

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA**

AMERICAN COMMERCIAL BARGE

LINE LLC,

Plaintiff,

v.

TRICON STEAMSHIP AGENCY, INC.,

in personam, and APPROXIMATELY

40,600.93 NT OF COAL CARGO LOADED

ABOARD BARGES MEM0479, AEP3362,

MEM94267, MEM5004, AEP7142, MEM0478,

AEP3379, RF936B, MEM94210, MEM5275,

MEM5208, MEM5026, MEM94121, MEM5052,

MEM5285, ACL96006, ACL01549, ACL9503B,

ACL00219, ACL99003, MEM6053, ACL9945B,

ACL96034 and MEM5231, *in rem*

Defendants.

*

* **SECTION NO. “_____”**

* **Honorable _____**

*

* **MAGISTRATE ()**

* **Honorable _____**

*

*

*

*

*

*

*

*

*

*

*

*

*

*

*

VERIFIED COMPLAINT

NOW INTO COURT, through undersigned counsel, comes American Commercial Barge Line LLC (“ACBL” or “Plaintiff”), which, for its Complaint against Tricon Steamship Agency, Inc. (“Tricon” or “Defendant”), *in personam*, and approximately 40,600.93 net tons (“NT”) of coal cargo loaded aboard barges MEM0479, AEP3362, MEM94267, MEM5004, AEP7142, MEM0478, AEP3379, RF936B, MEM94210, MEM5275, MEM5208, MEM5026, MEM94121, MEM5052, MEM5285, ACL96006, ACL01549, ACL9503B, ACL00219, ACL99003, MEM6053, ACL9945B, ACL96034 and MEM5231 (“Cargo”), *in rem*, respectfully avers as follows:

PARTIES

1.

Plaintiff ACBL is a limited liability company organized under the laws of the State of Delaware and has its principal place of business in Jeffersonville, Indiana.

2.

Upon information and belief, Defendant Tricon is a corporation incorporated under the laws of the State of Louisiana with its principal place of business in Gonzales, Louisiana, and either is the owner of the Cargo or, to the extent the cargo is owned by some third-party, maintains a lien on the Cargo for unpaid freight, demurrage and other expenses. Defendant Tricon has appointed W. Brett Mason, One American Place, Suite 1150, 301 Main Street, Baton Rouge, Louisiana 70825 as its registered agent for service of process.

JURISDICTION AND VENUE

3.

This is a case falling within this Court's admiralty and maritime jurisdiction pursuant to 28 U.S.C. § 1333 and U.S. Constitution Article 3, Section 2, and is an admiralty and maritime claim within the meaning of Rule 9(h) of the Federal Rules of Civil Procedure.

4.

In the alternative, this Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332 because the parties are diverse and the amount in controversy exceeds \$75,000, exclusive of judicial interests and costs.

5.

Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b), as a substantial amount of the events giving rise to this controversy occurred in the Eastern District of Louisiana, and pursuant to Rules B and C of the Supplemental Admiralty Rules, as plaintiff intends to attach and arrest the Cargo (on Tricon's lien on the cargo) which is located in this District.

FACTUAL BACKGROUND

A. Contract 360610-0

6.

ACBL and Tricon, through their duly authorized representatives, entered into "Contract 360610-0" for the charter by Tricon from ACBL of 42 barges which would be used to transport a

cargo of coal from Kentucky to Louisiana that was, upon information and belief, sourced from Carter Resources ("Carter") and was being sold by Tricon to its third-party buyer UStore, Inc. ("UStore").

7.

The term of Contract 360610-0 was March 2, 2018 until March 31, 2018.

8.

Pursuant to Contract 360610-0, Tricon was to pay ACBL a base freight rate of \$15.00 per NT, and demurrage for each barge of \$250.00 per barge, ACBL's invoices under Contract 360610-0 being payable immediately upon receipt.

9.

In accordance with Contract 360610-0, 24 of the barges provided by ACBL to Tricon were loaded with approximately 40,600.93 NT of the Cargo and thereafter transited downriver from Kentucky to Louisiana.

10.

Although Tricon paid freight in respect of barges MEM5208, MEM5026, ACL0149 and MEM5231, Tricon never paid freight on the remaining 20 barges under Contract 360610-0, and because of delays not caused by ACBL, substantial demurrage has accrued, and is continuing to accrue at \$250 per barge x 24 barges until the cargo is discharged.

11.

Despite due demand, the total amount owed by Tricon under Contract 360610-0 at the time of this filing is \$1,331,738.65, which figure will continue to increase as set forth in the preceding paragraph.

B. Contract 361366-0

12.

ACBL and Tricon, through their duly authorized representatives, entered into "Contract 361366-0" for the charter by Tricon from ACBL of numerous additional barges, *i.e.*, 42 barges in

May 2018, 42 barges in June 2018 and 42 barges in August 2018, which would be used to transport a cargo of coal from Kentucky to Louisiana.

