

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 17-09010 AGR	Date	September 4, 2020
Title	TMF Trustee Limited v. M/T Megacore Philomena, et al.		

Present: The Honorable	Alicia G. Rosenberg, United States Magistrate Judge
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K. Lozada

N/A

None

Deputy Clerk

Court Reporter / Recorder

Tape No.

Attorneys Present for Plaintiff & Intervenor
Plaintiffs

Attorneys Present for Defendants &
Counterclaimants

None

None

Proceedings: **MINUTE ORDER (1) STAYING PLAINTIFF TMF TRUSTEE LIMITED'S *IN PERSONAM* CLAIMS PENDING CONCLUSION OF THE TRIAL IN THE ENGLISH PROCEEDINGS; AND (2) GRANTING PLAINTIFF TMF TRUSTEE LIMITED'S REQUEST FOR ENTRY OF JUDGMENT PURSUANT TO FED. R. CIV. P. 54(b) AND 58(d) (Dkt. Nos. 553-554)**

Plaintiff TMF Trustee Limited filed a request for entry of judgment against the Megacore Philomena *in rem* pursuant to Fed. R. Civ. P. 54(b) and 58(d). (Dkt. Nos. 553-554.) As requested in a court order, TMF filed a supplemental brief regarding proceedings in Case No. CL-2018-000440 in the High Court of Justice, Business and Property Courts of England and Wales, Queen's Bench Division, Commercial Court (hereinafter the "English proceedings"). (Dkt. No. 561.) Defendant Hurricane Navigation Inc. filed an opposition. (Dkt. No. 563-565.) TMF filed a reply. (Dkt. No. 566.) The matter is appropriate for adjudication without oral argument. Fed. R. Civ. P. 78; Local Rule 7-15.

This court issued an order to show cause in writing why TMF's *in personam* claims should not be stayed pending resolution of the English proceedings. (Dkt. No. 558.) TMF filed a response to the order to show cause. (Dkt. No. 567.) Hurricane filed an opposition. (Dkt. Nos. 569-70.) TMF filed a reply. (Dkt. No. 571.) The matter is also appropriate for adjudication without oral argument. Fed. R. Civ. P. 78; Local Rule 7-15.

A. Stay of TMF's *In Personam* Claims

TMF acknowledges that its *in personam* claims in this court are "duplicative of claims it has filed and are pending in the High Court in London." (Dkt. No. 567 at 1.) TMF consents to a stay of its *in personam* claims in this court and does not object to dismissal without prejudice. (*Id.* at 1 & n.1.)

Hurricane opposes a stay and urges the court to apply the *Colorado River* legal standard governing parallel federal and state litigation. Under that standard, the Ninth Circuit evaluates eight factors: "(1) which court first assumed jurisdiction over any property at stake; (2) the inconvenience of the federal forum; (3) the desire to avoid piecemeal litigation; (4) the order in which the forums obtained

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jurisdiction; (5) whether federal law or state law provides the rule of decision on the merits; (6) whether the state court proceedings can adequately protect the rights of the federal litigants; (7) the desire to avoid forum shopping; and (8) whether the state court proceedings will resolve all the issues before the federal court.” *Seneca Ins. Co. v. Strange Land, Inc.*, 862 F.3d 835, 842 (9th Cir. 2017) (citation omitted). These factors are applied pragmatically and not as a mechanical checklist, with a presumption against federal abstention. *Id.*

Contrary to Hurricane’s argument, application of even the *Colorado River* standard shows exceptional circumstances favoring a stay of TMF’s *in personam* claims pending conclusion of the trial of those claims in the English proceedings, which trial is scheduled in November 2020. None of the factors weigh against a stay. The second, fourth, sixth and eighth factors strongly favor a stay, and the remaining factors are neutral at best.

