

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO. 19-62670-CIV-ALTONAGA

KEVIN TURNER, et al.,

Plaintiffs,

vs.

**ONE 2019 76 FOOT SUNSEEKER
SPORT YACHT**, Hull No. XSK07214A919,
her engines, tackle, equipment, furniture,
auxiliary vessels or tenders, appurtenances,
and necessaries, *in rem*,

Defendant.

ORDER

Plaintiffs, Kevin Turner and his wife, Alice Lawaetz, filed this *in rem* action on October 25, 2019, seeking the arrest of the Defendant-Vessel, mistakenly identified in the Verified Complaint [ECF No. 1] as One 2019 76 Foot Sunseeker Sport Yacht with Hull number XSK07214A919. The Verified Complaint, brought under Federal Rule of Civil Procedure 9(h) and Rule D of the Supplemental Rules for Admiralty and Maritime Claims, is an *in rem* possessory and petitory action. (*See* Compl. 1). It alleges Plaintiffs entered into a New Yacht Purchase Agreement (“Purchase Agreement”) and timely complied with their obligations, including full payment of the purchase price. (*See* Compl. ¶¶ 10, 19). The Complaint alleges Plaintiffs purchased the Vessel but are being deprived of possession of the Vessel by the manufacturer Sunseeker International Ltd. (“Sunseeker International”) or its U.S. subsidiary, who are using the Vessel as security or leverage for those entities’ business disputes with the local Sunseeker Dealer, and so Plaintiffs “are entitled to not only possession of the Vessel but title to the Vessel as well.” (*Id.* ¶ 20).

On October 31, 2019 [ECF No. 13], the Court granted Plaintiffs' Motion for Issuance of Order Directing the Clerk of Court to Issue a Warrant of Arrest *In Rem* and for Emergency Consideration [ECF No. 7]. (*See* Oct. 31, 2019 Order [ECF No. 11]). The Vessel, correctly identified as a 2020 74 Foot Sunseeker Sport Yacht with Hull number XSK07214H920, was arrested on November 3, 2019 (*see* [ECF No. 14]) and released to the Substitute Custodian (*see* [ECF No. 12]).

On November 13, 2019, the party Plaintiffs identified in their Complaint as the "U.S. subsidiary," Sunseeker USA Sales Co., Inc. ("Sunseeker USA"), filed a Motion by Owner to Vacate Arrest, Dismiss the Verified Complaint, and for Emergency Relief [ECF No. 18]. The Motion has been fully briefed (*see* Pls.' Resp. in Opp'n [ECF No. 30] and Sunseeker USA's Reply [ECF No. 31]). On December 12, 2019, the Court set the Motion for an evidentiary hearing (*see* Order [ECF No. 33]), and thereafter the parties engaged in discovery. On February 6 and 7, 2020, the Court received testimony and evidence, and on February 11, 2020, the Court heard the parties' closing arguments. Having carefully considered the written briefing, the testimony and evidence, and applicable law, including supplemental authorities supplied by the parties before and after the hearing, the Court enters its Order resolving the Motion in favor of Sunseeker USA.

Sunseeker yachts are manufactured by Sunseeker International in Poole, Dorset, United Kingdom. In a typical transaction, the purchase and claim of title run from Sunseeker International to Sunseeker USA, and when Sunseeker USA receives payment in full, title is transferred to a dealer and then to a retail buyer. Plaintiffs signed the Purchase Agreement with dealer Rick Obey & Associates ("ROAA") on September 24, 2018 for the purchase of the Vessel. At the time, ROAA was an authorized Sunseeker USA dealer. Plaintiffs made all required payments to ROAA,

including the trade-in of their existing Sunseeker vessel, but ROAA only paid a fraction of the deposit to Sunseeker USA and never paid for the Vessel in full.

At the time they entered the Purchase Agreement, production of the Vessel had not begun. The Vessel mould process began on September 26, 2018. (*See* Def. Ex.¹ 35). The Purchase Agreement provided final payment would be due five days after notification the Vessel was complete. (*See* Def. Ex. 2, Purchase Agreement 1).

