

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

Case No. 1:21-cv-21588-KMM

NAHIM JORGE BONILLA,

Plaintiff,

v.

SIMON LIBRATI, *et al.*,

Defendants.

ORDER

THIS CAUSE came before the Court upon Defendant Yacht 87, LLC’s Motion for Summary Judgment, as well as through a *sua sponte* examination of the record for jurisdictional purposes. On April 24, 2021, Plaintiff Nahim Jorge Bonilla (“Bonilla” or “Plaintiff”) brought this action against Defendants Simon Librati, Sierra Drew Smebakker, and John Doe¹ (holder of loan note for M/Y “SEA ERA” (the “Boat”), a 2013, 1978 Ferretti manufactured vessel, with Hull Identification # XFAF8702A313), on the basis of admiralty and maritime jurisdiction pursuant to 28 U.S.C. § 1333 and 46 U.S.C. § 31343.² In Plaintiff’s Verified Complaint for Injunctive Relief, Declaratory Relief, and Other Equitable Relief, he asserts only one claim which implicates federal jurisdiction under those two statutes: a claim “for fraud and declaratory relief voiding the fraudulent lien filed by Simon Librati against the Vessel on February 22, 2021.” (“Compl.”) (ECF

¹ This party has since been identified as Defendant Yacht 87, LLC (“Yacht 87”).

² On the first page of its Complaint, Plaintiff also asserts jurisdiction under 46 U.S.C. § 31322, a statute providing a definition for “preferred mortgages” but not appearing to confer jurisdiction on cases involving the same. Defendant asserts this citation was included in error, *see* (ECF No. 296), and Plaintiff seems to agree, as it does not reassert jurisdiction under that statute in any of its later filings supporting jurisdiction. *See, e.g.*, (ECF Nos. 325, 336, 348, 351).

No. 1) at 9. On June 2, 2022, Yacht 87 filed its Motion for Summary Judgment, which attacks the Court's subject matter jurisdiction by claiming that Plaintiff's asserted bases for jurisdiction are factually inapplicable. ("Yacht 87's MSJ") (ECF No. 296). On August 24, 2022, the Court issued an Order to Show Cause inquiring as to the case's jurisdictional standing on different grounds and asking the Parties what the jurisdictional implication might be if Plaintiff's sole federal claim were to be found moot. ("Jurisdictional OTSC") (ECF No. 350). Plaintiff filed a response, ("Pl.'s OTSC Resp.") (ECF No. 351), as did Defendants Librati and Yacht 87 ("Def.' OTSC Resp.") (ECF No. 353). For the reasons discussed herein, the Court now finds that it lacks subject matter jurisdiction over the case as a whole and DISMISSES the action. The Court sets forth the facts relevant to its jurisdictional analysis below.

I. RELEVANT BACKGROUND

While its scope has expanded considerably over the course of litigation, this action humbly began as a "case about a boat."³ Plaintiff is a Canadian citizen residing in Canada and, when the Complaint was filed, was a member of Sea-Era Charters, LLC ("SEC") who owned fifty percent of SEC's outstanding shares. Compl. ¶ 4. Defendant Simon Librati ("Librati") is a Canadian citizen residing in Miami, Florida, who was also a member of SEC and owned the remaining fifty percent of SEC's outstanding shares. *Id.* ¶ 5. Defendant Yacht 87, LLC ("Yacht 87"), originally styled as "John Doe" in the Complaint, was a "not-holder [sic] of a preferred ship mortgage secured by the vessel, M/Y 'SEA ERA' ["the Boat"], which [was] owned by SEC." *Id.* ¶ 7. Yacht 87 is an entity "beneficially owned, at least in part, by Mr. Librati." (ECF No. 22) at 2.

³ See (ECF Nos. 180, 232, 325).

On or about September 2, 2020, SEC purchased the Boat from Miami Beach Yacht Sales, LLC (“MBYS”) at a purchase price of \$2,750,000.00. Compl. ¶ 5.⁴ Plaintiff funded the initial down payment to purchase the Boat, and MBYS gave SEC a preferred ship mortgage (or “PSM”) for the remaining \$2,050,000.00 of the purchase price. *Id.* ¶¶ 5, 7. SEC also gave MBYS a note to secure the mortgage. *Id.* ¶ 6. The mortgage created a payment schedule which the Parties were ultimately unable to abide by, resulting in a default on the vessel in either February or March of 2021. *Id.* ¶¶ 15–16; *see also* Yacht 87’s MSJ at 5.

