IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

PUERTO RICO PORTS AUTHORITY **Plaintiff** v. EMMETT CALDWELL **Defendant** v. PUERTO RICO PORTS AUTHORITY **Counter Defendant**	**CIVIL NO.** 23-1357(RAM)

MEMORANDUM AND ORDER

RAÚL M. ARIAS-MARXUACH, United States District Judge

Pending before the Court is Plaintiff Puerto Rico Ports Authority's ("PRPA") *Motion to Remand for Lack of Subject-Matter Jurisdiction* ("*Motion to Remand*") (Docket No. 7). After reviewing the documents on record and the applicable law, the Court hereby **REMANDS** this lawsuit to the Puerto Rico Court of First Instance, Superior Chamber of San Juan, for lack of subject matter jurisdiction.

I. BACKGROUND

On June 23, 2023, the PRPA filed a complaint requesting injunctive relief in the Puerto Rico Court of First Instance, Superior Chamber of San Juan against Emmett Caldwell ("Caldwell"),

an individual who "appears to be a homeless person who spends the night in an illegally abandoned boat in the San Antonio Channel of San Juan Bay."[1] (Docket No. 2-1 ¶ 2). Per the PRPA, the vessel is an abandoned, inoperative, 54-foot-long Bertram recreational boat that is unidentified, unregistered, and has no tags or identification number. Id. ¶¶ 6-7, 9-10. Furthermore, the PRPA alleges that the vessel is illegally docked in the San Juan Bay, as it does not comply with Regulation 4287 and does not have docking permits. Id. ¶ 8. Accordingly, the PRPA seeks an injunction ordering Caldwell to vacate the vessel so that it can proceed to remove the vessel pursuant to applicable Puerto Rico laws and regulations. Id. at 8.

On July 10, 2023, Caldwell filed a pro se *Notice of Removal*. (Docket No. 2). Therein, he claims he was defamed by being called homeless and that he has been maintaining the vessel for over four years as his primary residence ("floating home"). Id. at 2-4. Furthermore, he identifies the following jury issues, among others: (1) whether the vessel is in federal navigable waters or otherwise outside of the PRPA's area of operations; (2) whether Puerto Rico law prevents the PRPA from seizing and forcing Caldwell from his primary residence; and (3) whether the vessel is subject to admiralty law. Id. at 4. That same day, Caldwell filed his

[1] The Court notes that the PRPA's complaint is technically against John Doe, who the PRPA stated has "once identified himself as Emmett Caldwell, but he has identified himself by other names to authorities." (Docket No. 1-2 ¶ 2).

answer to the complaint and a counterclaim for defamation. (Docket No. 3).

On July 20, 2023, the PRPA filed the pending *Motion to Remand for Lack of Subject-Matter Jurisdiction*. (Docket No. 7). The PRPA asserts that pursuant to Act No. 151 of June 28, 1968, known as the Puerto Rico Docks and Ports Act ("Act 151"), it is responsible for continuously identifying and removing abandoned vessels in the San Juan Bay that are illegally obstructing marine traffic and represent a danger. Id. at 1-2. The PRPA reiterates that the vessel in this case is inoperative, displays large perforations, has no engine, lacks required safety equipment, and represents a risk to the transportation of passengers and commercial cargo in the area. Id. at 2. The PRPA reasserts that it can remove abandoned or illegally docked vessels without court intervention. Id. at 3. However, the PRPA claims it lacks the mechanisms and resources to remove Caldwell from the vessel and thus sought injunctive relief.[2] Id. The PRPA contends that the Court does not have subject matter jurisdiction over the present case as there is no claim arising under federal law. Id. at 5, 10-14.

Caldwell subsequently filed a pro se amended notice of removal, answer to the complaint and counterclaim. (Docket No.

[2] The Court notes that the PRPA claims it has repeatedly asked Caldwell to abandon the vessel and has also requested assistance from the Puerto Rico Department of Housing and Department of Family to relocate Caldwell and offer him social assistance and housing. (Docket No. 7 at 3).