13.

The term of Contract 361366-0 was May 8, 2018 until August 30, 2018.

14.

Pursuant to Contract 361366-0, Tricon was to pay ACBL a base freight rate of \$16.25 per NT, and demurrage for each barge of \$250.00 per barge, ACBL's invoices under Contract 361366-0 being payable 15 days following receipt. In addition, Contract 361366-0 contained a cancellation fee provision calling for Tricon to pay a cancellation fee equal to the greater of (i) ACBL's actual cost associated with the cancellation or (ii) \$2,500 if cancelled less than five days prior to requested date or \$5,000 if cancelled after barge placement.

15.

In accordance with Contract 361366-0, ACBL began the process of tendering barges to Tricon on short notice, *i.e.*, less than the contractual minimum of 10 business days' notice by Tricon for barge placement.

16.

However, on May 25, 2018, Tricon authorized the release of the barges from Tricon's service, as no cargo would ultimately be shipped and the barges were not needed.

17.

On July 2, 2018 ACBL invoiced Tricon seeking to recoup its costs associated with mobilizing barges pursuant to Contract 361366-0 in the amount of \$93,554.00 as provided in Contract 361366-0.

18.

To date, despite due demand, Tricon has not paid any amounts owed to ACBL under Contract 361366-0.

COUNT ONE: BREACH OF CONTRACT

19.

ACBL repeats and re-alleges paragraphs 1-18 as if repeated verbatim herein.

20.

The non-payment for the services rendered under Contract 360610-0 and Contract 361366-0 (collectively, the “Contracts”) constitutes a breach of the terms by which ACBL furnished the above-described services to Tricon.

21.

All conditions precedent required of ACBL under the Contracts have been performed.

22.

As a result of Tricon’s breach of its obligations to ACBL, ACBL has suffered damages in the principal amount of \$1,425,292.65, as of the date of this filing, inclusive of freight, demurrage and additional expenses, which figure will increase by \$250 per barge per day until the barges supplied by ACBL under Contract 360610-0 are discharged.

23.

In addition, Tricon is liable to ACBL for pre-judgment and post-judgment interest at the agreed rate of 1.5% per month from the date each invoice came due, and all costs incurred in connection with ACBL’s collection efforts, including court costs and reasonable attorney fees incurred by ACBL, all as stipulated in the Contracts.

COUNT TWO: QUANTUM MERUIT/UNJUST ENRICHMENT

24.

ACBL repeats and re-alleges paragraphs 1-23 as if repeated verbatim herein.

25.

Tricon accepted the above-described services performed and completed by ACBL. Tricon had reasonable notice that ACBL expected compensation for these services, but Tricon

has not compensated ACBL for same. ACBL is entitled to damages and compensation under the theory of *quantum meruit*.

26.

Pursuant to La. Civ. Code art. 2298, ACBL is entitled to damages and compensation under a theory of enrichment without cause for its handling, transportation and storage of the subject cargo for which it has not been paid.

CLAIM AGAINST TRICON, IN PERSONAM, AND RULE B ATTACHMENT

27.

ACBL repeats and re-alleges paragraphs 1 through 26 as if repeated verbatim herein.

28.

The non-payment of the principal amount of \$1,425,292.65 plus interest and costs currently payable under the Contracts constitutes a breach of the terms by which ACBL furnished its services to Tricon.

29.

Tricon is liable for its breach of the aforementioned maritime Contracts with ACBL in the principal amount of \$1,425,292.65 at present, plus further demurrage at the rate of \$250 per barge per day until the barges supplied under Contract 360610-0 are discharged, plus pre-judgment and post-judgment interest at 1.5% per month from the date each invoice came due and attorney fees and costs.

30.

ACBL is entitled to obtain jurisdiction over and security from the *in personam* Defendant Tricon, which cannot be found within this District within the meaning of Rule B because Tricon has no agent for service of process in this District and is believed to have assets in this jurisdiction, namely the Cargo, or a lien on the Cargo in Tricon's favor if said Cargo is deemed to be owned by UStore or Carter, by attachment and/or garnishment of Tricon's goods and chattels within this District and within the State of Louisiana pursuant to a Writ of Foreign

Attachment to be issued against the Cargo, or lien on the Cargo in Tricon's favor if said Cargo is deemed to be owned by UStore or Carter, requiring Tricon to answer the allegations detailed above and to provide security for ACBL's claims, all in accordance with Rule B and Local Admiralty Rule 4.1(A).

CLAIM AGAINST THE CARGO, *IN REM*, AND RULE C ARREST

31.

