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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

<hr/>		X
DELTA CORP SHIPPING PTE LTD,		:
		:
	Plaintiff,	:
		:
	- against -	:
		:
RANKERS INTERNATIONAL PVT LTD,		:
		:
	Defendant	:
<hr/>		X

Civil Action:
IN ADMIRALTY

**PLAINTIFF’S MEMORANDUM OF LAW IN SUPPORT OF REQUEST
FOR ISSUANCE OF ORDER DIRECTING CLERK TO ISSUE PROCESS
OF MARITIME ATTACHMENT AND GARNISHMENT**

PRELIMINARY STATEMENT

Supplemental Rule B for Certain Admiralty and Maritime Claims of the Federal Rules of Civil Procedure (“Rule B”) provides for a special remedy, routinely issued *ex parte* in maritime cases. The circumstances for issuance of that remedy are present here. The facts are set out in the Verified Complaint and accompanying Rule B Declarations of Elizabeth Turnbull and Lauren B. Wilgus dated November 4, 2020.

ARGUMENT

POINT I

THE COURT HAS JURISDICTION

The Verified Complaint alleges admiralty jurisdiction pursuant to 28 U.S.C. § 1333 and Fed.R.Civ.P. 9(h) based on a breach of a charter party, which is a quintessential maritime claim.

POINT II

**LOCAL ADMIRALTY AND MARITIME RULE B DOES
NOT REQUIRE PRE-ATTACHMENT NOTICE**

In *Aqua Stoli Shipping Ltd. v. Gardner Smith Pty Ltd.*, 460 F.3d 434 (2d Cir. 2006), the Court described the mechanics of obtaining a maritime attachment under Rule B. Implicit in L. Adm. Rule B.2 is the acknowledgment that process of maritime attachment is issued *ex parte*:

In any action where any property of a defendant is attached, the plaintiff shall give prompt notice to the defendant of the attachment. Such notice shall be in writing, and may be given by telex, telegram, cable, fax, or other verifiable electronic means.

Id. (emphasis added).

As stated in the 1966 Advisory Committee Notes to Rule B, no notice was provided for because “[n]one is required by the principles of due process, since it is assumed that the garnishee or custodian of the property attached will either notify the defendant or be deprived of the right to plead the judgment as a defense in an action against him by the defendant.” *Id.* The Committee noted in their comments on the 1985 Amendment that Rule B was amended to provide for judicial scrutiny before the issuance of the attachment “to eliminate doubts as to whether the Rule is consistent with the principles of procedural due process enunciated by the Supreme Court . . .” *Id.*

Further:

The rule envisions that the order will issue when the plaintiff makes a prima facie showing that he has a maritime claim

against the defendant in the amount sued for and the defendant is not present in the district. A simple order with conclusory findings is contemplated.

Id.

Service of a writ of maritime attachment is not the same as an actual attachment. If there is no property in the garnishee's hands, there is no attachment, and therefore no requirement for notice under L. Adm. Rule B.2. If L. Adm. Rule B.1¹ were interpreted to require notice before any property was actually seized, that would enable a defendant to divert its funds and thus defeat the very purpose of maritime security in a case against a foreign or transient defendant. Therefore, Plaintiff may proceed *ex-parte* and provide notice promptly after a successful attachment of Defendant's property.

As was well stated in *Trans-Asiatic Oil Limited, S. A. v. Apex Oil Company*, 604 F. Supp. 4 (D. P.R. 1984):

Maritime attachment is part of admiralty jurisdiction in the maritime context. Since the constitutional power of the federal courts is separately derived from admiralty, suits under admiralty jurisdiction involve separate policies to a certain extent. This principle suggests, not only that jurisdiction by attachment of property should be accorded special deference in the admiralty context, but also that maritime actors must reasonably expect to be sued where their property may be found. *See Amoco Overseas Oil v. Compagnie Nationale Algenienne*, supra, 605 F. 2d [648] at 655 [2d Cir. 1979]. Thus, the history of maritime attachment itself, the autonomy of admiralty jurisprudence, the long constitutional viability of maritime attachment, and the modern trend in admiralty to strengthen traditional admiralty remedies against property, rather than erode them, compel the conclusion that the common law principles enunciated in

¹ "In an action where any property of a defendant is attached, the plaintiff shall give prompt notice to the defendant of the attachment. Such notice shall be in writing, and may be given by telex, telegram, cable, fax, or other verifiable electronic means."

Shaffer v. Heitner, supra [433 U.S. 186, 97 S. Ct. 2569, 53 L. Ed. 2d 683 (1977)] do not apply to Rule B(1) attachments.

* * *

Property attached under Supplemental Rule B could be shipped out, otherwise disposed of, or concealed; credits, such as the one involved here, could be collected or quickly transferred from the jurisdiction. Notice prior to attachment would in many instances enable the owner to frustrate judicial enforcement of the lien. In fact, it could defeat the purposes of the attachment.