10). Caldwell appears to assert that there is federal jurisdiction because "[t]he Vessel is anchored in US COAST GUARD Jurisdiction Federal Navigable water." Id. ¶ 11I. He also articulates additional allegations and claims regarding racism and sexual harassment, among others. Id.

The Court proceeded to appoint Caldwell pro-bono counsel to respond to the *Motion to Remand*. (Docket Nos. 13, 14, 19, 24). On October 30, 2023, Caldwell, with the help of counsel, filed a *Motion in Opposition to Remand, Motion Requesting Permission to Amend Counterclaim, and Memorandum of Law in Support* (the "*Opposition*"). (Docket No. 40). The *Opposition* contends that the present action entails a general maritime claim involving a permanent injunction upon a person occupying a vessel that they salvaged and docked on navigable waters. Id. at 7. Therefore, Caldwell posits that the case is properly before this Court as it is subject to the Court's original admiralty jurisdiction. Id.

On November 3, 2023, Caldwell filed a pro se motion seeking 60 days to file his own reply to the *Motion to Remand*, without counsel, claiming he had insufficient time to discuss the case with his pro bono counsel. (Docket No. 41). Caldwell's pro bono counsel withdrew from the case shortly thereafter. (Docket Nos. 44 and 49). On November 13, 2023, the Court denied Caldwell's request, noting that ample time was provided for Caldwell and his counsel to confer. (Docket No. 48). Caldwell filed a *Notice of*

Interlocutory Appeal as to this order on November 22, 2023. (Docket No. 54).

II. DISCUSSION

A. Caldwell's Appeal is Improper and Does Not Stay Proceedings nor Divest the Court of Jurisdiction

1. Appealable orders

28 U.S.C. § 1291 grants courts of appeals jurisdiction "of appeals from all final decisions of the district courts of the United States ... except where a direct review may be had in the Supreme Court." This "statutory requirement of a 'final decision' means that 'a party must ordinarily raise all claims of error in a single appeal following final judgment on the merits.'" Richardson-Merrell, Inc. v. Koller, 472 U.S. 424, 429-30(1985) (quoting Firestone Tire & Rubber Co. v. Risjord, 449 U.S. 368, 374 (1981)); *see also* Quinn v. City of Bos., 325 F.3d 18, 26 (1st Cir. 2003) (noting that usually, "an appeal must await the entry of a final judgment, commonly regarded as a judgment that fully disposes of all claims asserted in the action."). The aptly named final judgment rule "promotes efficient judicial administration while at the same time emphasizing the deference appellate courts owe to the district judge's decisions on the many questions of law and fact that arise before judgment." Id. at 430; *see also* Zayas-Green v. Casaine, 906 F.2d 18, 21 (1st Cir. 1990) (citations omitted) (explaining that the final judgment rule furthers the strong

congressional policy against piecemeal review, the independence of the district judge, and prevents litigants from engaging in stalling tactics).

However, there are exceptions to this rule. By statute, courts of appeals also have jurisdiction over the following non-final orders: (1) interlocutory orders granting, continuing, modifying, refusing, or dissolving injunctions; (2) interlocutory orders appointing and managing receivers; and (3) interlocutory decrees determining the rights and liabilities of parties to admiralty cases. 28 U.S.C. § 1292. Additionally, "orders which are not final dispositions of an action may be immediately appealed in any type of litigation if they satisfy the criteria of the collateral order exception to the final judgment rule first enunciated in [Cohen v. Beneficial Loan Corp., 337 U.S. 541, 69 (1949)]." In re Cont'l Inv. Corp., 637 F.2d 1, 4 (1st Cir. 1980).

