MLA Spring 2023 Practice & Procedure Meeting

Subcommittee on Maritime Liens and Ship Mortgages

Recent Decisions of Interest

A. Rule C

Singh Fuels Pte Ltd. v. M/V LILA SHANGHAI, 39 F.4th 263 (4th Cir. 2022)

- Plaintiff-Appellant Singh Fuels brought Supplemental Rule C arrest proceeding in EDVA
- Basis for arrest was that Singh Fuels had agreed to bunker the vessel and alleged that it had a maritime lien for the provision of necessaries under the Commercial Instrument and Maritime Lien Act ("CIMLA")
- Singh Fuels was contacted to bunker the vessel through Windrose Marine (a bunker broker)
- Throughout the transaction, Singh Fuels communicated only with Windrose, neither the vessel's owners nor charterers were copied on any of the transaction communications
- No confirmation by any vessel interest of the bunkering transaction
- Singh Fuels did not physically supply vessel
- Vessel supplied by physical supplier / Singh Fuels not paid
- Singh Fuels demands payment from vessel's owners, owners refuse to pay
- Arrest warrant granted
- The Vessel's owners posted a Letter of Undertaking to release the vessel
- The court conducted a bench trial on the issue of whether Singh Fuels had a maritime lien, focusing on the issue of whether the bunkers were provided "on the order of the owner or a person authorized by the owner" (the parties agreed that the two other elements to establish a maritime lien under CIMLA – namely that (1) Singh was a person providing necessaries, and (2) those necessaries were provided to the vessel – had been established)
- District Court holds that Windrose possessed no actual, apparent or presumed authority to bind the vessel
- District Court holds that third element of the maritime lien test was not satisfied, denies Singh Fuels' claim

- On appeal, Fourth Circuit first raises issue of whether the "Liverpool and London" clause contained in the Singh Fuels General Terms & Conditions is enforceable (this is the clause that seeks to adopt the maritime lien procedure of a local jurisdiction in which an arrest is being prosecuted)

- Fourth Circuit rules that there is no need to examine the L&L Clause as the outcome of the dispute will be the same whether Singapore law or US law is applied ***(***nevertheless, this might be something worthy of note for a future dispute where the difference in the laws of the different for a will be outcome determinative***)***

- Fourth Circuit affirms District Court's decision that Windrose possessed no authority under CIMLA – while Singh Fuels argues that apparent authority was present, the appeals court rejects argument as there were no communications between any entity involved with the management of the vessel and Singh Fuels

- Concurring opinion also worth noting – judge agrees with the result in this case, but speculates that the law has tilted too far in favor of shipowners and there may be scenarios where not allowing payment to the bunker provider would be inequitable

- Question raised during presentation: does the limited agency theory set forth by the US Supreme Court in the *Kirby* decision (i.e., finding that a cargo middleman can act as a limited agent for the agreeing to COGSA package limitations, Himalaya Clauses, etc.) present an opportunity for application in this area?

B. Rule B

Victory Shipping Pte Ltd. v. 50,109 Metric Tons of Concrete, Civ. Act. No. 4:22-cv-03689, 2022 WL 17738735 (S.D. Tex. Dec. 16, 2022)

- Plaintiff commences Rule B attachment and Rule C arrest action against the defendant Cargo as security for a demurrage claim to be prosecuted in London arbitration

- Court grants both attachment and arrest orders

- Court subsequently vacates Rule C order (English law does not grant lien for claim)

- Defendant Cargo seeks to vacate Rule B order despite conceding that Plaintiff met all grounds for a Rule B attachment

- Defendant Cargo sought to argue that its owner was located in the Northern District of Texas, hence the court should use the doctrine of equitable vacatur to vacate the attachment as the Cargo's owner was located in an adjacent district

- District Court reviews a number of adjacent district equitable vacatur cases, but notes that the Plaintiff has a historic right to security that must be weighed against the vacatur request

- District Court finds that the Cargo's owner exhibited "carelessness" with respect to its carrying out its obligations in getting the Cargo discharged promptly, and that the mere fact that the Cargo's owner is a brick-and-mortar company sells short the rapidity that the Cargo's owner could flee in the event that it chose to do so

- District Court denies Cargo's motion to vacate the Rule B attachment on equitable vacatur grounds

Transatlantica Commodities Pte Ltd. v. Hanwin Shipping Ltd., Civ. Act. No. 4:22-CV-1983, 2022 WL 18932063 (S.D. Tex. Nov. 2, 2022)

- Rule B attachment brought by Plaintiff against defendant's purported property held by garnishee

- Garnishee moves to vacate the Rule B writ that was served on it, claiming that funds attached (in Garnishee's bank account) are not the Defendant's property

- Garnishee maintains responsibilities for vessels chartered by the Defendant

- Garnishee possessed over $362K in funds to be paid to third-parties to satisfy debts of Defendant, and another $600K could be refunded to Defendant as overpayments

- District Court notes that precedent makes clear that Rule B attachment does not require that the defendant have a titular interest in the property attached; here, a right to possession of the funds by the Defendant was sufficient to uphold the attachment

- District Court also rejects equitable vacatur argument by Defendant, finding that none of the claimed "convenient adjacent jurisdictions" were actually adjacent to the Southern District of Texas

Peninsula Petroleum Far East Pte Ltd. v. Crystal Cruises, LLC, Civ. Act. No. 3:22-CV-0241-L-BH, 2022 WL 17413572 (N.D. Tex. Aug. 5, 2022)

- Rule B attachment granted by Court

- Defendant seeks to vacate on equitable vacatur grounds, arguing that Southern District of Florida, where parties had been involved in litigation, was a convenient adjacent jurisdiction

- District Court rejects minority precedent which supported "adjacent" not meaning physically adjacent, and rejects Defendant's motion to vacate

Platina Bulk Carriers Pte Ltd. v. Praxis Energy Agents DMCC, Civ. Act. No. 2:22-cv-1851-RMG, 2023 WL 286036 (D.S.C. Jan. 17, 2023)

- Plaintiff commences Rule B attachment proceeding against Defendant
- Plaintiff serves garnishee holding Defendant's funds with writ
- Defendant seeks to vacate the Rule B attachment, on grounds that the forum selection clause in the parties' contract called for disputes to be resolved in the Southern District of New York
- District Court holds that the language of the forum selection clause did not preclude the South Carolina attachment action because the language of the forum selection clause was not broad enough (it did not include the term "exclusive jurisdiction") to require sending the dispute to New York, but suggested that a clause with sufficiently broad language could have required sending the dispute to the parties' designated forum
- District Court also rejects equitable vacatur argument
- District Court denies motion to vacate Rule B attachment

Thorco Projects A/S v. Nutrion Feeds North America, Case No. 2:22-cv-01331-TLN-JDP, 2022 WL 5237099 (E.D. Cal. Sept. 9, 2022)

- Defendant in Rule B attachment proceeding seeks to reduce the amount of security ordered to be posted
- The charter party at issue contains UK law and arbitration clause
- Defendant argues that the Plaintiff's claim amount should be reduced under the Supreme Court's *Robins Dry Dock* decision
- Court distinguishes the claims in the parties' dispute, then further notes that courts in security proceedings should abstain from ruling on the underlying merits of claims to be decided in foreign proceedings
- Court is satisfied through its inquiry that the Plaintiff's claims are not frivolous
- Court rejects Defendant's motion to reduce security