

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

OCT 26 2023

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

BRANNON FINNEY,

Plaintiff-Appellee,

v.

BRYAN R. HOWEY, and his marital  
community,

Defendant-Appellant.

No. 23-35026

D.C. No.

3:20-cv-00289-SLG-KFR

MEMORANDUM\*

Appeal from the United States District Court  
for the District of Alaska  
Sharon L. Gleason, Chief District Judge, Presiding

Submitted October 19, 2023\*\*  
Portland, Oregon

Before: GILMAN,\*\* KOH, and SUNG, Circuit Judges.

Bryan R. Howey (“Appellant”) appeals the district court’s decision denying his Motion to Vacate for Lack of Jurisdiction under Federal Rule of Civil

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\* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

\*\* The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

\*\*\* The Honorable Ronald Lee Gilman, United States Circuit Judge for the U.S. Court of Appeals for the Sixth Circuit, sitting by designation.

Procedure (“Rule”) 60(b)(4), which claimed that the default judgment entered against him was void for lack of subject matter jurisdiction. Because the contract at issue in this case (the “Seine Permit Contract”) was maritime in nature, the district court had admiralty jurisdiction under 28 U.S.C. § 1333, and we affirm.

1. The district court had admiralty jurisdiction because the Seine Permit Contract was a maritime contract. “[A] contractual claim gives rise to Section 1333 admiralty jurisdiction when the underlying contract is ‘maritime in nature.’” *ProShipLine Inc. v. Aspen Infrastructures Ltd.*, 609 F.3d 960, 967 (9th Cir. 2010) (quoting *Norfolk S. Ry. Co. v. Kirby*, 543 U.S. 14, 23 (2004)). Contracts are maritime in nature if they relate to “commerce . . . on navigable waters,” *La Reunion Francaise SA v. Barnes*, 247 F.3d 1022, 1026 (9th Cir. 2001) (quoting *Aqua-Marine Constructors, Inc. v. Banks*, 110 F.3d 663, 670-71 (9th Cir. 1997)), or involve the procurement of “[c]ommercial privileges” related to maritime commerce, *see Ex parte Easton*, 95 U.S. 68, 73 (1877). The Seine Permit Contract gave Appellant the right to fish for salmon in Alaskan and federal waters and to sell his catch for profit. Moreover, the Seine Permit Contract involved the procurement of a necessary commercial privilege, a fishing permit, because Appellant needed the permit to conduct commercial fishing operations in Alaska. Because fishing is an economic activity that takes place at sea, the Seine Permit Contract advances maritime commerce and is therefore maritime in nature.

2. Because the Seine Permit Contract is clearly maritime in nature, we need not resolve the parties' dispute about who bore the burden of proof as to the existence of subject matter jurisdiction. Even assuming, as Appellant suggests, that the burden shifted to Appellee upon Appellant filing the Rule 60(b)(4) motion, Appellee has met that burden. As explained above, the Seine Permit Contract, which Appellee incorporated by reference in her complaint, is sufficient proof of admiralty jurisdiction. *See Exp. Grp. v. Reef Indus., Inc.*, 54 F.3d 1466, 1468 (9th Cir. 1995) (“[I]n deciding whether the district court appropriately determined that it lacked subject matter jurisdiction [under Fed. R. Civ. P. 60(b)(4)], we accept the facts alleged in the complaint as true.”). Because the complaint and incorporated contract show that the dispute sounds in admiralty, the Rule 60(b)(4) motion was properly denied no matter which party had the burden.

**AFFIRMED.**