ACBL repeats and re-alleges paragraphs 1 through 30 set out hereinabove as though the same were more thoroughly set forth at length herein.

32.

To the extent the Cargo is owned by Tricon, ACBL has a maritime lien on the Cargo arising out of Tricon's failure to pay freight, demurrage and other expenses due under said Contract 360610-0.

33.

The maritime lien on the Cargo in ACBL's favor is enforceable pursuant to a suit *in rem*. Accordingly, ACBL seeks to enforce its maritime lien pursuant to a Warrant of Arrest to be issued against the Cargo, all in accordance with Rule C and Local Admiralty Rule 4.1(B) by way of an arrest of the Cargo.

* * * *

34.

ACBL reserves the right to supplement and/or amend any article of this Verified Complaint as facts become better known.

35.

All and singular the premises are true and correct within the admiralty and maritime jurisdiction of the United States of America and this Honorable Court.

WHEREFORE, Plaintiff, American Commercial Barge Line LLC, prays that:

1. Its Verified Complaint be deemed good and sufficient;

2. Process in due form of law be issued pursuant to Rules B and C of the Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions of the Federal Rules of Civil Procedure, directing that the approximately 40,600.93 NT of coal cargo loaded aboard barges MEM0479, AEP3362, MEM94267, MEM5004, AEP7142, MEM0478, AEP3379, RF936B, MEM94210, MEM5275, MEM5208, MEM5026, MEM94121, MEM5052, MEM5285, ACL96006, ACL01549, ACL9503B, ACL00219, ACL99003, MEM6053, ACL9945B, ACL96034 and MEM5231 (or Tricon's lien on said cargo), presently, or during the pendency of this action, due to be, lying afloat on the navigable waters of the United States of America within the jurisdictional limits of this Court, be attached and arrested in the proceeding to the amount of Plaintiff's claims stated herein, plus interest, costs, and attorney's fees;
3. All parties claiming an interest, title or right in said cargo appear and answer, all and singular, the allegations of this Verified Complaint;
4. After due proceedings, Plaintiff have judgment against Defendants Tricon Steamship Agency, Inc., *in personam*, and approximately 40,600.93 NT of coal cargo loaded aboard barges MEM0479, AEP3362, MEM94267, MEM5004, AEP7142, MEM0478, AEP3379, RF936B, MEM94210, MEM5275, MEM5208, MEM5026, MEM94121, MEM5052, MEM5285, ACL96006, ACL01549, ACL9503B, ACL00219, ACL99003, MEM6053, ACL9945B, ACL96034 and MEM5231, *in rem*, in the amount of the aforesaid \$1,425,292.65, and further demurrage at the rate of \$250 per barge per day until each barge is unloaded, interest thereon at the contractually agreed rate of 1.5% per month until paid, attorney fees and court costs and for any other and further amount that later calculation may demonstrate as being appropriate;

5. This Honorable Court enter a decree in favor of Plaintiff and against the Defendants for the total amount of Plaintiff's damages, and that the *in rem* Defendant cargo be condemned and sold for the aforesaid amount together with interest and reasonable costs and attorney's fees.
6. Plaintiff be awarded such other and further relief as the law and justice may require; and
7. Plaintiff agrees to release and hold harmless, and indemnify the United States of America, the United States Marshal Service, their agents, servants, employees, and all others for whom they are responsible, from any and all liability or responsibility for claims arising from the attachment and arrest of the cargo or Tricon's lien on said cargo.

Respectfully submitted,

FRILOT L.L.C.

/s/ Kathleen P. Rice

PATRICK J. MCSHANE T.A. (#19055)

DANICA BENBOW DENNY (#27376)

KATHLEEN P. RICE (#31291)

3700 Energy Centre

1100 Poydras Street

New Orleans, LA 70163-3700

Phone: 504.599.8010

Fax: 504.599.8110

pmcshane@frilot.com

ddenny@frilot.com

krice@frilot.com

Counsel for Plaintiff,

American Commercial Barge Line LLC

INSTRUCTIONS FOR US MARSHALS SERVICE:

Please serve Writ of Foreign Attachment and Warrant of Arrest and seize approximately 40,600.93 NT of coal cargo loaded aboard barges MEM0479, AEP3362, MEM94267, MEM5004, AEP7142, MEM0478, AEP3379, RF936B, MEM94210, MEM5275, MEM5208, MEM5026, MEM94121, MEM5052, MEM5285, ACL96006, ACL01549, ACL9503B, ACL00219, ACL99003, MEM6053, ACL9945B and ACL96034 located at ACBL Transportation Services LLC's Harahan fleet, approx. LMR Mile 107.4 AHP (Left Descending Bank), and barge MEM5231 located at ACBL Transportation Services LLC's Convent fleet, approx. LMR Mile 158.1 AHP (Left Descending Bank).