TMF represents that its claims in this case are duplicative of the claims asserted in the English proceedings. Thus, with respect to the sixth and eighth factors, the English proceedings will most likely resolve the issues in this litigation and there is no indication that the English proceedings cannot protect Hurricane’s rights.¹ *Id.* at 845. The fourth factor does not merely examine filing dates but rather analyzes the progress made in each case. *Id.* at 843. Trial is set on November 16, 2020, about 2½ months from now, in the English proceedings.² (Pre-Trial Timetable Order in English proceedings, Dkt. No. 561-2 at 5 ¶ 22.) The Loan Agreement at issue financed the purchase of two vessels, the Megacore Philomena (the vessel at issue in this case) and the Megacore Honami. (Exh. 2 to Brucculeri Decl., Dkt. No. 570-2 at 3.) Whereas the case in this court involves only the Philomena, the English proceedings include both vessels and all of the relevant parties for both vessels. The parties to the English proceedings include Plaintiff TMF Trustee Limited (security trustee), TMF Global Services (UK) Limited (agent), Burlington Loan Management DAC (Lender), Bank of America, N.A. (Lender), Fire Navigation Inc. (owner of vessel Honami), Defendant Hurricane Navigation Inc. (owner of vessel Philomena) and OD Investment Ltd. (guarantor). (*Id.* at 2-4.) By contrast, in this case, pretrial and trial dates have not been set. The second factor favors a stay because all of the relevant entities are parties to the English proceedings whereas this court does not have jurisdiction over all of the relevant entities or

¹ Hurricane concedes that the English proceedings can adequately protect the rights of the litigants with one exception. In conclusory fashion, Hurricane argues that, in the English proceedings, it cannot prevent the disbursement of proceeds from the sale of the Megacore Philomena in this court. (Opp. at 8.) Hurricane states that it asserts a counterclaim for wrongful arrest in the English proceedings. (*Id.*) Hurricane does not state whether it requested relief in the English proceedings as to the sale proceeds from the Megacore Philomena and/or the Megacore Honami and, if so, the result of its request. In any event, disbursement of the funds in this court’s registry from the sale of the Megacore Philomena is the subject of *in rem* proceedings in this court, not TMF’s *in personam* claims.

² Given the trial date in the near future in the English proceedings, this is not a situation in which the parties have merely made “somewhat more progress” in the foreign proceedings. *Neuchatel Swiss Gen’l Ins. Co. v. Lufthansa Airlines*, 925 F.2d 1193, 1195 (9th Cir. 1991).

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witnesses.

The first factor is neutral because this court has resolved the *in rem* issues surrounding the arrest of the vessel Megacore Philomena. *Seneca*, 862 F.3d at 842. The third and fifth factors are also neutral. English law governs the Loan Agreement and Marshall Islands law governs the Mortgage Agreement. The parties' disputes raise complex legal issues³ and, as this court previously found, United States law does not supply the rule of decision under those agreements. (Order, Dkt. No. 408 at 7-8, 9-10; *see also* Dkt No. 534 at 3); *Seneca*, 862 F.3d at 842-44. As to the seventh factor, the court finds no evidence of forum shopping. *Id.* at 846.

As TMF points out, a stay makes sense as a matter of the court's discretion to control its docket. "The District Court has broad discretion to stay proceedings as an incident to its power to control its own docket." *Clinton v. Jones*, 520 U.S. 681, 706 (1997); *Landis v. North American Co.*, 299 U.S. 248, 254-55 (1936) ("[T]he power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants. How this can best be done calls for the exercise of judgment, which must weigh competing interests and maintain an even balance."). Following *Landis*, the Ninth Circuit has indicated that, in exercising discretion, "the competing interests which will be affected by the granting or refusal to grant a stay must be weighed" by the court. *Lockyer v. Mirant Corp.*, 398 F.3d 1098, 1110 (9th Cir. 2005) (citation omitted). "Among those competing interests are the possible damage which may result from the granting of a stay, the hardship or inequity which a party may suffer in being required to go forward, and the orderly course of justice measured in terms of the simplifying or complicating of issues, proof, and questions of law which could be expected to result from a stay." *Id.* (citation omitted).

The court does not discern any material prejudice to Hurricane. Given that the trial date in the English proceedings is November 16, 2020, only 2½ months from now, trial in the English proceedings will be concluded before this case even without a stay. Hurricane argues that it will suffer prejudice because any discovery in this case would have to be re-done in the English proceedings. (Opp. at 3.) Discovery is completed in the English proceedings with the exception of expert discovery, which is scheduled to be completed in a few days on September 11, 2020. (Dkt. No. 561-2 ¶¶ 6, 9-10, 12-13.) Expert discovery, pretrial and trial dates have not been set in this case. Thus, a stay at this stage would not prejudice Hurricane in terms of discovery. Hurricane argues that trial in the English proceedings would be more expensive because it must retain both a solicitor and barrister at higher hourly rates than in the United States. This court has no power to stay the English proceedings and, therefore, Hurricane must bear those costs in any event. Hurricane's contention does not justify denial of a stay in this case, which could conceivably benefit Hurricane by avoiding overlapping litigation during pretrial and trial in the English proceedings. As TMF argues, there is hardship or inequity in being required to go forward

³ The parties previously conducted a portion of the settlement negotiations in England. The parties explained to the court that the persons with specialized knowledge about mortgages on such vessels are in England.

