

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

MALCOLM L. PETTEGROW, INC.,)
and MALCOLM L. PETTEGROW,)
)
Plaintiffs,)
v.) Civ. No. 96-0009-B
)
THE M/V TIGHT FIT, her engines,)
equipment, tackle, licenses, et cetera,)
in rem,)
and RICHARD R. RODONIS,)
)
Defendants.)

ORDER AND MEMORANDUM OF DECISION

BRODY, District Judge.

This case revolves around the construction, seaworthiness, and ownership of a fishing vessel, the Tight Fit. The case is before the Court based on diversity and admiralty jurisdiction. Defendant, Richard R. Rodonis, filed Combined Motions to Quash the Orders of Arrest and Appointing Substitute Custodian and for Summary Judgment (hereinafter “Defendant’s Motions”), claiming that the Court does not have admiralty jurisdiction over the case. Defendant’s Motions are denied.

I. Background

Plaintiffs, Malcolm L. Pettegrow, Inc. and Malcolm L. Pettegrow, entered into a contract with Defendant, Mr. Rodonis, to construct a fishing vessel, the Tight Fit. Defendant paid Plaintiffs a down payment prior to commencement of construction. For various reasons, the Tight Fit cost more to build than either party intended. Due to the cost overruns, Plaintiffs took a loan from Bar Harbor Banking and Trust (hereinafter “Bar Harbor” or “Claimant”). In consideration for this loan, Bar Harbor took a chattel mortgage on the Tight Fit. During the

construction of the vessel, Plaintiffs and Defendant signed a Bill of Sale documenting Malcolm L. Pettegrow, Inc.'s 60 percent interest in the Tight Fit and Mr. Rodonis's 40 percent interest.¹

After construction was completed, Defendant used the vessel for the summer of 1995. Near the end of 1995 the conflict regarding payment for and financing of the vessel caused Plaintiffs to file their Complaint requesting In Rem Warrant for Arrest and Rule D Partition under the Supplemental Rules for Certain Admiralty and Maritime Claims (hereinafter "Supplemental Rules"). The Court, pursuant to the Supplemental Rules, issued a Warrant for Arrest of the Tight Fit and an Order Appointing Substitute Custodian. Pursuant to the Court's Orders, the U.S. Marshall seized the vessel and placed it in the custodial care of Able Yacht Yard. Defendant filed a Counterclaim against Plaintiffs, and Claimant filed both a Counterclaim and a Crossclaim to protect its interest in the boat.

Defendant's Motions claim that the Court lacks admiralty jurisdiction over this case, hence, the Supplemental Rules do not apply. Based on this argument, Defendants assert that the Court must quash the Order of Arrest and the Order Appointing Substitute Custodian. Plaintiffs respond that Defendant's Motions are untimely and that the Court does have admiralty jurisdiction in this case. Claimant also argues that the Court has jurisdiction.

II. Jurisdiction

As an initial matter, Defendant's Motions are timely. It is explicit in our

¹ It is unclear from the record how the 60 and 40 percent figures were derived. Defendant claims that they were solely intended to show that Plaintiffs had more money invested in the boat and, hence, a controlling security interest. Plaintiffs contend that these percentages indicate the respective ownership interests over title of the vessel. Resolution of this dispute is unnecessary as it has no impact on the Court's decision regarding the issues presented in Defendant's Motions.

Constitution that the federal courts must have subject matter jurisdiction in order to hear a case. Jurisdictional issues can be raised at any time by any party, including, sua sponte by the Court. E.g., Mansfield, Coldwater & Lake Michigan Railway v. Swan, 111 U.S. 379, 382, 384 (1884). The Court cannot act without jurisdiction. Defendant's Motions are, therefore, timely, and the Court will address this issue.

Admiralty jurisdiction is authorized by article III of the Constitution and is specifically conferred on the district courts by statute. U.S. Const. art. III, § 2, cl. 1; 28 U.S.C. § 1333(1). Whether the Court has admiralty jurisdiction over a dispute depends on the maritime character of the dispute. If the dispute in question is maritime in character, the Court has jurisdiction, and the Supplemental Rules apply. Generally a dispute or transaction is maritime if it takes place on the navigable waters or is intimately connected with navigable waters. In the landmark DeLovio v. Boit decision, Judge Story defined the admiralty jurisdiction of the federal courts such that it:

. . . comprehends all maritime contracts, torts and injuries. The latter branch is necessarily bounded by locality; the former extends over all contracts, (wheresoever they may be made or executed, or whatsoever may be the form of the stipulations,) which relate to the navigation, business, or commerce of the sea.

DeLovio v. Boit, 7 F. Cas. 418, 444 (C.C.D. Mass. 1815) (No. 3,776). The question here, therefore, is whether the dispute over the Tight Fit is maritime in character.

