



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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ASIA PROJECT SERVICES LTD.,

Plaintiff,

-against-

USHA MARTIN LIMITED and
USHA MARTIN AMERICAS,

Defendants.

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09 Civ. 5084 (WHP)

MEMORANDUM & ORDER

WILLIAM H. PAULEY III, District Judge:

This is a maritime action pursuant to Rule B of the Supplemental Rules for Admiralty and Maritime Claims to recover money for damaged cargo carried by Defendants Usha Martin Limited and Usha Martin Americas (collectively "Usha Martin"). On August 4, 2009, this Court vacated an Order of Attachment and Garnishment entered on July 1, 2009 (the "Attachment") and entered an Order Approving Bond as Substitute Security in the amount of \$891,375.64 (the "Bond Order"). On December 14, 2009, Defendants moved to vacate the Bond Order. Following oral argument on January 15, 2010, this Court denied Defendant's motion on the record in open court. (Transcript dated Jan. 15, 2010, at *9-11.) Defendants move for reconsideration of that order or, in the alternative, certification of this matter for interlocutory appeal. For the following reasons, Defendants' motions are denied.

DISCUSSION

I. Reconsideration

Local Civil Rule 6.3 allows a party to move for reconsideration of a court's decision in light of "matters or controlling decisions which counsel believes the court has overlooked." Reconsideration of an order is an "extraordinary remedy to be employed sparingly in the interests of finality and [to conserve] scarce judicial resources." Parrish v. Sollecito, 253 F. Supp. 2d 713, 715 (S.D.N.Y. 2003) (quoting In re Health Mgmt. Sys. Inc. Sec. Litig., 113 F. Supp. 2d 613, 614 (S.D.N.Y. 2000)); see also Banco Central de Para. v. Para. Humanitarian Found., Inc., No. 01 Civ. 9649 (JFK), 2005 WL 1561504, at *1 (S.D.N.Y. Jun. 30, 2005); Colodney v. Continuum Health Partners, Inc., No. 03 Civ. 7276 (DLC), 2004 WL 1857568, at *1 (S.D.N.Y. Aug. 18, 2004). Indeed, reconsideration is not an invitation for parties to "treat the court's initial decision as the opening of a dialogue in which that party may then use such a motion to advance new theories or adduce new evidence in response to the court's rulings." De Los Santos v. Fingerson, No. 97 Civ. 3972 (MBM), 1998 WL 788781, at *1 (S.D.N.Y. Nov. 12, 1998).

Accordingly, a motion for reconsideration "will generally be denied unless the moving party can point to controlling decisions or data that the court overlooked matters . . . that might reasonably be expected to alter the conclusion reached by the court." Shrader v. CSX Transp., Inc., 70 F.3d 255, 257 (2d Cir. 1995). Such a motion "cannot assert new arguments or claims which were not before the court on the original motion." Koehler v. Bank of Bermuda, Ltd., No. M18-302 (CSH), 2005 WL 1119371, at *1 (S.D.N.Y. May 10, 2005) (citing Kunica v. St. Jean Fin., Inc., 63 F. Supp. 2d 342, 346 (S.D.N.Y. 1999)). Thus, reconsideration allows a

court to correct for clear error, to prevent manifest injustice, or to review in the light of newly available evidence. Parrish, 253 F. Supp. 2d at 715.

On this motion, Defendants reiterate their argument that Shipping Corp. of India Ltd. v. Jaldhi Overseas Pte Ltd., 585 F.3d 58, 70-71 (2d Cir. 2009), and Hawknet, Ltd. v. Overseas Shipping Agencies, 590 F.3d 87, 91 (2d Cir. 2009), control the Rule E(5) bond. Based on these Court of Appeals' opinions, Defendants assert that the Bond Order should be vacated because it was the "direct and exclusive result" of the Attachment. Notably, Defendants fail to cite any new controlling authority or evidence that contradicts this Court's earlier decision.

