UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
FORT LAUDERDALE DIVISION
CASE NO. 25-60661-CIV-DIMITROULEAS/HUNT

DAMERA ELSABET GIRMAY,

Plaintiff,

v.

M/Y EALU, a 1995 model 132-foot Northcoast motor yacht, MMSI No. 376093000, her engines, tackle, dinghies, and appurtenances, *in rem*, and EALU MI LLC, as employer of DAMERA ELSABET GIRMAY and owner of the M/Y EALU, *in personam*,

Defendants.
_____/

REPORT AND RECOMMENDATION

THIS CAUSE is before this Court on Defendants' Expedited Motion for Show Cause Hearing as to Why Arrest Should Not Be Vacated and to Vacate Arrest. ECF No. 18. The Honorable William P. Dimitrouleas, United States District Judge, referred this Motion to the undersigned for disposition. ECF No. 19; *see also* 28 U.S.C. § 636(b); S.D. Fla. Mag. R. 1. Upon thorough and careful review of the Motion and Response, the applicable law, argument of counsel at a May 9, 2024, hearing, and being otherwise fully advised in the premises, the undersigned respectfully recommends GRANTING IN PART and DENYING IN PART the Motion for the reasons outlined below.

I. Background

This case arises from a sexual assault committed by a senior crew member aboard the M/Y EALU (the "vessel"), a luxury charter yacht. ECF No. 1. Plaintiff Damera Elsabet

Girmay, a U.S. citizen[1] employed as a stewardess aboard the EALU, was attacked in her bed aboard the yacht and sexually assaulted. *Id.* Girmay brought this maritime personal injury action under the Jones Act and general maritime law, and the vessel was arrested *in rem* while docked in Fort Lauderdale. ECF No. 3, 12. Girmay's Complaint alleges this Court has jurisdiction under 28 U.S.C. §1333, which provides district courts original jurisdiction for admiralty and maritime cases. Girmay asserts her *in rem* claims under the general maritime law of the United States and *in personam* claims under the Jones Act, 46 U.S.C. § 30104. Therefore, Girmay contends, her claim is within this Court's admiralty and maritime jurisdiction within the meaning of U.S. Const. Art. III § 2, 28 U.S.C. §1333, Fed. R. Civ. P. Rule 9(h), Supplemental Rule C and Local Admiralty Rule C.

Girmay asserts *in rem* claims against the vessel for unseaworthiness and for maintenance and cure under the general maritime law of the United States because the vessel was not reasonably fit for its intended purpose. Plaintiffs' actions *in rem* may be brought "[t]o enforce any maritime lien," and Girmay moved for an issuance of a warrant *in rem* to arrest the vessel. ECF No. 3, 11. Following Girmay's posting of a security bond, the Court granted the motion, and, pursuant to Supplemental Rule (C)(3) and Local Admiralty Rule C(2), directed the clerk to issue a warrant of arrest for the vessel. ECF No. 12.

Defendants now move to vacate the arrest, claiming the United States has no jurisdiction or legal interest in the case. ECF No. 18. Defendants' motion requests a post-arrest hearing to allow the Court "to make a preliminary determination of whether

[1] Girmay claims she is a dual citizen of the United States and the United Kingdom and that she has a United States passport. Girmay has not yet produced a copy of the U.S. passport, and Defendants dispute this point.

there were reasonable grounds for issuing the arrest warrant, and if so, to fix an appropriate bond." *Salazar v. Atlantic Sun*, 881 F.2d 73, 79 (3d Cir. 1989). Plaintiff argues Defendants' motion should be denied because the arrest was proper, the Court has admiralty jurisdiction, and United States law applies under the guidance provided by the *Lauritzen-Rhoditis* cases.

