, 1096 (Mar. 3, 1973). Further, the regulations state that "any person holding" such a permit "assumes all liability and responsibility for the conduct of any activity conducted under [it]." 50 C.F.R. § 13.50. Although the regulations required Majoka's signature, it was Global's independent statutory duty to ensure that Majoka signed the document. Thus, we reject Global's argument that FWS wrongly imposed a form of vicarious liability.

Global also asserts that a "customs broker"—not Global—presented the invalid permit to FWS. Global Br. 9-10. But Global failed to raise its argument before the district court, so that claim is forfeit. *See Marymount Hosp., Inc. v. Shalala*, 19 F.3d 658, 663 (D.C. Cir. 1994).

For the foregoing reasons, we affirm the district court's order granting summary judgment.

Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate herein until seven days after resolution of any timely petition for rehearing or rehearing en banc. *See* FED. R. APP. P. 41(b); D.C. CIR. R. 41(a)(1).

FOR THE COURT:
Mark J. Langer, Clerk

BY: /s/
Daniel J. Reidy
Deputy Clerk