

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
CIVIL MINUTES – GENERAL

Case No. **8:20-cv-01420-MCS-ADS** Date August 18, 2021

Title ***Waterfront Newport Beach LLC et al v. P/V Royal Princess, et al***

Present: The Honorable **Mark C. Scarsi, United States District Judge**

Stephen Montes Kerr

Not Reported

Deputy Clerk

Court Reporter

Attorney(s) Present for Plaintiff(s):

Attorney(s) Present for Defendant(s):

None Present

None Present

**Proceedings: (IN CHAMBERS) ORDER GRANTING MOTION FOR
INTERLOCUTORY VESSEL SALE AND AUTHORIZATION TO CREDIT
BID [ECF No. 56]**

Before the Court is Plaintiff Waterfront Newport Beach LLC’s Motion for Interlocutory Vessel Sale and Authorization to Credit Bid. Mot., ECF No. 56. Defendant Vessel P/V ROYAL PRINCESS, U.S.C.G. Official No. 1088916 (“Defendant Vessel”) did not file an opposition. The Court deems this matter appropriate for decision without oral argument. *See* Fed. R. Civ. P. 78(b); C.D. Cal. R. 7-15. For the following reasons, the Court **GRANTS** the Motion.

I. BACKGROUND

Plaintiff “operates a commercial wharf” and “provided wharfage and other services” for the Defendant Vessel’s benefit pursuant to a commercial lease. Verified Compl. (“Compl.”) ¶ 2, ECF No. 1. John Gueola executed a commercial lease on July 1, 2016 that allowed the Defendant Vessel to occupy a slip at Plaintiff’s marina. *Id.* at ¶ 14. John Gueola then executed a lease addendum on May 17, 2018 and April 17, 2019 for the commercial lease. *Id.* at ¶¶ 14, 15. The 2019 lease addendum that allowed the Defendant Vessel to occupy Plaintiff’s slip terminated on February 29, 2020. *Id.* at ¶ 17. According to the Verified Complaint, Plaintiff stopped receiving

sums “due pursuant to the” commercial leases and addenda in April 2020. *Id.* at ¶ 18. Plaintiff calculates that “wharfage fees and other sums contractually due” are \$65,365.36 when calculated through July 31, 2020. *Id.* at ¶ 20. The Defendant Vessel has been at the slip at Plaintiff’s “private premises without permission, authority or legal justification.” *Id.* at ¶ 30. On August 20, 2020, the United States Marshal arrested the Defendant Vessel. Mot. 5; *see also* Order Appointing Substitute Custodian and Authorizing Movement of Defendant Vessel, ECF No. 16.

Plaintiff has filed this *in rem* action to foreclose on maritime liens against the Defendant Vessel due to a “failure to pay for wharfage services” and “trespass [] following termination” of the commercial lease and addenda. Mot. 3; *see also* 46 U.S.C. § 31301 *et seq.*

II. LEGAL STANDARD

A. Interlocutory Sale

“On application of a party, the marshal, or other person having custody of the property, the court may order all or part of the property sold--with the sales proceeds, or as much of them as will satisfy the judgment, paid into court to await further orders of the court--if:

- (A) the attached or arrested property is perishable, or liable to deterioration, decay, or injury by being detained in custody pending the action;
- (B) the expense of keeping the property is excessive or disproportionate; or
- (C) there is an unreasonable delay in securing release of the property.”

Fed. R. Civ. P. E(9)(a)(i)(A)–(C). Plaintiff only has to satisfy one of these criteria for the Court to allow an interlocutory sale. *Bank of Rio Vista v. VESSEL CAPTAIN PETE*, No. C 04-2736CW, 2004 WL 2330704, at *2 (N.D. Cal. Oct. 14, 2004); *see also Rainaldi Fam. Tr. Dated Feb. 26, 2004 v. M/Y Excalibur, U.S.C.G. Off. No. 1057893*, No. SACV 19-00684 AG (JDEx), 2019 WL 6794218, at *2 (C.D. Cal. Aug. 6, 2019).

Plaintiff argues that the Defendant Vessel will deteriorate because it currently sits in salt water. Decl. of Ray Jones ISO Mot., ¶ 5, ECF No. 56-4. Plaintiff’s expert was unable to inspect “the vessel’s engines and generators” and he did not conduct

“an out of water inspection” of various parts of the Defendant Vessel that are “located below [the] water line.” *Id.* at ¶ 2. Plaintiff’s expert even stated that the Defendant Vessel “appears to be seaworthy and overall in good condition.” *Id.* Plaintiff’s expert merely states that if the Defendant Vessel continues to “sit[] idle,” the Defendant Vessel will further deteriorate. *Id.* at ¶ 5. Plaintiff’s assertions do not establish that the Defendant Vessel is “liable to deterioration, decay, or injury” under Rule E(9)(a)(i)(A). *AmericanWest Bank v. P/V INDIAN*, No. 12cv1786 AJB (BGS), 2013 WL 784756, at *2 (S.D. Cal. Mar. 1, 2013) (“Because there is no specific evidence suggesting deterioration, decay, or injury that is out of the ordinary for a vessel generally, the Court does not find interlocutory sale of the DEFENDANT VESSEL warranted under Rule E(9)(a)(i)(A).”).

Plaintiff further argues that the Defendant Vessel should be sold under Rule E(9)(a)(i)(B) because “the expense of keeping the property is excessive or disproportionate.” Fed. R. Civ. P. E(9)(a)(i)(B); Mot. 10, 11. Plaintiff states that the custodial costs of \$11,500 per month in wharfage services and custodial expenses of \$1,215 per month are excessive. Mot. 10, 11. Given the length of time Plaintiff has had custody of the Defendant Vessel and the amount Plaintiff has paid in relation to that custody, the Court finds that these expenses are excessive.

