

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

HSH NORDBANK : CIVIL ACTION
 :
 v. :
 :
 :
 :
 M/V AHMETBEY, :
 ODIN DENIZCILIK : NO. 03-3520

Padova, J.

MEMORANDUM

January __, 2004

Plaintiff HSH Nordbank has filed a motion for satisfaction of judgment and reimbursement of *custodia legis* expenses, attorneys' fees and costs incurred in connection with Plaintiff's enforcement of its mortgage and the arrest and subsequent sale of the M/V Ahmetbey. On October 6, 2003, after a three day trial, this Court entered judgment in favor of Plaintiff on Plaintiff's claim for money owed to it by Odin Denizcilik which was secured by a mortgage upon the Ahmetbey. On November 5th, 2003, the Ahmetbey was sold at auction to Goldfish Shipping of Panama. By order dated November 14, 2003, this sale was confirmed by the Court (Docket # 81.) The proceeds of the sale (\$2,350,000.00) are currently being held by the Court. Defendant Odin Denizcilik filed numerous objections to Plaintiff's Motion. On January 7, 2004, this Court held a hearing and heard argument concerning Plaintiff's motion for costs and fees. The Court ruled upon many of Defendant's objections at this hearing. The Court also deferred ruling upon a number of

Defendant's objections in order to allow the parties to submit additional briefing. Accordingly, those objections not already ruled upon by the Court on the record will be addressed in the instant memorandum.

1. Judgment for Mortgage Deficiency

The parties agree that the total amount of the judgment in this case, including interest accrued through November 18, 2003, is \$811,936.48. However, Defendant now seeks a setoff in the amount of \$18,588.52, representing funds owed to Defendant for services rendered to Key Maritime, a third party. Plaintiff does not dispute that Key Maritime remitted this payment to it. Plaintiff asserts, however, that Defendant should not be entitled to any such setoff until all expenses, costs and fees owed to Plaintiff are paid. Because the Court declines to conduct a final distribution of the funds held by the Court at this time (see *infra*, section 13), and because the Court does not yet know the full extent of the costs and expenses for which Plaintiff will be entitled to reimbursement, the Court declines to setoff the \$18,588.82 payment from the amount of the judgment at this time.

2. Travel Time for Ring Maritime Guard Employees

For the reasons stated on the record in open court on January 7, 2004, Defendant's objections to the reimbursement of Plaintiff for these charges are overruled.

3. Fees for Line Handlers Related to Preparation for Hurricane Isabel

For the reasons stated on the record in open court on January 7, 2004, Defendant's objections to the reimbursement of Plaintiff for line handler charges are overruled.

4. Payment to Marshall for Arrest and Publication

Defendant indicates that it has no objection to reimbursing Plaintiff for payments it has made to the Marshall in connection with the arrest and sale, provided that Plaintiff produces adequate supporting documentation. The Court therefore declines to disburse funds to Plaintiff for reimbursement of this amount at this time. It is expected that the parties will work to resolve this matter by the time of final distribution.

5. Travel Expenses for Roland Pabst and Oliver Brandt

For the reasons stated on the record in open court on January 7, 2004, Defendant's objections to the travel expenses of Mr. Pabst and Mr. Brandt are overruled, with the exception that the charges for business class tickets that Plaintiff has requested will be reduced to coach class rates. The parties have agreed that a reasonable price for a coach class ticket for the journeys of Mr. Brandt and Mr. Pabst is \$1,375.00 for each journey.

6. Port Risk Insurance

For the reasons stated on the record in open court on January 7, 2004, Defendant's objections to the reimbursement of Plaintiff

for the purchase of port risk insurance are overruled.

7. Crew Liability Insurance

At the January 7th hearing, the Court ordered Plaintiff to submit additional briefing on this issue. The portions of Defendant's insurance policy with the North of England Association cited by Plaintiff in its supplemental memorandum demonstrate that "call" payments may be demanded by the insurer at any time after the date on which an accident giving rise to liability occurs. Furthermore, these call payments, or "overspill payments," may be associated with prior periods of coverage. Thus, the insurer may demand a call payment associated with the year 2003 at some point in the year 2004. Plaintiff's memorandum further indicates that, if these "call" payments are not made, liability insurance for the period with which these call payments are associated will lapse. The result is that, if a crew member were to make a claim in the year 2005 for an injury which had occurred at some point while the Ahmetbey was under arrest in 2003, and if Defendant had not kept current in its 2003 call payments during the intervening time period, the insurance company would not be responsible for payment on this claim. Defendant has not refuted the assertions made in Plaintiff's Memorandum.

