

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 23-61696-CIV-SINGHAL/VALLE

STARBOARD YACHT GROUP LLC,

Plaintiff,

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
a Delaware limited liability Company, in personam,

Defendants.

SHM LMC, LLC, d/b/a Lauderdale Marine Center,

Intervening Plaintiff,

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
a Delaware limited liability Company, in personam,

Defendants.

SHM LMC, LLC, d/b/a Lauderdale Marine Center,

Cross-Plaintiff,

v.

STARBOARD YACHT GROUP LLC,

Defendant.

ORDER

THIS CAUSE comes before the Court on Defendants M/Y OCTOPUSSY (the “Vessel”) and Contessa Marine Research LLC’s (“Contessa”) Motion to Dismiss Intervening Plaintiff SHM LMC, LLC d/b/a Lauderdale Marine Center’s (“LMC”) Amended Verified Intervening Complaint (the “Motion” or “Motion to Dismiss”) (DE [114]), filed on July 19, 2024. Intervenor Plaintiff LMC filed its Response in Opposition to Defendants’ Motion to Dismiss the Amended Verified Complaint in Intervention and Cross-Claim (the “Response”) (DE [129]) on August 9, 2024. In rebuttal, Defendants submitted a Reply to LMC’s Response in Opposition to the Motion to Dismiss the Amended Verified Complaint in Intervention (the “Reply”) (DE [131]). Hence, the Motion is ripe for adjudication. The Court has reviewed the relevant materials and docket and is otherwise 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]). In SYG’s version, it provided materials and services, for which “an additional \$2,219,616.48 remains due and owing.” (DE [114] at p. 4). The vessel was arrested by the U.S. Marshal on September 6, 2023 and would soon depart from LMC’s facility. *Id.*

Contessa believes “it owes SYG nothing.” *Id.* On October 31, 2023, Contessa filed its Answer and Counterclaim against SYG, alleging fraud, breach of contract, unjust enrichment, breach of fiduciary duty, and negligent misrepresentation. See (DE [31]). According to Contessa, SYG then began to contact “its credit card companies and

initiated fraudulent chargebacks (unknown to Contessa) wrongfully claiming that money rightfully paid to LMC, was not due to LMC.” (DE [114] at p. 4). Filed by LMC on March 29, 2024, the Amended Verified Intervening Complaint centers on these chargebacks. See (DE [94] at ¶¶ 22-25, 39-42). Though LMC presents five causes of action, the instant Motion to Dismiss targets dismissal with prejudice of “Counts I against Octopussy [Supplemental Admiralty Rule C *In Rem* Foreclosure of Maritime Lien] and Counts II [Breach of Maritime Cause of Action] and IV [Fraudulent Chargeback Claim] against Contessa.” (DE [114] at p. 6).

DISCUSSION

Count I

Defendants reject the existence of an *in rem* action against the Vessel. A maritime lien “arises when the debt arises, and grants the creditor the right to appropriate the vessel, have it sold, and be repaid the debt from the proceeds.” *World Fuel Servs., Inc. v. MAGDALENA GREEN M/V*, 464 Fed. App’x 339, 341 (5th Cir. 2012) (citing *Equilease Corp. v. M/V Sampson*, 793 F.2d 598, 602 (5th Cir. 1986)). In this case, Defendants declare that the lien was previously extinguished when LMC was paid in full. (DE [114] at p. 8, 13). Of note, the Parties do not dispute that LMC was paid in full in September 2023. See (DE [94] at ¶¶ 36-38; DE [114] at p. 8-9). Rather, the Parties diverge on the ramifications of the aforementioned alleged chargebacks. On the one hand, Defendants argue the chargebacks cannot resuscitate the extinguished maritime lien, and that relief would be more appropriately sought through an *in personam* claim against SYG. (DE [114] at p. 9). On the other hand, LMC argues its *in rem* action should be allowed to proceed, because it “does not possess the funds (payment). . .” (DE [129] at p. 3).

