UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 19-cv-62672-UU

WORLD FUEL SERVICES, INC., *et al.*,

Plaintiffs,

v.

M/V PACKGRACHT (IMO 9424546),

Defendant,
_____/

ORDER

THIS CAUSE comes before the Court upon Owner's Motion for Summary Judgment (the "Motion"). D.E. 33.

THE COURT has considered the Motion and pertinent parts of the record and is otherwise fully advised in the premises. For the reasons that follow, the Motion is GRANTED.

I. Background

Unless otherwise indicated, the following facts are undisputed.

Plaintiffs are four separate legal entities that share a common parent corporation, World Fuel Services Corp. ("WFS"). D.E. 34 ¶¶ 1–4. Through this lawsuit, Plaintiffs seek to collect on unpaid invoices for the provision of marine fuel (known as "bunkers") to the M/V Parkgracht (IMO 9424546) (the "Vessel"). *Id.* ¶¶ 8–12. The bunkers at issue were furnished to the Vessel pursuant to a contract between WFS and Hansa Heavy Lift GMBH ("HHL"), the previous owner of the Vessel. *Id.* ¶ 14. WFS was the exclusive supplier of bunkers for HHL and all of its vessels, to include the subject Vessel. *Id.* ¶ 15.

The first unpaid invoice involves the provision of $130,625.95 worth of bunkers to the Vessel on February 27, 2018 in the port of St. Eustatius, Bonaire, by Plaintiff Trans-Tec International (a Costa Rican entity). *Id.* ¶ 8. The second unpaid invoice involves the provision of $50,565.11 worth of bunkers to the Vessel on June 14, 2018 in the port of Montreal, Quebec, by Plaintiff World Fuel Services Canada (a Canadian entity). *Id.* ¶ 9. The third unpaid invoice involves the provision of $411,506.26 worth of bunkers to the Vessel on July 12, 2018 in the port of Houston, Texas, by Plaintiff World Fuel Services Inc. (a U.S. entity). *Id.* ¶ 10. The fourth unpaid invoice involves the provision of $279,590.00 worth of bunkers to the Vessel on September 9, 2018 in Bermuda, by Plaintiff Trans-Tec International. *Id.* ¶ 11. The fifth and sixth unpaid invoices involve the provision of $318,010.00 and $247,240.00 worth of bunkers to the Vessel on September 28, 2018 and October 30, 2018 in Algeciras, Spain, by Plaintiff World Fuel Services Europe, Ltd. (a United Kingdom entity). *Id.* ¶ 12. In total, Plaintiff seeks to recover $1,464,537.32 in unpaid invoices. *Id.* ¶ 13.

On December 18, 2018, WFS and Plaintiffs learned that HHL would be entering insolvency proceedings, and at that time, HHL owed WFS approximately $15 million for bunkers provided to HHL vessels, to include the subject Vessel.[1] *Id.* ¶ 18. Prior to learning that HHL was entering insolvency proceedings, WFS arrested one HHL vessel in a foreign port in an effort to collect on unpaid bunkers, and between December 2018 and January 2019 (*i.e.*, after WFS learned of HHL's insolvency), WFS arrested four additional HHL vessels in foreign ports. *Id.* ¶¶ 21–22.

The subject Vessel is the only former HHL vessel on which WFS is still seeking to collect for unpaid bunkers furnished under the supply contract between WFS and HHL. *Id.* ¶ 20. HHL

[1] WFS has been able to recover between $10 million and $12 million of the $15 million that it was owed by HHL at the time it entered insolvency proceedings. *Id.* ¶ 19.

provided WFS and Plaintiffs the Vessel's schedule through January 2019, to include the planned ports at which the Vessel would be making berth, but WFS and/or Plaintiffs failed to arrest the Vessel at any of the scheduled ports. *Id.* ¶ 26. WFS and Plaintiffs tracked and monitored the Vessel for an opportunity to arrest it and even maintained a regularly updated tracking report. *Id.* ¶¶ 25, 28.

At some point, WFS and Plaintiffs discovered that the Vessel was scheduled to arrive in Malta on or around January 25, 2019. *Id.* ¶ 25. After learning that the Vessel was destined for Malta, WFS and Plaintiffs consulted with a Maltese attorney, who advised them that "there was a mortgage claim on the Vessel in excess of 30 million Euro." *Id.* ¶ 29. After consulting with this attorney, WFS and Plaintiffs elected not to arrest the Vessel upon its arrival in Malta. *Id.* On February 6, 2019, WFS and Plaintiffs were notified by the same attorney that the Vessel had been arrested in Malta by the Vessel's mortgage holder "based on a claim of lien in excess of 30 million Euro." *Id.* ¶ 33.