Plaintiff further notes that, as the Court has transferred ownership of the vessel from Defendant to Goldfish Shipping, Defendant has no incentive to keep current in its call payments.

Furthermore, the Court finds that, given Defendant's conduct throughout the course of these proceedings,¹ it was reasonable for Plaintiff to decline to rely upon Defendant to keep current in its insurance payments. Defendant's objection to the reimbursement of Plaintiff for its purchase of crew liability insurance is therefore overruled.

8. Ehlermann & Jeschonek

Plaintiff enlisted the services of Ehlermann & Jeschonek (E&J), a German law firm, in connection with Plaintiff's attempt to renegotiate its loan agreements with Odin Denizcilik and other members of the Karahasan Group in April, 2003, as well as to research areas of German law which might have been relevant to the trial of this matter.

The party requesting the attorney's fees has the burden of showing that the claimed fees are reasonable. SNA, Inc. v. Array, 173 F. Supp. 2d 347, 350 (E.D. Pa. 2001). Accordingly, the billing records submitted to the Court must be sufficiently detailed for the Court to determine whether the fees are reasonable. The proper inquiry in making this determination is whether the fee is reasonable in light of the fact that the Court is to order another party to pay for it. Halderman v. Pennhurst State School, 49 F.3d 939, 943 (3d Cir. 1995).

¹Defendant's conduct during the course of these proceedings is detailed in the Court's prior memorandums of October 6, 2003 and November 11, 2003.

E&J has submitted a bill for \$19,407.84 for its services in researching German law in preparation for the September trial. For the reasons stated on the record in open court at the hearing held on January 7, 2004, the Court has allowed \$10,000.00 for these services. Defendant continues to object to the reasonableness of the \$19,407.94 billed by E&J for its research of German law issues. However, as the Court previously noted on the record, it was reasonable for Plaintiff to prepare for trial by researching German law, as the loan agreement at issue referenced German law and Defendant had attempted to raise defenses related to German law in similar actions which were ongoing in other jurisdictions. Defendant argues that, as it never filed a Notice of German Law indicating its intention of pursuing German law pursuant to Rule 44.1 of the Federal Rules of Civil Procedure, Plaintiff had no reason to assume that Defendant would raise German law defenses. Defendant notes that a party must give notice of its intention to use foreign law at a point in the proceedings where it will allow the opposing party sufficient time to research this foreign law. However, the timeliness of a party's notice of foreign law is ultimately a matter for the Court to decide, and, given Defendant's history of last minute submissions in this case,² it was reasonable

² As an example, the Court notes that, on the first day of the trial of this matter, Defendant raised a forum non conveniens argument for the first time and requested that the Court decline to decide this case in deference to parallel proceedings which were ongoing in Turkey.

for Plaintiff to prepare for Defendant's anticipated arguments rather than to rely upon the Court's power to strike untimely submissions.

E&J has also submitted a bill in the amount of \$49,571.91 for its services in connection with the preparation of the failed April, 2003 refinancing and loan agreement. The Court deferred ruling upon the \$49,571.91 bill to allow Plaintiff to attempt to obtain more detailed billing records from E&J. However, Plaintiff now indicates that E&J cannot provide more detailed billing records, as German law firms do not follow the billing practices of American law firms. Defendant therefore argues that the Court does not have a sufficiently detailed bill for the Court to assess the reasonableness of the \$45,571.91 bill. However, upon examination of the billing records that were originally submitted by E&J, the Court finds them sufficiently detailed to allow the Court to determine the reasonableness of the fees charged. Indeed, while the statement of account related to the April 2003 loan agreement does not contain detailed hourly billing records, it does contain a narrative description of the services rendered. According to the narrative description, the bill is based upon the drafting of three separate loan agreements on four different vessels, including the Ahmetbey, as well as implementing various changes to the loan and security documentation. (Catell Aff. Ex. F.) Based upon this narrative description, the Court finds that 50% of the amount

charged, or \$22,785.96, is reasonable for the services rendered. The Court bases this finding on the fact that the bill includes services rendered that are not related to the subject of this action. Furthermore, the Court notes that, at the rate of \$355 per hour, an amount that the Court has found reasonable in connection with the services of Watson and Farley (see infra), the sum of \$22,785.96 would represent approximately 64 hours of work. The Court finds that 64 hours of work done in connection with the negotiation and drafting of a complex loan agreement is reasonable under all of the circumstances.

