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ST Shipping and Transport, Inc. v. Golden Fleece Maritime, Inc. United States District Court for the Southern District of New York 2008 A.M.C. 2640 (Decided September 9, 2008)

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THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK DENIED A MOTION TO VACATE A RULE B ATTACHMENT BECAUSE THE UNDERLYING CLAIM WAS VALID UNDER ENGLISH LAW.

The United States District Court for the Southern District of New York denied a motion to vacate an attachment based on English law and equity. Despite the finding of a valid equitable assignment of rights to payment based upon a charterer under English law, the requirement that such assignment be made in the ordinary course of business rendered the assignment void for purposes of attachment.

ST Shipping and Transport, Inc. v. Golden Fleece Maritime, Inc.
United States District Court for the Southern District of New York
2008 A.M.C. 2640
(Decided September 9, 2008)

On May 30, 2003, ST Shipping and Transport, Inc. (“ST Shipping”) chartered the M/T ELLI, owned by Golden Fleece Maritime, Inc. (“Golden Fleece”) for a period of six months. Clauses in the charter stated that (1) Golden Fleece be charged with the maintenance or restoration of the ship’s ability to carry crude petroleum and have on board all certificates necessary to perform the charter service, and (2) Golden Fleece warranted the speed and performance of the ship during the contract period. Disputes arose in England between ST Shipping and Golden Fleece relating to alleged violations of these clauses.

On December 4, 2003, the International Maritime Organization issued new regulations which required changes to the M/T ELLI. Despite the need for modifications, Golden Fleece assured ST Shipping that the M/T ELLI fit within an exception to the new regulations and was in compliance. After the termination of a subcharter agreement due to alleged non-compliance, ST Shipping brought a claim against Golden Fleece in a London court.

On May 11, 2007, ST Shipping requested, and was granted, an ex parte attachment of Golden Fleece’s assets in the Southern District of New York, seeking security for the claims pending in the London court. However, before ST Shipping attached any of Golden Fleece’s assets, the London court rendered a judgment mandating payment by Golden Fleece to ST Shipping by August 20, 2007. As payment was made on August 22, 2007, ST Shipping filed a notice of dismissal of the attachment action in accordance with Rule 41(a)(1) of the Federal Rules of Civil Procedure. The Clerk of the Court, however, did not formally close the case until May 9, 2008, when the District Judge endorsed the notice of dismissal.

On March 15, 2007, ST Shipping gave notice to Golden Fleece of a separate claim for breach of the speed and performance clause. On October 10, 2007, ST Shipping made a demand for \$200,000 in security, which Golden Fleece refused. On the same day, Golden Fleece began discussions regarding the sale of the M/T ELLI. The sale of the ship was initiated on October 26, 2007. In the side letter accompanying the memorandum of agreement to sell the M/T ELLI, the buyer was articulated as, “Blanca Ship Management Company of [the] Marshall Islands or another company TBN.” Although closing and delivery did not occur until March 17, 2008, the effective date of transfers to the buyer of all payments of hire made by charterers, claims, losses, and damages of the ship was deemed to be December 15, 2007.

On December 11, 2007, ST Shipping filed a motion requesting maritime attachment of Golden Fleece’s assets as security for the speed and performance claims pending in London. ST Shipping failed to indicate on the civil cover sheet that the case was related to “a civil case pending... in S.D.N.Y.” In fact, ST Shipping’s attorney stated in its affidavit that it was the first request for such relief to any court. On December 28, 2007, the court authorized an ex parte order of maritime attachment.

Subsequent to the attachment order, Citibank restrained three electronic funds transfers (“EFTs”) naming Golden Fleece as their beneficiary. These three payments were made by a company in exchange for the charter of the M/T ELLI after the December 15, 2007.

As a result of this restraint of funds, Golden Fleece and Blanca Ship Management Co. (“Blanca”) moved to vacate the attachment on two grounds. First, they argue that the attached funds were not property of Golden Fleece as they were held in trust or, in the alternative, had been assigned to Blanca. Second, the two movants asserted that the attachment should be vacated on equitable grounds as ST Shipping allegedly made false representations in the attorney’s affidavit in support of the attachment and also failed to file the action as a related case.

Under Supplemental Rules B and E of the Federal Rules of Civil Procedure, and in accordance with the Second Circuit decision in *Aqua Stoli Shipping, Ltd. v. Garnder Smith Pty, Ltd.*,¹ the plaintiff carries the burden of satisfying the elements of attachment. There must be a, “valid prima facie admiralty claim against the defendant; ... the defendant cannot be found within the district; ... the defendant’s property may be found within the district; and... there is no statutory or maritime law bar to the attachment.”² While there only need be a *prima facie* showing of a claim against the defendant, the last three jurisdictional elements require proof by a preponderance of the evidence.

The only issue before the court was whether the seized assets, the EFTs, were Golden Fleece’s assets. The other requirements for attachment were satisfied. Examining the trust and assignment assertions in light of English law,³ the court held that Golden Fleece did not establish the elements required for either a trust on behalf of, or an equitable assignment of the assets to, Blanca.

English law requires four factors to be evinced with reasonable certainty: “intent to create a trust with property intended to be kept separate from the trustee’s personal property, trust property, intended beneficiaries, and a trust purpose.” Although the side letter evinces intent for Blanca to receive payments after December 15, 2007, the court found the absence of basic trust terminology in an otherwise sophisticated agreement provided strong evidence of a lacking intent to create a trust. Additionally, the court cited the lack of sufficient certainty as to whether Blanca was even the beneficiary of the alleged trust. The court found that the articulation of, “Blanca... or another company TBN” in the side letter provided no indication of who could name the alternative beneficiary and thus, who could even be an alternative beneficiary.

English law regarding an equitable assignment requires an absolute arrangement to be in writing under the hand of the assignor. Although it found such an assignment present in the agreement between Blanca and Golden Fleece, the court held that since the assignment in consideration of the sale of the sole ship in a maritime corporation did not occur within the ordinary course of business, the agreement would not protect Golden Fleece. The court reasoned that if the sale of the only ship owned by a maritime corporation was found to be a transaction in the ordinary course of business, companies would, “simultaneously rid[] [themselves] of assets from which creditors could seek satisfaction... rendering the corporation judgment proof.”

Because the assets were not property of Blanca, but rather of Golden Fleece, the court found the *Aqua Stoli* factors fulfilled and thus, denied the motion to vacate for failure to meet the requirements for attachment.

The court then addressed the equitable vacatur argument and held that ST Shipping did not mislead the court by not indicating that the action was related to another pending civil case. The court found there to be no evidence proving the elements required to grant an equitable vacatur.⁴ Citing the

¹ 460 F.3d 434 (2d Cir. 2006),

² *Id.*

³ The application of English law was undisputed by the parties.

⁴ The court established that an equitable vacatur may be issued if the defendant demonstrates that “1) the defendant is subject to suit in a convenient adjacent jurisdiction; 2) the plaintiff could obtain in personam jurisdiction over the defendant in the

Rule 41(a)(1) dismissal on August 22, 2007, the court held both that the later endorsement by the judge had no bearing on the legal status of the closed case and the fact that the action stemmed from a case relating to the same charter was irrelevant. Therefore, the court denied the motion to vacate on equitable grounds.

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district where the plaintiff is located; or 3) the plaintiff has already obtained sufficient security for the potential judgment, by attachment or otherwise.”