On November 16, 2018, Sunseeker USA gave written notice to ROAA that the latter was in default of those parties' Dealer Agreement (Def. Ex. 20) due to the failure to make over £ 13.5 Million GBP in payments for various vessels ordered from Sunseeker USA. On December 28, 2018, Sunseeker USA entered into a plan that would permit ROAA to cure the default by closing the sales on 11 vessels, but ROAA did not meet the terms of the cure plan by January 30, 2019, remaining in breach of the cure plan and the Dealer Agreement. On March 8, 2019, Sunseeker USA terminated the Dealer Agreement with ROAA. Because ROAA continued to hold itself out as a Sunseeker dealer, Sunseeker USA filed claims in arbitration and obtained an emergency preliminary injunction against ROAA on May 31, 2019.

In March and April 2019, ROAA sent four email requests to Sunseeker USA asking Sunseeker USA to reallocate to Plaintiffs' Vessel monies ROAA had delivered to Sunseeker USA for several vessels under order. Sunseeker USA did not accede to these requests; had Sunseeker USA agreed to do so, the Vessel would have been paid in full and could be delivered to Plaintiffs. Under the Dealer Agreement, Sunseeker USA has the sole discretion to transfer or refund payments for a product order. (*See* Dealer Agreement ¶ 4.8). Sunseeker USA was not obligated under the Dealer Agreement to "reallocate" monies in the way requested by ROAA and did not

¹ The exhibits Sunseeker USA introduced at the evidentiary hearing are designated "Def. Ex." although Sunseeker USA is not a defendant in this action.

act in bad faith in not doing so, given the several other vessels ordered by ROAA and the large sums of money due to Sunseeker USA from ROAA.

According to the Dealer Agreement between the “Distributor” Sunseeker USA and its “Dealer” ROAA,

Legal and beneficial title in any Product shall remain in Distributor until the later of Delivery, with Builder’s Certificate and Manufacturer’s Statement of Origin, or the date on which all monies for which payment is then due have been received by Distributor in accordance with clause 10.2, but without prejudice to any rights of Distributor to receive further monies from Dealer pursuant to clause 10.3. Delivery occurs when the Product is tendered to Dealer or a designated carrier at the port of Delivery, at which time, legal and beneficial title shall pass to Dealer or as Dealer may direct. Dealer shall be entitled to take Delivery of the Products at such place that the parties may agree.

(Dealer Agreement ¶ 9.3). It is undisputed delivery with Builder’s Certificate and Manufacturer’s Statement of Origin and receipt by Sunseeker USA of all monies for which payment was due for the Vessel never took place. On September 30, 2019, Sunseeker International passed title of the Vessel to Sunseeker USA. By the terms of the Dealer Agreement, then, legal and beneficial title to the Vessel remained with Sunseeker USA and never passed to ROAA, or to Plaintiffs.

Plaintiffs tendered their final payment of \$998,398.10 to ROAA on March 29, 2019, three weeks after the Dealer Agreement had been terminated. On May 24, 2019, Plaintiffs filed suit over their failed purchase of the Vessel against Sunseeker International, Sunseeker USA, and ROAA and its principal Rick Obey, in state court in Broward County. (*See generally* State Ct. Compl. [ECF No. 18-3]; Def. Ex. 37, Am. State Ct. Compl.). They asserted causes of action against ROAA for breach of the Purchase Agreement and specific performance, demanding damages and delivery of the Vessel. (*See generally* State Ct. Compl.; Am. State Ct. Compl.). Plaintiffs also stated tort and statutory claims against Sunseeker USA. (*See generally* State Ct. Compl.; Am. State Ct. Compl.).

In late September 2019, months after ROAA defaulted on the purchase of the Vessel, Sunseeker USA negotiated the sale of the Vessel to a new dealer and arranged to ship the Vessel to the Fort Lauderdale International Boat Show for display by the new dealer. As explained, Plaintiffs then filed their Verified Complaint, omitting any mention of their state-court suit, and the Vessel has been with the Substitute Custodian these many months.

By its Motion, Sunseeker USA requests: (1) the Court dismiss the Verified Complaint and vacate the arrest of the Vessel because the Court lacks admiralty jurisdiction; and (2) find the arrest of the Vessel to have been procured by Plaintiffs in bad faith, requiring a vacatur of the arrest, and the award of damages and attorney's fees and costs. As stated in open court at the conclusion of the evidentiary hearing, the Court will reserve jurisdiction on the request for damages and attorney's fees; the parties may move to reopen this case once the state-court action is concluded if there are any remaining damages issues between the parties. Consequently, this Order only addresses the first point: whether the Court lacks admiralty jurisdiction and so should vacate the arrest and dismiss the case.

