

FEDERAL MARITIME COMMISSION

TZ SSE BUYER, LLC,

Complainant,

-against-

YANG MING MARINE TRANSPORT CORP.,

Respondent.

Docket No. 24-10

ANSWER TO AMENDED
COMPLAINT WITH
AFFIRMATIVE DEFENSES

1. Respondent, YANG MING MARINE TRANSPORT CORP. ("Respondent"), by its attorneys Mahoney & Keane, LLP, answers the Amended Complaint ("Complaint") of Claimant upon information and belief as follows:

**AS AND FOR AN ANSWER TO "INTRODUCTION", "THE COMPLAINANT",
"THE RESPONDENT", "JURISDICTION AND LEGAL AUTHORITY",
AND ALLEGED FACTS"**

2. Respondent denies the allegations contained in paragraphs "1", "3", "4", "5", "8", "9", "12", "13", "20", "22", "23", "24", "25", "26", "27", "28", "29", and "30" of Claimant's Complaint.

3. Respondent denies knowledge or information sufficient to form a belief as to the allegations contained in paragraphs "2", "6", "7", "10", "11", "14", "15", "16", "17", "18", "19", and "21" of Claimant's Complaint.

AS AND FOR AN ANSWER TO "COUNT I"

4. Respondent repeats and reiterates its responses to the allegations contained in paragraphs "1" through "30" of Claimant's Complaint as if fully set forth herein at length in response to paragraph "31" of Claimant's Complaint.

5. Respondent denies the allegation contained in paragraph "32" of Claimant's Complaint.

AS AND FOR AN ANSWER TO “COUNT II”

6. Respondent repeats and reiterates its responses to the allegations contained in paragraphs “1” through “32” of Claimant’s Complaint as if fully set forth herein at length in response to paragraph “33” of Claimant’s Complaint.

7. Respondent denies the allegation contained in paragraph “30” of Claimant’s Complaint.

AS AND FOR AN ANSWER TO “CAUSATION”

8. Respondent denies the allegation contained in paragraph “35” of Claimant’s Complaint.

AS AND FOR AN ANSWER TO “COMPLAINANT’S DAMAGES”

9. Respondent denies the allegations contained in paragraphs “36” and “37” of Claimant’s Complaint.

AS AND FOR A FIRST SEPARATE AND COMPLETE AFFIRMATIVE DEFENSE

10. The Complaint fails to state a claim against Respondent on which relief can be granted.

AS AND FOR A SECOND SEPARATE AND COMPLETE AFFIRMATIVE DEFENSE

11. Respondent committed no Shipping Act violation and is not liable to Claimant on the cause of action alleged in the Complaint.

AS AND FOR A THIRD SEPARATE AND COMPLETE AFFIRMATIVE DEFENSE

12. If there was any loss to the Claimant as alleged in the Complaint, Respondent is not liable to Claimant by reason of the provisions contained in the bill(s) of lading, contract of carriage, charter party, applicable tariffs, special contract, service contract, or dock receipt.

AS AND FOR A FOURTH SEPARATE AND COMPLETE AFFIRMATIVE DEFENSE

13. Any damages sustained by Claimant, as alleged in the Complaint, were proximately, directly, and solely caused by the negligent acts of third persons over whom Respondent had and has no direction or control.

AS AND FOR A FIFTH SEPARATE AND COMPLETE AFFIRMATIVE DEFENSE

14. The claims or parts thereof are barred by the applicable statute of limitations, contractual terms between the subject parties and/or the doctrine of laches, and Respondent puts Claimant to its proof of compliance with the provisions for giving of notice and the commencement of this as provided for in the aforesaid contract of carriage.

AS AND FOR A SIXTH SEPARATE AND COMPLETE AFFIRMATIVE DEFENSE

15. Claimant knowingly and intentionally assumed any and all risks inherent in the shipment(s) of the goods at issue by sea, which is a complete bar to recovery.

AS AND FOR A SEVENTH SEPARATE AND COMPLETE AFFIRMATIVE DEFENSE

16. Any injuries that may have been sustained by Claimants, as alleged in the Complaint, occurred as a direct result of Claimant's own negligent conduct, and not by any negligence or fault of Respondent, and as such Claimant is barred from recovery in this action.

AS AND FOR AN EIGHTH SEPARATE AND COMPLETE AFFIRMATIVE DEFENSE

17. Complainant is guilty of culpable conduct in the events giving rise to the claims now asserted in the Complaint, and Claimant's recovery, if any, must be diminished in proportion thereto.

AS AND FOR A NINTH SEPARATE AND COMPLETE AFFIRMATIVE DEFENSE

18. Complainant has failed to mitigate its damages.

AS AND FOR A TENTH SEPARATE AND COMPLETE AFFIRMATIVE DEFENSE

19. Any damage as alleged in the Complaint was caused by Restraint of Princes, Act of God, and/or force majeure, and Respondent is thus under no liability therefor.

