UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 4:19-cv-10193-KMM

ROBBIE'S OF KEY WEST,

Plaintiff,

v.

M/V KOMEDY III, ON:1108268,
its engines, tackle, boats, gear,
appurtenances etc., *in rem*,

Defendant.
_____/

ORDER ON PLAINTIFF'S MOTION FOR FINAL DEFAULT JUDGMENT

THIS CAUSE came before the Court upon Plaintiff Robbie's of Key West, LLC's ("Plaintiff") Motion for Final Default Judgment ("Motion") against Defendant M/V Komedy III ("Defendant Vessel") (ECF No. 17). Defendant did not respond and the time to do so has passed. The Motion is now ripe for review.

I. BACKGROUND

On November 4, 2019, Plaintiff filed a Verified Complaint against the Defendant Vessel. ("Compl.") (ECF No. 1). Therein, Plaintiff claims a maritime lien on the Defendant Vessel for the provision of necessaries pursuant to general maritime law and the Federal Maritime Liens Act ("FMLA"), 46 U.S.C. § 31342 *et seq*. *See id.* ¶ 3. Specifically, Plaintiff alleges that Plaintiff entered into a contract with the representative of the Defendant Vessel for dock space and storage. *See id.* ¶ 12. Further, Plaintiff alleges that the representative of the Defendant Vessel abandoned the vessel and ceased paying for dock space and storage and Plaintiff provided necessaries to the Defendant Vessel. *See id.* ¶¶ 8, 12, 14.

On November 26, 2019, the Court granted Plaintiff's Motion for a Warrant of Arrest and Clerk of the Court issued a Warrant of Arrest against the Defendant Vessel and directed the U.S. Marshal to take custody of the Defendant Vessel and to retain custody of the Defendant Vessel pending further order of the Court. (ECF Nos. 9, 10). Further, the Court granted Plaintiff's Application for Appointment of Substitute Custodian, appointing Plaintiff custodian of the Defendant Vessel and authorizing the U.S. Marshal to surrender possession of the Defendant Vessel to Plaintiff. (ECF No. 9). On or about December 10, 2019, the Warrant for Arrest was served on the Defendant Vessel by the U.S. Marshal. (ECF No. 11).

Thereafter, the Complaint was served on known persons with an interest in the Defendant Vessel. (ECF No. 12). Further, Plaintiff published the notice of arrest on December 17, 2019, December 24, 2019, December 31, 2019 and January 7, 2020 in the Florida Key West Citizen in compliance with Rules C and E of the Supplemental Rules for Admiralty and Maritime Claims and Southern District of Florida Local Admiralty Rule C(4). (ECF No. 13). On February 14, 2020, the Clerk of Court entered default against all claimants who failed to file a claim against the Defendant Vessel. (ECF No. 15). To date, no one has filed a verified statement of right of possession or ownership interest in the Vessel and the time to do so has passed. *See* S.D. Fla. Local Admiralty Rule C(6). Now, Plaintiff moves for default judgment *in rem*.

II. LEGAL STANDARD

The mere entry of a default by the Clerk does not in itself warrant the entry of a default judgment by the Court. *See Garrido v. Linden Contracting Servs.*, Case No. 0:14-cv-60469-KMM, 2014 WL 12603170, at *1 (S.D. Fla. Aug. 21, 2014) (internal citation omitted). Rather, the Court must find that there is a sufficient basis in the pleadings for the judgment to be entered. *See id.* A

party in default has admitted all well-pleaded allegations of fact. *See id.* (internal citations omitted).

"Although a defaulted defendant admits well-pleaded allegations of liability, allegations relating to the amount of damages are not admitted by virtue of default. Rather, the Court determines the amount and character of damages to be awarded." *Miller v. Paradise of Port Richey, Inc.*, 75 F. Supp. 2d 1342, 1346 (M.D. Fla. 1999). Damages may be awarded without an evidentiary hearing "only if the record adequately reflects the basis for award via . . . a demonstration by detailed affidavits establishing the necessary facts." *Adolph Coors Co. v. Movement against Racism & Klan*, 777 F.2d 1538, 1544 (11th Cir. 1985) (citations and internal quotation marks omitted). In other words, a court may award damages "as long as the record contains evidence allowing the court to ascertain damages from 'mathematical calculations' and 'detailed affidavits.'" *Holtz v. Bagel Mkt., Inc.*, No. 12-62040-CIV-ROSENBAUM, 2013 WL 12141515, at *2 (S.D. Fla. Apr. 29, 2013) (quoting *Adolph*, 777 F.2d at 1543–44).

