

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

UNITED SHIPPING SERVS. THREE, INC., : CIVIL ACTION
HACI ISMAIL KAPTANOGLU SHIP :
MANAGEMENT & TRADING CO., LTD. & :
PACIFIC BUSINESS CAPITAL CORP. :
 :
v. :
 :
U.S. EXPRESS LINES, LTD. : NO. 98-950

MEMORANDUM and ORDER

Norma L. Shapiro, J.

November 5, 1998

Before this court is a motion of Defendant United Express Lines, Ltd. ("USEL") to vacate a maritime attachment, dismiss the complaints, and direct the plaintiffs to arbitration. For the reasons stated below, the motion is granted in part and denied in part. The attachment is vacated and United Shipping Services Three, Inc. ("USST") and Haci Ismail Kaptanoglu Ship Management & Trading Co., Ltd. ("Haci") are directed to arbitration. The court will retain jurisdiction pending arbitration.

BACKGROUND

This maritime action arises from the alleged breach of several charter parties. USEL contracted with Sunrise Maritime, Inc. ("Sunrise"),¹ Trade Shipping and Management, S.A. ("Trade

¹ By order of September 23, 1998, Sunrise has been dismissed from this action.

Shipping"),² USST, and Haci. Each charter party required arbitration of disputes and imposed a maritime lien if USEL failed to pay the required freight.

Sunrise brought this action against USEL for breach of its charter party. Sunrise sought and was granted an attachment of USEL's property held by Sedgwick of Pennsylvania and Founder's Bank; Trade Shipping, USST, and Haci intervened. The parties agreed to vacating the Sedgwick attachment.³ Sunrise has filed a praecipe for a writ to restore the attached funds to Founder's Bank, but the Founder's Bank attachment had not been vacated at the time USEL filed this motion to vacate.

Founder's Bank filed an interpleader action against USST and Haci, who also claimed the funds for breach of their charter parties, and Pacific Business Capital Corporation ("PBCC"), a secured creditor of USEL who claimed a prior lien on the funds. That action has been consolidated with this.⁴

DISCUSSION

I. Standard of Review

When a defendant moves to vacate a maritime attachment, the

² By order of September 23, 1998, Trade Shipping was dismissed from this action.

³ The attachment was vacated by order of June 19, 1998.

⁴ The case was consolidated pursuant to an order of June 19, 1998.

plaintiffs have the burden of proving "why the arrest or attachment should not be vacated or other relief granted consistent with these rules." FED. R. CIV. P. Supp. R. E(4)(f). The evidence must be viewed in the light most favorable to the party whose property is attached.

II. The Maritime Attachment and Arbitration

Rule B of the Supplemental Rules for Certain Admiralty and Maritime Claims states that a plaintiff may attach defendant's property within a district if the defendant is not within the district. See FED. R. CIV. P. Supp. Rule B. The request must include "an affidavit signed by the plaintiff or the plaintiff's attorney that, to the best of the affiant's knowledge, or to the best of affiant's information and belief, the defendant cannot be found within the district." Id. A defendant is "found within the district" if it is subject to personal jurisdiction and service of process in the district. See West of England Ship Owners Mut. Ins. Ass'n (Lux.) v. McAllister Bros., Inc., 829 F. Supp. 122, 123 (E.D. Pa. 1993).

When ordering the attachment, this court mistakenly followed Schiffahrtsgesellschaft Leonhardt & Co. v. A. Bottacchi S.A. DeNavegacion, 773 F.2d 1528 (11th Cir. 1985) ("Bottacchi"). Bottacchi held that even if Rule B does not apply because the defendant could be found within the district, a district court

might attach property under its general inherent admiralty powers. Id. at 1533. This court no longer agrees; a maritime attachment of defendant's property must comply with Rule B.

The Federal Rules of Civil Procedure state the rules, including the Supplemental Rules, govern all suits in admiralty. FED. R. CIV. P. Rule 1. The Supplemental Rules were drafted "to preserve the ancient process of maritime attachment that had been known to courts of admiralty for centuries." Maryland Tuna Corp. v. MS BENARES, 429 F.2d 307, 321 (2nd Cir. 1970). Cases involving maritime attachments generally rely upon Rule B instead of any inherent court power. See West of England Ship Owners, 829 F. Supp. at 123; Western Bulk Carriers (Austl.), Pty. Ltd. v. P.S. Int'l, Ltd., 762 F. Supp. 1302 (S.D. Ohio 1991). The Supplemental Rules have limited the inherent powers of the court; therefore, this court rejects Bottacchi, which has not been adopted by any other circuit.

