

BEFORE THE
FEDERAL MARITIME COMMISSION

DOCKET NO. 23-05

RAHAL INTERNATIONAL, INC.,
COMPLAINANT,

v.

HAPAG-LLOYD AG, HAPAG-LLOYD (AMERICA) LLC AND HAPAG-LLOYD USA, LLC,
RESPONDENTS,

HAPAG-LLOYD AG AND HAPAG-LLOYD (AMERICA) LLC,
RESPONDENTS AND THIRD-PARTY COMPLAINANTS,

v.

MAHER TERMINALS LLC, GCT NEW YORK LP AND GCT BAYONNE LP,
THIRD-PARTY RESPONDENTS.

**VERIFIED ANSWER AND AFFIRMATIVE DEFENSES TO
THIRD-PARTY COMPLAINT ON BEHALF OF
THIRD-PARTY RESPONDENT MAHER TERMINALS LLC**

Third-Party Respondent Maher Terminals LLC (“Maher”), by and through its attorneys, Chiesa Shahinian & Giantomasi PC, by way of answer to the Third-Party Complaint of Hapag-Lloyd AG and Hapag-Lloyd (America) LLC (collectively, “Hapag”) served September 8, 2023 (the “Third-Party Complaint”), hereby states as follows:

AS TO INTRODUCTION

The introductory paragraph of the Third-Party Complaint contains argument and what

appears to be Hapag's thoughts and beliefs as to the nature of this action, to which no response is required. As such, Maher neither pleads nor responds thereto. To the extent that the introductory paragraph of the Third-Party Complaint can be construed as requiring a response from Maher, it is denied.

AS TO SPECIFIC ALLEGATIONS

1. The allegations in paragraph 1 of the Third-Party Complaint do not require a response inasmuch as they are not directed to Maher and contain what appears to be Hapag's reasoning for bringing the Third-Party Complaint. As such, Maher neither pleads nor responds thereto. To the extent the allegations in paragraph 1 of the Third-Party Complaint can be construed as having been alleged against Maher, they are denied.

2. To the extent the allegations in paragraph 2 of the Third-Party Complaint contain what appears to be Hapag's summary of the Verified Complaint and reasoning for bringing the Third-Party Complaint, no response is required. As such, Maher neither pleads nor responds thereto. To the extent the allegations in paragraph 2 of the Third-Party Complaint are directed to Maher, they are denied.

AS TO SECTION I. COMPLAINANT

3. Maher is without knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraph 3 of the Third-Party Complaint.

AS TO SECTION II. RESPONDENTS/THIRD PARTY COMPLAINANTS

4. Maher is without knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraph 4 of the Third-Party Complaint.

5. Maher is without knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraph 5 of the Third-Party Complaint.

6. Maher is without knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraph 6 of the Third-Party Complaint.

AS TO SECTION III. THIRD-PARTY RESPONDENTS

7. Maher admits that it operates a marine container terminal in Elizabeth, New Jersey abutting the Newark Bay to the east of Newark Liberty International Airport and that its principal place of business is located at 1210 Corbin Street, Elizabeth, New Jersey (the “Terminal”).

8. Maher is without knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraph 8 of the Third-Party Complaint.

AS TO SECTION IV. JURISDICTION

9. Admitted.

10. Admitted.

11. Denied.

12. The allegations in the first sentence of paragraph 12 of the Third-Party Complaint are admitted to the extent they are directed to Maher. Maher is without knowledge and information sufficient to form a belief as to the truth of the allegations contained in the balance of the first sentence of paragraph 12. The allegations in the second sentence of paragraph 12 constitute legal conclusions to which no response is required. To the extent the allegations contained in the second sentence of paragraph 12 can be construed as requiring a response, they are denied.

AS TO SECTION V. INITIAL COMPLAINT AND ANSWER

13. Admitted.

14. The allegations set forth in paragraph 14 of the Third-Party Complaint relate to a document that speaks for itself and are not directed to Maher. As such, no response is required and Maher neither pleads nor responds thereto.

15. Admitted.

16. Admitted.

17. Admitted.

18. The allegations set forth in paragraph 18 of the Third-Party Complaint relate to a document that speaks for itself and are not directed to Maher. As such, no response is required and Maher neither pleads nor responds thereto.

19. Maher is without knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraph 19 of the Third-Party Complaint.

20. Maher is without knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraph 20 of the Third-Party Complaint.

21. Maher is without knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraph 21 of the Third-Party Complaint.

22. Maher is without knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraph 22 of the Third-Party Complaint.

23. The allegations in paragraph 23 of the Third-Party Complaint do not require a response inasmuch as they request that Maher admit or deny that “Hapag admitted” an allegation that was set forth in the Verified Complaint. Notwithstanding the foregoing, Maher is without knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraph 23 of the Third-Party Complaint, but does admit that the claims brought against Maher by way of the Third-Party Complaint and the damages Hapag seeks from Maher are limited to the seven (7) containers specifically referenced in paragraph 23 of the Third-Party Complaint.