By March 2019, WFS and Plaintiffs knew that B.V. Firmanten Parkgracht ("Owner") and its parent company, Spliethoff Beveer B.V. ("Spliethoff") were seeking to acquire the subject Vessel, but did nothing to confirm the details of the pending sale. *Id.* ¶ 32, 35. On May 29, 2019, a court in Malta approved the sale of the Vessel to Owner for a purchase price of €9.3 million and "confirmed that such sale would provide Owner with a free and clear title under Maltese law." *Id.* ¶ 47. Plaintiffs dispute the validity of the sale because they assert that "[n]o notice of the proceedings in Malta was ever provided to Plaintiffs," and that "[n]o notice of the judicial sale was ever provided to Plaintiffs." D.E. 36 ¶¶ 5, 6 (Plaintiffs' Additional Material Facts).

Despite continuing to monitor the Vessel's movements, WFS and Plaintiffs "did nothing up through October 18, 2019 . . . to pursue or protect their claim for unpaid bunkers." D.E. 34 ¶

36. Plaintiffs do not dispute that they "knew of the insolvency proceedings relating to the Vessel and its prior owners, but elected not to file a claim for the unpaid bunkers furnished to the Vessel." *Id.* ¶ 40. In addition, Plaintiffs concede that, as of April 17, 2019, they "knew . . . that the insolvency proceedings related to the Vessel were terminated on March 20, 2019, due to a lack of funds." *Id.* ¶ 39. WFS and Plaintiffs made their first demand via an October 18, 2019 email correspondence for the full balance of the unpaid invoices for the provision of bunkers to the Vessel. *Id.* ¶ 37.

Plaintiffs initiated this action on October 25, 2019, seeking to foreclose of the alleged maritime liens arising under 46 U.S.C. § 31342 for the provision of bunkers to the Vessel. *See* D.E. 1. Through the Motion, Owner asserts that it is entitled to summary judgment because (1) "[a]ny possible liens Plaintiffs may have had were extinguished after the Vessel was arrested in Malta and sold to Owner," and (2) the doctrine of laches bars Plaintiffs' claims. D.E. 33. In the alternative, Owner argues that "even if Plaintiffs['] claims could have survived the judicial sale in Malta, and even if they were not barred by the doctrine of laches," Plaintiff only "would at best be entitled to assert a lien over any bunkers furnished to the Vessel in the U.S., by a U.S. entity." *Id.* The Motion is fully briefed and ripe for adjudication.

II. Legal Standard

Summary judgment is authorized only when the moving party meets its burden of demonstrating that "the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56. When determining whether the moving party has met this burden, the Court must view the evidence and

all factual inferences in the light most favorable to the non-moving party." *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 157 (1970); *Rojas v. Florida*, 285 F.3d 1339, 1341-42 (11th Cir. 2002).

The party opposing the motion may not simply rest upon mere allegations or denials of the pleadings; after the moving party has met its burden of proving that no genuine issue of material fact exists, the non-moving party must make a showing sufficient to establish the existence of an essential element of that party's case and on which that party will bear the burden of proof at trial." *See Celotex Corp. v. Catrell*, 477 U.S. 317 (1986); *Poole v. Country Club of Columbus, Inc.*, 129 F.3d 551, 553 (11th Cir. 1997); *Barfield v. Brierton*, 883 F.2d 923, 933 (11th Cir. 1989).

If the record presents factual issues, the Court must not decide them; it must deny the motion and proceed to trial. *Envntl. Def. Fund v. Marsh*, 651 F.2d 983, 991 (5th Cir. 1981). Summary judgment may be inappropriate even where the parties agree on the basic facts, but disagree about the inferences that should be drawn from these facts. *Lighting Fixture & Elec. Supply Co. v. Cont'l Ins. Co.*, 420 F.2d 1211, 1213 (5th Cir. 1969). If reasonable minds might differ on the inferences arising from undisputed facts, then the Court should deny summary judgment. *Impossible Elec. Techs., Inc. v. Wackenhut Protective Sys., Inc.*, 669 F.2d 1026, 1031 (5th Cir. 1982); *see also Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) ("[T]he dispute about a material fact is 'genuine' . . . if the evidence is such that a reasonable jury could return a verdict for the nonmoving party.").