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in this case while preparing for trial in two months in the English proceedings. Given TMF's representation that its claims in the English proceedings are duplicative of its *in personam* claims in this court, it is reasonable to assume that trial in the English proceedings will resolve or at least simplify issues, proof and questions of law in this case. This court therefore exercise its discretion to stay TMF's *in personam* claims pending conclusion of the trial in the English proceedings now scheduled to commence on November 16, 2020.

B. Final Judgment on TMF's In Rem Claims

"When an action presents more than one claim for relief . . . the court may direct entry of a final judgment as to one or more, but fewer than all, claims or parties only if the court expressly determines that there is no just reason for delay." Fed. R. Civ. P. 54(b).

A court first determines whether the order is "a 'judgment' in the sense that it is a decision upon a cognizable claim for relief, and it must be 'final' in the sense that it is 'an ultimate disposition of an individual claim entered in the course of a multiple claims action.'" *Curtiss-Wright Corp. v. Gen'l Elec. Co.*, 446 U.S. 1, 7 (1980). The court's entry of summary judgment on TMF's *in rem* claims satisfies this standard.

A court thereafter determines whether there is no just reason for delay and considers "such factors as whether the claims under review were separable from the others remaining to be adjudicated and whether the nature of the claims already determined was such that no appellate court would have to decide the same issues more than once even if there were subsequent appeals." *Id.* at 8 (footnote omitted).

Hurricane opposes TMF's request. Hurricane contends that TMF's *in rem* claims are not separable from TMF's *in personam* claims. Hurricane, however, appealed the court's grant of summary judgment on TMF's *in rem* claims pursuant to 28 U.S.C. § 1292(a)(3). (Dkt. No. 431-1 at 2.) Section 1292(a)(3) permits an interlocutory appeal of an order that conclusively determines the rights and liabilities of parties to an admiralty case. *All Alaskan Seafoods v. M/V Sea Producer*, 882 F.2d 425, 427 (9th Cir. 1989). Under the law of the case doctrine, this court "is generally precluded from reconsidering an issue previously decided by the same court, or a higher court in the identical case." *Milgard Tempering v. Selas Corp. of Am.*, 902 F.2d 703, 715 (9th Cir. 1990). Thus, the issues adjudicated in the court's grant of summary judgment to TMF on its *in rem* claims and affirmed on appeal have been conclusively determined and no appellate court would have to decide the same issues more than once.

Hurricane contends that it would be prejudiced in the English proceedings if this court grants a Rule 54(b) certification in this case because TMF would be able to argue in England that this court's decision should have res judicata or collateral estoppel effect. (Opp. at 7.) Hurricane, however, does not make any showing as to how res judicata or collateral estoppel could apply to TMF's *in personam* claims in the English proceedings and this court will not speculate. Indeed, Hurricane states that the

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English court has set a 12-day trial.

Hurricane further argues that this court should hold the proceeds from the sale of the Megacore Philomena in the court registry (or transfer the funds to the English court) in the event Hurricane prevails on its *in personam* counterclaims in the English proceedings. Hurricane's argument does not provide a just reason for delay of judgment on the *in rem* claims. All of the issues in the *in rem* claims, including claims based on maritime liens or *custodia legis* expenses, have been adjudicated. TMF's *in personam* claims are stayed in this court pending trial in the English proceedings. Although Hurricane also asserts *in personam* claims in the English proceedings, Hurricane has not shown legal entitlement to the sale proceeds from the sale of the Megacore Philomena pending the outcome of the English proceedings.⁴

C. Orders

IT IS ORDERED that, on the court's own motion and after considering the parties' briefs and arguments, TMF's *in personam* claims are STAYED pending the conclusion of the trial in the English proceedings that is scheduled to commence on November 16, 2020.

IT IS FURTHER ORDERED that the parties shall file a status report with this court within seven days after trial in the English proceedings is concluded.

IT IS FURTHER ORDERED that TMF's request for entry of judgment against the Megacore Philomena *in rem* pursuant to Fed. R. Civ. P. 54(b) and 58(d) is GRANTED. A separate judgment will issue.

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⁴ Moreover, Hurricane represents that proceeds from the sale of the Megacore Honami are being held in a Singapore court. It is not clear to this court whether the stay in the Singapore court was the result of proceedings in the English court or otherwise.