

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

Case No. 20- 22281-Civ-COOKE

IN ADMIRALTY

AQUARIUS AQUA USA, INC.,

Plaintiff,

vs.

M/Y VOGUE/JIMBO, a Sunseeker 64" vessel, her boats, engines, generators, tackle, rigging, apparel, furniture, furnishings, equipment, contents and appurtenances, etc., *in rem*, & PETHÓ AXEL, an individual; AUGUSTUS J. STERGIOS, an individual; MARINE CONSULTING INC., a New York corporation; MARINE CUSTOM HARDWARE INC., a Florida corporation; MARINE CONSULTING FLOOR PLAN HOLDING LLC, a Florida limited liability company; RICK OBEY, an individual; and SPECIALIZED NAUTICAL SERVICES, INC., a Florida corporation, in personam,

Defendants.

ORDER GRANTING MOTION TO DISMISS

**THIS MATTER** is before the Court on Defendant Augustos Stergios' Motion to Dismiss for Lack of Subject Matter Jurisdiction and Due to Laches with Prejudice (the "Motion"), filed February 5, 2021. ECF No. 45. Plaintiff Aquarius Aqua USA, Inc. ("Plaintiff") filed its opposition in response to the Motion on March 2, 2021. ECF No. 49. Defendant Augustos Stergios ("Defendant Stergios") filed his reply in support of the Motion on March 15, 2021. ECF No. 60. Thus, the Motion is ripe for adjudication. Having reviewed the Motion, the briefing related thereto, the record, and the relevant legal authorities, the Court finds, for the reasons discussed below, that the Motion should be granted.

Background

Plaintiff filed the Verified Complaint in this action on June 2, 2020. ECF No. 1. In its

Complaint, in relevant part, Plaintiff alleges that it purchased the vessel, M/Y VOGUE/JIMBO, from Aqua Plava d.o.o., a Croatian limited liability company, on October 20, 2015. ECF No. 1, Compl. at ¶ 13. Plaintiff then paid to have M/Y VOGUE/JIMBO transported to the United States using Sevenstar Yacht Transport B.V., a Netherlands company. *Id.* at ¶ 14. Once M/Y VOGUE/JIMBO was in the United States, Plaintiff registered M/Y VOGUE/JIMBO with the State of Delaware. *Id.* at ¶ 15. M/Y VOGUE/JIMBO is currently still registered in Delaware under registration number DL 7679 AB. *Id.* at ¶¶ 15-16.

Plaintiff contracted with PETHŌ AXEL, who was to care for, maintain, and set up chartering for M/Y VOGUE/JIMBO during the long periods of time when Plaintiff was not using the vessel. *Id.* at ¶ 17. However, it recently came to the Plaintiff's attention that M/Y VOGUE/JIMBO is currently being advertised for sale by Rick Obey Yacht Sales, operating out of Fort Lauderdale. *Id.* at ¶ 18. Upon investigation, Plaintiff discovered that M/Y VOGUE/JIMBO was fraudulently mortgaged and sold. *Id.* at ¶ 19. M/Y VOGUE/JIMBO was apparently registered with the U.S. Coast Guard, by someone other than Plaintiff and without Plaintiff's authorization. *Id.* at ¶ 20. The U.S. Coast Guard records indicate that a sale took place of M/Y VOGUE/JIMBO from Plaintiff to Defendant Stergios, with a bill of sale dated February 8, 2017. *Id.* at ¶ 21. Plaintiff did not know about or authorize the sale of M/Y VOGUE/JIMBO, nor did Plaintiff sign any document(s) authorizing the sale or mortgage. *Id.* U.S. Coast Guard records evidence a mortgage was placed on M/Y VOGUE/JIMBO in the amount of \$349,999.00 by Defendant Stergios, which mortgage was later satisfied. *Id.* at ¶ 23. U.S. Coast Guard records indicate a second sale of M/Y VOGUE/JIMBO took place from Defendant Stergios to Marine Consulting, Inc. with a bill of sale dated March 12, 2019. *Id.* at ¶ 24. U.S. Coast Guard records indicate a third sale of M/Y VOGUE/JIMBO took place from Marine Consulting, Inc. to Marine Custom Hardware, Inc. with a bill of sale dated March 4, 2020. *Id.* at ¶ 25. U.S. Coast Guard records show that the latest purchaser, Marine Custom Hardware, Inc. mortgaged M/Y VOGUE/JIMBO with Marine Consulting Floor Plan Holdings, LLC through a mortgage instrument dated March 6, 2020. *Id.* at ¶ 26.

