

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

STEMCOR UK LTD.,

Plaintiff,

v.

SESA INTERNATIONAL LTD.,

Defendant.

MEMORANDUM AND ORDER

No. 09 Civ. 1155 (LBS)

SAND, J:

On May 18, 2009, the Court issued an opinion denying Defendant's motion to vacate an order of maritime attachment issued pursuant to Rule B of the Supplemental Rules.¹ Defendant now brings a motion for reconsideration or, in the alternative, for certification of the matter for review by the Second Circuit Court of Appeals pursuant to 28 U.S.C. § 1292(b). For the reasons stated herein, we deny both the motion for reconsideration and the request to certify the matter for interlocutory appeal.

Motions for reconsideration are evaluated under a strict standard and are generally "denied unless the moving party can point to controlling decisions or data that the court overlooked—matters, in other words, that might reasonably be expected to alter the conclusion reached by the court." *Shrader v. CSX Transp.*, 70 F.3d 255, 256 (2d Cir. 1995). A motion for reconsideration is not an opportunity to relitigate issues already decided by the Court, and the moving party may not use the motion to advance new facts, issues, or arguments not previously presented to the Court. *Id.* at 257.

¹ The background of this case is discussed in the Court's prior opinion and will not be repeated here.

Defendant's motion for reconsideration does not raise any controlling decisions or relevant facts not already considered by the Court in its prior opinion. The Court discussed three grounds for its conclusion that maritime jurisdiction existed over the contracts: first, maritime transportation and commerce were integral to the contracts; second, demurrage costs sought by Plaintiff are traditional maritime claims; and third, the parties agreed to arbitrate any disputes under the auspices of the London Maritime Arbitrators Association (LMAA), which indicated that the parties knew or could have predicted the possibility of being subject to Rule B attachment. Defendant's motion does not challenge this analysis with any controlling case law or facts not previously brought to the Court's attention. Based on the analysis of the Court's May 18, 2009 opinion, we find that maritime jurisdiction is appropriate and deny Defendant's motion for reconsideration.

Defendant requests, in the alternative, that the Court certify this case for interlocutory appeal pursuant to 28 U.S.C. § 1292(b). Under Section 1292(b), a district court may certify an immediate appeal of an interlocutory order if the order (1) involves a controlling question of law (2) as to which there is substantial ground for difference of opinion and (3) an immediate appeal from the order may materially advance the ultimate termination of the litigation. 28 U.S.C. § 1292(b). The three elements are conjunctive; all three must be present to justify certification. *Williston v. Eggleston*, 410 F. Supp. 2d 274, 276 (S.D.N.Y. 2006). The Second Circuit has held that "use of this certification procedure should be strictly limited because only exceptional circumstances [will] justify a departure from the basic policy of postponing appellate review until after the entry of a final judgment." *Flor v. Bot Financial Corp.*, 79 F.3d 281, 284 (2d Cir. 1996) (internal quotation marks and citations omitted). In addition, the party seeking an interlocutory

appeal has the burden of showing the existence of the exceptional circumstances that justify immediate appeal. *See Williston*, 410 F. Supp. 2d at 276.

Defendant does not satisfy the second element for Section 1292(b) certification, namely, that there is “substantial ground for difference of opinion.” To establish this element, it is insufficient to merely allege that the relevant cases “are less than clear or not in accord” on the issue at hand. *North Fork Bank v. Abelson*, 207 B.R. 382, 390 (E.D.N.Y. 1997). Instead, the party requesting certification must either show that “(1) there is conflicting authority on the issue, or (2) the issue is particularly difficult and of first impression for the Second Circuit.” *In re Lloyd’s Am. Trust Fund Litig.*, No. 96 Civ. 1262, 1997 U.S. Dist. LEXIS 11937, at *13 (S.D.N.Y. Aug. 9, 1997) (citing *Klinghoffer v. S.N.C. Achille Lauro*, 921 F.2d 21, 25 (2d Cir. 1990)). Defendant has not made this showing.

While Defendant cites cases that have found a lack of maritime jurisdiction over general contracts for sale of goods, those cases are based on distinct factual contexts. First, in this case, specific provisions in the parties’ contracts dictate the terms of ocean transportation. These contractual provisions implicate the fundamental interest of maritime jurisdiction, which is the protection of maritime commerce.² Second, the cases to which Defendant cite do not refute our analysis, in concordance with *Glencore AG v. Bharat Aluminum Co.*, that designation of LMAA arbitration is instructive as to the intent of the parties and suggests that the parties could predict with relative certainty that they were exposing themselves to the possibility of Rule B attachment. No. 08 Civ. 9765, 2008 U.S. Dist. LEXIS 107063, at *15 (S.D.N.Y. Dec. 15, 2008).

² As noted in the Court’s prior opinion, our finding that maritime jurisdiction existed is in accord with Judge Preska’s decision in *Noble Resources S.A. v. Yugtransitservis Ltd.*, No. 08 Civ. 3876 (LAP).

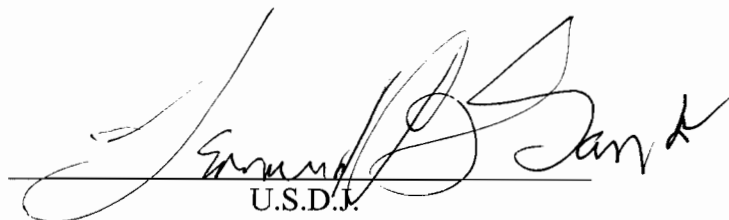
Furthermore, *Stemcor UK Limited v. Indian Overseas Bank*, on which Defendant relies for the proposition that there is substantial ground for difference of opinion on the question of jurisdiction, is inapposite; that case was an independent action concerning a separate and distinct set of contractual obligations. No. 09 Civ. 1157, 2009 U.S. Dist. LEXIS 11810 (S.D.N.Y. Feb. 17, 2009). (See Pl.'s Mem. Opp'n Mot. Reconsideration at 4.) In *Indian Overseas Bank*, the court declined to issue an order of maritime attachment after reviewing the plaintiff's complaint. *Id.* at *1. In contrast, the Court in this case had the opportunity to review the Complaint as well as the allegations in the parties' motion papers and the arguments made at the post-attachment hearing. See Opinion of May 18, 2009, at 2 (citing *Wajilam Exp. (Singapore) Pte, Ltd. v. ATL Shipping Ltd.*, 475 F. Supp. 2d 275, 279 (S.D.N.Y. 2006)). Based on the pleadings, supplemental papers, and factual contentions elicited during oral argument, the Court was satisfied that Plaintiff had sufficiently alleged a claim that fell within our maritime jurisdiction.

In sum, Defendant's arguments neither establish clearly conflicting authority, nor present sufficient reason why this issue requires immediate appellate review. Because Defendant fails to show the existence of exceptional circumstances justifying interlocutory appeal, the Court denies the request for certification under 28 U.S.C. § 1292(b).

Defendant's motion for reconsideration and request for certification for interlocutory appeal are both denied. The parties are to advise the Court in writing within sixty (60) days of this order on the status of arbitration proceedings in the case.

SO ORDERED.

Dated: July **20**, 2009
New York, NY


U.S.D.J.