Moreover, the party opposing a motion for summary judgment need not respond to it with evidence unless and until the movant has properly supported the motion with sufficient evidence. *Adickes*, 398 U.S. at 160. The moving party must demonstrate that the facts underlying the relevant legal questions raised by the pleadings are not otherwise in dispute, or else summary judgment will be denied notwithstanding that the non-moving party has introduced no evidence whatsoever.

Brunswick Corp. v. Vineberg, 370 F.2d 605, 611-12 (5th Cir. 1967). The Court must resolve all ambiguities and draw all justifiable inferences in favor of the non-moving party. *Liberty Lobby, Inc.*, 477 U.S. at 255.

III. Analysis

Owner argues that it is entitled to summary judgment because "[a]ny possible liens Plaintiffs may have had were extinguished after the Vessel was arrested in Malta and sold to Owner, free and clear of any encumbrances, through a judicial sale authorized under Maltese law." D.E. 33, p. 4. Under applicable maritime law, "summary judgment based upon the affirmative defense of a prior judicial sale in a foreign country is inappropriate unless there are no genuine issues of fact relating to the following elements: (1) that a foreign court of competent admiralty jurisdiction ordered the sale; (2) that the court conducted fair and regular proceedings; (3) that the sale was ordered pursuant to a validly entered judgment in an *in rem* admiralty proceeding; and (4) that the effect of the sale, under the law of that foreign forum, would be to extinguish all pre-existing maritime liens." *Cresent Towing & Salvage Co., Inc. v. M/V Anax*, 40 F.3d 741, 744 (5th Cir. 1994).

To support this affirmative defense, Owner proffers the Affidavit of Dr. Ann Fenech, a Maltese attorney who practices maritime law in Malta. D.E. 34-11. In the affidavit, Dr. Fenech testifies that: (1) "[the Maltese] courts would have jurisdiction in rem against a vessel," under the facts and circumstances at issue here, and that on May 29, 2019, the Maltese court "delivered a decree, . . . ordering the private sale of the [Vessel] to [Owner] . . . , ordering that the sale gives the purchaser a free and unencumbered title," (*id.* ¶¶ 10, 17); (2) the procedure related to the sale of the Vessel "was perfectly in order and in accordance with and as permitted by Maltese law," (*id.* ¶ 39); (3) pursuant to section 742(B)(c) of the Maltese Code of Organisation and Civil

Procedure, "the Maltese courts could exercise jurisdiction in Rem against the [Vessel]," (*id* ¶ 18); and (4) "[w]hen a vessel is sold in a court approved private sale held in accordance with Article 358 to 364 of the Code of Organisation and Civil Procedure, the vessel is sold free and unencumbered." *Id.* ¶ 40. A copy of the Maltese court's decree and the bill of sale memorializing the judicial sale are attached to Dr. Fenech's affidavit. *See id.*, Annex AF 4 & Annex AF 13.

On the same day that Owner moved for summary judgment, Plaintiffs filed a Motion to Strike Expert Witness (the "Motion to Strike"), in which Plaintiffs request the Court to strike Dr. Fenech as an expert witness, disregard her affidavit on summary judgment, and preclude Dr. Fenech from offering testimony at trial. D.E. 32. In the Motion to Strike, Plaintiffs assert that the disclosure of Dr. Fenech came "well after the deadlines set by this Court," and that "the disclosure is also incomplete and in violation of Rule 26." *Id.* According to Plaintiffs, Dr. Fenech "was an expert witness that was required to be timely disclosed under Rule 26 like any other expert witness," and that "[t]he only evidence regarding the alleged sale in Malta comes from an untimely expert report that should be excluded." D.E. 35, p. 9. In response, Owner argues that the Motion to Strike must be denied because Dr. Fenech "was properly disclosed as a foreign law expert under Rule 44.1, and Rule 26(a)(2) does not apply." D.E. 37.