9. Hollstein Keating

Defendant has made various objections to the bill presented by Hollstein, Keating, Cattell, Johnson & Goldstein, Plaintiff's local counsel in this matter. At the January 7th hearing, the Court reduced the hourly rate of Patrick McStravick from \$185.00 to \$150.00. Defendant has argued that specific time billed by Mr. McStravick and Mr. Catell should be reduced, because this time is either duplicative or unnecessary. Defendant's objections to specific portions of Hollstein Keating's bill are found in Defendant's Response to Plaintiff's Motion for Satisfaction of Judgment, § G. After a thorough review of the time entries disputed by Defendant, the Court will reduce the bill of Hollstein Keating as follows:

a. June 12, 2003 Entry by EVC and JWJ

Time is reduced by one hour (time billed is excessive for work described).

b. February 17, 2003³ Entry by EVC

Time is reduced by two hours (time billed is excessive for work described).

c. Disbursements

Charges related to meals in the amount of \$498.23 are disallowed and will be deducted.

d. Reduction of Time Billed by Patrick McStravick.

Time is reduced by 16 hours to 357 hours.⁴

Except as noted above, all of the objections to the bill of Hollstein, Keating, Cattell, Johnson & Goldstein are overruled.

Plaintiff also seeks reimbursement for \$10,000 in expenses that Hollstein Keating will incur in the future in connection with this action. Because the Court declines to conduct a final distribution of the funds held by the Court at this time, the Court will defer ruling on Plaintiff's request for prospective reimbursement for Hollstein Keating's fees. Plaintiff may submit

³ The Court assumes the date listed is incorrect, as this action was not initiated until June, 2003.

⁴ This time reduction, as well as the reduction in Mr. MrStravick's base rate from \$185.00 to \$150.00, addresses all of Defendant's objections to Mr. McStravick's time, including objections related to the necessity of second chair assistance at hearings and trials, duplication, and the nature of Mr. McStravick's work.

additional documentation concerning the fees that Hollstein Keating continues to incur in connection with the enforcement of the mortgage on the Ahmetbey at any time.

10. Watson & Farley Invoice

Plaintiff seeks reimbursement for attorney's fees paid to Watson and Farley, a British law firm which assisted Plaintiff and Plaintiff's local counsel, Hollstein Keating, with issues related to the arrest and sale of the vessel. At the January 7th hearing, the Court reduced Watson and Farley's hourly rate for partners from \$681 per hour to \$355 per hour.⁵ The Court now reduces Watson and Farley's hourly rate for trainees from \$265.00 per hour to \$175 per hour.⁶

In its objections to Watson and Farley's invoice, Defendant

⁵This rate is the rate charged by Jeffery Moller, an attorney with the law firm Blank Rome who practices admiralty law in this area. (See Pl's Reply Mem., Ex. C.)

⁶ In supplemental briefing submitted after the hearing, Plaintiff argues that the appropriate rate for the fees of attorneys in foreign jurisdictions must be determined by reference to the market rate in the jurisdiction where the attorney practices, and not by reference to the local rate used in the area where the Court is located. Plaintiff points the Court to courts which have held that, in cases where the services of attorneys from a foreign jurisdiction are necessary, the Court should allow attorney's fees which are consistent with the market rates in the foreign jurisdiction. See Adcock-Ladd v. Secretary of Treasury, 227 F.3d 343 (6th Cir. 2000.) However, Plaintiff has presented no evidence in this case which establishes the market rate for attorneys in London, England, the location of Watson and Farley. Furthermore, this case involved the arrest of a Turkish ship by a German bank in United States waters, and Plaintiff has not provided any explanation for why this action required the expertise of British attorneys.

has raised the same arguments with regard to specificity of billing that it raised in connection with the bill of Ehlermann & Jeschonnek. However, Watson and Farley has submitted both a narrative description of the work that they have performed in connection with the matter, as well as a specific breakdown of the number of hours spent by specific attorneys. These invoices indicate a total of 43 hours of partner time, and a total of 3.89 hours of trainee time. This bill is sufficiently detailed for the Court to determine that the number of hours spent by Watson and Farley are reasonable for the work completed. The Court therefore will reimburse Plaintiff for the fees paid to Watson and Farley as follows:

\$15,265.00 (43 hours at \$355.00 hourly rate)

\$684.25 (3.91 hours at \$175.00 hourly rate)

Total: \$15,949.25.

11. Yerlikaya Law Offices

Ms. Sema Yerlikaya, Plaintiff's counsel in Turkey, has submitted a bill in the amount of \$65,477.10. Ms. Yerlikaya also indicates that she will spend approximately \$157,000.00 defending various lawsuits brought by Defendant against Plaintiff in Turkish courts challenging the validity of the arrest and sale of the Ahmetbey in this Court. Ms. Yerlikaya's bill provides virtually no detail concerning the services that she has provided. Ms.

