FEDERAL MARITIME COMMISSION

Office of Administrative Law Judges

AENEAS EXPORTING LLC, *Complainant* v. CARLO SHIPPING INTERNATIONAL, INC., *Respondent*.	**DOCKET NO. 20-11**

Served: September 29, 2020

BEFORE: Erin M. WIRTH, *Chief Administrative Law Judge*.

INITIAL DECISION APPROVING SETTLEMENT AGREEMENT[1]

I. Introduction

On August 11, 2020, Complainant Aeneas Exporting LLC ("Aeneas Exporting") filed a request for dismissal ("motion") pursuant to settlement of the complaint filed against Respondent Carlo Shipping International, Inc. ("CSI"). Complainant attached a copy of a July 28, 2020, email outlining settlement terms. Complainant requested approval of the settlement terms and dismissal with prejudice, although Complainant noted that the parties were "unable to reach an agreement regarding the outstanding demurrage charges and related penalties," so that "no final settlement agreement with releases was signed." Motion at 2.

In response to an order, on September 9, 2020, the parties filed a joint status report ("JSR") which stated that the 24 containers at issue had been released to Complainant and that the payment identified in the settlement had been made to Respondent although some demurrage charges remained and mutual releases between the parties had not been signed. JSR at 1-4.

As discussed below, the parties presented an enforceable settlement agreement upon which both parties relied and substantially performed. It is not necessary for mutual releases to be signed or for issues not raised in a settlement agreement to be resolved before a settlement agreement can be approved. Accordingly, the settlement agreement will be approved.

II. Procedural History

On July 22, 2020, Aeneas Exporting filed a complaint alleging violations of the Shipping Act, including that CSI violated 46 U.S.C. §§ 41102(c) and 41104(a)(3), and seeking damages accrued due to an increase in shipping rates and subsequent detention of 24 of Aeneas Exporting's shipping containers in Benghazi, Libya. *See* Complaint at 6-7.

[1] This initial decision will become the decision of the Commission in the absence of review by the Commission. 46 C.F.R. § 502.227.

On August 11, 2020, Complainant filed a request for dismissal pursuant to settlement and stated that in order to ensure the release of its 24 containers, Aeneas agreed to dismiss this proceeding along with a related federal lawsuit filed in the District of New Jersey. Motion at 1. Attached to the motion was an email dated July 28, 2020, outlining an agreement between the parties, which stated:

> 1. CSI will release the 24 containers listed below (from the previous agreement) and provide copies of the Sea Way bills within 72 hours of the acceptance of this agreement. [List of 24 vehicles included.]
>
> 2. Aeneas will release $20,000 from the escrow today and the remaining $20,000 when CSI has provided Aeneas with Sea Waybills for the remaining fourteen containers on the list and assurances from Hapag-LLoyd and CMA CGM that all USA special charges have been satisfied on these containers.
>
> 3. CSI is responsible for paying any special charges, including demurrage, etc. owed in the USA.
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> 4. Aeneas will remove the untitled vehicles from the CSI facility in Elizabeth, NJ within a week, and agrees to pay $20 a day storage fee for any vehicles still present more than seven days after this agreement is finalized.
>
> 5. Aeneas will dismiss the federal maritime complaint it filed against CSI and the case filed in the New Jersey District Court with prejudice upon completion of CSI's obligations as laid out in paragraphs 1 and 2, within 48 hours of such completion.
>
> 6. When both sides perform their obligations, they will exchange mutual releases so there can be no further claims about any pending claims Aeneas has against CSI has with Aeneas [sic] or involving the vehicles.

Motion, Exhibit A at 1-2.

On August 24, 2020, an Order was issued requiring the parties to submit a joint status report addressing the status of the 24 containers, whether Complainant had paid outstanding charges to Respondent, whether the parties had reached agreement regarding the outstanding demurrage charges and penalties, as well as whether mutual releases had been exchanged and signed, and if not, whether dismissal without prejudice would be more appropriate. Order Requiring Joint Status Report at 2.