"For the collateral-order doctrine to apply, a district court order must: '[1] conclusively determine the disputed question, [2] resolve an important issue completely separate from the merits of the action, and [3] be effectively unreviewable on appeal from a final judgment.'" Lee-Barnes v. Puerto Ven Quarry Corp., 513 F.3d 20, 25 (1st Cir. 2008) (quoting Will v. Hallock, 546 U.S. 345, 349 (2006)). If an order "fails to meet any one of these 'conjunctive' conditions, it is not appealable under the collateral order doctrine." U.S. Fid. & Guar. Co. v. Arch Ins. Co., 578 F.3d 45, 55

(1st Cir. 2009) (quoting Lee-Barnes, 513 F.3d at 25-26). To qualify as an important issue in the collateral-order-doctrine sense "'means being weightier than the societal interests advanced by the ordinary operation of final judgment principles.'" Gill v. Gulfstream Park Racing Ass'n., Inc., 399 F.3d 391, 399 (1st Cir. 2005) (quoting Digital Equip. Corp. v. Desktop Direct, Inc., 511 U.S. 863, 879 (1994)). Notably, the collateral order exception "is applied narrowly and interpreted strictly." United States v. Quintana-Aguayo, 235 F.3d 682, 684 (1st Cir. 2000).

2. The effect of an appeal

"The filing of a notice of appeal is an event of jurisdictional significance—it confers jurisdiction on the court of appeals and divests the district court of its control over those aspects of the case involved in the appeal." Griggs v. Provident Consumer Disc. Co., 459 U.S. 56, 58 (1982). However, as the First Circuit has explained:

> [T]he rule that either the trial or the appellate court—but not both—may have jurisdiction over a case at any given point in time admits of some exceptions. **Thus, a district court can proceed, notwithstanding the filing of an appeal, if the notice of appeal is defective in some substantial and easily discernible way (if, for example, it is based on an unappealable order) or if it otherwise constitutes a transparently frivolous attempt to impede the progress of the case.**

United States v. Brooks, 145 F.3d 446, 456 (1st Cir. 1998) (emphasis added); *see also* Colon-Torres v. Negron-Fernandez, 997 F.3d 63, 74 (1st Cir. 2021). In other words, a notice of appeal fails to "divest the district court of jurisdiction" if the district court issues a ruling finding "that [the] appeal is 'patently meritless[.]'" Lopez-Erquicia v. Weyne-Roig, 2015 WL 6828315, at *2 (D.P.R. 2015) (quoting Rivera-Torres v. Ortiz Velez, 341 F.3d 86, 96 (1st Cir.2003)).

3. Analysis

In the case at bar, Caldwell appealed this Court's order at Docket No. 48 denying his request for a 60-day extension of time to file a further response to PRPA's *Motion to Remand*, following the thorough *Opposition* already filed by his pro bono counsel. (Docket No. 54). This appeal is not of a final judgment, nor is it an appeal of an order regarding injunctions, receivers, or admiralty rights and liabilities. Thus, for this order to be immediately appealable, it must comply with the requirements of the collateral order doctrine. The order did conclusively determine the disputed question, *i.e.*, whether Caldwell could have a further extension. **However, an order denying an extension of time is not an important issue under the collateral order doctrine.** This issue "simply does not 'rise to the level of importance needed for recognition under [the collateral-order doctrine]' as it "is highly unlikely to affect, or even be consequential to, anyone

aside from the parties." Lee-Barnes, 513 F.3d at 26 (quoting Digital Equip. Corp., 511 U.S. at 878). The Court finds that the order at Docket No. 48 does not warrant immediate review and thus, **Caldwell's interlocutory appeal was based on an unappealable order**. Because Caldwell's interlocutory appeal was improper, **the Court is not divested of jurisdiction** to review and address the pending *Motion to Remand* on the merits.

B. Remand is Proper

1. *Standard of Review for Removals*

Pursuant to the federal removal statute 28 U.S.C. § 1441(a), "any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending." For a district court to have original jurisdiction over a civil action, it must be determined that "the case could have been filed originally in federal court based on a federal question, diversity of citizenship, or another statutory grant of jurisdiction." Villegas v. Magic Transp., Inc., 641 F. Supp. 2d 108, 110 (D.P.R. 2009) (citing Caterpillar, Inc. v. Williams, 482 U.S. 386, 393 (1987)).

