

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS TRICO MARINE ASSETS, INC. DEFENDANTS BENDER SHIPBUILDING & REPAIR CO., INC. (b) County of Residence of First Listed Plaintiff (c) Attorney's (Firm Name, Address, and Telephone Number) Matthew C. McDonald, Jones Walker, Waechter, Poitevent, Carrere & Denegre, L.L.P., 254 State St., Mobile, AL 36601 (251)432-1414

II. BASIS OF JURISDICTION (Place an "X" in One Box Only) III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

IV. NATURE OF SUIT (Place an "X" in One Box Only) CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES

V. ORIGIN (Place an "X" in One Box Only) 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from another district, 6 Multidistrict Litigation, 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): Brief description of cause: Suite to enforce obligations of loan.

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMANDS CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY (See instructions): JUDGE DOCKET NUMBER

DATE 12-9-08 SIGNATURE OF ATTORNEY OF RECORD Matt McDonald

FOR OFFICE USE ONLY RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

TRICO MARINE ASSETS, INC.,
v.
BENDER SHIPBUILDING & REPAIR CO.,
INC.

CIVIL ACTION
NO.: 08-710
MAGISTRATE

COMPLAINT

Plaintiff, Trico Marine Assets, Inc. (hereinafter referred to as "Trico"), a Delaware corporation, against Defendant, Bender Shipbuilding & Repair Co., Inc. (hereinafter referred to as "Bender"), in a suit for breach of contract and specific performance, alleges upon information and belief and avers as follows:

JURISDICTION AND PARTIES

1. At all material times, Trico was and still is a foreign corporation duly organized and existing under the laws of Delaware with a principal Louisiana address at 125 James Dr. West #140, St. Rose, LA 70087.

2. Upon information and belief, at all times hereinafter mentioned, Bender was and still is a domestic corporation organized and existing under the laws of Alabama with an office and address at 265 S Water St., Mobile, AL 36603.

3. This Court has subject matter jurisdiction over this civil action under 28 U.S.C. § 1332; the Plaintiff and Defendant are of diverse citizenship and the amount in controversy exceeds the sum of \$75,000, exclusive of interest and costs.

4. This Court has personal jurisdiction over Defendant, Bender, because Defendant (1) is incorporated under the laws of Alabama; (2) solicits business in Alabama; and (3) does business in Alabama.

GENERAL ALLEGATIONS

5. Plaintiff, Trico, and Defendant, Bender, entered into two (2) Contracts for the Construction and Sale of two 210-Foot Diesel Electric Powered Platform Supply Vessels (hereinafter collectively referred to as the “Vessel Construction Contracts”) on or about September 1, 2006.

6. Under the Vessel Construction Contracts, Bender, as the “Builder,” was obligated to build and deliver two (2) 210-Foot Diesel Electric Powered Platform Supply Vessels (hereinafter referred to as the “Vessels”) to Trico on or before July 22, 2008.

7. During the course of building the Vessels, Bender contracted with various subcontractors (hereinafter collectively referred to as the “Subcontractors”), to assist in construction of the Vessels.

8. Bender began experiencing cash-flow problems during the construction of the Vessels. As a result, on or about September 10, 2008, Trico and Bender entered into and executed seventeen (17) separate Letter Agreements (hereinafter collectively referred to as the

“Letter Agreements”), whereby Trico agreed to pay the Subcontractors directly and assumed the obligation of Bender for payment to the Subcontractors.

9. Under the Letter Agreements, if the amounts paid by Trico Marine to the the Subcontractors exceeded the amount that Trico owed Bender under the Vessel Construction Contracts, then any such excess constituted a loan (hereinafter referred to as the “Loan”) between Trico and Bender. A representative clause of the Letter Agreements reads as follows:

If the Full Payment exceeds the balance owed by Trico to Bender for [the Vessels] on the Payment Date, the remaining portion of the Full Payment will constitute a loan from Trico to Bender (the “Loan”). Bender will repay the Loan in full on or before the 15th day of February, 2009 plus interest, which will accrue at the rate of 9% per annum from the date hereof. The terms and conditions of the Loan will be memorialized in a promissory note execute on the Payment Date by Bender in its corporate capacity. Bender will use its best efforts to provide sufficient collateral for the Loan, the sufficiency of which will be determined in the sole discretion of Trico.

