

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
IN ADMIRALTY

Case No.: 0:23-cv-61616-Singhal/McCabe

CENTURY BANK,

Plaintiff,

v.

M/V SUMMER 69, a 2003 130' Westport Motor
Yacht Official No. 1143060, along with her boats,
engines, boilers, tackle, equipment, apparel,
furnishings, freights, and appurtenances, etc. *in rem*,

and

M/V 689, a 2016 42' Scout 420 LXF Official No.
1261594, along with her boats, engines, boilers,
tackle, equipment, apparel, furnishings, freights, and
appurtenances, etc. *in rem*,

Defendants.

REPORT & RECOMMENDATION

THIS CAUSE comes before the Court on two motions filed by Plaintiff Century Bank:

(1) a Motion for Bill of Costs, and

(2) a Verified Motion for Attorneys' Fees and Taxable Costs, Additional Interest, and Continued Accrual of Interest Against the M/V Summer 69 and for Entry of Amended Final Judgment.

(DE 54, DE 58). Both motions have been referred to the undersigned for resolution. (DE 69).

Because these motions arose post-judgment, the Court regards the referral to fall within the scope of 28 U.S.C. § 636(b)(3). *See State Contracting & Eng'g Corp. v. Condotte Am., Inc.*, No. 97-7014-CV, 2005 WL 8165478, * 2 (S.D. Fla. Aug. 12, 2005) (recognizing that post-trial motions can be referred under § 636(b)(3)). The Court therefore resolves these motions by way of Report and Recommendation. As set forth below, the undersigned **RECOMMENDS** that both motions

be **DENIED AS MOOT** because the *in rem* vessels at issue in this case have been sold at auction and are no longer before the Court.

I. BACKGROUND

This is an admiralty case to foreclose two preferred ship mortgages against, respectively, the M/V SUMMER 69 (a 130-foot luxury yacht) and the M/V 689 (a 42-foot center-console sportfishing boat). (DE 1). The Complaint named the two vessels as *in rem* defendants. (DE 1). The Complaint did not name the mortgagor, Marine Biology Research, LLC (hereafter “Mortgagor”), as an *in personam* defendant, nor did the Complaint name any other *in personam* defendants.

On or about August 28, 2023, the District Judge issued warrants to arrest the two vessels, after which, the U.S. Marshal took custody of both vessels. (DE 13, DE 14). Thereafter, the District Judge appointed a substitute custodian to take custody of the vessels until further order. (DE 16). On May 7, 2024, the District Judge granted summary judgment in favor of Plaintiff against the two vessels, ordering as follows:

- Finding both mortgages to be valid and enforceable;
- Awarding final summary judgment against the two vessels in the amount of \$6,438,103.31, comprised of the following amounts:
 - \$6,237,188.93 for the M/V SUMMER 69 mortgage through and including February 1, 2024 (with a per diem thereafter of \$3,033.61), in principal, interest, and late fees;
 - \$8,982.86 for the M/V 689 mortgage in principal, interest, and late fees;
 - \$188,724.54 in *custodia legis* expenses; and
 - \$3,630.00 for reimbursement of expenses incurred for vessel appraisal surveys;

- Authorizing both vessels to be sold at auction to satisfy the final summary judgment; and
- Retaining jurisdiction to award further relief against the two vessels in the future, including court costs, attorneys' fees, and subsequently incurred *custodia legis* expenses.

(DE 37 at 7-9).

Thereafter, on or about August 13, 2024, the U.S. Marshal sold both vessels at auction. (DE 47, DE 50). The M/V SUMMER 69 sold for \$5,600,000. (DE 53). The M/V 689 sold for \$295,000. (DE 53). Pursuant to 28 U.S.C. § 1921(c)(1), the District Judge authorized the U.S. Marshal to retain statutory commissions and costs. (DE 53). The District Judge instructed the remaining funds, \$5,837,498.34, to be distributed to Plaintiff's counsel's trust account. (DE 53).

Notably, the post-auction funds distributed to Plaintiff's counsel (\$5,837,498.34) fell short of the summary judgment amount entered against the two vessels (\$6,438,103.31). This left a substantial deficiency, even without consideration of the amounts left open for future determination by the District Judge, i.e. court costs, attorneys' fees, and subsequently incurred *custodia legis* expenses.

By way of the pending motions, Plaintiff now seeks to modify the District Judge's prior judgment of \$6,438,103.31 by making the following adjustments:

- Subtracting \$5,895,000 to account for the combined sales price of the two vessels;
- Adding \$54,440.00 to reimburse Plaintiff for the U.S. Marshal's commissions;
- Adding \$7,416.84 in taxable costs;
- Adding \$94,080.00 in attorneys' fees;
- Adding \$724,328.92 for additional *custodia legis* expenses; and
- Adding \$615,822.83 in additional interest.

(DE 58).

In total, Plaintiff seeks entry of a deficiency judgment in the amount of \$2,039,191.90. (DE 58-1). Plaintiff also requests the Court to reserve jurisdiction to award additional amounts in the future. (DE 58-1).

II. DISCUSSION

The Court finds that all relief must be denied as moot because the two *in rem* vessels at issue in this case are gone, having been sold at auction to third parties. The Complaint did not name any *in personam* defendants. As such, there are no further defendants against whom a deficiency judgment can be entered.