24. The allegations set forth in paragraph 24 of the Third-Party Complaint relate to a document that speaks for itself and are not directed to Maher. As such, no response is required

and Maher neither pleads nor responds thereto.

AS TO SECTION VI. FACTUAL ALLEGATIONS

25. Admitted.

26. The allegations set forth in paragraph 26 of the Third-Party Complaint are vague and ambiguous and therefore do not require a response. Notwithstanding the foregoing, Maher admits that demurrage charges were incurred on the four full container loads carried under bill of lading number HLCUEUR2203EZGCO (that were delivered to the Terminal) and that the demurrage charges were calculated using Maher's publicly available rules and regulations with respect to demurrage on import cargo and Hapag's import demurrage provisions and rates. Maher is without knowledge and information sufficient to form a belief as to the truth of the balance of the allegations contained in paragraph 26 of the Third-Party Complaint and they are therefore denied.

27. Denied.

28. The allegations set forth in paragraph 28 of the Third-Party Complaint are vague and ambiguous and therefore do not require a response. Notwithstanding the foregoing, Maher admits that it has a Stevedoring and Terminal Services Agreement with Hapag Lloyd AG. Maher is without knowledge and information sufficient to form a belief as to the truth of the balance of the allegations contained in paragraph 28 of the Third-Party Complaint and they are therefore denied.

29. Maher admits that it had control over the Terminal and the placement and movement of four full container loads carried under bill of lading number HLCUEUR2203EZGCO during the time that the containers were located within the Terminal and that it made those four containers available for pick-up/delivery by outside vendors during the

normal business hours that Maher conducts its gate operations (i.e., Monday through Friday) as well as on Saturdays during the relevant time period. Maher is without knowledge and information sufficient to form a belief as to the truth of the balance of the allegations contained in paragraph 29 of the Third-Party Complaint and they are therefore denied.

30. Denied.

31. Denied.

32. The allegations set forth in paragraph 32 of the Third-Party Complaint constitute legal conclusions to which no response is required. To the extent that the allegations contained in paragraph 32 be construed as requiring a response, they are denied.

33. Denied.

34. Denied.

35. Maher is without knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraph 35 of the Third-Party Complaint, and they are therefore denied.

36. Maher is without knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraph 36 of the Third-Party Complaint, and they are therefore denied.

37. Denied.

AS TO SECTION VII. CAUSATION AND INJURY TO COMPLAINANT

38. Denied.

39. Denied.

40. Denied.

AS TO SECTION VIII. PLACE OF HEARING

41. The allegations in paragraph 41 of the Third-Party Complaint do not require a response inasmuch as they contain Hapag's request for a hearing and its preference as to where the hearing should be held if permitted by the Federal Maritime Commission.

AS TO SECTION IX. PRAYER FOR RELIEF

Maher opposes and denies the relief sought by Hapag in this section of the Third-Party Complaint.

AFFIRMATIVE DEFENSES

First Affirmative Defense

The Third-Party Complaint fails to state a claim upon which relief may be granted.

Second Affirmative Defense

Hapag's claims are barred because Complainant's losses or damages, if any, were not caused by Maher.

Third Affirmative Defense

Hapag's claims against Maher are barred because no actions or inactions on the part of Maher were the cause of Complainant's alleged losses or damages, if any.

Fourth Affirmative Defense

Hapag is barred from recovery against Maher as the matters complained of in the Verified Complaint were caused by the conduct of Complainant and/or third parties over which Maher had no control.

Fifth Affirmative Defense

Hapag's claims against Maher and the damages it seeks from Maher are limited to the seven (7) containers specifically referenced in the Third-Party Complaint.

Sixth Affirmative Defense

Hapag's claims against Maher and the damages it seeks from Maher are barred to the extent Hapag seeks damages relating to containers other than the seven (7) containers specifically referenced in the Third-Party Complaint.

Seventh Affirmative Defense

Hapag's claims against Maher and the damages it seeks from Maher are barred to the extent Hapag seeks damages relating to the alleged damages set forth on Exhibit 1 of the Verified Complaint, which was not included in the version of the Third-Party Complaint that was served on Maher.

Eighth Affirmative Defense

The Third-Party Complaint fails to state a claim upon which relief may be granted to the extent that the detention charges alleged in the Verified Complaint were assessed, collected and/or retained by Hapag, not Maher.