When Sunrise moved for a writ of attachment, it did not include the affidavit required by Rule B but relied upon Bottacchi. While Plaintiffs may have been under the impression that USEL no longer conducted business in this district, USEL could have been found within this district at all times during the course of this action. USEL has its principal place of business in Paoli, PA, and continues to conduct business there. (McGowan Aff. of Sept. 29, 1998). USEL is subject to personal

jurisdiction and service of process in this district. The attachment violates Rule B and is accordingly vacated.

Founder's Bank deposited the disputed funds with the court when it filed the action in interpleader. The interpleader action, Founder's Bank v. Sunrise Maritime, Inc. (No. 98-1645), has not been resolved and the funds remain in the custody of the court. USST and Haci agree with USEL that their charter parties require arbitration. This court will retain jurisdiction until the respective claims of USST and Haci have been arbitrated and then address PBCC's claim because PBCC has not agreed to arbitration. See 9 U.S.C.A. § 8 (Supp. 1998).

III. Priority of the Claims

If either USST or Haci is awarded a maritime lien, the maritime lien will have priority over the security interest perfected under UCC Article 9. The J. E. RUMBELL, 148 U.S. 1 (1893); In Matter of Topgallant Lines, Inc. v. Ambassador Factors, 154 B.R. 368 (S.D. Ga. 1993); see also Western Bulk Carriers (Aust.), Ltd. v. P.S. Int'l, Inc., 164 B.R. 616 (S.D. Ind. 1994); Charles H. Raley, Jr., Admiralty Law: Litigation's Wild Card, 5 S.C. LAW. 32, 34(1993); George A. Rutherglen, Admiralty and Bankruptcy Revisited: Effects of the Bankruptcy Reform Act of 1978, 65 TUL. L. REV. 503, 504 (1991).

The Supreme Court has addressed the issue of priority in a

different but analogous context involving a mortgage. See The J.E. RUMBELL, 148 U. S. 1 (holding maritime lien has priority over mortgage encumbering ship; superseded by statute applicable to mortgages only). In The J.E. RUMBELL, the Supreme Court, analyzing case law involving the conflict between mortgages and maritime liens, concluded that priorities derived from state statutes are immaterial in cases involving maritime liens; "the admiralty courts of the United States, enforcing the lien because it is maritime in its nature, arising upon a maritime contract, must give it the rank to which it is entitled by the principles of the maritime and admiralty law." Id. at 19. The perfected UCC security interest is here analogous to a mortgage because both are land liens on property arising under state law; The J.E. RUMBELL guides the present action.

Maritime liens customarily have priority over other security interests. Topgallant involved a maritime lien created by statute not charter party, but the decision is persuasive; it considers the issue of priority generally and, relying on The J.E. Rumbell, concludes that maritime liens have priority over security interests. See Topgallant, 154 B.R. at 376. Western Bulk, following Topgallant, stated that a maritime lien arising from a charter party had priority over a security interest. See Western Bulk, 164 B.R. at 618-19. This court finds these decisions persuasive; PBCC offers no authority or argument to the

contrary. A maritime lien will have priority.

CONCLUSION

The court will vacate the maritime attachment, but the interplead funds will remain subject to the jurisdiction of the court. Plaintiffs USST and Haci shall arbitrate their claims to maritime liens. Any established maritime lien will have priority over PBCC's security interest. Once the parties' rights have been adjudicated in arbitration, the court will try any remaining issues.

An appropriate Order follows.

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ORDER

AND NOW, this 5th day of November, 1998, upon consideration of defendant's motion to vacate the maritime attachment, dismiss the complaints, and direct the plaintiffs to arbitration and all responses thereto, and after a hearing in which all parties were heard, and in accordance with the attached Memorandum, it is hereby **ORDERED** that:

1. Defendant's motion is **GRANTED** in part and **DENIED** in part.
2. The writ of maritime attachment is vacated.
3. United Shipping Services Three, Inc., Hacı İsmail Kaptanoğlu Ship Management & Trading Co., Ltd., and U.S. Express Lines, Ltd. shall submit their disputes to the Society of Maritime Arbitrators for arbitration. If the arbitration proceeding cannot be concluded within six months of the date of this order, the court will order arbitration elsewhere.
4. Pending arbitration, the funds deposited by Founder's Bank will remain in the custody of the court.
5. The court retains jurisdiction, but the action is placed in administrative suspense pending arbitration.

Shapiro, J.