Because "[t]he post-arrest hearing is not intended to resolve definitively the dispute between the parties, but only to make a preliminary determination . . . [g]enerally speaking, an exhaustive adversarial hearing is not necessary for resolution of those issues. Thus, in many instances we would expect that an informal proceeding . . . might be sufficient." *Salazar*, 881 F.2d at 79–80. "[T]he details of a post-attachment hearing are left to the Court's discretion." *20th Century Fox Film Corp. v. M.V. Ship Agencies, Inc.*, 992 F. Supp. 1423, 1427 (M.D. Fla. 1997). The undersigned held a hearing on Defendants' motion at which counsel presented argument for why the arrest of the vessel should either continue or be vacated. This hearing served as a sufficient post-arrest hearing.

"Plaintiff has the burden under Supplemental Rule E(4)(F) to come forward with sufficient evidence to show there was probable cause for the arrest or attachment of the vessel." *20th Century Fox*, 992 F. Supp. at 1427. Probable cause exists when there is "[a] reasonable belief in the existence of facts on which a claim is based and in the legal validity of the claim itself." *Anderson v. M/Y Dream*, No. 21-60863-CIV-SINGHAL, 2021 WL 2435455, at *2 (S.D. Fla. May 12, 2021). Defendants do not dispute there was probable cause that the assault happened on the vessel. Instead, Defendants assert the claim should not be in the United States at all because there is no connection between

the vessel and the United States. Defendants maintain that because the tort did not take place on the navigable waters of the United States, Plaintiff cannot properly assert her claim is contemplated by 28 U.S.C. § 1333. That statue provides:

> 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.

28 U.S.C. § 1333(1).

A federal court's authority to hear cases in admiralty flows initially from the Constitution, which "extend[s]" federal judicial power "to all Cases of admiralty and maritime Jurisdiction." U.S. Const., Art. III, § 2. Congress has embodied that power in a statute giving federal district courts "original jurisdiction . . . of . . . [a]ny civil case of admiralty or maritime jurisdiction. . . ." 28 U.S.C. § 1333(1). "Supplemental Rule C is a true proceeding in rem. The claim is against the thing itself." *Sembawang Shipyard, Ltd. v. Charger, Inc.*, 955 F.2d 983, 987 (5th Cir. 1992). A plaintiff may proceed under Supplemental Rule C "[w]henever a statute of the United States provides for a maritime action in rem or a proceeding analogous thereto." Supplemental Rule C(1)(b). A complaint for civil action *in rem* is subject to the particularity requirements found in Supplemental Rules for Certain Admiralty and Maritime Claims C(2) and Rule E(2) of the Federal Rule of Civil Procedure for Certain Admiralty and Maritime Claims. Supplemental Rule C(2) provides as follows:

> (2) Complaint. In actions in rem the complaint shall be verified on oath or solemn affirmation. It shall describe with reasonable particularity the property that is the subject of the action and state that it is within the district or will be during the pendency of the action. In actions for the enforcement of forfeitures for violation of any statute of the United States the complaint shall state the place of seizure and whether it was on land or on navigable

> waters, and shall contain such allegations as may be required by the statute pursuant to which the action is brought.

II. Test for Admiralty Tort Jurisdiction

"The traditional test for admiralty tort jurisdiction asked only whether the tort occurred on navigable waters. If it did, admiralty jurisdiction followed; if it did not, admiralty jurisdiction did not exist." *McIntosh v. Royal Caribbean Cruises Ltd.*, No. 17-23575-CIV-GAYLES/TORRES, 2023 WL 10430780, at *3 (S.D. Fla. Aug. 31, 2023), *report and recommendation adopted*, No. 17-23575-CIV-GAYLES, 2024 WL 1174301 (S.D. Fla. Mar. 18, 2024) (quoting *Jerome B. Grubart, Inc. v. Great Lakes Dredge & Dock Co.*, 513 U.S. 527, 534 (1995)). But following expansions of admiralty power, the Supreme Court defined the applicable test for determining whether admiralty jurisdiction exists in a maritime tort case: "[A] party seeking to invoke federal admiralty jurisdiction pursuant to 28 U.S.C. § 1333(1) over a tort claim must satisfy conditions ***both*** of location and of connection with maritime activity." *Grubart*, 513 U.S. at 534 (emphasis added).

