

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 23-61696-CIV-SINGHAL

STARBOARD YACHT GROUP LLC,

Plaintiff/Counter-Defendant

v.

M/V OCTOPUSSY, a 1988 Heesen built 143-ft. motor yacht,  
Registry No. JMP15060 her engines, tackle, boats, gear,  
Seakeepers, appurtenances, etc. *in rem*, and  
CONTESSA MARINE RESEARCH LLC, *in personam*

Defendants/Counter-Plaintiffs

v.

CHARLES JAKE STRATMANN, individually,

Counter-Defendant.

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**ORDER**

**THIS CAUSE** is before the Court on Counter-Defendant Charles Stratmann's ("Stratmann") Motion to Dismiss Counterclaim Vs. Charles Stratmann (the "Motion" or "Motion to Dismiss") (DE [60]), filed on March 28, 2024. Counter-Plaintiff/Defendant Contessa Marine Research LLC ("Contessa") filed its Response in Opposition to Stratmann's Motion to Dismiss Counterclaim ("Response") (DE [62]) on April 10, 2024. In rebuttal, Stratmann filed his Reply in Support of Motion to Dismiss Counterclaim Vs. Charles Stratmann ("Reply") (DE [63]) on April 15, 2024. As such, the Motion is ripe for adjudication. The Court has reviewed the docket and is fully advised in the premises.

**BACKGROUND**

This matter concerns the “provision of repair services, materials to repair the vessel and dockage/wharfage,” as well as a maritime lien on the vessel. (DE [1] at ¶ 3). Plaintiff Starboard Yacht Group LLC (“SYG”) filed its action *in rem* against the M/V OCTOPUSSY and *in personam* against Contessa on September 1, 2023. See (DE [1]). Contessa filed its Answer and Counterclaim against SYG and Stratmann on October 31, 2023. See (DE [31]). Contessa put forward four counts against Stratmann: Conversion, Fraud, Negligent Misrepresentation, and Breach of Fiduciary Duty. See *id.* at Counts IV, V, VIII, and IX. Stratmann was served with “a first party summons and a counterclaim” on March 7, 2024. (DE [60] at ¶ 7). The instant Motion to Dismiss relates to the Counterclaim against Stratmann, who was not an original party to the action.

#### DISCUSSION

This Motion to Dismiss embodies an ‘all hands on deck’ effort to dispose of Contessa’s counterclaim “on several grounds including 12(b)(1) [lack of subject-matter jurisdiction], 12(b)(2) [lack of personal jurisdiction], 12(b)(4) [insufficient process], and 12(b)(6) [failure to state a claim upon which relief can be granted].” (DE [60] at p. 2). More specifically, Stratmann points out that “defendants plead a counterclaim against a non-party . . ., failed to file a third-party complaint, failed to join a third party . . ., and sought to add an additional party after the Court’s [deadline to amend pleadings or join additional parties] without leave of court and failed to serve [a proper] summons and complaint” pursuant to Rule 4. *Id.* at p. 3. In addition, Stratmann cites defects in how Contessa pleads each of its counts and also invokes the business judgment rule, independent tort doctrine, duplicity, and failure to allege veil piercing. For the purposes

of this Motion, the subsequent analysis will focus on dismissal pursuant to 12(b)(1), 12(b)(2), and 12(b)(4).

As a preliminary issue, Stratmann concludes that this Court “has neither personal jurisdiction of the claim, subject matter jurisdiction nor ancillary jurisdiction,” arguing that Contessa’s counterclaim against a non-party violates Rule 13(g) of the Federal Rules of Civil Procedure. (DE [60] at p. 3-4). In particular, Stratmann argues Contessa’s filing “is not a proper pleading of a third-party claim or cross claim.” *Id.* at p. 4. Contessa rejects this view, maintaining its counterclaim “is not a third-party claim within the meaning of the Federal Rules of Civil Procedure and is instead a compulsory counterclaim against a nonparty who may be joined in the action.” (DE [62] at p. 6). In support of its view that “[t]here is no violation of Rule 13,” Contessa references Rule 13(h) and the joinder of parties through Federal Rules 19 and 20. *Id.* at p. 8.

