

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

Case No. 1:22-cv-23951-KMM

In the Matter of the Complaint for Exoneration
From or Limitation of Liability by Windward
Boating, LLC, as Owner of one 1979 Fiberglass
Vessel, HIN: FLZFN458J879, Florida Registration
No.: FL3018RT.,

Petitioner,

ORDER

THIS CAUSE came before the Court upon Claimant Taymi Estevez’s (“Claimant”) Motion to Dismiss Limitation Proceeding (“Motion” or “Mot.”) (ECF No. 7).¹ Petitioner, Windward Boating LLC (“Petitioner”), as Owner of one 1979 Fiberglass vessel (“Petitioner’s Vessel”), HIN: FLZFN458J879, Florida Registration No. FL3018RT, filed a response in opposition. (“Resp.”) (ECF No. 20). Claimant filed a reply. (“Reply”) (ECF No. 21). The matter is now ripe for review.

I. FACTUAL BACKGROUND AND PROCEDURAL HISTORY

This action arises from a collision involving Petitioner’s Vessel on June 17, 2022. *See* (“Compl.”) (ECF No. 1 ¶ 7). Petitioner alleges that its vessel was traveling towards its home marina when it was struck by a separate vessel (“Cobia Vessel”) traveling at an estimated 35-40 knots. *Id.* ¶¶ 10–12. Petitioner’s Vessel was unable to avert contact with the Cobia Vessel. *Id.* ¶ 13. The collision resulted in five passengers being ejected from the Cobia Vessel and two fatalities. *Id.* ¶ 17.

As a result of the collision, Petitioner filed the Complaint seeking exoneration from or limitation of liability pursuant to 28 U.S.C. § 1333 and the Limitation of Vessel Owner Liability

¹ Taymi Estevez brings this action as Personal Representative of the Estate of Pablo Castro Diaz.

Act (“Limitation Act”), 46 § 30503, *et seq.* See generally Compl. Petitioner then filed an Amended Motion for Entry of Order Approving Ad Interim Stipulation for Value and Order Directing Monition and Injunction, *see* (ECF No. 3), which the Court granted on December 16, 2022. *See* (ECF No. 4). In the Order, the Court held that the Ad Interim Stipulation for the value of Petitioner’s interest in the Vessel amounted to \$2,500.00, plus costs of Court and interest at a rate of six percent. *Id.* at 1. The Court also explained:

A Monition issue out of and under the seal of this Court against all persons or corporations claiming damage for any and all loss, destruction, damage, injuries, and/or death allegedly as a result of the occurrences and happenings recited in the Complaint, to file their respective claims with the Clerk of this Court and to serve on or mail to the attorneys for Petitioner Matthew John Valcourt, Valcourt and Associates LLC, with address at 850 NE Third St, Suite 208, Dania FL 33004, email mvalcourt@valcourtlaw.com fax no (305) 470-7484 copies thereof on or before February 15, 2023, and that all persons or corporations so presenting claims and desiring to contest the allegations of the Complaint shall serve on or mail to the attorneys for the Petitioner copies thereof, or be defaulted.

Id. at 3. Public notice was given in a newspaper of general circulation in the Miami-Dade County area for four successive weeks. *Id.* As of the date of this Order, only Claimant is contesting the limitation of liability claim.

Now, Claimant moves this court to dismiss this Action pursuant to the “saving to suitors clause” codified in 28 U.S.C. § 1333(1). Claimant believes that the statute entitles it to dismissal of this Action “to allow [Claimant] to file a personal injury in state court.” Resp. at 4. In the alternative, Claimant requests that the Court retain jurisdiction over this Action, but lift the stay so that it may seek compensation on its personal injury action independent of the limitation question. *See generally* Reply.

II. LEGAL STANDARD

Federal Rule of Civil Procedure 12(b)(6) permits a court to dismiss a complaint for failing to state a claim upon which relief can be granted. Fed. R. Civ. P. 12(b)(6). “To survive a motion

to dismiss, a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citation and internal quotation marks omitted). This requirement “give[s] the defendant fair notice of what the claim is and the grounds upon which it rests.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (internal citation and alterations omitted). The court takes the plaintiff’s factual allegations as true and construes them in the light most favorable to the plaintiff. *Pielage v. McConnell*, 516 F.3d 1282, 1284 (11th Cir. 2008).