On September 9, 2020, the parties submitted a joint status report which stated that the 24 containers at issue had been released to Complainant and that the payment identified in the settlement had been made to Respondent. However, the parties indicated that there remained a dispute regarding demurrage charges and whether or not a global settlement had been reached. JSR at 1-3. Mutual releases between the parties have not been signed. JSR at 4.

III. Discussion

A. Relevant Law

Using language borrowed in part from the Administrative Procedure Act,[2] Rule 75 of the Commission's Rules of Practice and Procedure gives interested parties an opportunity, *inter alia*, to submit offers of settlement where "time, the nature of the proceeding, and the public interest permit." 46 C.F.R. § 502.75(b). If dismissal is sought due to a settlement by the parties, "the settlement agreement must be submitted with the motion for determination as to whether the settlement appears to violate any law or policy and to ensure the settlement is free of fraud, duress, undue influence, mistake, or other defects which might make it unapprovable." 46 C.F.R. § 502.72(a)(3). "Unless the order states otherwise, a dismissal under this paragraph is without prejudice." 46 C.F.R. § 502.72(a)(3).

The Commission has a strong and consistent policy of "encourag[ing] settlements and engag[ing] in every presumption which favors a finding that they are fair, correct, and valid." *Inlet Fish Producers, Inc. v. Sea-Land Serv., Inc.*, 29 S.R.R. 975, 978 (ALJ 2002) (quoting *Old Ben Coal Co. v. Sea-Land Serv., Inc.*, 18 S.R.R. 1085, 1091 (ALJ 1978) (*Old Ben Coal*)). *See also Ellenville Handle Works, Inc. v. Far Eastern Shipping Co.*, 20 S.R.R. 761, 762 (ALJ 1981).

> The law favors the resolution of controversies and uncertainties through compromise and settlement rather than through litigation, and it is the policy of the law to uphold and enforce such contracts if they are fairly made and are not in contravention of some law or public policy. . . . The courts have considered it their duty to encourage rather than to discourage parties in resorting to compromise as a mode of adjusting conflicting claims. . . . The desire to uphold compromises and settlements is based upon various advantages which they have over litigation. The resolution of controversies by means of compromise and settlement is generally faster and less expensive than litigation; it results in a saving of time for the parties, the lawyers, and the courts, and it is thus advantageous to judicial administration, and, in turn, to government as a whole. Moreover, the use of compromise and settlement is conducive to amicable and peaceful relations between the parties to a controversy.

Old Ben Coal, 18 S.R.R. at 1092 (quoting 15A AM. JUR. 2D *Compromise and Settlement* § 3 (1976)).

"While following these general principles, the Commission does not merely rubber stamp any proffered settlement, no matter how anxious the parties may be to terminate their litigation." *Old Ben Coal*, 18 S.R.R. at 1092. However, if "a proffered settlement does not appear to violate any law or policy and is free of fraud, duress, undue influence, mistake or other defects which might make it unapprovable despite the strong policy of the law encouraging approval of settlements, the settlement will probably pass muster and receive approval." *Old Ben Coal*, 18

[2] "The agency shall give all interested parties opportunity for – (1) the submission and consideration of facts, arguments, offers of settlement, or proposals of adjustment when time, the nature of the proceeding, and the public interest permit." 5 U.S.C. § 554(c).

S.R.R. at 1093. "[I]f it is the considered judgment of the parties that whatever benefits might result from vindication of their positions would be outweighed by the costs of continued litigation and if the settlement otherwise complies with law the Commission authorizes the settlement." *Delhi Petroleum Pty. Ltd. v. U.S. Atlantic & Gulf/Australia – New Zealand Conf. and Columbus Line, Inc.*, 24 S.R.R. 1129, 1134 (ALJ 1988) (citations omitted).

"Reaching a settlement allows the parties to settle their differences, without an admission of a violation of law by the respondent, when both the complainant and respondent have decided that it would be much cheaper to settle on such terms than to seek to prevail after expensive litigation." *APM Terminals North America, Inc. v. Port Authority of New York and New Jersey*, 31 S.R.R. 623, 626 (FMC 2009) (citing *Puerto Rico Freight Sys. Inc. v. PR Logistics Corp.*, 30 S.R.R. 310, 311 (ALJ 2004)).