Based upon the above allegations, Plaintiff's Complaint asserts the following causes of action: Count I - Quiet Title to M/Y VOGUE/JIMBO as to all Defendants; Count II - Breach

of Contract against Defendant Pethö Axel; Count III - Unjust Enrichment against Defendant Pethö Axel (asserted in the alternative to Count I's claim to quiet title); and Count IV - Conversion against Defendant Pethö Axel.

### **Legal Standard**

Federal Rule of Civil Procedure 8(a) requires that a complaint “contain. . . a short and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). While this standard “does not require ‘detailed factual allegations,’ . . . it demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). The standard requires the complaint to “give the defendant fair notice of what the plaintiff’s claim is and the grounds upon which it rests.” *Swierkiewicz v. Sorema N.A.*, 543 U.S. 506, 512 (2002) (quoting *Conley v. Gibson*, 355 U.S. 41, 47 (1957)). To provide the “grounds” for “entitle[ment] to relief,” the complaint must contain “more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (citing *Papasan v. Allain*, 478 U.S. 265, 286 (1986)).

“To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Iqbal*, 556 U.S. at 678 (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* When considering a motion to dismiss, the court must accept the allegations in the complaint as true and construe them in the light most favorable to the plaintiff. *Duty Free Ams., Inc. v. Estee Lauder Cos.*, 797 F.3d 1248, 1262 (11th Cir. 2015) (citing *Murphy v. F.D.I.C.*, 208 F.3d 959, 962 (11th Cir. 2000)). However, this tenet is inapplicable to legal conclusions. *Iqbal*, 556 U.S. at 678.

A Rule 12(b)(1) motion to dismiss may present a facial or factual attack on subject-matter jurisdiction. *Lipkin v. Norwegian Cruise Line Ltd.*, 93 F. Supp. 3d 1311, 1317 (S.D. Fla. 2015) (citing *McElmurray v. Consol. Gov't of August–Richmond Cnty.*, 501 F.3d 1244, 1251 (11th Cir. 2007)). “Facial attacks challenge subject-matter jurisdiction based on the allegations in the complaint, and the district court takes as true the allegations contained in the complaint when considering the motion.” *Id.* (citing *Lawrence v. Dunbar*, 919 F.2d 1525, 1529 (11th Cir. 1990)). “In contrast, factual attacks challenge the existence of subject-matter jurisdiction in fact, and

in such cases no presumptive truthfulness attaches to plaintiff's allegations.'" *Id.* (quoting *Dunbar*, 919 F.2d at 1529).

### Analysis

In his Motion, Defendant Stergios seeks dismissal of this action because 1) this Court lacks admiralty jurisdiction in this action; and 2) the doctrine of laches precludes Plaintiff from proceeding on its claims. Because the Court finds that it lacks subject matter jurisdiction over Plaintiff's claim to quiet title, it need not and will not reach Defendant Stergios' laches argument.

#### **A. The Court Lacks Subject Matter Jurisdiction Over Plaintiff's Quiet Title Claim**

With respect to his contention that the Court lacks subject matter jurisdiction, Defendant Stergios argues:

Plaintiff has failed to serve the Vessel and now abandoned its efforts to do so. It is really of no moment whether the Plaintiff chose to proceed and attempt to obtain a warrant of arrest in rem and serve the Vessel as Rule C provides that a Vessel may only be arrested if the Plaintiff alleges a maritime lien or if a United States statute provides for a right of arrest in rem. Plaintiff has no maritime lien claim, has not alleged a maritime lien claim, has cited no law that gives rise to a maritime lien claim. . . . In fact, it is well settled in the 11th Circuit that no action (including for quiet title) arising from an agreement for the purchase and sale of a vessel gives rise to admiralty jurisdiction.