A complaint must contain enough facts to plausibly allege the required elements. *Watts v. Fla. Int’l Univ.*, 495 F.3d 1289, 1295–96 (11th Cir. 2007). A pleading that offers “a formulaic recitation of the elements of a cause of action will not do.” *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 555). “[C]onclusory allegations, unwarranted deductions of facts or legal conclusions masquerading as facts will not prevent dismissal.” *Oxford Asset Mgmt., Ltd. v. Jaharis*, 297 F.3d 1182, 1188 (11th Cir. 2002).

III. DISCUSSION

Whether Claimant is entitled to relief turns on the interplay between the Limitation Act and the “saving to suitors clause” in 28 U.S.C. § 1333(1).

Under the Limitation Act, a vessel owner may file a petition in federal court to limit his or her liability from exceeding the amount of their interest in the vessel. *See Norwich & N.Y. Transp. Co. v. Wright*, 80 U.S. 104, 121 (1871). “Provided that the accident in question occurred without the vessel owner’s ‘privity or knowledge,’ the [Limitation] Act limits the owner’s liability to the value of his or her interest in the vessel and its pending freight.” *Beiswenger Enterprises Corp. v. Carletta*, 86 F.3d 1032, 1036 (11th Cir. 1996) (quoting 46 App. U.S.C. § 183(a)). The vessel owner must deposit with the Court the value of the vessel and its freight, and in turn, the district

court stays all related claims against the vessel owner in all other forums. *See id.* (citations omitted).

District courts who adjudicate these limited liability actions do so pursuant to their exclusive admiralty jurisdiction. *See id.* (citing *Ex Parte Green*, 286 U.S. 437, 439–40 (1932)); *see also* 28 U.S.C. § 1331. But, Section 1331, which grants federal courts exclusive admiralty jurisdiction over the limited liability action, also saves to suitors “all other remedies to which they are otherwise entitled,” including any common law rights which claimants may pursue. *Id.* Accordingly, the Limitation Act and the “saving to suitors” clause create a tension whereby the limited liability action must be adjudicated in federal court, but claimants have a statutory right to bring a damages claim in the forum of their own choosing.

The Eleventh Circuit has attempted to reconcile this tension by “giv[ing] effect to both the Limitation Act and the saving to suitors clause whenever possible.” *Beiswenger*, 86 F.3d at 1037. To do so, it has identified two circumstances in which claimants must be permitted to bring cases for liability and damages in a forum of their choosing outside the limitation action: (1) when a limitation fund exceeds the aggregate amount of all possible claims against the vessel owner; and (2) where only one claimant exists. *See id.* at 1037–38. If either circumstance exists (and certain stipulations are made), the claimant may enforce his or her right to a jury trial on liability and damages. *See id.* at 1038.

The second exception applies here. After Claimant filed the instant Motion claiming that this Action should be dismissed or stayed because the single claimant exception applies, the Court issued a paperless order requiring supplemental briefing because Petitioner responded that this is not a single claimant case. *See* (ECF No. 23). In its supplemental briefing, Claimant explained that “[t]he only person who complied with this [C]ourt’s order regarding the deadlines for

contesting the limitation of liability claim[] is Mr. Castro Diaz. . . .Thus, this is a single claim.” (ECF No. 25 at 2). In response, Petitioner reverses course and concedes “pursuant to the current list and type of Claimants in this action (Damage and Indemnity types of claimants) [] the law defines this as a single claimant case.”² (ECF No. 24 at 2). Accordingly, the Court finds that Claimant is the only party contesting the allegations in the Complaint and therefore, the single claimant exception applies.

Despite the applicability of the single claimant exception, Petitioner has repeatedly argued that Claimant has failed to satisfy the exception because it has not filed the necessary stipulations. *See* Resp. at 7; (ECF No. 24 at 4). In response, Claimant executed stipulations and attached them as an exhibit to its supplemental briefing. *See* (ECF No. 25, Ex. A). The question before the Court is therefore whether the stipulations are sufficient.