III. DISCUSSION

1. Liability

The FMLA grants a maritime lien to a party that provides necessaries to a vessel. § 31342. "A maritime lien is a 'special property right in a ship given to a creditor by law as security for a debt or claim subsisting from the moment the debt arises.'" *Dresdner Bank AG v. M/V Olympia Voyager*, 465 F.3d 1267 (11th Cir. 2006) (quoting *Galehead, Inc. V. M/V Angelia*, 183 F.3d 1242, 1247 (11th Cir. 1999)). Maritime liens differ from other common law liens in that a maritime lien is "not simply a security device to be foreclosed if the owner defaults"; rather, a maritime lien converts the vessel itself into the obligor and allows injured parties to proceed against it directly. *See Crimson Yachts v. Betty Lyn II Motor Yacht*, 603 F.3d 864, 868 (11th Cir. 2010) (citation

omitted). "In other words, '[a] maritime lien gives its holder a properly right in a vessel, and the proceeding *in rem* is . . . a means of enforcing the property right.'" *Id.* (citation omitted).

For a party to establish a maritime lien in a vessel: (1) the good or service must qualify as a "necessary"; (2) the good or service must have been provided to the vessel; (3) on the order of the owner or agent; and (4) the necessaries must be supplied at a reasonable price. *See Barcliff, LLC v. M/V Deep Blue, IMO No. 9215359*, 876 F.3d 1063, 1068 & n.5 (11th Cir. 2017).

Here, Plaintiff has established that it has a maritime lien in the Defendant Vessel. First, Plaintiff provided necessaries to the Defendant Vessel in the form of storage and amenities. *See Am. Eastern Dev. Corp. v. Everglades Marina, Inc.*, 608 F.2d 123, 125 (5th Cir. 1979) (holding that dockage constitutes a necessary). Second, Plaintiff provided the necessaries based on a contract with the representative of the Defendant Vessel. Compl. ¶ 12. Third, the necessaries appear to be a reasonable price as the representative of the Defendant Vessel agreed to the storage price in the contract. *Id.* Therefore, Plaintiff has established that it has a maritime lien in the Defendant Vessel.

2. Damages

Plaintiff seeks a total award of $58,885.46 in reimbursement for costs that Plaintiff has incurred in caring for the vessel and pursuing this case. Mot. at 4. Plaintiff provided an affidavit of Terry Ritter, its general manager, in support of the following categories of reimbursement: (1) pre-arrest storage fees in the amount of $27,931.74; (2) Marshal's bond and filing fee in the amount of $3,900.00; (3) custodial storage charges in the amount of $8,134.72; (4) publication costs in the amount of $585.00; (5) legal fees in the amount of $8,115.00; and (6) prejudgment interest at a rate of 18% for a total of $10,219.00. (ECF No. 17–1). Additionally, Plaintiff provided a statement which provides the outstanding balance as of February 28, 2019 and the monthly

statements for the months between February of 2019 and September of 2019. ("Statement") (ECF No. 1–1).

"[A] person providing necessaries to a vessel on the order of the owner or a person authorized by the owner" possesses a maritime lien on that vessel and can enforce that lien *in rem*. § 31342. A suit *in rem* to enforce a maritime lien is limited to the value of the necessaries that the lienholder provided to the vessel. *See Bradford Marine, Inc. v. M/C Sea Falcon*, 64 F.3d 585, 588–89 (11th Cir. 1995). What constitutes a necessary service has been liberally construed to include "what is reasonably needed in the ship's business." *Id.* (citation omitted). However, despite the liberal construction of the term "necessaries[,]" maritime liens are governed by the principle of *stricti juris* and will not be extended by construction, analogy or inference. *Id.* (citation omitted). Thus, what a plaintiff may recover for a maritime lien is strictly limited as to what can reasonably be construed as a necessary. *Id.*

First, Plaintiff seeks to recover costs that it incurred enforcing its maritime lien, which cannot be assessed against a vessel *in rem*. Specifically, Plaintiff seeks to recover (1) legal fees; (2) publication costs; and (3) the cost of the Marshal's bond and filing fee. Mot. at 4. However, these costs were incurred to assist Plaintiff in enforcing a maritime lien and were not "necessaries" which were provided to the vessel to assist the vessel perform her function. *See Bradford Marine, Inc.*, 64 F.3d 588–89. As such, these costs are not part of the value of the maritime lien. *See id.* Moreover, it is immaterial that the underlying contract with the owner of the Defendant Vessel provides for attorney's fees because the contract does not bind the Defendant Vessel. *See id.* (finding that the vessel is not liable *in rem* for attorney's fees because the repair contract does not bind the vessel). Thus, Plaintiff may not recover for legal fees, publication costs, or the costs of the Marshal's bond and the filing fee.