On or about February 22, 2021, Librati recorded a “lien for a second ‘Preferred Ship Mortgage’ on the Vessel’s title . . . in favor of Defendant, Simon Librati, in the amount of \$837,000.00” (hereinafter the “Librati PSM”). Compl. ¶ 17; Yacht 87’s MSJ at 5. Yacht 87 avers that Librati had SEC grant him this mortgage, *see* Yacht 87’s MSJ at 5, and Plaintiff seems to agree. *See* (ECF No. 231-1) at 6 (referencing Librati’s “fraudulent” February 22, 2021 lien for \$837,000 and citing to an appended document entitled “USCG Abstract” attached as “Exhibit F”); *see also* (ECF No. 231-7) (“Exhibit F”) (document titled “GENERAL INDEX OR ABSRACT OF TITLE” [“Abstract”], listing “Mortgagee” as Simon Librati and “Mortgagor” as SEC, recording a mortgage for \$837,000 on February 22, 2021). While they disagree about what happened next with respect to offers and payment, the filings make clear that the Parties had a dispute over the payment schedule, resulting in MBYS’ seizure of the Boat on March 19, 2021. *See* Compl. ¶ 19; Yacht 87’s MSJ at 6. Then, on April 2, 2021, Yacht 87 “entered an agreement with MBYS to purchase an assignment of all of MBYS’ interest in the [Boat] including all rights and remedies available to MBYS’ under its Note, Mortgage and related documents” (hereinafter the “MBYS

⁴ Plaintiff’s Complaint restarts the paragraph numbering in the Background section beginning on page three. From this point forward, references to the paragraph numbers correspond to the Complaint’s Background section.

PSM”). (ECF No. 22) at 6; *see also* Pl.’s OTSC Resp. at 2 (describing a preferred ship mortgage “assigned by MBYS to Yacht 87 on April 2, 2021”). This mortgage was for \$2,050,000.00. (ECF No. 149-3) at 5 (Abstract listing an assignment for \$2,050,000 on April 2, 2021 from assignor MBYS to assignee Yacht 87).

Bonilla commenced this action on April 24, 2021 by filing his Complaint. *See generally* Compl. Therein, Bonilla invoked this Court’s admiralty jurisdiction under 28 U.S.C. § 1333 and 46 U.S.C. § 31343. *Id.* at 2.⁵ While Plaintiff’s Complaint asserts four claims, only one merited admiralty jurisdiction under the cause of action specified by 46 U.S.C. § 31343(c)(2): his “[c]laim for fraud and declaratory relief voiding the fraudulent lien filed by Simon Librati against the [Boat] on February 22, 2021” (“Count I”). *See id.* at ¶¶ 34–44.

Hundreds of filings later, this case no longer resembles the quaint dispute summarized above.⁶ Yacht 87 has long since sold the Boat and deposited \$1,000,000.00 of proceeds from that sale in the Court Registry as a substitute *res*. *See* (ECF No. 245) at 1–2. The Court approved this action, *see* (ECF No. 180), and acknowledges that the \$1,000,000.00 *res* would have served as a jurisdictional substitute for the Boat while the lien in dispute still existed. *See Isbrandtsen Marine Servs., Inc. v. M/V Inagua Tania*, 93 F.3d 728, 734 (11th Cir. 1996) (“The proceeds from the judicial sale of a vessel, or security furnished in lieu thereof, are deemed a jurisdictional substitute for the vessel itself.”) (citations and quotations omitted).

⁵ In his more recent filings, Plaintiff argues that this Court has diversity jurisdiction under 28 U.S.C. § 1332. *See, e.g.*, (ECF No. 325) at 11. The Court discusses this argument in Section III.C, *infra*.

⁶ *See, e.g.*, (ECF No. 310) (requesting summary judgment on disputes of fact involving “the conveyance of membership interests in 3914 Island Estates SN, LLC,” whether Plaintiff “stole funds deposited in [Intervenor-Plaintiff] Prime Med’s bank account,” and a dispute over ownership interests in a restaurant called Mandrake).

Yet the Court has since become aware that the February 22, 2021 preferred ship mortgage at issue in Bonilla’s Complaint—the “Librati PSM”—has been extinguished. *See* (ECF No. 149-3) at 5 (continuation of the Abstract described above, listing Simon Librati as “Mortgagee” and SEC as “Mortgagor,” showing that the mortgage for \$837,000.000 was satisfied on July 01, 2021). Accordingly, on August 24, 2022, the Court ordered the Parties to show cause as to why the Court should not dismiss the matter for want of jurisdiction. (“Jurisdictional OTSC”) (ECF No. 350). Despite Plaintiff’s averment that it still “heavily dispute[s] the validity of the two Preferred Ship Mortgages [and] entitlement to the subject funds” in the Court’s Registry, neither Party denied that the Librati PSM was extinguished on July 1, 2021. *See generally* Pl.’s OTSC Resp.; Defs.’ OTSC Resp.