a. Location Test

"To satisfy the location test, the tort must have occurred on navigable water or the injury suffered on land must have been caused by a vessel on navigable water." *Broughton v. Florida Intern. Underwriters, Inc.*, 139 F.3d 861, 865 (11th Cir. 1998) (citing *Grubart*, 513 U.S. at 534). "Whether in a tort case or in a salvage case, the waterway at issue must be navigable." *Aqua Log, Inc. v. Lost & Abandoned Pre-Cut Logs & Rafts of Logs*, 709 F.3d 1055, 1060 (11th Cir. 2013).

Defendants address this issue only in passing, stating, "the alleged incident did not occur on the navigable waters of the United States and, therefore, does not meet the location requirement." ECF No. 18. It is true that a Supreme Court case, *Victory Carriers,*

Inc. v. Law, 404 U.S. 202, 205 (1971), reads: "maritime law governs only those torts occurring on the [high seas and the] navigable waters of the United States." And some courts have "used this statement to conclude that federal maritime law does not extend to torts that occur in territorial waters of other nations." *Campbell v. Starwood Hotels & Resorts Worldwide, Inc.*, No. 07-61744-CIV-COHN, 2008 WL 4609986, at *3 (S.D. Fla. Oct. 14, 2008) (citing *St. Pierre v. Maingot*, No. Civ.A.01-2281, 2002 WL 31655355, *3 n.8 (E.D. La. Nov. 21, 2002) (denying maritime jurisdiction because the accident occurred in territorial waters of the Caymen Islands); *Dunham v. Hotelera Canco S.A. de C.V.*, 933 F.Supp. 543, 547 (E.D. Va. 1996) (denying admiralty jurisdiction over tort where injury occurred in territorial waters of Mexico); *Sharma v. Skaarup Ship Management Corp.*, 699 F. Supp. 440, 448 (S.D.N.Y.1988) (denying admiralty jurisdiction where injury occurred in territorial waters of British Columbia)).

However, courts in other cases, including this District in *Campbell v. Starwood Hotels & Resorts Worldwide, Inc.*, have concluded otherwise, finding that "admiralty jurisdiction applies to cases which arise on navigable waters outside of the United States." *Campbell*, 2008 WL 4609986, at *3. The court in *Campbell* was convinced by "the majority of courts that have addressed the issue [and] have determined that no such restriction [to the navigable waters of the United States] applies" and determined "that the statement in *Victory Carriers* . . . is mere dicta because *Victory Carriers* concerned a tort that occurred in United States waters and the case never addressed this issue." *Campbell*, 2008 WL 4609986, at *3 (citing *Malaysia Intern. Shipping Corp. v. Sinochem Intern. Co. Ltd.*, 436 F.3d 349, 355 n.11 (3rd Cir. 2006) (finding admiralty jurisdiction over tort that occurred in Chinese waters and noting that "a tort need not have occurred in

waters under the jurisdiction of the United States for us to exercise admiralty jurisdiction") (reversed on other grounds); *Exter Shipping Ltd. v. Kilakos*, 310 F. Supp. 2d 1301, 1310–11 (N.D. Ga. 2004) (exercising admiralty jurisdiction where ships were seized in Singapore and the United Kingdom); *Szollosy v. Hyatt Corp.*, 208 F. Supp. 2d 205, 211 n.4 (D. Conn. 2002) (exercising admiralty jurisdiction over accident in Cayman Islands waters); *Afflerbach v. Cunard Line, Ltd.*, 14 F. Supp. 2d 1260, 1263 n.1 (D. Wyo. 1998) (assuming admiralty jurisdiction over passenger disembarkation injury at Cayman Islands).