Neither Jaldhi nor Hawknet supports vacating a Rule E(5) bond. Jaldhi's holding applies to quasi in rem attachments of EFTs under Rule E(4)(f). As this Court explained from the bench on January 15 decision, the essential language of Jaldhi concerns whether "EFTs are indeed defendant's property." Jaldhi, 585 F.3d at 67. Where a Defendant voluntarily posts a bond, there can be no dispute that the security posted is the Defendants' property. Further, Defendants offer no grounds to discard Judge Richard J. Sullivan's reasoning in Vencedor Shipping Ltd. v. Ingosstakh Ins. Co., Ltd., 09 Civ. 4779 (RJS) (S.D.N.Y. July 13, 2009). Jaldhi did not overrule the body of maritime attachment jurisprudence or eliminate the ability to enter into voluntary supplemental security agreements. See Cent. Shipping Co. Ltd v. Internaut Shipping Ltd., --- F. Supp. 2d. ----, 2009 WL 5342062, at *1-2 (Jan. 11, 2010) (denying reconsideration of order denying vacatur of bond); see also Americas Bulk Transport Ltd. v. IMT, Nos. 08 Civ. 6970 (AKH), 08 Civ. 8319 (AKH), 2010 WL 1047674, at *9 (S.D.N.Y. Mar. 19, 2010) ("An admiralty court need not turn a blind eye to the facts of the cases before it.").

Finally, this Court disagrees with Defendants' contention that they will suffer "manifest injustice" absent reconsideration. The parties agreed to the substitute security to aid a proceeding before the High Court in London, England. Keeping the bond in place ensures that the parties can resolve their dispute on the merits in London—a result which serves the interest of justice. See Am. Alliance Ins. Co., Ltd. v. Eagle Ins. Co., 92 F.3d 57, 61 (2d Cir. 1996); Americas Bulk, 2010 WL 1047674, at *9-10 (upholding attachment of funds in suspense accounts to allow plaintiff to pursue its arbitration rights under a contract).

II. Certification of Interlocutory Appeal

A district court may certify an order for interlocutory appeal where the matter "involves a controlling question of law as to which there is substantial ground for difference of opinion and . . . an immediate appeal from the order may materially advance the ultimate termination of the litigation." 28 U.S.C. § 1292(b); In re South African Apartheid Litig., 624 F. Supp. 2d 336, 339 (S.D.N.Y. 2009). Appeal is limited to those instances "where the movant demonstrates the existence of 'exceptional circumstances' sufficient to overcome the 'general aversion to piecemeal litigation.'" In re South African Apartheid, 624 F. Supp. 2d at 339 (citations omitted). A district court should consider judicial efficiency when considering an application for interlocutory appeal. See In re Currency Conversion Fee Antitrust Litig., MDL No. 1409 (WHP), 2005 WL 1871012, at *3 (S.D.N.Y. Aug. 9, 2005). While the decision to certify "is trusted to the sound discretion of the district court," Repub. of Colombia v. Diageo N. Am., Inc., 619 F. Supp. 2d 7, 9 (E.D.N.Y. 2007), the Court of Appeals is free to accept or reject the certified order. 28 U.S.C. § 1292(b). If accepted, the Court of Appeals "may address any

issue fairly included within the certified order,’ as ‘it is the order that is appealable and not the controlling question identified by the district court.’” Repub. of Colombia, 619 F. Supp. 2d at 9 (citing California Pub. Employees’ Retirement Sys. v. WorldCom, Inc., 368 F.3d 86, 95 (2d Cir. 2004)).

The factors present in those rare instances where certification is appropriate are absent here. First, because the Defendants registered to do business in New York, they are subject to the Court’s personal jurisdiction. See STX Panocean (UK) Co., Ltd. v. Glory Wealth Shipping Pte Ltd., 560 F.3d 127, 133 (2d Cir. 2009). Second, there is no “substantial” difference of opinion on the issue of applying Jaldhi to Rule E(5). This Court notes that both Vencedor and Internaut are in accord with the January 15 order. Even Judge Shira A. Scheindlin’s decision in Global Maritime Investments v. Companhia Siderugica Nacional, No. 08 Civ. 11199 (SAS), 2009 WL 4730196 (Dec. 9, 2009), which Defendants rely on, is distinguishable on the facts. Usha Martin more than merely posted a bond “in lieu of” an attachment—rather, the parties agreed to secure an amount greater than the sum of EFTs already attached and included restrictions preventing the Plaintiff from seeking alternative security.

CONCLUSION

For the foregoing reasons, Defendants Usha Martin Limited and Usha Martin Americas' motions for reconsideration and certification of interlocutory appeal are denied.

Dated: April 8, 2010
New York, New York

SO ORDERED:


WILLIAM H. PAULEY III
U.S.D.J.

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