Second, Plaintiff seeks the costs that it incurred as substitute custodian, $8,134.72. It is well settled that the expenses incurred in operating and caring for a vessel while in the custody of the court are considered "expense of justice" subject to reimbursement. *See Donald D. Forsht Assocs., Inc. v. Transamerica ICS, Inc.*, 821 F.2d 1556, 1561–1562 (11th Cir. 1987) (citation omitted). Thus, Plaintiff may recover the costs it incurred as substitute custodian.

Third, Plaintiff seeks to recover $27,931.74 in prearrest storage fees. Mot. at 4. However, Plaintiff (1) seeks costs beyond the cost of storage; and (2) Plaintiff does not provide the duration of time that it provided necessaries to the Defendant Vessel. Plaintiff seeks to recover $919.13 for each month it provided necessaries to the Defendant Vessel. *See* Statement. The monthly amount represents: (1) $805.00 for storage of the Defendant Vessel; (2) a $50.00 late fee; and (3) Florida state taxes in the amount of $64.13. *See id.* Storing the Defendant Vessel is a necessary service that is part of the maritime lien. *See Bradford Marine, Inc.*, 64 F.3d at 588–89. Additionally, the Florida state tax assessed each month is part of the cost of storage. *See A/S Dan-Bunkering Ltd. v. M/V Zamet*, 945 F. Supp. 1576, 1580–81 (S.D. Ga. 1996) ("[T]axes due on fuel supplied to a vessel would constitute a portion of the cost of that fuel and thus be included [in the] maritime liens for necessaries.").

However, the $50.00 late fee assessed each month is not part of the maritime lien. *See Bradford Marine, Inc.*, 64 F.3d at 588–89. Specifically, the late fee is not the cost of a necessary provided to the Defendant Vessel but was assessed because the representative of the Defendant Vessel failed to pay the monthly invoices. *See id.* Moreover, even if the contract provides that Plaintiff may assess a late fee for overdue invoices, the contract only binds the representative of the Defendant Vessel, not the Defendant Vessel itself. *See id.* Thus, Plaintiff is entitled to $869.13 for each month that it provided necessaries to the Defendant Vessel.

Moreover, Plaintiff does not provide the duration of time that it provided necessaries to the Defendant Vessel. *See generally* Compl.; Mot.; Statement. Specifically, Plaintiff does not provide a date that the representative of the Defendant Vessel ceased paying for storage of the Defendant Vessel. *See generally* Compl.; Mot. Further, the only monthly invoices that Plaintiff provides are from February of 2019 until September of 2019. *See* Statement. And, Plaintiff only indicates the total balance owed as of February of 2019. *See id*. Therefore, the Court cannot determine the duration of time that Plaintiff provided necessaries to the Defendant Vessel and, thus, the value of the maritime lien. *See Adolph Coors Co.*, 777 F.2d at 1544 (citation omitted).

Fourth, Plaintiff seeks to recover prejudgment interest at the interest rate provided by the contract between Plaintiff and the owner of the Defendant Vessel, which is 18%. The general rule in admiralty law is that prejudgment interest should be awarded unless there is an exceptional circumstance dictating otherwise. *See City of Milwaukee v. Cement Div., Nat Gypsum Co.*, 505 U.S. 189, 193–194 (1995); *see also Federal Ins. Co. v. Sabine Towing & Transp. Co., Inc.*, 783 F.2d 347, 352 n.4 (2d Cir. 1986).

However, a maritime lien does not necessarily include the contractual prejudgment interest rate. *See Triton Marine Fuels, Ltd. v. M/V Pacific Chukotka*, 671 F. Supp. 2d 753, 764 (D. Md. 2009) (citations omitted); s*ee also Inland Credit Corp. v. M/T Bow Egret*, 552 F.2d 1148, 1155 n.9 (5th Cir. 1977) ("The promissory notes' rate is inapplicable, since [the lenders] are recovering by virtue of their status as lien claimants rather than on their notes."). The rationale for awarding prejudgment interest is to ensure that the injured party is fully compensated for its loss. *See City of Milwaukee v. Cement Div., Nat Gypsum Co.*, 505 U.S. 189, 193–194 (1995). As such, courts award prejudgment interest to compensate for the use of funds to which the plaintiff was entitled, but which the defendant had use of prior to judgment, not on the grounds that the parties

specifically agreed to the interest rate. *See Offshore Marine Contractors, Inc. v. Palm Energy Offshore, LLC*, 779 F.3d 345, 351 (5th Cir. 2015) (citation omitted). Further, in the absence of a controlling statute, the choice of a rate at which to set the amount of prejudgment interest is . . . within the discretion of a federal court." *Werner Enter. v. Westwind Mar. Int'l Inc.*, 554 F.3d 1319, 1328 (11th Cir. 2009).