II. LEGAL STANDARD

The Court is obligated to inquire into the question of its jurisdiction over cases brought before it. *Ruhrgas AG v. Marathon Oil Co.*, 526 U.S. 574, 583 (1999) (“[S]ubject-matter delineations must be policed by the courts on their own initiative even at the highest level.”); *Univ. of S. Ala. v. Am. Tobacco Co.*, 168 F.3d 405, 410 (11th Cir. 1999) (“[I]t is well settled that a federal court is obligated to inquire into subject matter jurisdiction *sua sponte* whenever it may be lacking.”). The Eleventh Circuit maintains two forms of attack on subject matter jurisdiction: factual and facial. *Scarfo v. Ginsberg*, 175 F.3d 957, 960 (11th Cir. 1999). A factual attack challenges the existence of jurisdiction “in fact, irrespective of the pleadings, and matters outside the pleadings [I]n a factual attack, the presumption of truthfulness afforded a plaintiff under Federal Rule of Civil Procedure 12(b)(6) does not attach, and the court is free to weigh the evidence.” *Id.* (citing *Lawrence v. Dunbar*, 919 F.2d 1525, 1529 (11th Cir.1990)). Thus, in a factual attack on jurisdiction, the plaintiff bears the burden of proving to the court that jurisdiction

exists. *OSI, Inc. v. United States*, 285 F.3d 947, 951 (11th Cir. 2002).

Where the court determines subject matter jurisdiction is lacking, it must dismiss the action. *See* Fed. R. Civ. P. 12(h)(3) (“If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action.”); *see also* 526 U.S. at 577 (“Without jurisdiction the court cannot proceed at all in any case.”) (citations and annotations omitted). Thus, the dismissal of all claims upon which a case’s federal jurisdiction is premised creates grounds for dismissal of the action altogether. *See, e.g., Barry v. Wells Fargo Clearing Servs., LLC*, No. 1:21-CV-01150, 2022 WL 1144717, at *2 (N.D. Ga. Mar. 8, 2022), *appeal dismissed*, No. 22-11134-AA, 2022 WL 2443539 (11th Cir. June 1, 2022).

Further, because Article III of the United States Constitution limits a federal court’s jurisdiction to actual cases and controversies, claims must remain “live” throughout their tenure in litigation to avoid being dismissed as moot. *See DeFunis v. Odegaard*, 416 U.S. 312, 316 (1974); *see also U.S. Fire Ins. Co. v. Caulkins Indiantown Citrus Co.*, 931 F.2d 744, 747 (11th Cir. 1991) (“In addition, the controversy must be ‘live’ throughout the case; federal jurisdiction is not created by a previously existing dispute.”). A claim is moot “when it no longer presents a live controversy with respect to which the court can give meaningful relief.” *Yunker v. Allianceone Receivables Mgmt., Inc.*, 701 F.3d 369, 372 (11th Cir. 2012) (quotations omitted).

III. DISCUSSION

The Court finds the only claim maintaining this action’s federal jurisdiction is moot, thereby divesting the Court of subject matter jurisdiction. Further, the Parties do not meet the requirements for diversity of citizenship under 28 U.S.C. § 1332, and the Court declines to exercise supplemental jurisdiction over the balance of remaining claims. Each facet of this analysis is explained below.

A. FEDERAL QUESTION JURISDICTION

Plaintiff's Complaint asserted admiralty jurisdiction under two statutes: 28 U.S.C. § 1333 and 46 U.S.C. § 31343. Defendant Yacht 87 factually contests subject matter jurisdiction in its assertions that (1) neither provision of 28 U.S.C. § 1333 confers jurisdiction on the facts of this case; and (2) because "both the first Preferred Ship Mortgage to the original seller of the Yacht, Miami Beach Yacht Sales, LLC. . . and the second Preferred Ship Mortgage to Simon Librati were no longer in existence at the time the case *sub judice*, was originally filed," 46 U.S.C. § 31343 is inapplicable. *See* Yacht 87's MSJ at 2. The Court holds that neither of Plaintiff's asserted bases confer jurisdiction on the case as it stands, but for different reasons than asserted by Defendant Yacht 87. The Court addresses each of these assertions in turn.

i. Jurisdiction Under 28 U.S.C. § 1333.

