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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- X
CENTRAL SHIPPING COMPANY LTD.,

Plaintiff,

- against -

INTERNAUT SHIPPING LTD.,

Defendant.
----- X

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: 09 Civ. 6222 (VM)

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: **DECISION AND ORDER**

VICTOR MARRERO, United States District Judge.

By Order dated November 25, 2009 (the "November 25 Order") the Court denied the application of defendant Internaut Shipping Ltd. ("Internaut") for an order vacating the attachment order dated July 15, 2009 (the "July 15 Order") and releasing the bond posted by Internaut as substitute security pursuant to the Court's Order dated July 27, 2009 (the "July 27 Order"). Pursuant to the July 15 Order, plaintiff Central Shipping Company Ltd. ("Central") restrained assets of Internaut in an amount of \$118,641.17 in the form of electronic fund transfers ("EFT") in the hands of certain intermediary garnishee banks. The parties then negotiated an agreement (the "Bond Agreement") pursuant to which Internaut provided a bond in an amount of \$5,485,322.30 (the "Bond") as substitute security for the restrained EFT assets. The Bond Agreement provided for the revocation of the July 15 Order, for the return of the attached funds to Internaut, and for this action to "proceed in ordinary course." (July 27 Order at

2.) However, Internaut's provision of the Bond was without waiver of any rights and defenses in respect of the July 15 Order, including the right to challenge the validity of the attachment.

On October 16, 2009, the Court of Appeals for the Second Circuit issued a decision in Shipping Corp. of India Ltd. v. Jaldhi Overseas Pte Ltd., 585 F.3d 58 (2d Cir. 2009), holding that an attachment of assets flowing through intermediary banks as EFTs cannot serve as sufficient ground to support an exercise of jurisdiction by federal courts in cases brought under Rule B of the Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions. Subsequently, in Hawknet, Ltd. v. Overseas Shipping Agencies, ___ F.3d ___, No. 09-2128-cv. (2d Cir. Dec. 22, 2009), the Second Circuit held that Jaldhi applied retroactively to invalidate Rule B maritime attachment orders insofar as based on EFTs.

In its November 25 Order, the Court denied Internaut's request to vacate the July 15 Order and release the Bond. The Court determined that Jaldhi and Hawknet did not apply to this case, reasoning that by the terms of the Bond Agreement and the Court's July 25 Order approving it, the July 15 Order had already been vacated and Internaut had obtained a return of the funds that had been restrained pursuant to it. Thus, the Court found that there was no order then in effect for the

Court to vacate. Insofar as the Bond had been posted and remained in place as substitute security in connection with the parties' litigation, the Court determined that that circumstance followed from the parties' Bond Agreement, pursuant to which they exchanged other mutual promises, rights and obligations, such as Central Shipping's commitment not to attach other Internaut assets, arrest Internaut's ships or otherwise disrupt Internaut's maritime operations. As the Court viewed the matter, while it was true that Internaut provided the Bond because of Central Shipping's restraint of the EFTs, it was also true that, unlike many other maritime attachment cases the Court had previously encountered involving a substitution of security, the original attachment order authorizing the EFTs did not remain in effect, but rather was actually vacated by the Court. Consequently, to that extent the exercise of the Court's jurisdiction in this action no longer rested on an EFT-grounded order. Moreover, by posting the Bond and allowing this case to proceed, Internaut was able to secure the substantial benefits that the Bond Agreement provided to it in protecting other assets from restraint.

Accordingly, the Court determined that with the vacatur of the July 15 Order and release of the restrained EFT assets to Internaut, the parties' litigation in this Court continued

not by reason of quasi in rem jurisdiction obtained by the attachment of the EFTs, but consensually by the posting of the Bond pursuant to the terms of the Bond Agreement.

Finally, the Court relied upon equitable considerations for not releasing the Bond under the posture of the case as then presented. Specifically, the Court considered that circumstances had materially changed, in that, by complying with the Bond Agreement, Central Shipping had surrendered rights and potential opportunities to attach other non-EFT assets or arrest ships belonging to Internaut, thereby experiencing substantial prejudice if the Bond were released.

Internaut now moves for reconsideration or, in the alternative, leave to file an interlocutory appeal pursuant to 28 U.S.C. § 1292(b). Upon review of the papers submitted in favor of and against the motion, the Court denies the application for reargument. The Court finds nothing in Internaut's papers pointing to new evidence or controlling decisions not considered by the Court that might reasonably be expected to alter the outcome. See Local Civil Rule 6.3; Shrader v. CSX Trasnp., 70 F.3d 255, 257 (2d Cir. 1995).

The Court is persuaded, however, that the circumstances presented by this case are sufficiently exceptional to warrant leave for an interlocutory appeal pursuant to 28 U.S.C. § 1292(b). To satisfy the requirements of that statute, the

moving party must demonstrate that the order sought to be appealed "involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal may materially advance the ultimate termination of the litigation." 28 U.S.C. § 1292; In re Flor, 79 F.3d 291 (1996). Following Jaldhi and Hawknet, the rules of maritime law that govern the instant dispute have been in a state of the flux in this Circuit. Numerous rulings issued by the district courts have addressed various relevant issues opened by Jaldhi and Hawknet, not all in full agreement and some raising questions as to which there is substantial ground for difference of opinion. See, e.g., Global Mar. Invest. v. Companhia Siderugica Nacional, No. 08 Civ. 11199, 2009 U.S. Dist. LEXIS 115218 (S.D.N.Y. Dec. 9, 2009); HC Trading Int'l Inc. v. Crossbow Cement, S.A., No. 08 Civ. 11237, 2009 U.S. Dist. LEXIS 11876 (S.D.N.Y. Dec. 21, 2009). In addition, Jaldhi has undoubtedly spawned considerable additional appeals now pending before the Circuit Court. Insofar as the instant case presents a unique aspect of the controversy, its resolution in this context may certainly advance the termination not only of this dispute but of other related litigation. Accordingly, the Court grants this part of Internaut's application.

ORDER

For the reasons stated above, it is hereby

ORDERED that the motion (Docket No. 23) of defendant Internaut Shipping Ltd. for reconsideration is DENIED and its motion in the alternative for leave to file an interlocutory appeal of the Court's Order dated November 25, 2009 pursuant to 28 U.S.C. § 1292(b) is GRANTED.

SO ORDERED.

Dated: New York, New York
11 January 2010

A handwritten signature in black ink, consisting of several large, sweeping loops and a long horizontal stroke at the end.

VICTOR MARRERO
U.S.D.J.