Though the Court recognizes LMC's assertions, it disagrees with LMC's characterization that it "never got paid." *Id.* at p. 2. In fact, LMC conceded getting paid in its Amended Verified Intervening Complaint: "Contessa paid LMC \$22,495.22, which, but for the chargebacks that were initiated shortly after the Vessel was released, would bring the Vessel's account current." (DE [94] at ¶ 36). On its own, this would distinguish these circumstances from those in the authority LMC relies on, where the promissory note "had never been paid." *First Bank of Savannah v. Oil Screw Citation*, 488 F.2d 32, 33 (5th Cir. 1974). Thus, the maritime lien ceased to exist upon payment, and there is no cause of action *in rem* against the Vessel. Count I of the Amended Verified Intervening Complaint should be dismissed.

Counts II and IV

In their Motion, Defendants ask this Court to dismiss Counts II and IV with prejudice, contending that LMC fails to plead causes of action for both. In a broad sense, Defendants argue that LMC cannot establish the existence of an agency relationship between SYG and Contessa at the time of the supposed credit card chargebacks, thwarting LMC's attempts to link fraudulent conduct to Contessa. In response, LMC insists Defendants are liable for SYG's actions, because "[an] agency relationship between SYG and Defendants . . . existed at the time that LMC accepted the original credit card transactions" and SYG "only had the ability to institute the chargebacks and thereby cancel the payment . . . by way of its agency relationship with Defendants." (DE [129] at p. 8-9).

Terminating actual authority does not by itself end any apparent authority held by an agent. Apparent authority ends "when it is no longer reasonable for the third party with

whom an agent deals to believe that the agent continues to act with actual authority.” Restatement (Third) of Agency § 3.11 (2006). Here, the Parties talk past one another regarding the termination of SYG’s agency relationship with Contessa. Defendants claim “there is not a single alleged [fact] that would permit this court to infer that SYG was acting as Contessa’s agent at the time SYG fraudulently initiated the credit card chargebacks,” stating that “LMC knew SYG was terminated and no longer Contessa’s agent” as of June 22, 2023. See (DE [114] at p. 16, 18). For the latter point, Defendants cite to a specific paragraph in LMC’s Amended Verified Intervening Complaint, but the paragraph describes something different: “Contessa paid LMC \$241,000.00 on June 22, 2023; but for the chargebacks this would bring the Vessel’s account current. As the chargebacks had not yet been made, LMC agreed to drop its demand for a \$350,000.00 security deposit.” (DE [94] at ¶ 28). Moreover, Contessa hiring a different agent to address the tardy payment issue does not conclusively “establish[]” that its agency relationship with SYG had ended or that LMC knew SYG had been terminated. (DE [114] at p. 16). At this stage, the Court’s analysis must be limited to the four corners of the complaint. *Ashcroft v. Iqbal*, 556 U.S. 662, 674 (2009).

It is not lost on the Court, however, that LMC couches its argument by directing attention to the “agency relationship between SYG and Defendants which existed at the time that LMC accepted the original credit card transactions.” (DE [129] at p. 8). As a simple reminder, agency relationships can be terminated. Counts II and IV of LMC’s Amended Verified Intervening Complaint may be just sufficient to survive this stage, but Defendants could later present their arguments through a Rule 12(c) or Rule 56 Motion.

Accordingly, it is hereby **ORDERED AND ADJUDGED** that Defendants' Motion to Dismiss (DE [114]) is **GRANTED in part and DENIED in part**.

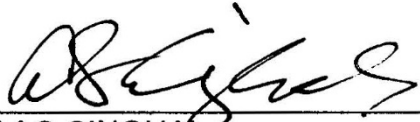
1. Count I (Supplemental Admiralty Rule C *In Rem* Foreclosure of Maritime Lien) of the Amended Verified Intervening Complaint (DE [94]) is **DISMISSED WITH PREJUDICE**.

2. Count II (Breach of Maritime Contract against Contessa) and Count IV (Fraudulent Chargeback Claim against Contessa) of the Amended Verified Intervening Complaint (DE [94]) are adequately plead.

3. Defendants **SHALL** file their Answer to LMC's Amended Verified Intervening Complaint (DE [94]) by **February 24, 2025**.

DONE AND ORDERED in Chambers, Fort Lauderdale, Florida, this 10th day of February 2025.

Copies furnished counsel via CM/ECF



RAAG SINGHAL
UNITED STATES DISTRICT JUDGE