Plaintiff's first asserted basis for admiralty jurisdiction in the Complaint is under 28 U.S.C. § 1333.⁷ While the Complaint itself does not attempt to explain why this provision is applicable, Plaintiff provides the following explanation in his Response to Defendants' Motion for Sanctions (ECF No. 348): "Plaintiff's claim is for wrongful seizure of the Boat at issue." *Id.* at 5. Plaintiff supports this theory in Exhibit A of his Motion for Leave to File Sur-Reply in Further Support of Response in Opposition to Motion for Summary Judgment ("Motion to File Sur-Reply") (ECF No. 336-1) by providing cases which purportedly demonstrate that 28 U.S.C. § 1333 confers jurisdiction on cases involving wrongful seizure. *Id.* at 6.

The Court need not decide whether the cases provided by Plaintiff in his Motion to File

⁷ The text of 28 U.S.C. § 1333 states: "The district courts shall have original jurisdiction, exclusive of the courts of the States, of: (1) Any civil case of admiralty or maritime jurisdiction, saving to suitors in all cases all other remedies to which they are otherwise entitled; (2) Any prize brought into the United States and all proceedings for the condemnation of property taken as prize." 28 U.S.C. § 1333.

Sur-Reply actually support his contention because Plaintiff simply does not state a claim for wrongful seizure. Plaintiff's Complaint states four causes of action: (1) a claim for "declaratory relief voiding the fraudulent [Librati PSM]"; (2) a battery of limited liability company claims (i.e. "Breach of Standards of conduct for members and managers," "Personal Liability for a Manager or Member," "failure to produce records," etc.); (3) a claim for civil conspiracy brought against Ms. Smebakken; and (4) a claim for civil conspiracy to commit fraud brought against the party now known as Yacht 87, LLC. *See* Compl. ¶¶ 34–70. Plaintiff does not assert a wrongful seizure of the Boat anywhere within these claims—indeed, Plaintiff only uses the word "seizure" once in his entire Complaint, and not in reference to a claim. *See id.* at ¶ 24 (citing a demand letter in which Plaintiff's attorney explained that, if the 60-day cure period in the original payment schedule for the Boat were to elapse, the Boat would be exposed to seizure by MBYS). Thus, because Plaintiff does not actually state a claim for wrongful seizure, the Court finds that Plaintiff fails to assert jurisdiction through his "wrongful seizure" theory under 28 U.S.C. § 1333.⁸

Apart from Plaintiff's first cause of action to void the Librati PSM (discussed more thoroughly below), none of the remaining three claims sound in admiralty or provide an alternative basis for jurisdiction under 28 U.S.C. § 1333. As such, the Court turns to an analysis of Plaintiff's first cause of action and whether it might confer jurisdiction on its own.⁹

⁸ Plaintiff himself may agree with the Court's assessment, as in his latest filing Plaintiff no longer chose to assert 28 U.S.C. § 1333 as a ground for jurisdiction when questioned by the Court. *See* Pl.'s OTSC Response (asserting federal jurisdiction *only* under 46 U.S.C. § 31343).

⁹ Despite an exhaustive search, the Court was not able to locate another filing in which Bonilla purports to explain how 28 U.S.C. § 1333 applies other than through the "wrongful seizure" theory asserted in his Motion to File Sur-Reply, (ECF No. 336-1). Yet even if Bonilla were to claim the statute conferred jurisdiction in actions involving preferred ship mortgages, jurisdiction would still be lacking for the reasons explained below.

ii. Jurisdiction Under 46 U.S.C. § 31343 and Mootness.

Plaintiff's sole remaining basis for federal jurisdiction is therefore 46 U.S.C. § 31343, which deals with the recording and discharging of claims of maritime liens. *See generally* 46 U.S.C. § 31343. Specifically, Plaintiff asserts jurisdiction under § 31343(c)(2), which states:

“The district courts of the United States shall have jurisdiction over a civil action in Admiralty to declare that a vessel is not subject to a lien claimed under subsection (b) of this section, or that the vessel is not subject to the notice of claim of lien, or both, regardless of the amount in controversy or the citizenship of the parties. Venue in such an action shall be in the district where the vessel is found or where the claimant resides or where the notice of claim of lien is recorded. The court may award costs and attorneys fees to the prevailing party, unless the court finds that the position of the other party was substantially justified or other circumstances make an award of costs and attorneys fees unjust. The Secretary shall record any such declaratory order.”

46 U.S.C. § 31343 (c)(2).

Thus, Plaintiff's request that the Court “void[] the fraudulent lien filed by Simon Librati against the Vessel on February 22, 2021” asserts jurisdiction through a district court's power to “declare that [the Boat] is not subject to a lien” under § 31343(b). Compl. ¶¶ 34–44.