ECF No. 45 at pp. 2-3 (internal citations omitted). In response, Plaintiff argues that it filed this action under Supplemental Admiralty Rule D and "[i]t is well established that such an action is utilized to assert legal title to a vessel, or to remove a cloud upon one's title. [Furthermore,] Supplemental Rule D actions fall under this Court's admiralty subject matter jurisdiction given to it by Article III, Section 2 of the United States Constitution and 28 U.S.C. § 1333." ECF No. 49 at p. 4 (internal citations and quotation marks omitted). Plaintiff's argument misses the mark.

While Plaintiff initially filed a motion for arrest of *in rem* Defendant – Vessel, M/Y VOGUE/JIMBO on June 15, 2020 (*see* ECF No. 4), Plaintiff withdrew that motion without prejudice on January 15, 2021 (*see* ECF No. 43). Nonetheless, in its Complaint, Plaintiff asserts "[t]his is an action for quiet title, unjust enrichment, and conversion in admiralty under Rule (9)h of the Federal Rules of Civil Procedure. As such, jurisdiction is vested in this Court by 28 U.S.C. § 1333." ECF No. 1, Compl. at ¶ 1. Section 1333 grants the federal district courts

“original jurisdiction, exclusive of the courts of the States, of: (1) Any civil case of admiralty or maritime jurisdiction, savings to suitors in all cases all other remedies to which they are otherwise entitled.” 28 U.S.C. § 1333(1). Rule D of the Supplemental Rules for Admiralty or Maritime Claims provides admiralty jurisdiction for “all actions for possession, partition, and to try title maintainable according to the course of the admiralty practice with respect to a vessel.” Rule D of the Supplemental Rules for Admiralty or Maritime Claims. “Suits to try title, known as petitory actions, are ‘suits in which it is sought to try the title to a ship independently of any possession of the vessel.’” *Libbey v. Kosterlitz*, No. 2:18-CV-466-FTM-29CM, 2018 WL 5617133, at \*2 (M.D. Fla. Oct. 30, 2018) (quoting *Thypin Steel Co. v. Asoma Corp.*, 215 F.3d 273, 282 n.7 (2d Cir. 2000) (citation omitted)). In contrast, possessory actions are “actions to recover vessels or other property to which an owner, seaman or lienor is of right entitled.” *Id.*

“[T]o bring a petitory or possessory action invoking the remedies set forth in Supplemental Rules for Admiralty or Maritime Claims Rule D, there must be a ‘maritime question.’” *Id.* (citing *J.A.R., Inc. v. M/V Lady Lucille*, 963 F.2d 96, 99 n.4 (5th Cir. 1992) (noting that the right to bring a possessory or petitory suit requires “the existence of a maritime question”) (quoting *Silver v. The Sloop Silver Cloud*, 259 F. Supp. 187, 191 (S.D.N.Y. 1966)). “[A] contract for the sale of a ship is not a maritime contract.” *Richard Bertram & Co. v. Yacht Wanda*, 447 F.2d 966, 967 (5th Cir. 1971)<sup>1</sup>. “A maritime contract is one which concerns transportation by sea, relates to navigable waters and concerns maritime employment.” *Id.* Therefore, despite the title affixed to the claim, “admiralty will not entertain suits where the substantive rights of the parties flow from a contract to sell or construct a vessel.” *Jones v. One Fifty Foot Gulfstar Motor Sailing Yacht, Hull No. 1*, 625 F.2d 44, 47 (5th Cir. 1980); *see also Yacht Wanda*, 447 F.2d at 967-68 (“[W]hether this suit is viewed as one to enforce a security interest or mortgage on a vessel, a suit to try or quiet title, a suit for breach of a contract of sale, or a suit upon a contract to construct a vessel, it is not within the admiralty jurisdiction of this

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<sup>1</sup> “[D]ecisions of the United States Court of Appeals for the Fifth Circuit (the ‘former Fifth’ or the ‘old Fifth’), as that court existed on September 30, 1981, handed down by that court prior to the close of business on that date, [are] binding as precedent in the Eleventh Circuit, for this court, the district courts, and the bankruptcy courts in the circuit.” *Bonner v. City of Prichard*, 661 F.2d 1206, 1207 (11th Cir. 1981).