Finally, Plaintiff argues there has been “an unreasonable delay in securing release of the property.” Fed. R. Civ. P. E(9)(a)(i)(C); Mot. 9, 10. “Generally, courts will only grant a motion for interlocutory sale if the defendant has been afforded a reasonable amount of time to post a bond to secure the vessel.” *AmericanWest Bank*, 2013 WL 784756, at *3. “As a general rule, defendants are given at least four months to bond a vessel absent some other considerations.” *Bank of Rio Vista*, 2004 WL 2330704, at *2 (quoting *United States v. F/V Fortune*, 1987 WL 27274 (D. Alaska Apr. 14, 1987)). Here, the U.S. Marshal arrested the Defendant Vessel almost one year ago. Mot. 11. Defendant has not responded to this motion and has not “posted or sought to post security for the” Defendant Vessel’s release. *Id.* at 9. The Court finds that unreasonable delay exists in securing the release of the Defendant Vessel.

The Court finds that an interlocutory sale is warranted due to the excessive “expense of keeping” the Defendant Vessel and the “unreasonable delay in securing release” of the Defendant Vessel. Fed. R. Civ. P. E(9)(a)(i)(B), (C).

B. Authorization to Credit Bid

Plaintiff asserts that it is “is entitled to credit bid its claim.” Mot. 12–15. Local Admiralty Rule E.15(b) states the following:

Notwithstanding the above, a plaintiff or intervening plaintiff foreclosing a properly recorded and endorsed preferred mortgage on, or other valid security interest in the vessel may bid, without payment of cash, certified check or cashier’s check, up to the total amount of the secured indebtedness as established by affidavit filed and served by that party on all other parties not later than fourteen (14) days prior to the date of sale.

Plaintiff is foreclosing on the maritime liens because it has provided wharfage services to the Defendant Vessel. *See* 46 U.S.C. § 31301 *et seq.* Plaintiff has represented that it has a “secured interest” in the Defendant Vessel and that nobody besides Plaintiff has “asserted any claim against the” Defendant Vessel. Mot. 12, 13. Plaintiff seeks to credit bid “in an amount of \$245,459.01, [] actual U.S. Marshal expenses,[] and any additional *custodia legis* expenses incurred after August 31, 2021.” *Id.* at 13. Plaintiff does not seek to credit bid attorneys’ fees. *Id.* at 15. The Court **GRANTS** Plaintiff’s request to credit bid.

III. CONCLUSION

The Court **GRANTS** Plaintiff’s Motion.

1. Accordingly, **IT IS HEREBY ORDERED** that the United States Marshal be and is hereby directed and empowered to sell said DEFENDANT VESSEL, her engines, tackle, accessories, furnishings and appurtenances, as is, where is, at public sale at the first available time and date, after having caused notice of said sale to be published at least seven (7) days immediately before the date of sale, as required by Local Admiralty Rule E.15(a). Such notice shall specify the date and time of the auction; and
2. **IT IS FURTHER ORDERED** that, consistent with Local Admiralty Rules E.15(a) and E.15(b) such public notice shall specify that the last and highest bidder at the sale will be required to deposit with the U.S. Marshal or the Registry of the Court a certified check or cashier’s check, of the full purchase price if it does not exceed \$500 and

otherwise \$500 or ten percent (10%) of the bid, whichever is greater, and that the balance, if any, of the purchase price shall be paid by cash, certified check, or cashier's check before confirmation of the sale or within seven (7) days of the dismissal of any opposition which may have been filed, exclusive of Saturdays, Sundays and legal holidays; and

3. **IT IS FURTHER ORDERED** that any proceeds of said sale shall be held by or deposited by the United States Marshal in the Registry of this Court, pending further Order of this Court; and
4. **IT IS FURTHER ORDERED** that as PLAINTIFF is the only party in this action for purposes of Local Admiralty Rule E.15(b) and as it has demonstrated the seniority of its lien, PLAINTIFF shall be authorized to credit bid at the public auction of the DEFENDANT VESSEL without cash in the amount attested to under oath in its Verified Complaint, \$65,365.36, plus actual and demonstrable costs of suit accruing through the date of the auction of the Defendant Vessel, including United States Marshal fees, Substitute Custodian fees and other *custodia legis* expenses detailed in the Declaration of Robert Lounsbury, and the fee paid to the Clerk of the Court to file the Verified Complaint, provided such total is established by the affidavit required by Local Admiralty Rule E.15(b). However, as PLAINTIFF's maritime necessities lien interest in the DEFENDANT VESSEL does not, as a matter of law, include attorneys' fees, such fees are not to be included in any credit bid PLAINTIFF makes; and
5. **IT IS FURTHER ORDERED** that should PLAINTIFF elect to credit bid, it shall file and serve all parties with its affidavit establishing the total amount of its secured indebtedness no later than fourteen (14) days prior to the date of the sale of the DEFENDANT VESSEL, as required by Local Admiralty Rule E.15(b); and
6. **IT IS FURTHER ORDERED**, pursuant to Local Supplemental Admiralty Rule E.15(c), that if within seven days of the auction date, exclusive of Saturdays, Sundays, and legal holidays, no written objection to the sale of the DEFENDANT VESSEL is filed, the sale shall stand confirmed as of course, without the necessity of any affirmative action thereon by the Court, except that no sale shall stand

confirmed until the buyer has complied fully with the terms of the purchase.

IT IS SO ORDERED.