The Court is not aware of other cases, within this jurisdiction or without, where a claim to void a preferred ship mortgage under § 31343(c)(2) was found moot due to the mortgage's satisfaction (and nor were the parties able to direct the Court to such authority, *see generally* Pl.'s OTSC Resp; Defs.' OTSC Resp.). Thus, the Court turns to the analogous jurisprudence of liens generally for guidance. *See* The Preferred Ship Mortgage, 1 Admiralty & Mar. Law § 9:5 (6th ed.) (explaining that the Ship Mortgage Act provides for the creation of “preferred ship mortgage[s],” which “create[] a maritime lien against the mortgaged vessel”); *see also* Compl. ¶ 9 (characterizing the Librati PSM as a “fraudulent lien”).

Several cases within the Eleventh Circuit confirm the idea that actions determining the

validity of a lien are mooted by the lien's subsequent satisfaction. *See, e.g., Haitz v. United States*, No. 89-794-CIV-T-13A, 1990 WL 74377, at *1 n.1 (M.D. Fla. Apr. 17, 1990) (plaintiff's claim to quiet title to property upon which the Government had placed a lien for unpaid personal income taxes was moot because lien was later satisfied); *Obonyano v. Aderibigbe*, No. 1:07-CV-1854, 2009 WL 10672142, at *3 (N.D. Ga. Feb. 10, 2009) ("The parties do not dispute that the cancellation of the lien has rendered moot Obonyano's claim to quiet title . . . and Defendants' claim for foreclosure of lien. These claims are DISMISSED AS MOOT."); *Townsend v. CitiMortgage Inc.*, No. 2:19-CV-251, 2021 WL 54201 (M.D. Ala. Jan. 6, 2021) (citing other cases holding the same) ("There being no further debt and therefore no corresponding mortgage premised on an outstanding debt, there is no longer a justiciable claim regarding a mortgage (or cloud) against the property.").

The Court also finds persuasive the First Circuit's decision in *Johansen v. United States*, 506 F.3d 65 (1st Cir. 2007). In *Johansen*, plaintiff brought an action to quiet title on her residential property, contending that a tax lien asserted against her as nominee for her ex-husband "created a cloud on her title, effected a detriment to her creditworthiness, and damaged her." *Id.* at 66. During litigation, however, plaintiff's ex-husband paid his tax liability, thereby satisfying the lien at contest. *Id.* at 67. The district court dismissed on jurisdictional grounds, finding the husband's satisfaction of the lien mooted plaintiff's claim to quiet title, ultimately depriving the court of its only basis for federal jurisdiction. *Id.* The First Circuit affirmed, finding that neither the statutes through which Plaintiff originally asserted jurisdiction nor her continued claim for attorneys' fees supported a sustained finding of federal jurisdiction. *Id.* at 68–71.

Here, the Parties' own assertions confirm that any real controversy over the Librati PSM has been extinguished by that mortgage's satisfaction. For instance, in Plaintiff's Amended

Response to Yacht 87's Motion for Summary Judgment, Plaintiff avers that, "[t]o the extent the [Librati PSM] was satisfied such satisfaction was pursuant to an instrument dated June 28, 2021 and recorded on July 1, 2021." (ECF No. 325) at 8. When the Court questioned Plaintiff about this assertion in the context of mootness and federal jurisdiction, Plaintiff provided the exact same response. *See* Jurisdictional OTSC; Pl.'s OTSC Resp. at 4 (repeating the quoted language). Indeed, in both instances, Plaintiff cites to a document showing a "Satisfaction of Mortgage" which corroborates Plaintiff's averments that the Librati PSM has been satisfied. *See* (ECF No. 149-3) at 5 (Abstract listing "Mortgagee" as Simon Librati and "Mortgagor" as SEC, showing that a mortgage for \$837,000.000 was satisfied on July 01, 2021). Based on Plaintiff's own statements and citations, the Court concludes that Plaintiff concedes the specific mortgage at issue in Count I of his Complaint has been extinguished.

Potentially in recognition of the jurisdictional implications of this finding, Plaintiff now argues that his Complaint actually requested relief for *both* the Librati PSM *and* the MBYS PSM. *See, e.g.*, (ECF No. 325) at 9 ("Because Plaintiff's claim to declare both liens on the boat void properly invokes this Court's admiralty jurisdiction . . . "); Pl.'s OTSC Resp. at 2 ("[T]his action is based on Plaintiff's attempt to declare void two Preferred Ships Mortgages that were filed against the subject vessel.") (emphasis in original). To this end, Plaintiff's Response to the Court's Jurisdictional OTSC attempts to characterize a generalized prayer for relief in his Complaint's "wherefore" clause (asking the Court to "[t]emporarily enjoin [Yacht 87] from foreclosing on the Preferred Ship Mortgage, until a hearing can be had on this matter *regarding any further relief*") as an independent request to void the MBYS PSM. *See id.* (citing Compl. at 21).