10. Therefore, Bender, in its corporate capacity, was and is obligated to memorialize the Loan in a separately executed promissory note (hereinafter referred to as the “Promissory Note”). Additionally, Bender was and is also obligated in such a case to provide sufficient collateral (hereinafter referred to as the “Collateral”) for the Loan.

11. To date, Trico has made several payments to the Subcontractors, and as a result, is presently owed \$3,459,000.37 from Bender.

12. To date, Defendant, Bender, has failed to execute the Promissory Note in favor of Plaintiff, Trico for the \$3,459,000.37 owed to Trico.

13. To date, Defendant, Bender Shipbuilding, has failed to provide the Collateral for the \$3,459,000.37 owed to Trico.

COUNT I—Breach of Contract

14. Plaintiff incorporates and realleges Paragraphs 1 through 14 as if fully set forth herein.

15. Under the Letter Agreements, Bender was obligated to execute the Promissory Note in the amount of \$3,459,000.37 owed by Bender to Trico.

16. Under the Letter Agreements, Bender was obligated to provide sufficient collateral for the Loan owed by Bender to Trico.

17. The failure of Bender Shipbuilding to execute the Promissory Note or provide the Collateral is a fundamental breach of the Letter Agreements.

SPECIFIC PERFORMANCE

18. Plaintiff incorporates and realleges Paragraphs 1 through 17 as if fully set forth herein.

19. Plaintiff, Trico, requests that the Court order the specific performance of Defendant, Bender, to execute the aforementioned Promissory Note and to provide sufficient collateral as required under the Letter Agreements.

WHEREFORE, Plaintiff, Trico Marine Assets, Inc., prays that Defendant, Bender Shipbuilding & Repair Co., Inc., be duly served and cited to appear and answer all and singularly the allegations of this Complaint and that after due proceedings are had, there be judgment herein in favor of Trico Marine Assets, Inc. and against Bender Shipbuilding & Repair Co., Inc. for specific performance of the execution of the Promissory Note and supply of sufficient collateral,

for penalties as provided by law, for reasonable attorney's fees and expenses, and for all general and equitable relief.

This 9th day of December, 2008.

Respectfully submitted,

s/Matthew C. McDonald

MATTHEW C. MCDONALD
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Plaintiff will serve defendant Bender Shipbuilding & Repair Co., Inc. by personal service at the following address:

265 South Water St.

Mobile, Alabama 36603

AO 440 (Rev. 04/08) Civil Summons

UNITED STATES DISTRICT COURT

for the

SOUTHERN DISTRICT OF ALABAMA

TRICO MARINE ASSETS, INC.)	
Plaintiff)	
v.)	Civil Action No. 08-710
BENDER SHIPBUILDING & REPAIR CO., INC.)	
Defendant)	

Summons in a Civil Action

To: (Defendant's name and address)

BENDER SHIPBUILDING & REPAIR CO., INC.
265 South Water St.
Mobile, Alabama 36603

A lawsuit has been filed against you.

Within 20 days after service of this summons on you (not counting the day you received it), you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff's attorney, whose name and address are:

Matthew C. McDonald, Esq.
254 State St.
Mobile, AL 36603

If you fail to do so, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

Name of clerk of court

Date: _____

Deputy clerk's signature

(Use 60 days if the defendant is the United States or a United States agency, or is an officer or employee of the United States allowed 60 days by Rule 12(a)(3).)

Proof of Service

I declare under penalty of perjury that I served the summons and complaint in this case on _____,
by:

(1) personally delivering a copy of each to the individual at this place, _____
_____ ; or

(2) leaving a copy of each at the individual's dwelling or usual place of abode with _____
who resides there and is of suitable age and discretion; or

(3) delivering a copy of each to an agent authorized by appointment or by law to receive it whose name is
_____ ; or

(4) returning the summons unexecuted to the court clerk on _____ ; or

(5) other (*specify*) _____

_____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00.

Date: _____

Server's signature

Printed name and title

Server's address