

Herman Family Revocable Trust v. Teddy Bear 254 F.3d 802 (9th Cir. 1998) (Decided June 13, 2001)

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**UNDERLYING ADMIRALTY SUBJECT MATTER JURISDICTION
REQUIRED**

Consent to jurisdiction is not sufficient to establish subject matter jurisdiction

Herman Family Revocable Trust v. Teddy Bear
254 F.3d 802 (9th Cir. 1998)
(Decided June 13, 2001)

Howard Littell (“Littell”), on behalf of a family trust, attempted to purchase the vessel *Teddy Bear*, a 62-foot powerboat from its owner, broker Marlineer International, Inc. (“Marlineer”). Following six months of failed negotiations originally between Littell and Marlineer’s president, Ted Tate (“Tate”) the sale was ultimately aborted. Littell filed suit in the United States District Court for the Central District of California, alleging: (1) in rem for foreclosure of a maritime lien against the *Teddy Bear*, based on work Little performed and supervised while living on the yacht; (2) in rem against the *Teddy Bear* and in personam against the other defendants for foreclosure of a maritime lien, based on the monies Littell had transferred to Marlineer; (3) in rem against the *Teddy Bear* and in personam against the other defendants for foreclosure of a maritime lien, based on Tate and Marlineer’s alleged misrepresentation of the value of the yacht; and (4) conversion, against all defendants, based on the California Civil Code § 3336.

After a bench trial, the United States District Court for the Central District of California determined it lacked admiralty jurisdiction. This determination was based on the honored principle that a suit arising out of the sale of a vessel does not give rise to admiralty jurisdiction. *See, e.g. Magallanes Invest. Co., Inc. v. Circuit Sys., Inc.*, 994 F.2d 1214, 1217 (7th Cir. 1993); *J.A.R., Inc. v. M/V Lady Lucile*, 963 F.2d 96, 98 (5th Cir. 1992); *Richard Bertram v. The Yacht, Wanda*, 447 F.2d 966, 967 (5th Cir. 1971); *The Ada*, 250 F. 194 (2d Cir. 1918); *see also* 1 BENEDICT ON ADMIRALTY § 186 (Matthew Bender 7th ed. 2000); 29 MOORE’S FEDERAL PRACTICE § 703.04[2][c][viii] (Matthew Bender 3rd ed. 2000). However, after determining that there was no admiralty jurisdiction, the court proceeded to adjudicate the federal admiralty claims and the supplemental state-law claim in favor of the Marlineer based on the merits of the case. Littell appealed.

If a federal claim is dismissed for lack of subject matter jurisdiction, the district court has no discretion to retain the supplemental claims for adjudication. *See* 16 MOORE’S FEDERAL PRACTICE § 106.66[1]; *see also Acri v. Varian Assoc.*, 114 F.3d 999, 1000 (9th Cir. 1997)(“a district court must be sure that it has federal jurisdiction under § 1367(a).”). For a district court to exercise discretionary supplemental jurisdiction under § 1367(c), in adjudicating the remaining claims after all the federal claims have been dismissed on the merits, there must first be subject matter jurisdiction, without which there is no discretion and the claims must be dismissed by the court. *See* Rule 12 (b)(1)(dismissal for lack of subject matter jurisdiction). Absent subject matter jurisdiction, there is no supplemental jurisdiction under Rule 12(b)(1) since there never was a valid federal claim. Devoid of the “substance sufficient to confer subject matter jurisdiction”, the effecting of jurisdiction based on a nonexistent federal claim is a violation of Article III of the Constitution. *See United Mine Workers v. Gibbs*, 383 U.S. 715, 725 (1966).

The United States Court of Appeals for the Ninth Circuit vacated and remanded with instructions to dismiss.

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