The authority that Contessa cites seems to reinforce its position. In *Software Tissue Regeneration Techs., LLC v. Kostopoulos*, the court concurred that an entity was not a proper third-party defendant, because Defendants had not alleged that the entity was “in anyway liable for Plaintiff’s claims against Defendants.” *Softwave Tissue Regeneration Techs., LLC v. Kostopoulos*, 2023 U.S. Dist. LEXIS 93370, at \*5 (N.D. Ga. 2023) (citing *Mace Sec. Int’l, Inc. v. Odierna*, 2008 WL 3851839, at \*3 (S.D. Fla. 2008) (performing a third-party defendant versus counter-defendant analysis). The court then found that the entity was “more properly termed a counterclaim defendant,” even as a new party, pursuant to Rules 13(h), 19, 20, and 21. *Softwave Tissue Regeneration Techs.*, 2023 U.S. Dist. LEXIS 93370, at \*5; see *Bank of New York Mellon Tr. Co. v. Prefco Nineteen Ltd. P’ship*, 2010 WL 11603087, at \*11 (N.D. Ga. 2010) (noting “Rule

13(h) allows a defendant to join a new party to a counterclaim as long as either Rule 19 or Rule 20 are satisfied.”). Here, Contessa has convinced the Court that a third-party claim would be improper, since “there is no . . . claim that Stratmann is liable to Contessa for SYG’s claims against Contessa. Instead, it is alleged that Stratmann is personally liable to Contessa for the torts he committed. . .” (DE [62] at p. 7). Contessa also sufficiently clarifies that Contessa seeks relief against Stratmann “from[,] with respect to[,] or arising out of the same transaction, or occurrence in the Complaint filed by SYG,” so the Court is persuaded that Stratmann can be joined as a counter-defendant per Rule 20. *Id.* at p. 8-9. Underscoring the Court’s certainty, Stratmann seems to recognize that his argument is lost at sea. He does not rebut Contessa’s points with contrasting authority in his Reply, instead navigating the Court’s attention towards other arguments. Thus, Stratmann’s request for dismissal based on purported Rule 13 violations fails.

Stratmann contends that, as a threshold matter, the Counterclaim should be dismissed for Contessa’s “failure to serve the summons and complaint” on a timely basis as per Rule 4 of the Federal Rules of Civil Procedure. (DE [60] at p. 5). Both Parties do not dispute that the summons was not served until March 7, 2024. See (DE [60] at ¶ 7; DE [62] at p. 3). To Contessa, Stratmann’s framing is “disingenuous”; Contessa puts forward its own narrative in which “Stratmann was improperly running the clock.” (DE [62] at p. 3, 5). More precisely, Contessa describes a “game . . . being played,” in which “SYG asserted affirmative defenses on behalf of Stratmann, service was agreed to, no response was filed like [Stratmann’s counsel] represented (motion to dismiss), and an incorrect argument that Stratmann had to be named as a third-party defendant was promulgated.” *Id.* at p. 4.

Yet, the Court is not swayed by Contessa's attempt to deflect responsibility for timely service. In the words of Contessa's own counsel, the "answer [SYG] filed [was] only for SYG." (DE [62-2] at p. 1). Further, in light of service being agreed to on November 8, 2023, Contessa does not adequately justify why service of a counterclaim filed in October 2023 should stall, especially and even after Stratmann's counsel had pointed out the issue with service on February 6, 2024. See (DE [45-1]); see also (DE [63] at p. 2) ("You never had a summons and complaint issued for Jake"). Nor is the Court impressed by the notion that Contessa "*mistakenly* presumed [Stratmann's counsel] was correct when he advised the counterclaim had to be filed as a third-party complaint." (DE [62] at p. 3) (emphasis kept). For one, with proper due diligence, Contessa could have located the same authority it cites in its Response—reinforcing that a third-party claim would not be appropriate. Second, this designated "moment of confusion" took place around February 29, 2024, or roughly four months after Contessa had initially filed its counterclaim. *Id.* Contessa has not shown good cause for its failure to effectuate timely service.

Accordingly, it is hereby **ORDERED AND ADJUDGED** that:

1. The Motion to Dismiss (DE [60]) is **GRANTED**.
2. The Counterclaim (DE [31]) is **DISMISSED WITHOUT PREJUDICE** as to

Charles Stratmann.

**DONE AND ORDERED** in Chambers, Fort Lauderdale, Florida, this 6th day of February 2025.

  
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RAAG SINGHAL  
UNITED STATES DISTRICT JUDGE

Copies furnished counsel via CM/ECF