

**BEFORE THE
FEDERAL MARITIME COMMISSION**

MOSES DAMISA, *Complainant*

v.

DOCKET NO. 1967(F)

TRANS ATLANTIC SHIPPING LLC, *Respondent*.

**RESPONDENT TRANS ATLANTIC SHIPPING, LLC'S SUR-REPLY TO
COMPLAINANT'S MOTION TO DISMISS WITHOUT PREJUDICE**

Pursuant to 46 C.F.R. § 502.69(d), Respondent Trans Atlantic Shipping, LLC (“TAS” or “Respondent”), by and through its undersigned counsel, hereby files this sur-reply in opposition to the motion to dismiss without prejudice filed by Complainant Moses Damisa (“Complainant”) and respectfully shows the Court as follows.

I.

TAS files this sur-reply to clarify misstatements or mischaracterizations of fact and law made by Complainant in his reply.

First, Complainant correctly states that the Commission has discretion to determine whether to grant Complainant’s motion to dismiss. [Dkt. 19 at 4]. In his reply to TAS’s response in opposition of dismissal, Complainant cites Romero v. Universal Ogden Services, 1997 U.S. Dist. LEXIS 16380, at *4 (E.D. La. 1997) (citing Fleming v. Joy Finance Co., 1995 U.S. Dist. LEXIS 19106, 1995 WL 739877, at *2 (E.D. La. 1995) to bolster his assertion that the case should be dismissed without prejudice. [Dkt. 19]. Both Romero and Fleming are distinguishable from the instant case because those cases involved dismissal of a lawsuit in a federal court to bring a lawsuit with the same claims in state court. 1997 U.S. Dist. LEXIS 16380, at *1-*2; 1995 U.S. Dist. LEXIS 19106, 1995 WL 739877, at *1-*2. In Complainant’s motion, he requests dismissal of his FMC Complaint so he can bring entirely different claims in state court. [Dkt. 19 at 2].

Complainant concedes that he will be bringing an entirely different claim in the event of future state court litigation. Id. A breach of contract claim and “other state law claims” are distinct from a violation of 46 U.S.C. § 41102(c) which involves the establishment of “just and reasonable regulations and practices relating to or connected with receiving, handling, storing, or delivering property.” Whether, or to what extent, discovery conducted in the instant proceeding may be used in a potential future state court proceeding remains unclear. No lawsuit has been filed at present, so even if discovery is deemed useful for state court proceedings, it may never be repurposed and the costs and fees TAS has incurred will be forever lost.

The courts in Romero and Fleming dismissed the lawsuits, albeit under entirely different circumstances than those in the instant case, however, they both determined that Defendant should be awarded all costs and fees incurred, including attorney’s fees, that would not be used in state court proceedings. 1997 U.S. Dist. LEXIS 16380, at *5-6; 1995 U.S. Dist. LEXIS 19106, 1995 WL 739877, at *2. The Eleventh Circuit, which Complainant points to as being the circuit where both parties reside [Dkt. 19 at 4], has stated that a Court may require Plaintiff to pay “all litigation-related expenses incurred by the defendant, including reasonable attorneys’ fees.” Jones v. SmartVideo Techs., Inc., No. 1:06-cv-2760-WSD, 2007 U.S. Dist. LEXIS 40699, at *7 (N.D. Ga. June 4, 2007) (quoting McCants v. Ford Motor Co., Inc., 781 F.2d 855, 860 (11th Cir. 1986)).

Complainant misstated that the mediation was completed in June 2021. [Dkt. 19 at 3]. The agreed mediation procedure was first for each party to have pre-mediation conference with the mediator then the parties mediate with the mediator. On June 28, 2021, Complainant and the FMC mediator held a *pre-mediation* conference call. On June 29, 2021, Respondent and the FMC mediator held a *pre-mediation* conference call. The mediation would have to occur in July 2021. At the June 29, 2021 telephone conference, Respondent asked the FMC mediator to relay several

unanswered discovery requests to the Complainant and stated that upon reviewing the information, Respondent would consider making a settlement offer. On July 1, 2021, Respondent sent the FMC mediator a list of selected discovery requests for him to send to the Complainant. On July 14, 2021, the FMC mediator asked Respondent's counsel if he could send the list of selected discovery requests to Complainant. TAS confirmed the same day that the mediator could send the list of selected discovery requests to Complainant. Apparently, the mediation was still on going as of July 14, 2021. In fact, at no point before Complainant's filing of his motion to dismiss, did he tell TAS or the FMC mediator that the mediation failed. Complainant is misleading the Court in saying that his Motion to Dismiss was filed after the conclusion of the mediation. [Dkt. 19 at 7].

TAS is a small, honest shipping company that has been adversely impacted by the Covid-19 global pandemic and elevated costs related to shipping. It has diligently participated in these proceedings and incurred significant expenses. To dismiss Complainant's claim without prejudice, or to dismiss the claim without prejudice and not condition such a dismissal to the payment of costs and fees that TAS has incurred in defending this suit, would be a manifest injustice resulting in undue prejudice for TAS. Complainant even admits that extensive discovery was conducted. [Dkt. 19 at 3].

PRAYER

.WHEREFORE, in light of the foregoing reasons and those set forth in TAS's response to Complainant's Motion to Dismiss, TAS respectfully submits that this Court grant Complainant's motion to dismiss in part to dismiss the complaint and deny in part so that the claims therein are dismissed with prejudice and that TAS be awarded with attorney's fees, costs, and expenses incurred in this case, or, in the alternative, TAS respectfully requests that Complainant's motion be granted in its entirety but that the dismissal be stayed until Complainant compensates TAS for

its costs, expenses, and attorney's fees incurred defending itself in this proceeding, or, in the alternative, TAS respectfully requests that Complainant's motion be denied in its entirety and this case proceeds to trial.

Respectfully submitted,

THE MOONEY LAW FIRM, LLC

/s/ Shanshan Liang

Shanshan (Shannon) Liang, of-counsel

Counsel for Respondent

Trans Atlantic Shipping L.L.C.

Fla. Bar No. 112991

sliang@customscourt.com

2717 Neuchatel Drive

Tallahassee, FL 32303

Tel. 850-893-0670

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **SUR-REPLY TO COMPLAINANT'S MOTION TO DISMISS WITH PREJUDICE** was sent to the below-mentioned counsel via email on August 18, 2021.

Matthew P. Collins, Esq.
THRIFT MCLEMORE
1000 Parkwood Circle SE Suite 900
Atlanta, GA 30339
Email: mcollins@thriftlegal.com
Attorney for Complainant Moses Damisa

/s/ Shanshan Liang

Shanshan Liang