Yerlikaya indicates that she bills on the tariff of the Istanbul Bar Association, which is 15 percent of the total amount of the claim (\$811,936.48.) Ms. Yerlikaya's bill for counsel fees is predicated upon a tariff which calls for the computation of counsel fees after all of the litigation which she is involved in related to the collection of the mortgage has been resolved.⁷ The Court therefore will defer ruling upon Plaintiff's claim for reimbursement of Ms. Yerlikaya's counsel fees at this time. Plaintiff may submit additional briefing and documentation concerning the fees that Ms. Yerlikaya continues to incur in connection with the enforcement of the mortgage on the Ahmetbey at any time.

12. Bill of Steve Britt, Esq.

In order to protect the interests of crew-members of the Ahmetbey while the ship was under arrest in this jurisdiction, the Court appointed Steve Britt, Esq., as their representative. Plaintiff seeks reimbursement for Mr. Britt's services. Mr. Britt has submitted an affidavit in which he indicates that the fee for his services in connection with this matter is \$3,175.00. The Court finds this fee amount reasonable considering the work performed.

Plaintiff has no objection to paying Mr. Britt for his

⁷The Court notes that the total amount that Plaintiff seeks for Ms. Yerlikaya's services (approximately \$220,000) is far greater than 15% of the total amount of the judgment in this case.

services, but asks that the Court reimburse it for this expense. Mr. Britt's services were necessitated by the arrest of the vessel and subsequent prolonged litigation between the parties, which resulted in the ship being maintained under arrest for a period of over five months. The Court therefore finds that the services of Mr. Britt are clearly reimbursable under the terms of the loan agreement between the parties, which states that,

The Borrower also shall pay all fees, costs, expenses, etc. charged by the Bank any lawyer respectively surveyor in connection with this agreement and the Mortgage as well as costs and expenses of any kind which might occur if the borrower shall be in default with its obligations under this agreement.

(Trial Ex. C, "Loan Agreement", at p. 18.)⁸ Accordingly, upon receipt of certification from Plaintiff that Mr. Britt has been paid in full, the Court will reimburse Plaintiff for this amount.

12. Claim of Turkish Ministry of Labor

Before the Court's Order confirming the sale of the Ahmetbey, the Court received notice that the Turkish Ministry of Labor maintains an outstanding claim on the M/V Ahmetbey in the amount of TL 114,844,000,000.00 (approximately \$83,660.06.) Defendant disputes this claim, and indicates that it has already negotiated a payment plan with the Turkish Ministry of Labor that extinguishes

⁸Defendant argues that Mr. Britt's services were necessitated by the failure of Plaintiff to respond quickly enough to the Court's directives concerning the repatriation of crew members who wished to return home. The Court disagrees with Defendant's characterization of the facts.

this debt. The Turkish Government has not yet entered an appearance in this matter. Accordingly, the Court instructs both parties to notify the Turkish Ministry of Labor that it has 30 days from the date of this Order to present its claim against the fund by appearing through counsel in this action. Upon such appearance, a hearing will be scheduled to determine the existence and amount of any such claim.

13. Final Distribution of Proceeds

By order dated November 14, 2003, this Court confirmed the sale of the M/V Ahmetbey to Goldfish Shipping, S.A., and ordered the transfer of the title to the M/V Ahmetbey to Goldfish shipping "free and clear of all claims, liens, or encumbrances in favor of any other person or entities which may have claimed an interest or a lien on the vessel." (11/14/03 Order, Docket # 81.) Goldfish Shipping, a Third Party Intervener in this action, has notified the Court that Odin Denizcilik continues to claim ownership of the vessel. (See Goldfish Shipping Motion for Contempt, Ex. F.) Goldfish Shipping has further informed the Court that a company related to Odin, Hunter Maritime, has filed a lien in Turkey against the M/V Ahmetbey in the amount of \$365,000.00, and seeks the arrest of the vessel. While the exact nature of the lien has not been ascertained at this point, Goldfish Shipping has submitted a declaration of Mr. David Ten Cate, who indicates that neither Goldfish Shipping nor Orient Shipping, Goldfish Shipping's agent,

have had any dealings with Odin Denizcilik or its related companies which could lead to the existence of a claim. (Goldfish Shipping Reply, Ex. 2, "Ten Cate Decl.") It therefore appears that the lien against the Ahmetbey asserted by Hunter Maritime arose before this Court's order selling the ship free of all liens and encumbrances.

