

FEDERAL MARITIME COMMISSION

RAHAL INTERNATIONAL INC., *Complainant*

v.

HAPAG-LLOYD AG, HAPAG-LLOYD (AMERICA), LLC, AND
HAPAG-LLOYD USA, LLC,¹ *Respondents*

AND

HAPAG-LLOYD AG AND HAPAG-LLOYD (AMERICA), LLC,
Third-Party Complainants

v.

MAHER TERMINALS, LLC, GCT NEW YORK LP, AND GCT
BAYONNE LP, *Third-Party Respondents.*

DOCKET NO. 23-05

Served: December 6, 2023

ORDER OF: Linda S. Harris CROVELLA, *Administrative Law Judge.*

ORDER ON THIRD-PARTY RESPONDENTS' MOTION TO DISMISS

I. Introduction and Procedural Background

On June 30, 2023, the Commission issued a Notice of Filing of Complaint and Assignment, noting that Complainant Rahal International, Inc. ("Rahal") had filed a complaint alleging that Respondents Hapag-Lloyd AG, ("HLAG"), Hapag-Lloyd (America), LLC ("HLA"), and Hapag-Lloyd USA, LLC ("HLUSA") violated 46 U.S.C. §§ 41102(c), 41104(a)(2)(A), 41104(a)(14), 41104(a)(15), 41104(d) and the Commission's regulations at 46 C.F.R. §§ 545.4 and 545.5, in connection with the delivery of Complainant's cargo consisting of fruit products from overseas suppliers to the United States through the Port of New York and New Jersey ("PNYNJ"). Among other allegations, Complainant asserts that Respondents failed to provide adequate facilities for the return of empty containers at the PNYNJ, causing a "logistical paralysis," and accepted business from Complainant despite being aware that they

¹ Pursuant to a Motion for Summary Judgment, summary judgment was granted in favor of HLUSA, and the Complaint against it was dismissed in its entirety by Order dated September 27, 2023.

lacked adequate facilities to process shipments, resulting in their inability to timely process Complainant's shipments, including seven containers of apple juice, which caused the apple juice to then ferment and deteriorate, and Complainant to incur damages in the amount of \$198,798.11.

On September 8, 2023, the Commission issued a Notice of Filing of Third-Party Complaint, noting that Respondents HLAG and HLA (collectively, "Hapag" or "Third-Party Complainants") had filed a third-party complaint in this proceeding against Maher Terminals, LLC ("Maher"), GCT New York LP ("PLNY"), and GCT Bayonne LP ("PLB").² Third-Party Complainants allege that Maher, PLNY, and PLB violated 46 U.S.C. § 41102(c) and the Commission's regulation at 46 C.F.R. § 545.5, by failing to establish, observe, and enforce just and reasonable regulations and practices related to or connected with receiving, handling, storing, or delivering property. They allege these violations arose from the Third-Party Respondents' assessments, billing, and collection of charges related to shipping containers controlled and operated by Third-Party Respondents. Third-Party Complainants further alleged that if they are found liable for violations alleged in the Complaint filed by Rahal, that liability should pass to the Third-Party Respondents.

On September 27, 2023, an Order on Motion for Summary Judgment and Motion to Dismiss issued, granting Summary Judgment to Hapag-Lloyd USA, LLC, and denying HLAG and HLA's Partial Motion to Dismiss.

On October 3, 2023, Maher filed an answer to the third-party complaint. On the same day, PLNY and PLB filed Third-Party Respondents GCT New York LP and GCT Bayonne LP's Motion to Dismiss and Memorandum of Law in Support of Third-Party Respondents' Motion to Dismiss (collectively, "Motion to Dismiss")³ the third-party complaint for failure to state a claim for which relief can be granted. The current Motion to Dismiss is the third dispositive motion filed in this proceeding.

On October 18, 2023, Third-Party Complainants filed an opposition in response to the motion to dismiss ("Dismissal Opposition") asserting that PLNY and PLB's motion "applies the erroneous 'heightened' standard for pleadings," and Third-Party Complainants had pleaded plausible allegations.

On October 25, 2023, Third-Party Respondents filed a reply ("Reply") to Third-Party Complainants' opposition. Complainant Rahal did not take any position on the Motion to Dismiss.