If the propriety of a removal petition is questioned, "the removing party bears the burden of showing that removal is proper." Id. (citing Danca v. Private Health Care Sys., 185 F.3d 1, 4 (1st

Cir. 1999)). The First Circuit has held that due to this burden and the federalism concerns that arise when considering removal jurisdiction, "ambiguity as to the source of the law […] ought to be resolved against removal." Rossello-Gonzalez v. Calderon-Serra, 398 F.3d 1, 11 (1st Cir. 2004). *See also* Asociacion de Detallistas de Gasolina de Puerto Rico, Inc. v. Shell Chem. Yabucoa, Inc., 380 F. Supp. 2d 40, 43 (D.P.R. 2005) ("When plaintiff and defendant clash about jurisdiction, uncertainties are construed in favor of remand.")

2. *The Well-Pleaded Complaint Rule*

The Supreme Court has established that ordinarily, a plaintiff is the "master of the complaint." Holmes Grp., Inc. v. Vornado Air Circulation Sys., Inc., 535 U.S. 826, 831 (2002). As such, the well-pleaded complaint rule enables plaintiffs to have their cause of action heard in state court by "eschewing claims based on federal law." Caterpillar Inc. v. Williams, 482 U.S. 386, 398-399 (1987). In other words, if the allegations presented in the complaint are premised only on local law, the claim cannot be deemed to have arisen under federal law and the case cannot be removed. *See* Negron-Fuentes v. UPS Supply Chain Sols., 532 F.3d 1, 6 (1st Cir. 2008);Cambridge Literary Properties, Ltd. v. W. Goebel Porzellanfabrik G.m.b.H. & Co. KG., 510 F.3d 77, 93 (1st Cir. 2007); *see also* Villegas, 641 F. Supp. 2d at 112-13 ("Plaintiff

recognized that he could have asserted a claim under federal law [but] exercised his discretion to decline to do so.")

However, as an exception, "certain state claims are subject to removal, even if they purport to rest only on state law, because **the subject matter is powerfully preempted by federal law, which offers some 'substitute' cause of action**." Negron-Fuentes, 532 F.3d at 6 (emphasis added).

3. *Removal of Admiralty and Maritime Claims*

Under 28 U.S.C § 1333(1), district courts have original jurisdiction, exclusive of state courts, in "[a]ny state case of admiralty or maritime jurisdiction, **saving to suitors** in all cases all other remedies to which they are otherwise entitled" (emphasis added). It has long been established that the saving-to-suitors clause of this statute gives state courts the concurrent jurisdiction to adjudicate maritime causes of action brought *in personam*. *See* Madruga v. Superior Ct. of California, 346 U.S. 556, 560-61 (1954), *see also* Rounds v. Cloverport Foundry & Mach. Co., 237 U.S. 303, 305—306 (1915). A maritime cause of action is *in personam* when "the defendant is a person, not a ship or some other instrument of navigation." Id. On the other hand, district courts have exclusive jurisdiction "only as to those maritime causes of action begun and carried on as proceedings *in rem*, that is, where a vessel or thing is itself treated as the offender and made the defendant by name or description." Id. at 560.

Although district courts undoubtedly have original jurisdiction to adjudicate these claims, "[t]he generally accepted rule is that cases may not be removed from state court to federal court where the only basis of the federal court's jurisdiction is admiralty." 1 Benedict on Admiralty § 132 (2019). In other words, removal is proper when the district court has "both admiralty jurisdiction and some other basis of jurisdiction, such as diversity or federal question jurisdiction." Id. Thus, although the saving-to-suitors clause allows plaintiffs to present their *in personam* claims in state court and preserves their right to pursue nonmaritime remedies, "[i]t does not guarantee them a nonfederal *forum*, or limit the right of defendants to remove such actions to federal court **where there exists some basis for federal jurisdiction other than admiralty**." Tenn. Gas Pipeline v. Hous. Cas. Ins., 87 F.3d 150, 153 (5th Cir. 1996) (emphasis added). *See also* 14A Charles A. Wright, Arthur R. Miller & Edward H. Cooper, Fed. Prac. & Proc. Jurs. § 3672 (4th. ed. 2019) ("[B]y virtue of the saving-to-suitors clause, the plaintiff also has the option of either asserting his or her claim at law (whether it be based on tort or contract)—as opposed to admiralty—in a state court or bringing a diversity of citizenship suit in a United States district court.")

