

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Newport News Division

KPI BRIDGE OIL, LTD.,

Plaintiff,

v.

CIVIL NO. 4:20cv40

ALFA DENIZCILIK ANONIM SIRKETI
(a/k/a KINAY DENIZCILIK ANONIM SIRKETI or
ALFA MARINE or
ALFAMARIN DENIZCILIK ANONIM SIRKETI), et al.

Defendant and Garnishees.

MEMORANDUM ORDER

This matter comes before the court on Defendant Alfa Denizcilik Anonim Sirketi's ("Alfamarin" or "Defendant") Motion to Vacate Process of Maritime Attachment and Garnishment and accompanying Memorandum in Support ("Motion"), filed on April 16, 2020. ECF Nos. 21-22. In the Motion to Vacate, the Defendant requests that the court set aside (1) the court's March 16, 2020, Order directing the Clerk to issue process of maritime attachment and garnishment ("March 16 Order"); (2) the writ for maritime attachments issued by the Plaintiff pursuant to the March 16 Order ("March 16 writ"); and (3) the Clerk's March 23, 2020, and March 24, 2020, supplemental writs for maritime attachment and garnishment ("March 23 and 24 writs").

On December 2, 2020, this matter was referred to United States Magistrate Judge Lawrence R. Leonard pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and Federal Rule of Civil Procedure 72(b), to conduct necessary hearings and to submit to the undersigned district judge proposed findings and recommendations for the disposition of the Motion to Vacate. ECF No. 39.

The Magistrate Judge filed the Report and Recommendation ("R&R"), on February 18, 2021. ECF No. 42. The R&R recommends granting the Motion to Vacate in part, such that (1) the March 23 and 24 writs be vacated; and (2) the court deny the Defendant's request to vacate the March 16 Order and writ. By copy of the R&R, the parties were advised of their right to file written objections to the findings and recommendations made by the Magistrate Judge. Id. at 15. The Defendant filed an objection to the R&R on March 2, 2021. ECF No. 44. The Plaintiff filed a response to the Defendant's objection on March 16, 2021. ECF No. 45.

I. LEGAL STANDARDS

The court, having reviewed the record in its entirety, makes a de novo determination of those portions of the R&R to which the parties have specifically objected. Fed. R. Civ. P. 72(b). For unchallenged portions, the court "must 'only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.'" Diamond v. Colonial Life & Acc. Ins.

Co., 416 F.3d 310, 315 (4th Cir. 2005) (quoting Fed. R. Civ. P. 72 Advisory Committee's Note). The court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge, or recommit the matter to him with instructions. 28 U.S.C. § 636(b)(1).

A plaintiff seeking an ex parte order of attachment must adhere to the Supplemental Rules of Admiralty and Maritime Claims. Rule B sets forth the process by which a plaintiff can obtain a writ of attachment. See Fed. R. Civ. P., Adm. Supp. Rule B. When a writ of attachment has issued, "any person claiming an interest in [the property]" has the right to a hearing to review the issuance of the writ. See Fed. R. Civ. P., Adm. Supp. Rule E(4)(f). It is the plaintiff's burden "to show why the . . . attachment should not be vacated." Id. To meet this burden, the plaintiff must demonstrate: (1) a prima facie showing that the plaintiff has a maritime claim against the defendant; (2) that the defendant cannot be located within the district; (3) that the defendant has tangible or intangible property located within the district; and (4) that there is no statutory or maritime law bar to the attachment. See Vitol, S.A. v. Primerose Shipping Co., 708 F.3d 527, 541 (4th Cir. 2013).

II. PROCEDURAL BACKGROUND

On March 13, 2020, the Plaintiff filed an ex parte Complaint (“original Complaint”) naming Alfamarin as the Defendant. ECF No. 1. The original Complaint states a claim for breach of maritime contracts in Count One, and a claim for maritime attachment and garnishment in Count Two. Id. The Plaintiff requested an order authorizing it to serve a writ of attachment “up to the amount of at least USD 173,150.00.” Id. The court entered the requested Order on March 16, 2020. ECF No. 9. The Order stated that “supplemental process enforcing the Court’s Order may be issued by the Clerk upon application without further Order of the Court.” Id. at 2. That day, the Plaintiff served the writ of attachment on garnishee American Borate Company. ECF No. 17.