Yet Plaintiff's contemporary characterizations do not square with the plain language of the Complaint itself, which clearly indicates that Plaintiff sought federal declaratory relief for *only* the

Librati PSM. *See, e.g.*, Compl. at 9 (titling Count I as a claim for fraud and declaratory relief “voiding the fraudulent *lien*,” not “liens”) (emphasis added); *id.* at 20 (requesting that the Court “void the fraudulent Preferred Ship Mortgage recorded by Mr. Librati on February 22, 2021”). Nor is the Court swayed by Plaintiff’s attempt to read federal jurisdiction into its prayer for “any further relief” when Plaintiff failed to request that relief in the context of an actual claim—and particularly so where at least some documents cited by Plaintiff indicate the MBYS PSM *was also satisfied*. *See* (ECF No. 149-3) at 5 (Abstract listing “Mortgagee” as Yacht 87, LLC and “Mortgagor” as SEC, showing that a mortgage for \$2,050,000.000 was satisfied on August 3, 2021). While Plaintiff describes itself as still “heavily disput[ing] the validity of two Preferred Ship Mortgages,” *see* Pl.’s OTSC Resp. at 4, the fact remains that Plaintiff cites to documents indicating both mortgages it relies on for jurisdiction have been satisfied—and “federal jurisdiction is not created by a previously existing dispute.” *See U.S. Fire Ins. Co.*, 931 F.2d at 747. The Court cannot void a mortgage which no longer exists. *See* Compl. ¶¶ 42–44. Thus, because Count I of Plaintiff’s Complaint “no longer presents a live controversy with respect to which the court can give meaningful relief,” *Yunker*, 701 F.3d at 372, the Court holds that the single claim conferring federal jurisdiction on this action is moot.

To be sure, the Parties continue to dispute claim to the \$1,000,000.00 *res* currently in this Court’s remit. *See, e.g.*, Pl.’s OTSC Resp. at 8; Defs.’ OTSC Resp. at 6–7. Yet, in light of the above analysis, no lien exists to sustain the federal jurisdiction necessary for this Court to hear the Parties’ remaining claims. Moreover, Plaintiff cites no authority to support continued federal jurisdiction in such circumstances. *See generally* Pl.’s OTSC Resp.; (ECF Nos. 325, 343). The Court thus declines to exercise continued jurisdiction over the funds where it no longer would have jurisdiction over the Boat.

Therefore, the Court finds that Count I of Plaintiff's Complaint, requesting relief only with respect to the Librati PSM, is moot due to the satisfaction of that mortgage.¹⁰ Accordingly, because the only claim providing grounds for federal jurisdiction has fallen away, the Court turns to an assessment of alternative grounds for continued federal jurisdiction.

B. DIVERSITY JURISDICTION

Plaintiff also asserts diversity jurisdiction under 28 U.S.C. § 1332 in his Response to Yacht 87's Motion for Summary Judgment. *See* (ECF No. 325) at 11 ("As pled, Plaintiff is domiciled in Canada, while all of the named Defendants/Counterclaimants are either domiciled or incorporated in Florida. Plaintiff seeks damages in excess of \$75,000. Therefore, this Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332."). Defendants Librati and Prime Med, LLC assert diversity jurisdiction to the same barebones extent in their Second Amended Counterclaim. ("Def's.' SAC") (ECF No. 302) at ¶ 2 (asserting that, because "[t]he above styled matter seeks damages in excess of \$75,000 . . . and the Defendant [sic] has divergent domiciles," "there is diversity in the Counterclaim.").

To assert diversity jurisdiction under 28 U.S.C. § 1332, the Court must be satisfied that diversity of citizenship is plead on the face of the complaint. *Selensky v. Mobile Infirmary*, 221 F. App'x 814, 815 (11th Cir. 2007). "It is a standard rule that federal courts do not have diversity jurisdiction over cases where there are foreign entities on both sides of the action, without the presence of citizens of a state on both sides." *Iraola & CIA, S.A. v. Kimberly-Clark Corp.*, 232 F.3d 854, 860 (11th Cir. 2000) (citing *Cabalceta v. Standard Fruit Co.*, 883 F.2d 1553, 1558 (11th Cir. 1989)). Further, "[u]nder the current version of § 1332(a), a foreign citizen admitted to the

¹⁰ This conclusion also renders inapplicable any remaining argument for jurisdiction through Bonilla's first count under 28 U.S.C. § 1333. Because the Court has found Bonilla's claim moot, that claim can no longer confer jurisdiction under either of Bonilla's cited jurisdictional statutes.