After Congress's 2011 amendment to the federal removal statute (28 U.S.C § 1441), several district courts determined that

claims under the saving-to-suitors clause could be removed without an independent basis for federal jurisdiction. Sangha v. Navig8 ShipManagement Priv. Ltd., 882 F.3d 96, 100 (5th Cir. 2018). The most notable of these cases is the Southern District of Texas case Ryan v. Hercules Offshore, Inc., 945 F.Supp. 2d 772 (S.D. Tex. 2013). However, "the vast majority of district courts considering this question have maintained that such lawsuits are not removable." Sangha, 882 F.3d at 100. *See also* 1 Benedict on Admiralty § 132 (2019) ("It is inconceivable that Congress would have altered the rights of all plaintiffs who bring admiralty cases in state court without a clear demonstration of intent."). There is currently no precedent from the Fifth Circuit, *i.e.*, the appeals court that oversees the District Court for the Southern District of Texas, regarding this controversy. Id.; *see also* Riverside Constr. Co., Inc. v. Entergy Miss., Inc., 626 Fed. Appx. 443, 447 (5th Cir. 2015) (explaining that "[t]he Fifth Circuit has not yet spoken directly on this issue."); Barker v. Hercules Offshore, Inc., 713 F.3d 208, 223 (5th Cir. 2013) (noting "cases invoking admiralty jurisdiction under 28 U.S.C. § 1333 may require complete diversity prior to removal.").

Ryan **has not been adopted by the First Circuit** or the District Court of Puerto Rico. On the contrary, this district has expressed that as the masters of their complaint, plaintiffs may select the state court, instead of the district court, as the forum to present

in personam claims consisting of maritime breaches of contract and torts. *See* Villegas, 641 F. Supp. 2d at 112 (remanding a complaint that only asserted breach of contract and tort claims under Puerto Rico law and made no reference to any federal law, rule or regulation).

4. Analysis

In the case at bar, Plaintiff's complaint seeks an injunction ordering Caldwell to vacate a defunct vessel. (Docket No. 2-1 at 8). Given that this cause of action is against a person rather than a ship, it is *in personam*, and the savings-to-suitors clause granting state courts concurrent jurisdiction applies. *See* Madruga, 346 U.S. at 560-61. For removal to be proper, Caldwell needed to articulate an independent basis of federal jurisdiction. *See* Sangha, 882 F.3d at 100. Despite their best efforts, Caldwell and his pro bono counsel have been unable to do so. Neither the maritime nature of the claims at bar nor Caldwell's counterclaims are sufficient to establish federal subject matter jurisdiction to warrant removal in this case. Therefore, the present case must be remanded.

IV. CONCLUSION

In light of the above, the Court **GRANTS** Plaintiff's request for remand at Docket No. 7 and **ORDERS** that the case be remanded to the Puerto Rico Court of First Instance, Superior Chamber of San Juan, case caption and number: Puerto Rico Ports Authority v. John

Doe, Civil Núm. SJ2023CV06134. No fees or costs are imposed.[3] Caldwell should note that the Courts of the Commonwealth of Puerto Rico have a pro bono program through which he may qualify for free legal advice.

Judgment shall be entered accordingly.

IT IS SO ORDERED.

In San Juan Puerto Rico, this 14th day of February 2024.

S/ RAÚL M. ARIAS-MARXUACH
United States District Judge

[3] 28 U.S.C. § 1447(c) dictates that "[a]n order remanding the case may require payment of just costs and any actual expenses, including attorney fees, incurred as a result of the removal." However, The Supreme Court has held that under 28 U.S.C. § 1447(c), "absent unusual circumstances, attorney's fees should not be awarded when the removing party has an objectively reasonable basis for removal." Martin v. Franklin Capital Corp., 546 U.S. 132, 136 (2005).