In bringing this action, Plaintiffs invoked Supplemental Admiralty Rule D of the Federal Rules of Civil Procedure, which states, "In all actions for possession, partition, and to try title maintainable according to the course of the admiralty practice with respect to a vessel . . . the process shall be by a warrant of arrest of the vessel, cargo, or other property, and by notice in the manner provided by Rule B(2) to the adverse party or parties." Fed. R. Civ. P. Adm. Supp. R. D (alteration added). For its part, Sunseeker USA has appeared and sought the described remedies of vacatur of the Vessel's arrest and dismissal of the case under Supplemental Rule E(4)(f), which allows "any person claiming an interest in" "property [] arrested or attached" "to a prompt hearing at which the plaintiff shall be required to show why the arrest or attachment should not be vacated

or other relief granted consistent with these rules.” Fed. R. Civ. P. Adm. Supp. R. E(4)(f) (alteration added). Rule D does not create admiralty jurisdiction; instead, the remedy provided by Rule D is only available if a case is otherwise subject to admiralty jurisdiction and Federal Rule of Civil Procedure 9(h). *See Cary Marine, Inc. v. Motorvessel Papillon*, 872 F.2d 751, 756–57 (6th Cir. 1989). The reason for Sunseeker USA’s requests for vacatur of the arrest and dismissal is the absence of admiralty jurisdiction — the only basis for subject matter jurisdiction appearing in the Verified Complaint and urged by Plaintiffs to exist.

“A federal court’s authority to hear cases in admiralty flows initially from the Constitution, which extends federal judicial power to any civil case of admiralty jurisdiction.” *Craddock v. M/Y The Golden Rule*, 110 F. Supp. 3d 1267, 1274 (S.D. Fla. 2015) (citing *Alderman v. Pac. N. Victor, Inc.*, 95 F.3d 1061, 1063 (11th Cir. 1996)). “The federal courts have subject matter jurisdiction over admiralty cases pursuant to Article III, Section 2, and 28 U.S.C. section 1333(1).” *Tundidor v. Miami-Dade Cty.*, 108 F. Supp. 3d 1312, 1316 (S.D. Fla. 2015) (footnote call number omitted).

“[A] contract for the sale of a ship is not a maritime contract.” *Richard Bertram & Co. v. The Yacht, Wanda*, 447 F.2d 966, 967 (5th Cir. 1971) (alteration added; citations omitted). “[A]dmiralty will not entertain suits where the substantive rights of the parties flow from a contract to sell or construct a vessel.” *Jones v. One Fifty Foot Gulfstar Motor Sailing Yacht, Hull No. 01*, 625 F.2d 44, 47 (5th Cir. 1980) (alteration added). Consequently, a court sitting in admiralty does not have jurisdiction to compel specific performance of a contract to purchase a vessel. *See The Yacht, Wanda*, 447 F.2d at 967 (citing *The Guayaquil*, 29 F. Supp. 578 (E.D.N.Y. 1939)).

“[A]dmiralty has jurisdiction in a possessory suit by the legal owner of a vessel who has been wrongfully deprived of possession.” *Gallagher v. Unenrolled Motor Vessel River Queen*, 475 F.2d 117, 119 (5th Cir. 1973) (alteration added; internal quotation marks and citations

omitted). But merely using the catch words “petitory” and “possessory” does not confer admiralty jurisdiction. *See Matsuda v. Wada*, 128 F. Supp. 2d 659, 669 (D. Haw. 2000) (citation omitted). “A plaintiff must claim either legal title to the vessel (for a petitory suit) or that the vessel was wrongfully taken (for a possessory action).” *Id.* (citation omitted); *see also Gulf Coast Shell & Aggregate LP v. Newlin*, 623 F.3d 235, 239 (5th Cir. 2010) (stating a “petitory action (to try title) under Rule D requires [a] plaintiff to assert a legal title to the vessel; mere assertion of an equitable interest is insufficient” (alteration in original; internal quotation marks and citation omitted)).