Here, the incident underlying Plaintiff's tort claim occurred on the vessel while the vessel was outside United States territorial waters. But that does not, as *Campbell* instructs, necessarily mean the claim does not pass the locality test. "Federal admiralty jurisdiction extends to all navigable waters." *Aqua Log*, 709 F.3d at 1058 (citing *Ex parte Garnett*, 141 U.S. 1, 15 (1891)). The underlying incident occurred on navigable waters. Therefore, the undersigned finds that the locality test has been satisfied.

b. Connection Nexus Test

The connection test raises two issues. "A court, first, must assess the general features of the type of incident involved[] to determine whether the incident has a potentially disruptive impact on maritime commerce. Second, a court must determine whether the general character of the activity giving rise to the incident shows a substantial relationship to traditional maritime activity." *Grubart*, 513 U.S. at 534 (internal citations and quotation marks omitted).

The sexual assault tort claimed meets the connection test. "In what 'may represent the outer boundaries of admiralty jurisdiction over torts,' the Eleventh Circuit also

extended jurisdiction over a sexual battery that took place in a cruise ship's port-of-call." *McIntosh*, 2023 WL 10430780, at *5 (quoting *Doe v. Celebrity Cruises, Inc.*, 394 F.3d 891, 901 (11th Cir. 2004)). In *Doe*, a crew member recommended a bar at one of the ship's ports to the plaintiff then sexually assaulted the plaintiff before returning to the ship. "Recognizing that ports-of-call perform 'an essential function' of the cruise experience, the Eleventh Circuit held that 'nothing about the particular facts of this case takes the crew member sexual battery outside the scope of this Court's admiralty jurisdiction.'" *Id.*

In this case, Girmay while sleeping in her bunk was attacked by a fellow seaman crew member who was assigned to share the room with her. Sexual assault is a type of incident contemplated by the Eleventh Circuit as one fitting within the scope of admiralty jurisdiction. Girmay was on the vessel to perform her duties as a seaman. Therefore, the prongs of the connection test are satisfied.

Defendants' motion includes a thorough discussion of the *Lauritzen-Rhoditis* factors which assist the courts in determining whether the Jones Act—a statute enacted for the protection of seaman and the jurisdiction for which arises through federal question—is applicable to a claim. But with an agreement between all parties that probable cause exists and with both the locality and connection tests satisfied, Girmay has properly invoked the admiralty jurisdiction of the courts under § 1333. As such, there is currently no need to determine whether *in personam* jurisdiction exists over Girmay's claims. Defendants' motion specifically asks to vacate the arrest. But according to the tests utilized by the courts there is no defect in the arrest of the vessel, and therefore, the undersigned recommends denying Defendants' motion to vacate the arrest.

III. RECOMMENDATION

Based on the foregoing, the undersigned recommends that Defendants' Motion to vacate arrest, ECF No. 18, be GRANTED IN PART and DENIED IN PART. The motion should be granted insofar as Defendants and Plaintiff participated in and made their arguments at a post-arrest hearing, but the motion should be denied as to the request to vacate the arrest.

Within fourteen (14) days after being served with a copy of this Report and Recommendation, any party may serve and file written objections to any of the above findings and recommendations as provided by the Local Rules for this district. 28 U.S.C. § 636(b)(1); S.D. Fla. Mag. R. 4(b). The parties are hereby notified that a failure to timely object waives the right to challenge on appeal the District Court's order based on unobjected-to factual and legal conclusions contained in this Report and Recommendation. 11th Cir. R. 3–1 (2018); *see Thomas v. Arn*, 474 U.S. 140 (1985).

DONE AND SUBMITTED at Fort Lauderdale, Florida this 6th day of June 2025.

PATRICK M. HUNT
UNITED STATES MAGISTRATE JUDGE

Copies furnished to:
Honorable William P. Dimitrouleas
All Counsel of Record