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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

O'ROURKE MARINE SERVICES L.P.,
LLP,

Plaintiff,

v.

M/V COSCO HAIFA, IMO NO. 9484338,
her engines, apparel, furniture,
equipment, appurtenances, tackle, etc.,
in rem;

and

M/V COSCO VENICE, IMO NO.
9484405, her engines, apparel,
furniture, equipment, appurtenances,
tackle, etc., *in rem*;

Defendants.

15-cv-2992 (KBF)

MEMORANDUM DECISION &
ORDER

KATHERINE B. FORREST, District Judge:

On April 8, 2016, Judge Shira A. Scheindlin issued an Opinion & Order denying plaintiff O'Rourke Marine Services L.P., LLP's ("O'Rourke") motion for summary judgment. (ECF No. 79.) In sum, the Court found that while O'Rourke was the physical supplier of the certain bunkers to the M/V Cosco Venice and M/V Cosco Haifa (together, the "Cosco Vessels"), it did not possess a maritime lien. In addition, the Court found that O'Rourke's other claims failed as a matter of law, and therefore denied O'Rourke's motion.

O'Rourke timely brought this motion for reconsideration. (ECF No. 80.)

While the parties were briefing the instant motion for reconsideration, the case was reassigned to the undersigned in light of Judge Scheindlin's retirement.

O'Rourke argues, inter alia, that Judge Scheindlin's decision was manifestly erroneous and that it reflected too much haste on her part to clean up her docket prior to her retirement. O'Rourke argued further that they had not had a sufficient opportunity to explain the matter to Judge Scheindlin as she had not had oral argument. O'Rourke asserted the following errors:

1. That provision L.4 of the OW Bunker Group's Terms and Conditions incorporated O'Rourke's own Terms and Conditions and those terms expressly provide for direct contractual claims;
2. That the same provision of the OW Bunker Group's Terms (L.4) provide for a maritime lien;
3. That O'Rourke retains title to the bunkers by way of the OW Bunker Group Terms and Conditions; and
4. That equitable principles at the core of interpleader and maritime law require reversal.

ING cross-moved for entry of judgment under Rule 54(b). (ECF No. 89.) ING argued that, in light of Judge Scheindlin's statements in the decision denying O'Rourke's motion for summary judgment, the only matter left for the Court was entry of judgment in ING's favor.

This Court heard oral argument on this motion on June 30, 2016. (ECF No. 96.) The Court has also had occasion to study very similar issues in the context of other cases pending before it and, in fact, issues two decisions on similar issues simultaneously herewith.¹

Having carefully reviewed Judge Scheindlin's decision, this Court finds that she correctly denied O'Rourke's motion for summary judgment. The Court modifies that decision to vacate the portions on pages 14-16 which address whether ING Bank, N.V. must or does hold a maritime lien. The full contours of that question was not presented by O'Rourke's motion, is the subject of ongoing briefing, (ECF No. 98), and has not yet been decided. The Court finds it prudent not to express any opinion on that matter until full briefing has occurred.

DISCUSSION

As this Court finds that Judge Scheindlin's decision did not contain any manifest errors of law, it is unnecessary to do more than state that fact and deny the motion. However, to insure the parties that the Court has individually considered the facts of this case, it states that the reasoning set forth in the Court's two other physical supplier decisions of today's date² explains why O'Rourke's arguments with regard to provision L.4 are unavailing. That reasoning and rationale, as applied to the structure of the transaction here, is incorporated into this decision by reference.

¹ The cases are Aegean Bunkering (USA) LLC v. M/T Amazon, 14-cv-9447, and ING Bank N.V. v. M/V Temara, No. 9333929, 16-cv-95.

² See id.

O'Rourke's other arguments face a similar fate. For the reasons set forth in those two decisions, and as applied to the structure and facts of the O'Rourke transaction, the Court finds that they do not require a reversal of Judge Scheindlin's decision. The rationale set forth in those decisions on those points is similarly incorporated by reference.

As Judge Scheindlin's decision was correct on the law and facts, the Court DENIES O'Rourke's motion for reconsideration. Similarly, as Judge Scheindlin's decision addressed more than O'Rourke's entitlement to summary judgment, the sole question briefed at that time, the final portion of that decision is vacated and the Court accordingly DENIES ING's motion for entry of judgment.

The Clerk of the Court is directed to terminate the motions at ECF Nos. 80 & 89.

SO ORDERED.

Dated: New York, New York
August 24, 2016



KATHERINE B. FORREST
United States District Judge