When presented with a settlement and asked to enforce it, a court must first determine if a binding agreement was actually reached and, if so, what that contract provides. *Wood v. Virginia Hauling Co.*, 528 F.2d 423, 425 (4th Cir. 1975). "A settlement agreement is treated as any other contract for purposes of interpretation." *United Commercial Ins. Serv., Inc. v. Paymaster Corp.*, 962 F.2d 853, 856 (9th Cir. 1992). The determination of whether parties have entered into a binding settlement agreement is governed by the general principles of contract law. *Schwartz v. Florida Bd. of Regents*, 807 F.2d 901, 905 (11th Cir. 1987). "Thus, there must be an offer, acceptance, and consideration, as well as a meeting of the mind on all essential terms." *PNC Bank, N.A. v. Rolsafe Int'l, LLC*, 477 B.R. 884, 902 (Bankr. M.D. Fla. 2012).

> Among the most reliable indicators of intent is performance. The court will be more willing to find that an apparently incomplete agreement was in fact complete where the parties have already rendered some substantial performance or have taken other material action in reliance upon their existing expressions of agreement. The fact that they have so acted is itself a circumstance bearing upon the question of completeness of their agreement.

1 Corbin on Contracts § 2.9 n.5 (2020) citing *Fontainebleau Hotel Corp. v. Crossman*, 286 F.2d 926 (5th Cir. 1961).

B. Arguments of the Parties

In the motion requesting approval of the settlement agreement, Complainant states:

> In order to ensure the release of its 24 containers, continued detention of which threatened to put Aeneas out of business, Aeneas agreed to dismiss this proceeding, as well as a related federal lawsuit filed in the District of New Jersey (the "Federal Suit"), and to pay Respondent a sum of $40,000. . . . Because the parties were unable to reach an agreement regarding the outstanding demurrage charges and related penalties, no final settlement agreement with releases was signed. As a result, the parties have not agreed to fully release each other from all potential claims, allegations, or causes of action.

Motion at 1-2.

Attached to the motion was an email dated July 28, 2020, from Complainant's counsel to Respondent outlining the settlement terms. The email identified the 24 vehicles to be released and the terms of payment. The email stated that "[w]hen both sides perform their obligations, they will exchange mutual releases so there can be no further claims about any pending claims Aeneas has against CSI has with Aeneas [sic] or involving the vehicles." Exhibit A at 2. Neither the motion nor the exhibit was signed by Respondent.

The joint status report indicates that the vehicles at issue have been released and that the negotiated compromise payment was made but that there is not an agreement as to demurrage charges in Libya. Complainant states:

> As a result of Respondent's months-long detention of Claimant's 24 containers, approximately $60,000 in demurrage charges and penalties has been incurred in Benghazi, Libya. On or about July 28, 2020, Respondent committed to making a "good-faith effort" to have those charges reduced or waived. However, on August 6, 2020, Respondent, through its attorney, informed Claimant that it would no longer make any efforts to have those charges reduced or waived and that Claimant would have to deal with the charges itself. The amount of the Libyan charges and penalties exceeds the entire settlement payment Claimant made to Respondent for release of the 24 containers.

JSR at 2-3. Regarding mutual releases, Complainant asserts:

> No, mutual releases have not been exchanged or signed. While Claimant did agree to dismiss this action-along with a related federal case in New Jersey-with prejudice in exchange for release of the 24 containers, Claimant expressly reserved its right to bring suit for Respondent's breach of the July 17 Settlement Agreement. Because Respondent refused to include carve-out language in the releases for breach of the July 17 Settlement Agreement, the parties were not able to finalize or execute mutual releases. Nevertheless, Claimant sought dismissal of this action with prejudice in accordance with the July 28, 2020 Settlement Terms. Claimant does not intend to waive or release its right to seek damages for Respondent's breach of the July 17, 2020 Settlement Agreement.
>
> While Claimant would agree to dismiss this action without prejudice and concurs that such dismissal would be appropriate, the July 28, 2020 Settlement Terms require it to seek dismissal with prejudice. In any event, Claimant intends to initiate a new proceeding at some future date based on Respondent's breach of the July 17 Settlement Agreement.

