UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

D&S MARINE SERVICE, LLC,	§	
	§	
Plaintiff,	§	
	§	
VS.	§	CIVIL ACTION NO. 4:24-CV-03575
	§	
JAVEN LOTT,	§	
	§	
Claimant.	§	

ORDER

Before the Court are United States Magistrate Judge Christina A. Bryan's Memorandum and Recommendation filed on February 24, 2025 (Doc. #41), Limitation Petitioner D&S Marine Service, L.L.C.'s ("DMS") Objections (Doc. #51), and Claimant Javen Lott's ("Lott") Response (Doc. #54). The Magistrate Judge's findings and conclusions are reviewed de novo. FED. R. CIV. P. 72(b); 28 U.S.C. § 636(b)(1); *United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir. 1989). Having reviewed the parties' arguments and the applicable legal authority, the Court adopts the Memorandum and Recommendation as its Order.

Lott sustained a serious leg injury while working as a crewmember aboard the M/V BRIANNA ELIZABETH. Doc. #1. On August 21, 2024, Lott filed a personal injury action under the Jones Act in Harris County against D&S Marine Service, LLC ("DMS") and D&S Marine Management, LLC ("DMM"). Doc. #23, Ex. 1 at 2. Both DMS and DMM filed Answers in the state court proceeding. Doc. #23, Ex. 2, Ex. 3. On September 23, 2024, DMS and DMM initiated this federal limitation proceeding seeking exoneration or limitation of liability pursuant to the Limitation of Liability Act, 46 U.S.C. § 30501 *et seq*. Doc. #1.

On October 14, 2024, Lott filed two identical sets of Answers and Claims in this case, both naming DMM and inadvertently failing to name DMS. Doc. Nos. 8, 9. Judge Bryan later issued a Limitations Injunction staying the state court action and setting December 30, 2024, as the deadline for filing claims in this limitation proceeding. Doc. Nos. 14, 15. Lott mistakenly believed that he had already filed claims against both DMM and DMS. Doc. #23 at 7. On December 31, 2024, DMM and DMS each filed Motions for Entry of Default. Doc. Nos. 20, 21. DMM's Motion sought default against all potential claimants except Lott. Doc. #21. DMS's Motion sought default against all potential claimants, including Lott. Doc. #20. Realizing his error, Lott filed a Motion for Leave to File a Claim Against DMS, or Alternatively, Leave to File Amended Answer and Claims just three days after the December 30th deadline. Doc. #23.

On February 24, 2025, Magistrate Judge Bryan issued a Memorandum and Recommendation recommending that Lott be granted leave to file. Doc. #41. That same day, Lott filed an Answer and Claims, naming DMS as petitioner. Doc. Nos. 42, 43. On February 25, 2025, Judge Bryan granted DMS's Motion for Entry of Default, but expressly excluded Lott from the entry of default. Doc. #45. In its Objections, DMS contends that Judge Bryan erred in both granting Lott leave to amend and excluding Lott from the Order granting entry of default. *See* Doc. #51.

The court has discretion to permit the late filing of a claim in a limitation action under Supplemental Admiralty Rule F(4). *See Golnoy Barge Co. v. M/T SHINOUSSA*, 980 F.2d 349, 351 (5th Cir.1993). This is a forgiving and equitable standard given "a limitation of liability proceeding's short limitation period and lack of formal process." *Id.* In evaluating a request to file a late claim, courts "should consider (1) whether the proceeding is pending and undetermined, (2) whether granting the motion will adversely affect the rights of the parties, and (3) the claimant's

reasons for filing late." *Id.* Here, the Court agrees with Judge Bryan that all three factors support granting leave. First, the proceeding is still pending and unresolved. Second, DMS will not suffer prejudice by Lott's amendment, given that DMS was already named in the underlying state court action and was on notice of Lott's intent to assert a claim against DMS. *See* Doc. #23, Ex 1, Ex. 2; *Matter of High Tide Enters., Inc.*, No. 1:23-CV-1494-DII, 2024 WL 1292369, at *4 (W.D. Tex. Mar. 26, 2024) (weighing this factor in favor of granting leave where petitioner was already aware that claimant was likely to file a claim). Third, Lott has provided a reasonable explanation for the delay, namely, a typographical error that resulted in the filing of two identical claims against DMM, rather than separate claims against DMM and DMS. Doc. #23.

Accordingly, the Court agrees with Judge Bryan that the equitable outcome is to grant Lott leave to file. Further, to the extent DMS objects to Judge Bryan's denial of its Motion for Entry of Default against Lott, those objections are overruled. Considering Lott's prompt Motion for Leave, his demonstrated intent to assert a claim against DMS, and the absence of prejudice to DMS, the Court agrees with Judge Bryan that default against Lott is not warranted under these circumstances.

In conclusion, the Court adopts the Memorandum and Recommendation (Doc. #41) as its Order. As such, Claimant Javen Lott's Motion for Leave to File Claim Against Petitioner D&S Marine Service, L.L.C. or, Alternatively, Motion for Leave to File Amended Answer and Claims (Doc. #23) is hereby GRANTED.

It is so ORDERED.

JUN 03 2025

Date

The Honorable Alfred H. Bennett
United States District Judge