AS AND FOR AN ELEVENTH SEPARATE AND COMPLETE AFFIRMATIVE DEFENSE

20. Complainant lacks privity of contract with Respondent, and jurisdiction is lacking inasmuch as Complainant is not a party to a service contract with Respondent.

AS AND FOR A TWELFTH SEPARATE AND COMPLETE AFFIRMATIVE DEFENSE

21. Complainant has failed to state a claim for which relief may be granted because the Commission's interpretation of the purported Shipping Act violations may not be lawfully applied to conduct which occurred before the interpretation was adopted.

AS AND FOR A THIRTEENTH SEPARATE AND COMPLETE AFFIRMATIVE DEFENSE

22. The claimed Shipping Act violations are neither customary nor continuous.

AS AND FOR A FOURTEENTH SEPARATE AND COMPLETE AFFIRMATIVE DEFENSE

23. Respondent's practices were neither unjust nor unreasonable.

AS AND FOR A FIFTEENTH SEPARATE AND COMPLETE AFFIRMATIVE DEFENSE

24. Respondent's practices were not the proximate cause of Claimant's alleged loss.

AS AND FOR A SIXTEENTH SEPARATE AND COMPLETE AFFIRMATIVE DEFENSE

25. The Complaint concerns breach of contract issues, rather than a Shipping Act violation.

AS AND FOR A SEVENTEENTH SEPARATE AND COMPLETE AFFIRMATIVE DEFENSE

26. Claimant lacks standing to bring the Complaint or seek the relief requested.

AS AND FOR A EIGHTEENTH SEPARATE AND COMPLETE AFFIRMATIVE DEFENSE

27. This Answer is made without waiver of any jurisdictional defenses or rights to arbitrate or proceed in another forum that may exist between any of the parties.

AS AND FOR AN NINETEENTH SEPARATE AND COMPLETE AFFIRMATIVE DEFENSE

28. The Complaint is barred in whole or in part by waiver and/or estoppel.

AS AND FOR A TWENTIETH SEPARATE AND COMPLETE AFFIRMATIVE DEFENSE

29. The Complaint fails to allege the essential elements of 46 U.S.C. § 41102(c) and/or 41104 (a)(10).

AS AND FOR A TWENTY-FIRST SEPARATE AND COMPLETE AFFIRMATIVE DEFENSE

30. At all pertinent times, Respondent acted as an agent of a disclosed principal.

AS AND FOR A TWENTY-SECOND SEPARATE AND COMPLETE AFFIRMATIVE DEFENSE

31. The Federal Maritime Commission lacks subject matter jurisdiction over the Complaint.

AS AND FOR A TWENTY-THIRD SEPARATE AND COMPLETE AFFIRMATIVE DEFENSE

32. The Complaint concerns breach of contract issues which the Complainant has breached, including without limitation claiming damages in breach of a liquidated damage agreement.

AS AND FOR A TWENTY-FOURTH SEPARATE AND COMPLETE AFFIRMATIVE DEFENSE

33. The conduct which is the subject to the Complaint does not constitute a practice within the meaning of 46 U.S.C. § 41102(c).

AS AND FOR A TWENTY-FIFTH SEPARATE AND COMPLETE AFFIRMATIVE DEFENSE

34. All demurrage and detention charges collected were for delays caused by factors for which the shipper was responsible; none were collected for delays caused by factors beyond the shipper's control.

AS AND FOR A TWENTY-SIXTH SEPARATE AND COMPLETE AFFIRMATIVE DEFENSE

35. Respondent never unreasonable refused to deal or negotiate with Complainant.

RESERVATION OF RIGHT TO SEEK ENFORCEMENT OF THE FORUM SELECTION/ARBITRATION CLAUSE IN THE CONTRACT GOVERNING THE CLAIMS AT ISSUE

36. Respondent reserves the right to seek enforcement of the forum selection clause and/or choice of law clause contained in the applicable service contract governing the claims at issue.

**RESERVATION OF RIGHTS TO AMEND THIS ANSWER AND/OR TO BRING A
THIRD-PARTY CLAIM**

37. Respondent reserves its right to amend this Answer and/or to plead any additional affirmative defenses and/or to bring a third-party claim as the facts may warrant.

WHEREFORE, Respondent demands judgment dismissing the Complaint and awarding to Respondent costs, fees, including reasonable attorneys' fees and disbursements of this action, as well as such other and further relief the Court may deem just and proper.

Dated: New York, New York
October 24, 2024

Respectfully submitted,

MAHONEY & KEANE, LLP
Attorneys for Respondent
YANG MING MARINE TRANSPORT
CORP.

By: s/ Edward A. Keane
Edward A. Keane
Garth S. Wolfson
40 Worth Street, Suite 602
New York, New York 10013
Telephone: (212) 385-1422
E-Mail: ekeane@mahoneykeane.com
E-Mail: gwolfson@mahoneykeane.com
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