Plaintiff brought this case pursuant to the Ship Mortgage Act, 46 U.S.C. § 31321 *et seq.* Under that act, a lender may enforce a preferred mortgage in two ways upon default. *See J. Ray McDermott & Co. v. Vessel Morning Star*, 457 F.2d 815, 818 (5th Cir. 1972). First, the lender may commence a civil action *in rem* against the vessel. 46 U.S.C. § 31325(b)(1). By doing so, the lender limits any damages to the amount of the *res*. *See Pawtucket Credit Union v. M/Y Sea Rayna*, 560 F. Supp. 3d 690, 693 (D. Conn. 2021) *modified*, No. 3:20-CV-01847 (KAD), 2022 WL 1094044 (D. Conn. Apr. 12, 2022); *see also In re Metromedia Fiber Network, Inc.*, 299 B.R. 251, 271–72 (Bankr. S.D.N.Y. 2003) (“The concept of *in rem* jurisdiction is that the court has jurisdiction over property, a *res*, and is thereby empowered to adjudicate interests in the *res*.”).

Second, the lender may commence a civil action *in personam* against the mortgagor “for the amount of the outstanding indebtedness *or any deficiency in full payment of that indebtedness*.” 46 U.S.C. § 31325(b)(2) (emphasis added). To calculate the amount of a deficiency owed under a ship mortgage, a court must establish “the difference between the total outstanding obligation

and the ‘fair value’ [at the time of sale] of the vessel involved.” *Bollinger & Boyd Barge Serv., Inc. v. M/V Captain Claude Bass*, 576 F.2d 595, 598 (5th Cir. 1978); *see also Wilmington Trust Co. v. M/V Miss B. Haven V*, 760 F. Supp. 2d 364, 366 (S.D.N.Y. 2010) (“It is settled that, by way of an *in personam* proceeding, the mortgagee is entitled to a deficiency judgment if the foreclosure sale does not satisfy its lien and costs.”).

Here, Plaintiff chose to enforce its preferred mortgages solely by way of the first method, i.e., *in rem* claims against the two vessels. Plaintiff prevailed on these claims, resulting in the sale of both vessels at auction to third-party bidders “FREE AND CLEAR OF ALL LIENS, MORTGAGES AND OTHER ENCUMBRANCES OF ANY KIND AND NATURE...” (DE 51-3). To be sure, the auction proceeds left a deficiency. By choosing to limit the Complaint solely to *in rem* claims, however, Plaintiff limited its relief solely to the value of the *in rem* vessels. Given that the vessels have already been sold at auction, no further relief can be granted. Stated differently, the Court cannot enter a deficiency judgment because there are no more defendants left in the case.

The Court has considered, but finds unpersuasive, Plaintiff’s argument that the Court should calculate the remaining costs, attorneys’ fees, *custodia legis* expenses, and other amounts due in order to quantify the final amount owed under the ship mortgages. (DE 73 at 6). The Court declines to undertake this exercise for two reasons. First, the exercise would be futile given that Plaintiff cannot obtain any further relief against the *in rem* vessels. Federal courts “are not in the business of issuing advisory opinions that do not affect the rights of litigants ... or that merely opine on what the law would be upon a hypothetical state of facts.” *Gagliardi v. TJC Land Trust*, 889 F.3d 728, 733 (11th Cir. 2018). The Court should not expend its resources on a

futile exercise.¹

Second, Plaintiff has been candid that it seeks the entry of a deficiency judgment in the hopes of one day enforcing it against the Mortgagor—who was never named as an *in personam* defendant in this case. (DE 73 at 3). In the Court’s view, this raises serious due process concerns. To the extent Plaintiff hopes to one day enforce a \$2 million deficiency judgment against the Mortgagor, basic due process requires that the Mortgagor be afforded the opportunity to contest the reasonableness and propriety of that judgment.

The Court expresses no views on whether Plaintiff can obtain or enforce a deficiency judgment against Mortgagor in another forum or whether Plaintiff can, at this point in time, add Mortgagor to the instant case. The Court merely finds that no further judgments should be issued here given that the *in rem* vessels have been sold and that no further defendants remain in the case

III. RECOMMENDATION & NOTICE OF RIGHT TO OBJECT

Based on the foregoing, the undersigned **RECOMMENDS** as follows:

1. The Motion for Bill of Costs (DE 54) should be **DENIED as MOOT**.
2. The Verified Motion for Attorneys’ Fees and Taxable Costs, Additional Interest, and Continued Accrual of Interest Against the M/V Summer 69 and for Entry of Amended Final Judgment (DE 58) should **be DENIED as MOOT**.

¹ The Court notes, in this regard, that resolution of the pending motions will require more than mere mathematical calculations. Among other issues, the Court must determine the reasonableness of \$94,080.00 in attorneys’ fees (incurred in a mostly undefended case) and \$724,328.92 in *custodia legis* expenses. The Court has scheduled a three-hour evidentiary hearing to address the *custodia legis* expenses. (DE 72).

3. This ruling should not be deemed a decision on the merits of the pending motions, which have been denied solely for mootness.

4. The parties shall have fourteen (14) days from the date of being served with a copy of this Report and Recommendation within which to file written objections, if any, with the United States District Judge. Failure to file objections timely shall bar the parties from a de novo determination by the District Judge of an issue covered in the Report and Recommendation and shall bar the parties from attacking on appeal unobjected-to factual and legal conclusions contained in this Report and Recommendation. *See* 28 U.S.C. § 636(b)(1); 11th Cir. R. 3-1.

RESPECTFULLY SUBMITTED in Chambers at West Palm Beach in the Southern District of Florida, this 23rd day of April 2025.

A handwritten signature in blue ink, appearing to read 'R. McCabe', is written above a horizontal line.

RYON M. MCCABE
U.S. MAGISTRATE JUDGE