Plaintiffs have not shown they had legal title to the Vessel. The Purchase Agreement makes no mention of the transfer of title to Plaintiffs and gives Plaintiffs no right of title. Title to the Vessel was to be transferred at closing, when full payment was to be made to Sunseeker USA. (*See generally* Purchase Agreement). The evidence adduced at the hearing shows ROAA never remitted full and final payment to Sunseeker USA for the Vessel, and so title to the Vessel never passed to ROAA or to Plaintiffs. Tellingly, Plaintiffs appear to acknowledge in their State Court Complaints that Sunseeker USA was never paid in full.² On these facts, Plaintiffs’ petitory action fails.

Construed as a possessory action, the Verified Complaint also fails. A possessory action “is brought to *reinstate* an owner of a vessel who alleges wrongful deprivation of property. This

² In this regard, the State Court Amended Complaint alleges:

On or about February 28, 2019, and also without Plaintiffs’ knowledge, Sunseeker USA issued a Payment Cure letter to Obey and ROAA, describing an alleged debt due from ROAA to Sunseeker USA of more than £13,500,000.00 GBP, where Sunseeker USA claimed that ROAA had an overdue balance of £1,876,514.40 GBP (approximately \$2,432,000.00 USD) for the Vessel. But at the time the Payment Cure letter was issued, all of the Defendants knew that the Turners had already paid \$3,000,000.00 towards the purchase price for the Vessel. Moreover, ROAA and Obey represented to Plaintiffs that they had already tendered sufficient funds to Sunseeker USA and/or Sunseeker Int’l to cover the payment in full for the Vessel.

(*Id.* ¶ 31).

statement indicates that the action is one to recover possession rather than to obtain original possession.” *Silver v. Sloop Silver Cloud*, 259 F. Supp. 187, 191 (S.D.N.Y. 1966) (emphasis in original; internal citation and other citations omitted). A possessory action is brought by the vessel owner, who seeks “to recover possession rather than [to] obtain original possession, and [the] complainant must allege wrongful deprivation of property.” *Offshore Express, Inc. v. Bergeron Boats, Inc.*, 1978 AMC 1504, 1506 (E.D. La. 1977) (alterations added; citation omitted). As in *Silver*, “[h]ere, there is no showing that plaintiff was ever in possession.” 259 F. Supp. at 191 (alteration added).

Plaintiffs’ State Court Complaint is telling. In that pleading, filed before this action, Plaintiffs allege they entered into a contract with ROAA to purchase the Vessel, made all payments to ROAA for the Vessel, and ROAA took their money but never paid Sunseeker USA the full and final payment for the Vessel, and so closing and delivery did not occur. (*See* State Ct. Compl. ¶¶ 11–47).³ Plaintiffs assert claims of breach of the Purchase Agreement against ROAA for failing to deliver the Vessel; and for specific performance against ROAA, asking the state court to order ROAA to deliver the Vessel. (*See id.* 24–26). As noted by Sunseeker USA, at bottom this is a commercial contract dispute, with Plaintiffs using Supplemental Rule D to obtain the specific performance they have asked the state court to order (*see* Mot. 10–11) and even referencing the existence of the November 3, 2019 arrest of the Vessel in their state-court pleading (*see* Am. State

³ Plaintiffs alleged ROAA,

with the knowledge, endorsement, agreement and cooperation of Sunseeker Int’l and Sunseeker USA but without disclosure to the retail customers, would regularly collect payments from retail customers but apply such payments to vessels other than those vessels ordered by the retail customers, which vessels were typically due for delivery before the retail customers’ vessels.

(State Ct. Compl. ¶ 51).

Ct. Compl. ¶ 74). Rule D is not a vehicle to obtain specific performance of the Purchase Agreement, a non-maritime contract. *See The Yacht, Wanda*, 447 F.2d at 967.

In their effort to persuade the Court it has jurisdiction, Plaintiffs assert they acquired title by operation of Florida Statute section 672.401(3)(b), which provides:

(3) *Unless otherwise explicitly agreed* where delivery is to be made without moving the goods:

(a) If the seller is to deliver a tangible document of title, title passes at the time when and the place where he or she delivers such documents and if the seller is to deliver an electronic document of title, title passes when the seller delivers the document; or

(b) If the goods are at the time of contracting already identified and no documents of title are to be delivered, title passes at the time and place of contracting.

