

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

CAPTAIN SHERIFF SAUDI, : CIVIL ACTION
Plaintiff, :
 :
v. :
 :
ACOMARIT MARITIMES SERVICES, :
S.A.D., :
Defendant. : NO. 01-4301

MEMORANDUM & ORDER

J.M. KELLY, J.

FEBRUARY , 2002

Presently before the Court are the Motion to Remand of Plaintiff, Captain Sheriff Saudi ("Saudi") and the Motion to Dismiss for Improper Service of Process and Lack of Personal Jurisdiction of Defendant, Acomarit Maritimes Services, S.A.D. ("Acomarit"). Saudi seeks to recover for injuries he alleges he received during an intervessel transfer.

BACKGROUND

Saudi initially filed an action based upon his injury in the United States District Court for the Southern District of Texas. After Acomarit was dismissed from the Texas case, this action was filed in the Philadelphia Court of Common Pleas. Acomarit removed this case to the district court based upon admiralty and diversity jurisdiction.

DISCUSSION

Saudi argues that Acomarit cannot remove this case under

admiralty jurisdiction because of the "savings to suitors" clause of 28 U.S.C. § 1333 (1994). Section 1333 states "[t]he district courts shall have original jurisdiction, exclusive of the courts of the States, of: (1) Any civil case of admiralty or maritime jurisdiction, saving to suitors in all cases all other remedies to which they are otherwise entitled." The savings to suitors clause then acts to preserve all remedies that are available to litigants, despite the exclusive federal jurisdiction over admiralty cases. Newton v. Shipman, 718 F.2d 959, 962 (9th Cir. 1983). As any available state court remedies are available to Saudi under this Court's diversity jurisdiction, removal does not offend the savings to suitors clause.

The parties agree that Acomarit does not have a principal place of business in the United States. Saudi argues that this fact is fatal to removal of this case. "Any civil action brought in a state court of which the district courts . . . have original jurisdiction, may be removed by the defendant or defendants, to the district court . . . for the district . . . embracing the place where the action is pending." 28 U.S.C. § 1441(a). When removal is based upon diversity jurisdiction, no defendant may be "a citizen of the State in which such action is brought." Id., § 1441(b). Parties in a case are diverse when there are "citizens of a State and citizens or subjects of a foreign state." 28 U.S.C. § 1332(a)(2). Acomarit's lack of a principal place of

business in the United States means that it would be subject to diversity jurisdiction in any state, however, there is no offense to the purpose of diversity jurisdiction as a result of Acomarit's lack of a principal place of business in the United States. Accordingly, removal of this case based upon diversity was proper.

Finally, Saudi argues that a state court case brought under the Jones Act cannot be removed to federal court. See Stokes v. Victory Carriers, Inc., 577 F. Supp. 9 (E.D. Pa. 1983). While this is a correct statement of the law, nothing in Saudi's Complaint indicates that he was an employee of Acomarit and protected by the Jones Act. See 46 App. U.S.C. § 688; Shade v. Great Lakes Dredge & Dock Co., 154 F.3d 143, 147-48 (3d Cir. 1998). As this is not a Jones Act case, there is no statutory impediment to Acomarit's removal.

Acomarit argues that it is not subject to personal jurisdiction in Pennsylvania and that Saudi failed to properly effectuate service upon Acomarit. It appears that Saudi has made a reasonable showing that Acomarit may have had an agent for service of process located in Pennsylvania. Accordingly, the Court will deny Acomarit's Motion to Dismiss without prejudice and allow the parties to engage in discovery, until July 30, 2002, related solely to this Court's personal jurisdiction over Acomarit in the Eastern District of Pennsylvania and whether

service of process was properly effectuated.

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O R D E R

AND NOW, this day of February, 2002, upon consideration of the Motion to Remand (Doc. No. 4) of Plaintiff, Captain Sheriff Saudi, the Response thereto of Defendant, Acomarit Maritimes Services, S.A.D., and the Motion to Dismiss for Improper Service of Process and Lack of Personal Jurisdiction (Doc. No. 2) of Defendant, Acomarit Maritimes Services, S.A.D., and the Response thereto of Plaintiff, Captain Sheriff Saudi, it is ORDERED:

1. The Motion to Remand is DENIED.
2. The Motion to Dismiss is DENIED WITHOUT PREJUDICE. The parties may engage in discovery related solely to personal jurisdiction of this Court over Defendant, Acomarit Maritimes Services, S.A.D. and service of process in this matter. Acomarit

Maritimes Services, S.A.D. may then refile its Motion to Dismiss on or before July 30, 2002.

BY THE COURT:

JAMES MCGIRR KELLY, J.