The Court finds that Rule 44.1 is applicable here, as Dr. Fenech is offered as a foreign law expert on the relevant principles of Maltese law at issue. Rule 44.1 requires that "[a] party who intends to raise an issue about a foreign country's law must give notice by a pleading or other writing." Fed. R. Civ. P. 44.1. In this case, the record reveals that on July 1, 2020, Owner identified Dr. Fenech and advised Plaintiffs that "Dr. Fenech is expected to provide expert testimony regarding the process and laws governing judicial sales of vessels in Malta, the subject judicial sale of the vessel involved in this action, the arrest of the subject vessel prior to its sale,

and the effects of the subject judicial sale." D.E. 37-2. Owner thus complied with Rule 44.1 by giving notice by an "other writing." And contrary to Plaintiffs' contention, Owner was not required to provide a traditional expert report as required under Rule 26(a)(2). *See BCCI Holdings (Luxembourg), Societe Anonyme v. Khalil*, 184 F.R.D. 3, 9 (D.D.C. 1999).

Further, under Rule 44.1, "[i]n determining foreign law, the court may consider any relevant material or source, including testimony, whether or not submitted by a party or admissible under the Federal Rules of Evidence. The Court's determination must be treated as a ruling on a question of law." Fed. R. Civ. P. 44.1. This rule "allows the introduction of any evidence to be brought before the court as long as the evidence 1) is relevant and 2) relates to a determination of foreign law." *Grupo Televisa, S.A. v. Telemundo Commc'ns Grp., Inc.*, 2005 WL 5955701, at *6 (S.D. Fla. Aug. 17, 2005) (citing *Trinidad Foundry & Fabricating Ltd. v. MV K.A.S. Camilla*, 966 F.2d 613, 615 (11th Cir. 1992)). In this case, Maltese law necessarily needs to be interpreted and applied. Dr. Fenech's affidavit and supporting documents are squarely relevant to the issues of Maltese law implicated here. The Court thus declines to strike Dr. Fenech and her affidavit.[2]

Plaintiffs argue that even accepting Dr. Fenech's affidavit, Owner "fails to demonstrate that the Maltese court conducted fair and regular proceedings." D.E. 34, p. 11. Plaintiffs assert that "fair and regular proceedings" requires "notice to known creditors," and state that "no notice was provided to any of the Plaintiffs." *Id.* at 12. Yet Plaintiffs admit that they had actual notice

[2] In further support of this decision, each party recognized in its respective pleading that foreign law would be applicable to the resolution of this case. *See* D.E. 1; D.E. 10. But nothing in the Joint Scheduling Report or Proposed Scheduling Order indicated that the parties anticipated treating the foreign law issue as a discovery issue. *See* D.E. 12. In addition, in its Rule 26(a)(1) Disclosures, Owner informed Plaintiffs that it would be relying on "affidavits regarding the subject sale of the vessel or the Maltese procedure for the judicial sale of vessels prepared by any third parties including Dr. Ann Fenech." D.E. 37-2. In other words, Plaintiffs did not indicate in any way or at any point that they expected Owner to produce an expert report on foreign law or to take discovery regarding foreign law and procedure.

that the Vessel had been arrested in Malta. They admit that they consulted with a Maltese attorney, who notified Plaintiffs of the arrest, but took no further action thereafter. And it is undisputed that Plaintiffs specifically knew that Owner was attempting to acquire the Vessel in March of 2019. In drawing all reasonable inferences in Plaintiffs' favor, the Court finds that Plaintiffs were plainly on notice of the proceedings in Malta. And given Dr. Fenech's testimony that the judicial sale was "perfectly in order and in accordance with and as permitted by Maltese law," the Court finds that Plaintiffs fail to create a genuine issue of material as to whether the proceedings were "fair and regular."

In sum, Owner has properly supported the Motion with sufficient evidence to establish its affirmative defense predicated on the prior judicial sale in Malta. Plaintiffs have failed to offer any record evidence to demonstrate a genuine issue of material fact. Given that the judicial sale extinguished all liens against the Vessel by operation of law, Owner is entitled to summary judgment.

IV. Conclusion

For the foregoing reasons, it is hereby

ORDERED AND ADJUDGED that the Motion (D.E. 33) is GRANTED. The Court will enter a separate final judgment. It is further

ORDERED AND ADJUDGED that Plaintiffs' Motion to Strike (D.E. 32) is DENIED. It is further

ORDERED AND ADJUGED that the Clerk of Court shall administratively close this case. All future hearings and deadlines are hereby CANCELLED, and any remaining pending motions are DENIED AS MOOT.

DONE AND ORDERED in Chambers, Miami, Florida, this _28th_ day of September, 2020.

URSULA UNGARO
UNITED STATES DISTRICT JUDGE

Copies furnished:
All counsel of record