Id. (emphasis added).

Plaintiffs' reliance on this section is misplaced. First, under Florida law, "[a] purchaser of goods acquires all title which her or his transferor had or had power to transfer Fla. Stat. § 672.403(1) (alterations added). ROAA never possessed title to the Vessel, and so it was impossible for ROAA to pass title to Plaintiffs at the time they executed the Purchase Agreement with ROAA or tendered final payment. In their Distribution Agreement [ECF No. 31-1], the manufacturer, Sunseeker International and its distributor, Sunseeker USA explicitly agreed how and when title to Sunseeker yachts would transfer; and Sunseeker USA and ROAA had an explicit understanding, found in the Dealer Agreement (*see id.* ¶ 9.3), as to how and when title transfer for Sunseeker yachts would occur. While the Purchase Agreement does not specifically reference how title will transfer, ROAA must have had title to the Vessel in order to transfer title to Plaintiffs.

Even accepting Plaintiffs' position that Sunseeker USA should have agreed to ROAA's suggested reallocation of monies and transferred sums it was holding on several orders for

Sunseeker yachts to the balance owed on the Vessel, under the Dealer Agreement title does not pass until the later of Delivery or payment. (*See Dealer Agreement* ¶ 9.3). The Vessel was never tendered to ROAA or a designated carrier at the port of Delivery. Legal and beneficial title never passed from Sunseeker USA to ROAA, and so ROAA could not have transferred title to Plaintiffs. *See Fla. Stat. § 672.403(1)*.

Second, Florida Statute section 672.401(3)(b) requires there be goods that are both existing and “identified.” *See Fla. Stat. § 672.105(1)*. When the Purchase Agreement was entered, manufacture of the Vessel had not yet commenced. Because no identifiable good existed at the time of contracting, no title could pass to Plaintiffs under operation of the statute. *See, e.g., In re Carman*, 399 B.R. 158, 161 (Bankr. D. Md. 2009) (holding under Maryland statute title to a boat could not transfer at the time the contract to build the boat was entered into; “[t]he contract was not ‘for the sale of goods already existing and identified’” (alteration added; citation omitted)).

At bottom, the Plaintiffs are victims to ROAA’s undeniable breach of the Purchase Agreement. ROAA willingly accepted Plaintiffs’ several payments, including the trade-in of their 2016 68 Foot Sunseeker sport yacht, and failed to remit full payment for the Vessel to Sunseeker USA. ROAA’s last-minute requests in March and April 2019 that Sunseeker USA “reallocate” funds it was holding toward the purchase of several other boats under order with ROAA are merely window-dressing. ROAA had already sued Sunseeker International (*see State Ct. Compl. ¶ 26*) in state court and such “reallocations” were not the parties’ customary business practice, nor were they addressed in any relevant contract between the parties.

While Plaintiffs have undeniably been wronged, “[w]ithout jurisdiction the [C]ourt cannot proceed at all in any cause. Jurisdiction is the power to declare the law, and when it ceases to exist, the only function remaining to the [C]ourt is that of announcing the fact and dismissing the

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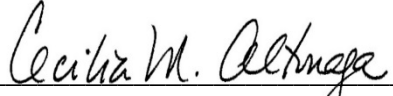
cause.”” *Steel Co. v. Citizens for a Better Env’t*, 523 U.S. 83 (1998) (alterations added; quoting *Ex parte McCardle*, 74 U.S. 506, 514 (1868)).

For the foregoing reasons, it is

ORDERED AND ADJUDGED that the Motion by Owner to Vacate Arrest, Dismiss the Verified Complaint, and for Emergency Relief [ECF No. 18] is **GRANTED**. The Warrant of Arrest [ECF No. 13] is **VACATED**. The Verified Complaint [ECF No. 1] is **DISMISSED** for lack of subject matter jurisdiction. The Court reserves jurisdiction to entertain Sunseeker USA’s requests for sanctions and damages against Plaintiffs, which requests may be renewed after the parties’ state-court litigation is concluded.

The Clerk shall mark the case CLOSED.

DONE AND ORDERED in Miami, Florida, this 13th day of February, 2020.



CECILIA M. ALTONAGA
UNITED STATES DISTRICT JUDGE

cc: counsel of record