² Third-Party Respondents note that they have undergone a name change pursuant to conversions to limited liability companies and are now known as Port Liberty New York LLC and Port Liberty Bayonne LLC.

³ Future motions filed by the parties should be one combined document so as not to burden the record, rather than a motion and separate memorandum of law in support of the motion.

On October 23, 2023,⁴ the parties submitted a Joint Status Report (“Oct JSR”) pursuant to the August 21, 2023 Scheduling Order (“Scheduling Order”), stating that, among other things, Hapag’s non-confidential documents production was past due, and it would not produce confidential documents until it entered a discovery confidentiality agreement. Oct JSR at 2. The joint status report further details an October 17, 2023 conference between the parties where they discussed discovery and then proposed Rahal and Hapag continuing their discovery pursuant to the Scheduling Order, but delaying depositions for 30 days, and then meeting after that date “to discuss and propose a joint global schedule.” Oct JSR at 3. In addition, “the parties will work on drafting a proposed discovery confidentiality agreement for consideration by the Commission.” *Id.* at 4. No confidentiality agreement has been submitted to date.

On November 22, 2023, the parties filed a joint status report (“Nov JSR”) stating that “the parties collectively agreed they require an extension of the operative deadlines set forth in the 8/21/23 Scheduling Order” and “with GCT’s Motion to Dismiss pending, the time is not yet ripe for the formulation of a global discovery schedule.” Nov JSR at 2.

On December 6, 2023, the parties filed a joint status report (“Dec JSR”) stating that “the parties disagree as to the propriety of discovery involving GCT while GCT’s Motion to Dismiss is pending and before GCT has answered the Third-Party Complaint or provided initial disclosures....” Dec JSR at 2. The parties further discussed that “GCT...had no control over whether Hapag would seek discovery from GCT in the interim via third-party discovery...but to date GCT has not been served with any subpoena seeking third-party discovery from GCT.” *Id.* The parties further state “[i]n lieu of motion practice as to the propriety of commencing discovery as to GCT prior to GCT answering the Third-Party Complaint and for an adjustment of the Scheduling Order, the parties respectfully request a conference with the Administrative Law Judge.” *Id.* at 2-3.

For the reasons set forth below, the motion to dismiss the third-party complaint against PLNY and PLB is denied. The parties must file a proposed scheduling order consistent with the parameters described below. PLNY and PLB must file an answer to third-party complaint within 10 days of the receipt of this motion. 46 C.F.R. § 502.62 (b).

II. Motion to Dismiss

A. Arguments of the Parties

Third-Party Respondents PLNY and PLB contend that the third-party complaint should be dismissed because “Hapag does not allege any single acct, omission or practice, let alone a continuing practice thereof, supporting how or why control by an MTO of its terminal and alleged control over billing for terminal services support the alleged violation,” and as a result of this lack of factual support, Hapag’s allegations “are not entitled to the assumption of truth.” Motion to Dismiss at 5-6. Similarly, PLNY and PLB assert that Hapag fails to cite and allege

⁴ The Joint Status Report is dated October 23, 2023, but was received by the Secretary’s Office and Judges on October 26, 2023, due to an electronic mail issue that has recurred and only appears to occur when issued from one of the law firms. The parties should consider emailing their future joint status reports from one of the other firms to avoid this issue in the future.

facts sufficient to prove the elements of Commission Interpretative Rule 545.4. *Id.* at 6-7. PLNY and PLB further argue that the allegations contained in paragraphs 25 to 37 essentially fail to allege violations and simply recite typical activities of MTOs (billing, invoicing, controlling the movement of containers in the terminal). *Id.* at 8-10. Finally, PLNY and PLB argue that the underlying complaint and the third-party complaint fail to identify which MTO handled which of the containers identified under two bills of lading, and how much each third-party respondent MTO billed Rahal pursuant to the bills of lading. *Id.* at 11.

Third-Party Complainants Hapag argue that it references the Complaint “as a predicate to file the Third-Party Complaint,” and that both “the Third-Party Complaint and Initial Complaint articulate well-pleaded factual allegations that are more than plausible and give rise to an entitlement to relief.” Dismissal Opposition at 3-4.