Ninth Affirmative Defense

The Third-Party Complaint is barred to the extent that the Federal Maritime Commission lacks personal jurisdiction over Maher inasmuch as the governing contracts between the Maher and Hapag require that this matter be heard in a forum other than this Court.

Tenth Affirmative Defense

The Third-Party Complaint is barred to the extent that the Federal Maritime Commission lacks subject matter jurisdiction over Complainant's claim for cargo loss or damage and therefore the Third-Party Complaint.

Eleventh Affirmative Defense

The Third-Party Complaint is barred to the extent that Complainant failed to mitigate its

damages.

Twelfth Affirmative Defense

The Third-Party Complaint is barred to the extent that the Complainant, Hapag and/or other indispensable parties caused and/or contributed to the losses and damages alleged in the Verified Complaint and Third-Party Complaint.

Thirteenth Affirmative Defense

The Third-Party Complaint is barred to the extent that the Complainant was aware of the facts, circumstances and conditions which existed at the time and place set forth in the Verified Complaint and voluntarily assumed all risks present and arising therefrom.

Fourteenth Affirmative Defense

The Third-Party Complaint is barred by the doctrine of avoidable consequences.

Fifteenth Affirmative Defense

The Third-Party Complaint is barred to the extent that Complainant and Hapag have failed to join an indispensable party(ies), such that the action may not be fully adjudicated in the absence of said part(ies) and, therefore, the Third-Party Complaint against Maher should be dismissed.

Sixteenth Affirmative Defense

The Third-Party Complaint is barred, in whole or in part, by the collateral source doctrine.

Seventeenth Affirmative Defense

The Third-Party Complaint, and the damages sought therein, are barred to the extent that the matters alleged by Hapag, as well as the matters alleged by Complainant in the Verified Complaint, were the result of unforeseeable intervening or superseding acts of others independent of Maher.

Eighteenth Affirmative Defense

If there was any loss and/or damage to cargo as alleged in the Verified Complaint and Third-Party Complaint, it was occasioned by causes for which Maher is exonerated under the United States Carriage of Goods by Sea Act, Title 46 U.S.C.A. § 1300, et seq.

Nineteenth Affirmative Defense

If the Commission finds that the Complainant has suffered damages to cargo for which Hapag and/or Maher is liable, said damages must be limited pursuant to 46 U.S.C. § 1304(5).

Twentieth Affirmative Defense

If there was any loss of and/or damage to cargo as alleged in the Verified Complaint and Third-Party Complaint, Maher is not liable to the Complainant and/or Hapag by reason of the provisions contained in the bill(s) of lading, contract of carriage, charter party, applicable tariffs, special contract and/or dock receipt.

Reservation Regarding Affirmative Defenses

Maher hereby reserves its right, without limitation, to amend its Verified Answer and Affirmative Defenses to the Third-Party Complaint to assert additional affirmative defenses and to raise and rely upon any additional affirmative defenses that it determines during the course of this action are appropriate and applicable to the Verified Complaint and/or the Third-Party Complaint.

PRAYER FOR RELIEF

WHEREFORE, Maher demands judgment against Hapag (1) dismissing the Third-Party Complaint with prejudice, (2) awarding Maher attorneys' fees and costs pursuant to 46 U.S.C. § 41305, and (3) awarding Maher such other relief as the Court deems equitable and just.

Dated: October 3, 2023

By: Michael Cross
MICHAEL CROSS

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Maher Terminals LLC

PLACE OF HEARING

To the extent the Federal Maritime Commission deems that a hearing on this matter is necessary, Maher respectfully requests that the hearing be held in the city and state of New York, or otherwise at the offices of the Federal Maritime Commission located at 800 N. Capitol Street, N.W., Washington, D.C., 20573.

Dated: October 3, 2023

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MICHAEL CROSS

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Maher Terminals LLC

VERIFICATION

I, Anthony Murrello, Chief Operating Officer of Maher Terminals LLC (“Maher”), hereby declare and attest under penalty of perjury that I have read the foregoing Verified Answer and Affirmative Defenses on behalf of Maher and believe, to the best of my knowledge, information and belief, that the facts stated therein are true and correct.

Dated: October 3, 2023

By: 

ANTHONY MURRELLO

Email: tmurrello@maherterminals.com

CERTIFICATION OF FILING AND SERVICE

I hereby certify that on October 3, 2023, I electronically filed the foregoing Verified Answer and Affirmative Defenses to Third-Party Complaint on behalf Maher Terminals LLC (the “Answer”) with the Federal Maritime Commission (the “Commission”) by emailing a copy of the Answer to the Secretary of the Commission at secretary@fmc.gov. I also certify that I simultaneously served a copy of the Answer upon the following counsel of record for each party by email:

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Dated: October 3, 2023

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