604 F. Supp. at 7-8 (emphasis added). *Winter Storm Shipping, Ltd. v. TPI*, 310 F. 3d 263 (2d Cir. 2002).

POINT III

THE CONDITIONS FOR A RULE B ATTACHMENT EXIST

Rule B provides “[w]ith respect to any admiralty or maritime claim *in personam*” for attachment of “credits and effects in the hands of garnishees to be named in the process to the amount sued for, if the defendant shall not be found within the district” (emphasis added). Plaintiff here meets the threshold showing required for the issuance, ex parte, of an attachment order under Rule B. Plaintiff has stated a maritime claim and Defendant cannot be “found” in this district. *Aqua Stoli*, 460 F.3d at 438, 443.

A. Plaintiff’s Claim Is An Admiralty Or Maritime Claim

Plaintiff’s claim is for Defendant’s breach of a charter party. This cause of action is the essence of an admiralty or maritime claim. *Kirno Hill Corp. v. Holt*, 618 F.2d 982 (2d. Cir. 1980).

B. Defendant Cannot Be “Found” in this District Pursuant to Rule B

There is a well-defined two-prong test to determine whether a defendant can be “found” within a district: “First, whether (the respondent) can be found within the district in terms of jurisdiction, and second, if so, whether it can be found for service of process.” *Seawind Compania*,

S.A. v. Crescent Line, 320 F.2d 580, 582 (2d Cir. 1963); *Aqua Stoli*, 460 F.3d at 439. In this particular matter, Defendant fails to meet both prongs of this test.

Being “found within the district” for jurisdictional purposes (the first prong) requires that a defendant “be engaged in sufficient activity in the district to subject it to jurisdiction even in the absence of a resident agent expressly authorized to accept process.” *Id.* at 583. “[A] defendant corporation is found within [the] jurisdiction of a federal district court if in the recent past it has conducted substantial commercial activities in the district and will probably continue to do so in the future.” *Bay Casino, LLC v. M/V Royal Empress*, 20 F. Supp. 2d 440, 451 (S.D.N.Y. 1998).

The burden of proving that a defendant can satisfy both prongs of the test after the plaintiff’s initial showing that at least one of the conditions for the Rule B remedy lies with the defendant. As stated in *K/S Ditlev Chartering A/S & Co. v. Egeria S.p.A. di Navigazione*, 1982 A.M.C. 1817 (E.D. Va. 1982):

Although [defendant] has thus established that it is found within the district for service of process, the law requires [defendant] to establish that it is also found within the district for the purposes of personal jurisdiction.

Id. at 1819 (citation omitted).

In order to be “found,” a defendant must be genuinely engaged in ongoing commercial activity within this district. *See Seawind*, 320 F.2d at 583; *VTT Vulcan Petroleum v. Landham-Hill Petroleum*, 684 F. Supp. 389, 391 (S.D.N.Y. 1988).

In *Aqua Stoli*, *supra*, the Second Circuit created three exceptions to the clear language of Rule B that a plaintiff need only show a valid prima facie admiralty claim and that the defendant cannot be “found” in the district, but its property can be: “Circumstances that may justify a vacatur can occur where 1) the defendant is present in a convenient adjacent district; 2) the defendant is present in the district where the plaintiff is located; or 3) the plaintiff has already obtained sufficient

security for a judgment.” 460 F.3d at 436, 445. The burden is on the defendant to raise these exceptions on a motion to vacate. Nevertheless, upon information and belief, none apply to the facts of the present case.

As such, Rankers cannot be found in this District within the meaning of Rule B of the Supplemental Rules for Admiralty and Maritime Claims.

POINT IV

THE EXISTENCE OF A LONDON ARBITRATION CLAUSE IN THE UNDERLYING CONTRACT DOES NOT VITIATE PLAINTIFF’S RIGHT TO A RULE B ATTACHMENT

In this matter, the contract calls for resolution of disputes in London arbitration. Plaintiff specifically reserves its rights in London. The London arbitration clause does not preclude Plaintiff’s right to a Rule B attachment to obtain security for a judgment in London.² Attachment to secure claims that are subject to arbitration elsewhere is commonplace and available even after the arbitration has been commenced, whether in the United States or abroad. *See, e.g., Casper Marine Inc. v. Seatrans Shipping Corp.*, 969 F. Supp. 395 (E. D. La. 1997); *Andros Compania Maritima, S.A. v. Andre & Cie, S.A.*, 430 F. Supp. 88, 94-95 (S.D.N.Y. 1977); *Paramount Carriers v. Cook Industries*, 465 F. Supp. 599, 602 (S.D.N.Y. 1995); *Unitramp, Ltd. v. Mediterranean Brokerage and Agents, S.A.S.*, 1994 AMC 476, 478 (S.D.N.Y. 1993); *Filia Compania Naviera S.A. v. Petroship, S.A.*, 1982 AMC 1217 (S.D.N.Y. 1982).

² Security may properly encompass interest, attorney’s fees and arbitrators’ fees when a party agrees to arbitrate in London, where such items are recoverable. *See Dongbu Express Co. Ltd. v. Navios Corp.*, 1997 AMC 34 (S.D.N.Y. 1996); *Proton Shipping, Inc. v. Sovarex S.A.*, 05 Civ. 10295, 2006 U.S. Dist. LEXIS 2389 (S.D.N.Y. Jan. 23, 2006).

CONCLUSION

In the circumstances, Plaintiff respectfully requests this Court to enter an Order directing the Clerk to issue Process of Maritime Attachment and Garnishment and grant such other and further relief as it may deem just.

Dated: New York, NY
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