In *Beiswenger*, the court found that a valid stipulation in a single claimant case must: (1) protect the “vessel owner’s right to litigate its claim to limited liability exclusively in the admiralty court;” (2) waive any *res judicata* defense and “the related defense of issue preclusion with respect to all matters reserved exclusively for determination by the admiralty court;” (3) protect “the vessel owner from having to pay damages in excess of the limitation fund, unless and until the admiralty court denies limited liability;” and (4) protect the vessel owner from “litigation by the damage

² Petitioner also argues that the issue of whether the single claimant exception applies is not yet ripe because third-party defendants may file answers, affirmative defenses, and counterclaims. *See* (ECF No. 24 at 4). Since the date of the instant Motion, no answers, affirmative defenses, or counterclaims have been filed. Moreover, any claims contesting the allegations of the Complaint were to be filed by February 15, 2023. *See* (ECF No. 4 at 2–3). Claimant is the only party to have done so. Thus, the Court disagrees with Petitioner that the issue of whether the single claimant exception applies is not ripe; the Court has clearly stated when any contest needed to have been filed and only Claimant complied.

claimants in any forum outside the limitation proceeding” in order to conform to the single claimant exception. *Beiswenger*, 86 F.3d at 1044.

Here, Claimant’s Stipulation provides that “Claimant will proceed only to judgment of issues exclusive of exoneration or limitation of liability.” (“Stip.”) (ECF No. 25 Ex. A) ¶ 1(a).

Claimant stipulates in relevant part that:

(a) That in pursuing her remedies in state court, Claimant will proceed only to judgment of issues exclusive of exoneration or limitation of liability;

(b) That if Claimant files an action against Petitioner or other third parties as a result of the incident described in the petition (D.E. 1), she will do so in a Florida state court with adequate jurisdiction and venue and do so within ninety (90) days of the stay being entered;

(c) That the Federal District Court for the Southern District of Florida will retain exclusive jurisdiction over the issues pertaining to (1) the right to Petitioner’s exoneration of liability to Claimant[,] (2) the right to limit liability, (3) the proper valuation of the Limitation Fund, (4) all matters affecting the right to limit liability herein, and that (5) any decision in any proceeding other than the Limitation Proceeding, will not be *res judicata* as to those issues set forth herein should they in any manner be embraced by any decision in any other proceeding;

(d) Claimant will not seek, in any action other than the Limitation Proceedings, any judgment or ruling on the issue of Petitioner’s right to exoneration or limitation of liability and hereby consents to waive any claim of collateral estoppel and/or *res judicata* relevant to the issues of exoneration or limitation of liability based upon any decision, ruling, or judgment that may be rendered in any other proceeding;

(e) In the event that any other proceeding, arising from or based upon the events underlying the filing of the petition for limitation of liability, there is a judgment entered against Petitioner and said judgment is for an amount in excess of the amount submitted by Petitioner as the value of the vessel after the occurrence, or such other amount found by the Court pursuant to Supplemental Admiralty Rule F, or later stipulated by the parties, Claimant stipulates that in no event will she seek to enforce that judgment or recovery in excess of the vessel’s value unless and until further proceedings and/or orders from this Court permit such enforcement.

Id. ¶ 1(a)–(e).

Accordingly, the Court finds that Claimant’s stipulation complies with the requirements of the single claimant exception of the “saving to suitors” clause. Specifically, Claimant’s stipulation

protects Petitioner's right to litigate limitation of liability before this Court, waives any *res judicata* defense, and disclaims any judgment in excess of the value of the Vessel as determined by this Court. These stipulations are sufficient under *Beiswenger*. Thus the Court will lift the injunction and permit Claimant to proceed with a state court action against Petitioner in accord with the stipulations. The Court retains jurisdiction over the limitation of liability action.

IV. CONCLUSION

UPON CONSIDERATION of the Motion, the pertinent portions of the record, and being otherwise fully advised in the premises, it is hereby ORDERED AND ADJUDGED as follows:

1. Respondent/Claimant's Motion to Dismiss Proceedings or Lift Stay is GRANTED as to the stay only.
2. This case is STAYED and the Clerk of Court is instructed to administratively CLOSE this case. All pending motions, if any, are DENIED AS MOOT.
3. This Court retains jurisdiction over this limitation of liability action.
4. The Injunction (ECF No. 4) is hereby LIFTED. Claimant may proceed with the state court action against Petitioner.

DONE AND ORDERED in Chambers at Miami, Florida, this 18th day of October, 2023.



K. MICHAEL MOORE
UNITED STATES DISTRICT JUDGE

c: All counsel of record