B. Motion to Dismiss Standard

The Commission’s Rules do not explicitly provide for motions to dismiss, but Commission Rule 12 states that the Federal Rule of Civil Procedure will be followed in instances that are not covered by the Rules, if consistent with sound administrative practice. 46 C.F.R. § 502.12. The “Commission looks to Federal Rule of Civil Procedure 12(b)(1) when considering dismissals based on lack of subject matter jurisdiction, and to Rule 12(b)(6) when considering dismissals based on failure to state a claim.” *MAVL Capital v. Marine Transport Logistics*, 2 F.M.C. 2d 198, 2020 WL 13512925 at *4 (FMC 2020).

“Under Fed. R. Civ. P. 12(b)(6), the facts alleged are taken as true and all reasonable inferences are drawn in the complainant’s favor.” *Id.* at *5 (citing *Maher Terminals, LLC v. The Port Authority of New York and New Jersey*, 34 S.R.R. 35, 54, 2015 WL 9426189 (FMC 2015)). To survive motions to dismiss for failure to state a claim under Rule 12(b)(6), a complaint must contain sufficient factual matter, accepted as true, to “state a claim to relief that is plausible on its face.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007). “A claim has facial plausibility when the pleaded factual content allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Ashcroft v. Iqbal*, 556 U.S. 662, 663 (2009) (citing *Twombly*, 550 U.S. at 556).

“A pleading that offers ‘labels and conclusions’ or ‘a formulaic recitation of the elements of a cause of action will not do.’” *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 555). However, “[w]hen there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement to relief.” *Iqbal*, 556 U.S. at 679. The focus at this stage is not with whether a complainant can prevail on its claim, but whether it has adequately pled the claim. *Negron v. USAA Casualty Ins. Co.*, 2014 WL 4411676 at *2 (M.D. Tenn. 2014).

C. Discussion

PLNY and PLB argue that Hapag fails to state a claim upon which relief can be granted because it does not plead facts that could plausibly lead to relief. While the third-party complaint in this matter lacks the specificity that PLNY and PLB argue is required, it refers back to the initial complaint as supplying the common nucleus of operative facts and attaches it as an exhibit. The initial complaint adequately addresses any factual gaps which PLNY and PLB assert are missing. In addition, the Third-Party Complaint also adequately asserts facts that put PLNY, PLB, and Maher on notice as to what conduct is asserted to violate § 41102(c) of the Shipping Act. While it is accurate as contended by PLNY and PLB that Complainant asserts other violations of the Shipping Act as to Hapag, that does not make the Third-Party Complaint defective.

PLNY and PLB do not argue that Hapag's reliance on the initial complaint is misplaced, and when read together, the two complaints plead sufficient facts to "give rise to an entitlement to relief." *Iqbal*, supra. In this regard, the Third-Party Complaint alleges the bills of lading numbers of the containers at issue in the underlying Complaint; the dates the containers were received and available for pickup; that the Third-Party Respondents directly charged the Complainant "for detention and/or demurrage for containers unremovable from the Port of New York and New Jersey" in the amount of \$298,911.16; that GCT and Maher remitted only a portion of the money collected by them to Hapag (\$7,653.60 and \$47,895.80, respectively); and that "Third-Party Respondents independently cause the Complainant to incur \$154, 909.26 for additional, extra, and/or excessive haulage fees by drayage providers and \$63, 013.30 for extra expenses as alleged in the Initial Complaint." These facts are sufficient to establish a plausible cause of action. Third-Party Complaint at ¶¶ 23-24, 26, 34-37.

PLNY and PLB contend that the absence of a recitation of the elements of a Section 41102(c) violation and the specific facts to support those elements make the third-party complaint defective. *Twombly* and *Iqbal* opine that a "formulaic recitation" of the elements "will not do," and *Negron* instructs that the complainant need not establish that it will prevail but must adequately plead a plausible claim. The Third-Party Complaint alleges that the above actions by the Third-Party Respondents of "charging Complainant for storage of the Containers" were not "just and reasonable regulations and practices related to or connected with receiving, handling, storing, or delivering property" and violated § 41102(c) of the Shipping Act. *Id.* at ¶¶ 38-40. To this end, while neither Rahal or Hapag must prove that they will prevail on the several or the one Shipping Act violations they have respectively alleged at this stage of the proceeding, they must be prepared to do so in their briefs at the conclusion of discovery.