JSR at 4.

Respondent asserts:

> Before the motion to dismiss this case was filed, we reached an agreement and later reached a revised agreement that also included the removal of several unregistered vehicles that Aeneas had left at my warehouse for several months without paying any storage fees. I asked Hapag-Lloyd to waive or reduce their

> Libyan fees for the Aeneas cargo. I agreed to pay all charges in the US, and Aeneas agreed to pay the charges in Libya. This is all I agreed to do about the demurrage charges and related penalties under either agreement.
>
> As part of the revised agreement, we were both supposed to sign a release so there would be no further litigation about any pending claims between us or involving the vehicles. After I signed the release, Aeneas claimed for the first time that he would not sign the release unless he could keep the right to sue me based on the original settlement. I would not have released the Aeneas cargo or let Aeneas remove the vehicles from my warehouse if I knew Aeneas planned to sue me again. This case should be dismissed and Aeneas should be barred from raising any claims about the 24 containers or destination fees. Aeneas would not have owed so many fees if it had paid me what it owed me back in February. We agreed on a global settlement and this case should be dismissed.

JSR at 3. Regarding mutual releases, Respondent states:

> No. Respondent signed a proposed settlement agreement with mutual releases. Complainant seeks to retain certain [sic] a claim arising out of an alleged breach of a settlement agreement, and will not sign unless he retains the right to pursue that claim. Respondent relied on Complainant's representation that global mutual releases would be signed when he performed under the revised settlement agreement. A dismissal with prejudice is appropriate.

JSR at 4.

C. Analysis

The settlement terms attached to the motion in an email were not signed or clearly acknowledged by both parties. However, it appears that the July 28, 2020, email lists the terms to which both sides agreed and neither side has raised any objections to the accuracy of the terms listed in the email. So, the lack of signature or more formal written agreement does not pose a bar to approving the settlement.

It appears that both parties agreed to the terms of the July 28, 2020, email. Moreover, it appears that both parties acted in reliance on the agreement and performed their obligations under the agreement, except for the failure to exchange mutual releases. Specifically, the email indicates that Respondent must provide assurances "that all USA special charges have been satisfied on these containers" and that Respondent "is responsible for paying any special charges, including demurrage, etc. owed in the USA." Motion, Exhibit A at 1. The July 28, 2020, email does not address demurrage charges in Libya, which is the subject of the current dispute, which suggests that resolution of that issue was not an essential term of the settlement. In addition, it is not clear that there was a meeting of the minds necessary for the July 17, 2020, terms and those terms were not part of the settlement motion.

The filings demonstrate that the parties agreed to the July 28, 2020, terms and that the parties have substantially completed their obligations under that agreement. Both parties benefited from the settlement agreement and both parties support the request for dismissal of the proceeding. While the settlement appears appropriate, out of an abundance of caution, the dismissal will be without prejudice.

Accordingly, the parties have established that the settlement agreement does not appear to violate any law or policy or contain other defects which might make it unapprovable. The proceeding is at an early stage and would require potentially expensive additional discovery and briefing. The parties have determined that the settlement reasonably resolves the primary issues raised in the complaint without the need for costly and uncertain litigation. There is no evidence of fraud, duress, undue influence, or mistake nor harm to the public. Accordingly, the settlement agreement is approved.

IV. Order

Upon consideration of the motion, the settlement agreement, and the record, and good cause having been stated, it is hereby:

ORDERED that the request to approve the July 28, 2020, settlement between Aeneas Exporting LLC and Carlo Shipping International, Inc. be **GRANTED**. It is

FURTHER ORDERED that this proceeding be **DISMISSED WITHOUT PREJUDICE**.

Erin M. Wirth

Erin M. Wirth
Chief Administrative Law Judge