Court.”).

The Court finds that although Plaintiff requests “[t]hat judgment issue in Plaintiff’s favor and against all Defendants specifying that title be cleared to M/Y VOGUE/JIMBO, and be placed solely in Plaintiff’s name, including the extinguishing of all liens and the confirmation of Plaintiff’s sole and exclusive right to possession[]”, ECF No. 1, Compl. at p. 6, the underlying issues surround: (1) a purported purchase agreement between Plaintiff and Defendant Stergios; and (2) allegations that Plaintiff did not know about or authorize the sale or mortgage of M/Y VOGUE/JIMBO. Thus, to provide the relief that plaintiff requests, the Court would be required to determine if, how, and when title transferred from Plaintiff to Defendant Stergios under the purported purchase agreement. The Court finds that this is not within the maritime jurisdiction of the Court, and Plaintiff has not established that there is a separate independent basis for subject matter jurisdiction. *See Chaney v. M/Y GODSPEED*, 2011 WL 13217279, \*2 (S.D. Fla. May 19, 2011) (“Count I of the Complaint only seeks to try title of M/Y Godspeed, which is based upon a contract that has no bearing on anything related to admiralty except that M/Y Godspeed is a vessel. That alone does not invoke admiralty jurisdiction. Consequently, Chaney has failed to demonstrate that this Court has subject matter jurisdiction as to Count I.” (citation omitted)). Moreover, there are no allegations that Defendant Stergios removed M/Y VOGUE/JIMBO from the water, that Defendant Stergios has physical possession of the vessel, or that Defendant Stergios damaged the vessel or acted in a tortious manner. Again, Count I of the Complaint only seeks to quiet title to M/Y VOGUE/JIMBO, which is based upon a purported contract that has no bearing on anything related to admiralty except that M/Y VOGUE/JIMBO is a vessel. But that alone does not invoke admiralty jurisdiction. *See Wanda*, 447 F.2d at 967.

Furthermore, Plaintiff’s reliance upon *Jones v. One Fifty Foot Gulfstar Motor Sailing Yacht, Hull No. 1* is misplaced. In that case there were allegations of “an unlawful taking and detention by [the] defendant and damages caused to the vessel by such tortious conduct by [the] defendants.” *Jones*, 625 F.2d at 47. There are no such allegations against Defendant Stergios here. The Court, therefore, finds that it lacks subject matter jurisdiction over Plaintiff’s claim to quiet title as to Defendant Stergios.

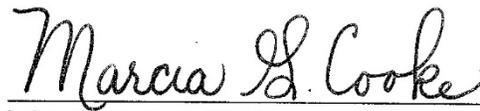
Accordingly, it is hereby **ORDERED and ADJUDGED** as follows:

1. Defendant Augustos Stergios’ Motion to Dismiss for Lack of Subject Matter

Jurisdiction and Due to Laches with Prejudice is **GRANTED**. Count I of the Complaint is **DISMISSED** as to Defendant Stergios.

2. On or before **November 1, 2021**, the remaining Defendants named in Count I of the Complaint shall separately file briefs addressing whether the Court has subject matter jurisdiction to entertain Plaintiff's attempt to quiet title pursuant to that count of the Complaint.

**DONE and ORDERED** in Chambers at Miami, Florida this 30th day of September 2021.



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MARCIA G. COOKE  
United States District Judge

Copies furnished to:

*Jonathan Goodman, U.S. Magistrate Judge  
Counsel of record*