

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

CARGILL, INCORPORATED

Plaintiff

VERSUS

M/V XING HE HAI,
COSCO SHIPPING (USA) INC.,
OCEAN KONG SHIPPING, LTD.,
FORTUNE OCEAN SHIPPING LTD.,
SHANGHAI OCEANFRATE SHIP
MANAGEMENT CO. LTD.,
ULTRABULK A/S,
MINSHENG ZHI XIN SHIPPING
LEASING CO LTD.,
STX PAN OCEAN CO., LTD., and
COMERGE SHIPPING
(HONG KONG) CO.

Defendants

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CIVIL ACTION NO.:

JUDGE:

MAGISTRATE:

COMPLAINT TO ENFORCE MARITIME LIEN

Plaintiff, Cargo Carriers, a business of Cargill, Incorporated (hereinafter “Cargill”), for
its Complaint respectfully represents:

Description of Action

1.

This is an action against M/V Xing He Hai, in rem, and COSCO Shipping (USA), Inc.,
Ocean Kong Shipping, Ltd., Shanghai Oceanfrate Ship Management Co. Ltd., Fortune Ocean
Shipping Ltd., Ultrabulk A/S, Minsheng Zhi Xin Shipping Leasing Co Ltd., STX Pan Ocean Co.,

Ltd., and Comerge Shipping (Hong Kong) Co., in personam, in a cause of action for damage caused to Cargill refusing to load cargo.

The Parties

2.

Plaintiff, Cargill, Incorporated, is a foreign corporation organized under the laws of the State of Delaware with its principal place of business in Minnesota.

3.

The vessel, “M/V Xing He Hai”, bearing IMO: 9746035, MMSI 477510800 is owned by Ocean Kong Shipping, Ltd., Minsheng Zhi Xin Shipping Leasing Co Ltd., Fortune Ocean Shipping Ltd., and/or COSCO Shipping (USA), Inc. and was doing business in Louisiana.

4.

Defendants, COSCO Shipping (USA), Inc., Minsheng Zhi Xin Shipping Leasing Co Ltd., Fortune Ocean Shipping Ltd., and/or Ocean Kong Shipping, Ltd., were, at all material times herein, the registered owner(s) of the M/V Xing He Hai.

5.

Defendant, Fortune Ocean Shipping Ltd. was the commercial manager in addition to being the beneficial owner of the M/V Xing He Hai.

5.

Defendant, Shanghai Oceanfrate Ship Management Co. Ltd, is the technical manager of the M/V Xing He Hai.

6.

Defendant, Ultrabulk A/S, was the commercial operator of the M/V Xing He Hai.

7.

Defendant, STX Pan Ocean Co., Ltd., a foreign corporation, was at all material times a time charterer of the M/V Xing He Hai.

8.

Defendant, Comerge Shipping (Hong Kong) Co., Ltd, a foreign corporation was at all material times a charterer of the M/V Xing He Hai.

Jurisdiction and Venue

9.

This Court has subject matter jurisdiction in this action pursuant to 46 U.S.C. Sec. 30101 and 28 U.S.C. Sec. 1333 in that this action is an admiralty and maritime claim within the meaning of Rule 9(h) of the Federal Rules of Civil Procedure and the Supplemental Rules for Certain Admiralty and Maritime Claims.

10.

Venue is proper in this district in that the vessel is located within this district, as required by Rule C of the Supplemental Rules for Certain Admiralty and Maritime Claims.

Factual Allegations

11.

At all material times herein, Plaintiff, Cargill, Incorporated was set to load grain for Cargill Japan onto the M/V Xing He Hai.

12.

At all material times herein, Defendant, M/V Xing He Hai, was an ocean-going, vessel. The M/V Xing He Hai is currently within the district.

13.

On or about September 29, 2021, the M/V Xing He Hai was anchored in the Mississippi River within this court's jurisdiction. The master of the M/V Xing He Hai, under operation of Fortune Ocean Shipping LTD., refused to open its hatches to load Cargill's grain upon direction of vessel owners. At the time of the incident, Pan Ocean and/or Comerge Shipping (Hong Kong) Co., Ltd had a time charter. Also, at the time of the incident, Cargill had a voyage charter. Cargill failed to receive port funds in advance of calling vessel to buoys and as a result of the vessel's failure to load there are significant port charges. The amount owed is in excess of \$400,000.000.

14.

The aforementioned failure to load property not caused or contributed to by any fault or neglect on the part of Cargill, but rather was caused or contributed to solely by the fault or neglect of defendants in the following non-exclusive particulars:

- a. Breach of contract;
- b. Failure of defendants to load Cargill's property on the M/V Xing He Hai;
- c. Failure to pay port funds; and
- d. Any and all negligence, fault, and/or intentional acts which are to be shown at the trial of this matter.

15.

The foregoing acts of fault or neglect were all done, occasioned, and incurred within the privity and knowledge of all defendants.

16.

Cargill has suffered damages in excess of FOUR HUNDRED THOUSAND (\$400,000.00) dollars, as nearly as same can presently be estimated, together with pre-judgment interest and costs.

17.

By reason of the matters set forth, Cargill is entitled to a preferred maritime lien pursuant to 46 U.S.C. Sec. 31301, et al., against M/V Xing He Hai, her engines, tackle, apparel, furniture, etc., in excess of FOUR HUNDRED THOUSAND (\$400,000.00) dollars, as nearly as same can presently be estimated, together with pre-judgment interest and costs.

18.

The M/V Xing He Hai is at Wills Point Anchorage between 66.5 and 66.7 of the Mississippi River.

19.

Pursuant to the United States Code, notice of these proceedings must be given to the owner or master of the M/V Xing He Hai, and all persons who have recorded liens with the U.S. Coast Guard, and Cargill requests the Court to order such notification to be made to such persons by certified mail, delivered to their last known address.

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