To assist the parties as they go forward in discovery regarding the one violation raised in both the complaint and the third-party complaint, the Commission's Interpretive Rule issued on December 17, 2018, provides guidance:

46 U.S.C. 41102(c) is interpreted to require the following elements in order to establish a successful claim for reparations:

(a) The respondent is an ocean common carrier, marine terminal operator, or ocean transportation intermediary;

- (b) The claimed acts or omissions of the regulated entity are occurring on a normal, customary, and continuous basis;
- (c) The practice or regulation relates to or is connected with receiving, handling, storing, or delivering property;
- (d) The practice or regulation is unjust or unreasonable; and
- (e) The practice or regulation is the proximate cause of the claimed loss.

Final Rule: Interpretive Rule, Shipping Act of 1984, 83 Fed. Reg. 64478, 64479 (Dec. 17, 2018); 46 C.F.R. § 545.4.

In addition, the parties should consider when briefing their arguments whether Hapag's third-party complaint raises an indemnification issue, and if so, whether that is appropriate to raise in a Commission proceeding.

D. Joint Status Report

Pursuant to the August 21, 2023 Scheduling Order, discovery should have commenced in this proceeding in September 2023, and depositions of fact witnesses and experts were to be completed by November 27, 2023. The parties did not file a motion requesting an amended schedule but have paused discovery while awaiting the outcome of this motion. Oct JSR; Nov JSR. The parties are reminded that the Scheduling Order stated:

Motions will not automatically stay other deadlines in the proceeding. If a motion could impact other deadlines, that should be clearly addressed in the motion and any response. All requests for extension of time will be reviewed for good cause, even if the parties agree on the requested extension.

Scheduling Order at 2. This point was reiterated in the August 24, 2023 Order on Motion for Leave to File Third-Party Complaint at page 3, and again in the September 20, 2023 Order Rejecting Respondents' Motion to Extend at page 2.

The Oct JSR seemingly proposes a new schedule for discovery due to the introduction of third-party respondents. The Nov JSR states that "the parties collectively agreed they require an extension of the operative deadlines set forth in the 8/21/23 Scheduling Order." Nov JSR at 2. The Initial Order directs the parties to the Commission's Rules regarding motions, and it also states:

Any request for action by the Commission or presiding officer **must be made by motion, not by letter or email request or as part of a joint status report.** Each page of the motion should be sequentially numbered.

Initial Order at 4 (emphasis added).

Since no motion seeking a revised scheduling order has been filed, good cause has not been evaluated, and no revised scheduling order has issued. When Hapag filed its motion for

leave to file a third-party complaint it claimed that it was moving “expeditiously,” and the Order granting leave to file it relied on the fact that it was very early in the proceeding, so the third-party complaint would not create undue delay. Order on Motion for Leave to File Third-Party Complaint at 2. Despite that premise, the parties now maintain in the JSR that they will be seeking to delay discovery and the filing of briefs.

While no motion is currently pending, if one is filed seeking to delay this proceeding, good cause must be set forth explicitly explaining why the current schedule cannot be met.

The parties used the Dec JSR to request a conference on revising the scheduling order due to the introduction of the third-parties to the proceeding and disagreement between them on how to proceed with discovery. Without a proposed amended schedule to discuss and for the undersigned to consider, a conference will not be the most expeditious way to consider good cause and arrive at an amended scheduling order. If, after receipt of the instant Order, the parties still wish to pursue a conference, they are advised to first submit their proposals for an amended scheduling order, separately if there is disagreement among some of the parties, or jointly to the extent there is agreement among some of the parties. Again, the proposed amended scheduling order must include recitations of good cause for any further delay.

The parties should submit a joint status report by December 13, 2023, discussing their progress with discovery.


V. Order

Upon consideration of the record herein, the arguments of the parties, and the conclusions and findings set forth above, it is hereby

ORDERED that Third-Party Respondents GCT New York LP and GCT Bayonne LP’s motion to dismiss be **DENIED**. It is

FURTHER ORDERED that Third-Party Respondents GCT New York LP and GCT Bayonne LP submit their answer to the Third-Party Complaint by December 18, 2023. It is

FURTHER ORDERED that the parties shall submit a joint status report by December 13, 2023.


Linda S. Harris Crovella
Administrative Law Judge