On March 23, 2021, the Plaintiff filed the Amended Complaint, which is substantively identical to the original Complaint except in one respect: the Amended Complaint contains an increased damages claim of \$1,848,922.94. ECF No. 13. After filing the Amended Complaint, the Plaintiff requested supplemental process from the Clerk to issue new writs of attachment based on the new amount of damages stated in the Amended Complaint. ECF Nos. 14, 18. The Clerk issued new writs of attachment on March 23, 2021, and March 24, 2021, for the new amount.¹ ECF Nos. 15, 19.

¹ As the Magistrate Judge correctly determined, those writs

III. OBJECTIONS

The Defendant objects that the R&R incorrectly concluded that the court should not vacate the March 16 writ. According to the Defendant, that writ should be vacated for several reasons. First, the Defendant argues that the Amended Complaint supersedes the original Complaint, and therefore the March 16 writ must be supported by the Amended Complaint. The Defendant continues that, because the Magistrate Judge found that the Amended Complaint failed to state a prima facie maritime claim, any writ based on the Amended Complaint -- including the March 16 writ - must necessarily be vacated. Second, the Defendant contends that, even if the Plaintiff could support the March 16 writ based on the allegations in the original Complaint, that complaint also fails to state a prima facie maritime claim. Finally, the Defendant asserts that, if the court does not vacate the March 16 writ, the court should at least limit the amount of the writ to \$79,466.00.

A. Amended Complaint

The court finds the first of Alfamarin's arguments unpersuasive because the Magistrate Judge's reason for concluding that the Amended Complaint fails to state a prima facie claim is entirely unrelated to the substantive validity of the March 16

were defective because the court's March 16, 2020, Order only authorized the Clerk to issue supplemental process "enforcing the Court's Order," and that Order only authorized attachment up to \$173,150.00. ECF No. 42 at 11.

writ. The Magistrate Judge found that the Amended Complaint failed to state a prima facie maritime claim solely based on the Amended Complaint's "lack of reasonable substantiation" of the purported damages amount of \$1,848,922.94, an amount not contained in the March 16 writ. ECF No. 42 at 10. The Magistrate Judge did not make a similar finding as to the original Complaint; that is, the Magistrate Judge did not find that the original Complaint failed to substantiate the \$173,150.00 figure described in that complaint. The Magistrate Judge reached these conclusions based on the different types of documentary evidence submitted by the Plaintiff with the respective complaints.²

Therefore, the Defendant asks the court to vacate the March 16 writ, which permits attachment up to \$173,150.00, based solely on the Magistrate Judge's finding that the Plaintiff failed to substantiate its claim that it should be permitted to attach up to \$1,848,922.94. The Defendant's argument essentially boils down to

² With the original Complaint, the Plaintiff submitted two invoices that totaled \$173,150.00, when accounting for interest, costs, and attorney's fees. ECF No. 1-2; see ECF No. 1 at 4. This evidence, the Magistrate Judge concluded, was sufficient to support the March 16 writ in that amount. In contrast, the Amended Complaint does not contain invoices showing amounts due by the Defendant; instead, the Amended Complaint contains a spreadsheet that purports to show the Defendant's "running balance." ECF No. 13-2. The Magistrate Judge found that this document was insufficient to substantiate the Plaintiff's damages claim of \$1,848,922.94. ECF No. 42 at 10.

an observation that the Plaintiff did not include with the Amended Complaint the two invoices that it attached to the Original Complaint. In other words, the Defendant seeks to have the March 16 writ vacated without any inquiry into whether the amount of that writ is supported by the invoices submitted with the original Complaint, solely because those invoices were not also submitted with the Amended Complaint.