United States for permanent residence is not a ‘citizen[] of a State,’ but rather a ‘citizen[] or subject[] of a foreign state.’” *Cavalieri v. Avior Airlines C.A.*, 25 F.4th 843, 848 (11th Cir. 2022) (quoting 28 U.S.C. § 1332(a)(2)) (alterations in original). Thus, “[u]nder the amended version of the statute, there is no diversity between citizens of a foreign state.” *Id.* (citing *Tagger v. Strauss Grp. Ltd.*, 951 F.3d 124, 125, 127 (2d Cir. 2020)).

Because Bonilla and Defendant Librati are both citizens of Canada, 28 U.S.C. § 1332 is inapplicable here. First, Bonilla avers that he is “a Canadian citizen, residing in Canada.” Compl. at 2. Next, despite some debate over the course of the litigation,¹¹ Defendant Librati has conceded in his most recent filing on the matter that he is a citizen of Canada as well. *See* (ECF No. 349) ¶ 34. For diversity purposes, this is true regardless of whether Defendant Librati is a permanent resident of the United States. *Cavalieri*, 25 F.4th at 848. To the Court’s knowledge—and based on the Parties’ representations—neither Party is also a citizen of the United States. *See* (ECF No. 348) at 8–9; (ECF No. 349) at ¶¶ 34–35. Thus, the dispute at hand is plainly one “between citizens of a foreign state,” and as such “there is no diversity.” 25 F.4th at 848.¹²

C. SUPPLEMENTAL JURISDICTION

In the absence of admiralty or diversity jurisdiction, Plaintiff argues the Court should exercise supplemental jurisdiction over the remainder of its claims pursuant to 28 U.S.C. § 1367(a). *See* (ECF No. 325) at 9–10; Pl.’s OTSC Resp. at 5–7.

Under 28 U.S.C. § 1367, this Court has supplemental jurisdiction “in any civil action of which the district courts have original jurisdiction . . . over all other claims that are so related to

¹¹ *See, e.g.*, (ECF Nos. 301–02, 348–49) (discussing whether diversity jurisdiction is applicable).

¹² Again, Plaintiff failed to raise diversity as grounds for the Court’s continued jurisdiction in response to the Court’s Jurisdictional OTSC. *See generally* Pl.’s OTSC Resp.

claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution.” 28 U.S.C. § 1367(a). However, the Court is afforded the discretion to decline to exercise supplemental jurisdiction over such a claim where the Court has “dismissed all claims over which it has original jurisdiction.” *Id.* § 1367(c)(3); *Engelhardt v. Paul Revere Life Ins. Co.*, 139 F.3d 1346, 1350 (11th Cir. 1998). As the Supreme Court has consistently recognized, “pendent jurisdiction is a doctrine of discretion, not of plaintiff’s right.” *United Mine Workers of Am. v. Gibbs*, 383 U.S. 715, 726 (1966). “[I]n the usual case in which all federal-law claims are eliminated before trial, the balance of factors to be considered under the pendent jurisdiction doctrine—judicial economy, convenience, fairness, and comity—will point toward declining to exercise jurisdiction over the remaining state-law claims.” *Carnegie-Mellon Univ. v. Cohill*, 484 U.S. 343, 350 n.7 (1988). The Eleventh Circuit encourages district courts to dismiss any remaining state claims when all federal claims are dismissed prior to trial. *See, e.g., Vibe Micro, Inc. v. Shabanets*, 878 F.3d 1291, 1296 (11th Cir. 2018); *Raney v. Allstate Ins. Co.*, 370 F.3d 1086, 1088–89 (11th Cir. 2004) (per curiam). Dismissal of state claims should usually be done without prejudice so that a plaintiff may seek relief in state court. *See Vibe Micro, Inc.*, 878 F.3d at 1296 (citing *Crosby v. Paulk*, 187 F.3d 1339, 1352 (11th Cir. 1999)).

Here, Plaintiff, Defendants and Intervenor-Plaintiff MVP explicitly invoke this Court’s supplemental jurisdiction over their remaining state law claims. Pl.’s OTSC Resp. at ¶¶ 5–7; Defs.’ SAC at ¶ 1. No federal claims remain and no other basis for jurisdiction applies. Accordingly, at this juncture the Court declines to exercise supplemental jurisdiction over all remaining claims and will dismiss those claims without prejudice.