The Court finds that there are no exceptional circumstances dictating that Plaintiff is not entitled to prejudgment interest, but Plaintiff's request of prejudgment interest at a rate of 18% is excessive. Plaintiff does not explain why an 18% prejudgment interest rate is necessary to compensate it for its loss. *See Triton Marine Fuels, Ltd.*, 671 F. Supp. 2d at 765. Additionally, as noted above, the contract does not bind the Defendant Vessel. *See Bradford Marine, Inc.*, 64 F.3d at 588–89. Moreover, parties may contract for prejudgment interest "to deter a breach or as a punitive measure, or both." *See Triton Marine Fuels, Ltd.*, 671 F. Supp. 2d at 765. Thus, an agreement for a certain rate does not establish that the rate is an accurate reflection of Plaintiff's loss. *See id.*

The Court finds that the appropriate interest rate to compensate Plaintiff for the use of the funds is the same rate that applies to post-judgment interest according to 28 U.S.C. § 1961. *See Hurtdo v. Balerno Int'l Ltd.*, 408 F. Supp. 3d 1315, 1334 (S.D. Fla. 2019) (computing the average weekly rate under § 1961 to determine the prejudgment interest rate for an admiralty judgment) (citation omitted); *see also Werner Enter.*, 554 F.3d at 1328 ("In the absence of a controlling statute, the choice of a rate at which to set the amount of prejudgment interest is [] within the discretion of a federal court."). Thus, to determine the prejudgment interest rate, the Court will compute the average weekly rate under 28 U.S.C. § 1961 from the date injury until the date of arrest of Defendant Vessel, which is when Plaintiff stopped providing necessaries to the Defendant

Vessel. *See id.* However, as set forth above, Plaintiff has not provided the Court with sufficient information to determine when the injury first arose. Therefore, the Court cannot compute the appropriate prejudgment interest rate.

Accordingly, the Court will enter default judgment on liability but defer ruling on damages. *See* Order on Motion for Final Default Judgment, *Gorgol v. Red Carpet Valet, Inc.*, No. 9:19-cv-80035-DMM (S.D. Fla. Apr. 16, 2019), ECF No. 20 (granting motion for default judgment but deferring ruling on damages, instructing plaintiff to submit a supplemental memorandum supporting damages); Order Granting Motion for Entry of Default Judgment on Liability *Only* & Directing Plaintiff to Submit Itemized Statement on Damages, *Cordell Funding, LLLP v. Galanis*, No. 9:10-cv-80250-DTKH (S.D. Fla. Oct. 8, 2010), ECF No. 15 (denying motion for default judgment as to damages where the "plaintiff demanded damages for a sum certain in its complaint . . . which [was] different from the amount demanded in its application for default judgment"). Plaintiff may submit a supplemental memorandum on damages that accurately states, calculates, and specifies the duration of time for which it seeks to be reimbursed for providing necessaries to the Defendant Vessel.

IV. CONCLUSION

UPON CONSIDERATION of the Complaint (ECF No. 1), the Motion (ECF No. 17), the pertinent portions of the record, and being otherwise fully advised in the premises, it is hereby ORDERED AND ADJUDGED that the Motion for Final Default Judgment is GRANTED IN PART and DENIED IN PART. The Motion is GRANTED as to liability but DENIED WITHOUT PREJUDICE as to damages. Plaintiff may file a supplemental memorandum demonstrating the damages owed within thirty (30) days of the date of this Order. Final Judgment will be entered by separate order after the Court assesses Plaintiff's supplemental memorandum. Failure to file a

supplemental memorandum within thirty (30) days of the date of this Order will result in dismissal of this case, and the Court will be divested of jurisdiction to enforce any judgment against Defendants. The Clerk of Court is instructed to administratively CLOSE this case. All pending motions, if any, are DENIED AS MOOT.

DONE AND ORDERED in Chambers at Miami, Florida, this 23rd day of June, 2020.

K. MICHAEL MOORE
UNITED STATES CHIEF DISTRICT JUDGE

c: All counsel of record