While it is true that an amended complaint "ordinarily supersedes the original," Young v. City of Mount Ranier, 238 F.3d 567, 572 (4th Cir. 2001) (emphasis added) (quotation marks omitted), the court concludes that in these circumstances the Plaintiff's failure to attach those invoices to the Amended Complaint does not require automatic vacatur of the March 16 writ. For one, the Defendant now concedes that the filing of the Amended Complaint did not automatically nullify the March 16 writ. See ECF No. 44 at 3. Moreover, to hold otherwise would impermissibly exalt form over substance, contrary to the "well recognized principle pervading admiralty practice generally that equitable principles rather than technical rules and forms should be the paramount consideration and that the objective is to do substantial justice between the parties." Esso Standard (Switz.) v. The Arosa Sun, 184 F. Supp. 124, 127 (S.D.N.Y. 1960). Because the court concludes that the invoices attached to the original Complaint are sufficient

to support the March 16 writ in an amount of \$173,150.00, see infra Section III.B, the court will not vacate that writ based solely on the fact that the Plaintiff subsequently failed to substantiate a much higher dollar amount than the one that is contained in the March 16 writ. For the foregoing reasons, the court **OVERRULES** this objection to the R&R.

B. Original Complaint

The Defendant next argues that the original Complaint, and the attachments thereto, fail to state a prima facie maritime claim, and therefore that the March 16 writ should be vacated. The Defendant asserts that the original Complaint fails to state a prima facie claim because, according to documentary evidence it submitted with the Motion to Vacate, it has already paid one of the invoices that was attached to the original Complaint. See ECF No. 44 at 5-6. Because the court concludes that it will consider the exhibits to the original Complaint in evaluating the Plaintiff's prima facie case with respect to the March 16 writ, see supra Section III.A, the court now addresses this objection.

Upon the filing of a motion to vacate, Rule E(4)(f) of the Supplemental Rules of Admiralty or Maritime Claims requires the Plaintiff to, among other things, make a "prima facie" showing that it has a maritime claim against the Defendant. Vitol, S.A., 708 F.3d at 541. "Prima facie" generally means "that evidence is

sufficient to justify, but not to compel an inference of the fact in question.” RLM Commc’ns, Inc. v. Tuschen, 831 F.3d 190, 199 (4th Cir. 2016) (quotation marks omitted). The Defendant has not argued, or submitted any authority for the proposition, that the term “prima facie” carries a different meaning in this context. Therefore, although the status -- paid or unpaid -- of one of the invoices appears to be in dispute, the court concludes that the evidence offered by the Plaintiff is sufficient, at this juncture, to carry the Plaintiff’s burden of a prima facie case. Accordingly, the court **OVERRULES** this objection.

C. Amount of Attachment


Lastly, the Defendant contends that, if the March 16 writ is not vacated, it should at least be limited to \$79,466.00. ECF No. 44 at 6-7. The Defendant cites exhibits to its Motion to Vacate that it says demonstrate that “only \$79,466.00 was due and owing at the time of service” of the writ. Id. at 6. The court agrees with the Magistrate Judge that this is a contested factual matter “to be resolved apart from the instant Motion to Vacate.” ECF No. 42 at 14; see supra Section III.B. Accordingly, this objection is **OVERRULED**.

IV. CONCLUSION

For the reasons stated herein, and having reviewed the record in its entirety and the Objections to the R&R, and having made de novo determinations with respect thereto, the court hereby **OVERRULES** the Defendant's Objections, ECF No. 44, to the R&R. Accordingly, the court **GRANTS IN PART** the Defendant's Motion to Vacate, ECF No. 21, such that the March 23 and 24 writs, ECF Nos. 15, 19, are **VACATED**. The court **DENIES** the Defendant's Motion to Vacate the March 16 writ.

The Clerk is **DIRECTED** to send a copy of this Memorandum Order to counsel for the parties.

IT IS SO ORDERED.



/s/
Rebecca Beach Smith
Senior United States District Judge

REBECCA BEACH SMITH
SENIOR UNITED STATES DISTRICT JUDGE

March 23, 2021