IV. LEAVE TO AMEND

Plaintiff Bonilla’s Motion for Leave to File First Amended Complaint (“Motion to Amend”) (ECF No. 337) would be futile given that his proposed First Amended Complaint (“Proposed FAC”) (ECF No. 337-1) does not create subject matter jurisdiction. “Leave to amend a complaint is futile when the complaint as amended would still be properly dismissed or immediately subject to summary judgment for the defendant.” *Tie Qian v. Sec’y, Dep’t of Veterans Affs.*, 432 F. App’x 808, 810 (11th Cir. 2011) (quoting *Cockrell v. Sparks*, 510 F.3d 1307, 1310 (11th Cir. 2007)). “Leave to amend should be freely given, but a district court can deny leave to amend the complaint when amendment would be futile.” *Wade v. Daniels*, 36 F.4th 1318, 1328 (11th Cir. 2022) (citing *Hall v. United Ins. Co. of Am.*, 367 F.3d 1255, 1262–63 (11th Cir. 2004)); *see* Fed. R. Civ. P. 15(a)(2). “Leave to amend is futile if ‘the complaint as amended is still subject to dismissal.’” *Wade*, 36 F.4th at 1328 (quoting *Hall*, 367 F.3d at 1263).

Plaintiff seeks leave to “[a]mend his Complaint to for [sic] the sole purpose of joining [SEC] as the real-party in interest with respect to the subject Preferred Ship Mortgages that are at issue in this case.” (“Mot. for Leave to Amend”) (ECF No. 337) at 3. Yet Plaintiff does not purport to amend his grounds for jurisdiction, *see* (Proposed FAC”) (ECF No. 337-1) ¶¶ 1–4 (alleging jurisdiction under 28 U.S.C. § 1333, 46 U.S.C. § 31322 [presumably intended to read 46 U.S.C. § 31343, *see* footnote 2, *supra*], and 28 U.S.C. § 1367), and the Court has already found that none of his cited statutes confer federal jurisdiction over this matter.

Further, even if Plaintiff were to allege diversity under 28 U.S.C. § 1332 and add SEC as an additional party, Plaintiff offers no argument as to how the proposed Amended Complaint might overcome the same statutory hurdles of foreign citizenship described above. “When determining citizenship of the parties for diversity jurisdiction purposes, a limited liability company (LLC) is

a citizen of every state that any member is a citizen of.” *Purchasing Power, LLC v. Bluestem Brands, Inc.*, 851 F.3d 1218, 1220 (11th Cir. 2017). And “[w]here jurisdiction depends on diversity of citizenship, for example, courts will look to see whether the parties are in fact diverse, not simply whether they are arguably so.” *Bolivarian Republic of Venezuela v. Helmerich & Payne Int’l Drilling Co.*, 137 S. Ct. 1312, 1322 (2017). Here, the proposed First Amended Complaint describes Plaintiff and Defendant Librati—both Canadian citizens—as the sole members of SEC. See Proposed FAC ¶¶ 5, 7; see also *Rolling Greens MHP, L.P. v. Comcast SCH Holdings L.L.C.*, 374 F.3d 1020, 1022 (11th Cir. 2004) (noting that “a party must list the citizenships of all the members of the limited liability company” to establish the citizenship of an LLC for diversity purposes). SEC’s addition does not create the necessary diversity which Plaintiff’s current Complaint lacks. Thus, the Court DENIES Plaintiff’s Motion for Leave to Amend as futile because the proposed amendment to Plaintiff’s Complaint cannot save this matter from dismissal on jurisdictional grounds.

V. CONCLUSION

UPON CONSIDERATION of the Motions, the pertinent portions of the record, and being otherwise fully advised in the premises, it is hereby ORDERED AND ADJUDGED that:

- 1) Defendant Yacht 87, LLC’s Motion for Summary Judgment (ECF No. 296) is GRANTED for lack of subject-matter jurisdiction.
- 2) Plaintiff’s Complaint (ECF No. 1) is DISMISSED WITHOUT PREJUDICE in its entirety as to all Defendants.
- 3) Plaintiff’s Motion for Leave to Amend (ECF No. 337) is DENIED.
- 4) Intervenor-Plaintiff MVP Group, LLC’s Amended Complaint in Intervention (ECF No. 81), and its claims previously stayed by the Court in its June 6, 2022 Omnibus Order

(ECF No. 303), are DISMISSED WITHOUT PREJUDICE in their entirety.

- 5) The Parties are ORDERED to confer and jointly determine how the Court should dispose of the remaining \$1,000,000.00 *res* currently in the Court's Registry. To the extent that the Parties cannot agree on a method of disposal, the Parties shall file a brief Joint Status Report of no more than seven (7) pages, on or before October 18, 2021, that explains each Party's position through supporting authorities.
- 6) The Clerk of Court is INSTRUCTED to CLOSE this case.
- 7) All pending motions, including those referred to United States Magistrate Judge Lauren F. Louis, are DENIED AS MOOT.

DONE AND ORDERED in Chambers at Miami, Florida this 28th day of September, 2022.



K. MICHAEL MOORE
UNITED STATES DISTRICT JUDGE

c: All counsel of record