Given that claims against the Ahmetbey still remain, the Court declines to order final distribution until these claims have been resolved and the ownership of the M/C Ahmetbey has been transferred on the Turkish Registry. It is inherent in the power of this Court to enforce its own orders. See Chambers v. Nasco Co., 501 U.S. 32, 44 (1991). On November 14, 2003, the Court ordered the vessel sold free and clear of all liens and encumbrances, and it is clear to the Court that this outcome has not yet occurred, in that there are still title impediments on the Ahmetbey. Accordingly, the Court will retain all funds remaining in its account due and owing to Defendant, if any, after the distributions discussed *supra* are made, pending further order of the Court.

An appropriate order follows.

IN THE UNITED STATES DISTRICT COURT
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HSB NORDBANK : CIVIL ACTION
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ORDER

AND NOW this __ day of January, 2004, upon the Motion of the Plaintiff, HSB Nordbank, AG, for the satisfaction of its Judgment and reimbursement of the *custodia legis* expenses, attorneys' fees and costs, it has incurred, duly submitted to this Court and supported by the documentation contained in the Affidavit of Edward V. Cattell, Jr., Esquire of the firm of Hollstein, Keating, Cattell, Johnson & Goldstein, P.C., and Memorandum in Support thereof, and the Court having considered such opposition to the motion as has been filed, **IT IS HEREBY ORDERED** that the following amounts are approved and are to be paid in accordance with the terms thereof:

1) Judgment in the amount of \$811,936.48, plus accrued interest in the amount of \$115.42 for each day from November 19, 2003 until the payment is made by the Clerk of Court;

2) Plaintiff is to be reimbursed for the following costs

and expenses:

- a) \$136,316.00 for the services of Ring Guard;
- b) \$88,925.51 for the services of Delaware River Stevadores;
- c) \$2,653.68 for the services of McAllister Towing;
- d) \$375.00 for the services of Hueber Launch Services;
- e) \$1,700.00 for the services of pilots;
- f) \$351.00 for the services of docking pilots;
- g) \$2,625.00 for the services of line handlers;
- h) \$4,526.32 for arrest and publication;
- I) \$34,785.96 for the services of Ehlermann & Jeschonnek;
- j) \$15,949.25 for the services of Watson and Farley;
- k) \$18,538.46 for Plaintiff's internal bank costs;
- l) \$3,434.91 for the services of Garlicke Bousfield;
- m) \$129,111.93 for the services of Hollstein Keating, Cattell, Johnson & Goldstein performed up to this point;
- n) \$3,175.00 for the services of Steve Britt, Esq.⁹

⁹ This amount will be paid to Plaintiff upon receipt of certification from Plaintiff that Mr. Britt has been paid.

IT IS FURTHER ORDERED that both parties shall diligently attempt to notify the Turkish Government of the details of this memorandum and order, and specifically of the fact that the Turkish Ministry of Labor must enter an appearance within 30 days of the date of this Order in order to protect any claim it may have in the M/V Ahmetbey. The Court will reserve decision on the potential claim of the Turkish Ministry of Labor at this time.

IT IS FURTHER ORDERED that the Clerk of Court shall draw a check payable from the proceeds of the sale of the M/V Ahmetbey to Hollstein Keating Catell Johnson & Goldstein, P.C., as attorneys for the plaintiff, HSH Nordbank, in the amount of \$811,936.48, plus an amount of \$115.42 per day for each day from November 19, 2003 until the date the check is drawn, in Satisfaction of the Judgment on the Mortgage amount due, and shall forward that check to counsel for Plaintiff forthwith.

IT IS FURTHER ORDERED that the Clerk of Court shall draw a check payable from the proceeds of the sale of the M/V Ahmetbey to Hollstein Keating Catell Johnson & Goldstein, P.C., as attorneys for the plaintiff, HSH Nordbank, in the amount of \$439,293.02, as partial reimbursement of the custodia legis expenses, costs, and attorney's fees and expenses incurred by HSH Nordbank, AG, and shall forward that check to counsel for Plaintiff forthwith.

IT IS FURTHER ORDERED that the Clerk of Court shall draw a check payable from the proceeds of the sale of the M/V Ahmetbey to the United States Marshall in the amount of \$35,000.00 for his

commission and fee for the preparation of the bill of sale, and forward it to the United States Marshall for this District.

IT IS FURTHER ORDERED that the Court will retain the balance of the proceeds from the sale of the Ahmetbey due and owing to Defendant, if any, until such time as all clouds and encumbrances upon the Ahmetbey's title are removed.

IT IS FURTHER ORDERED that, as the Court in its inherent power to enforce its own orders has elected to conduct a final distribution of the proceeds from the sale of the Ahmetbey only after a showing of quieted title, Goldfish Shipping's Motion to Hold Odin Denizcilik in Contempt of Court is **DISMISSED** without prejudice.

BY THE COURT:

John R. Padova, J.