Defendant correctly states that federal courts do not have admiralty jurisdiction over cases arising out of the construction or sale of a vessel. See, e.g., Peoples Ferry Co. v. Beers, 61 U.S. (20 How.) 393, 401, 402 (1858); Natasha, Inc. v. Evita Marine Charters, Inc., 763 F.2d 468, 470 (1st Cir. 1985). Such cases are not maritime. The United States Supreme Court

explained that:

[t]he admiralty jurisdiction, in cases of contract, depends primarily upon the nature of the contract, and is limited to contracts, claims and services, purely maritime, and touching rights and duties appertaining to commerce and navigation.

People's Ferry Co., 61 U.S. at 401. The Court has further stated:

we think the same reasons which exclude [construction] contracts from admiralty jurisdiction likewise apply to agreements made after the hull is in the water, for the work and material necessary to consummate a partial construction and bring the vessel into condition to function as intended.

Thames Towboat Co. v. The Schooner "Francis McDonald", 254 U.S. 242, 245 (1920). Some courts have ruled that even after a boat is launched, it does not fall within federal admiralty jurisdiction if "she is not yet sufficiently advanced to discharge the functions for which [she was] designed." Boat La Sambra v. Lewis, 321 F.2d 29, 31 (9th Cir. 1963). The general and longstanding rule, however, is that when a ship is launched for its intended purpose, not for continued construction or seasonal storage, it becomes a maritime vessel subject to admiralty jurisdiction. In Tucker v. Alexandroff, wherein the Alexandroff was the vessel in controversy, the Supreme Court stated:

[a] ship is born when she is launched, and lives so long as her identity is preserved. Prior to her launching she is a mere congeries of wood and iron -- an ordinary piece of personal property -- as distinctly a land structure as a horse, and subject only to mechanics' liens created by state law and enforceable in the state courts. In the baptism of launching she receives her name, and from the moment her keel touches the water she is transformed, and becomes a subject of admiralty jurisdiction.

Tucker v. Alexandroff, 183 U.S. 424, 438 (1910). Tucker v. Alexandroff is a clear and definitive explanation of the distinction between a vessel under construction, which is not maritime and, therefore, not subject to admiralty jurisdiction, and a vessel at sea, which is.

The Tight Fit set sail in the spring of 1995, and a significant portion of this controversy relates to damages and acts which occurred after the vessel was at sea functioning as a fishing vessel. The Complaint in this case was, in fact, not filed until early 1996. Although the fact that the Tight Fit was launched prior to commencement of this case does not, by itself, dictate that admiralty jurisdiction exists, significant portions of the Complaint, Counterclaims, and the Crossclaim deal with costs and damages unrelated to the construction of the vessel. Count one, for example, alleges that Plaintiffs should be compensated for insurance premiums and other vessel-care costs. These are maritime expenses. Count two, which requests Rule D Partition, alleges that Plaintiffs and Defendant are unable to agree on the business of the vessel. This is a maritime issue.

Defendant's Counterclaim alleges significant defects in the vessel which were discovered after it set sail in the summer of 1995. Defendant claims in count two of his Counterclaim that he "incurred repair costs." Suits for repairs to a vessel fall under federal admiralty jurisdiction. See, e.g., North Pacific Steamship Co. v. Hall Brothers & Marine Ry. & Shipbuilding Co., 249 U.S. 119, 127-128 (1919). Also, Claimant's allegations in its Counterclaim and Crossclaim regarding the preferred ship mortgage and equitable subordination are maritime claims which fall under the Court's admiralty jurisdiction. See, e.g., Custom Fuel Services, Inc. v. Lombas Industries, Inc., 805 F.2d 561, 563-565 (5th Cir. 1986).

In addition, disputes over title and possession of a vessel fall within the admiralty jurisdiction of the Court. See, e.g., The Tilton, 23 F. Cas. 1277, 1278-1279 (C.C.D. Mass. 1830) (No. 14,054). In this case, Plaintiffs claim 60 percent ownership in the Tight Fit. Defendant alleges that the Bill of Sale documenting Plaintiffs' 60 percent interest only confers a secured

interest to Malcolm L. Pettegrow, Inc. It is clear from the record that a controversy exists regarding ownership and title of the Tight Fit, and such cases fall within the admiralty jurisdiction of the federal courts.

This controversy may initially have been simply a dispute over the construction and sale of a vessel, however, it is currently a maritime conflict involving a ship on navigable waters. The Court has jurisdiction over the dispute, and the Supplemental Rules apply. The Order of Arrest and the Order Appointing Substitute Guardian are, therefore, valid and will not now be disturbed.

Defendant's Motions are DENIED.

SO ORDERED.

MORTON A. BRODY
United States District Judge

Dated this 31st day of October, 1996.