

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
CALIFORNIA

**Marriott International, Inc. v. M/Y Under the Radar, a 2001 37.8-
Foot Sea Ray Sundancer Motor Yacht, U.S. Coast Guard Official No.
1120637**

Marriott International, Inc. v. M/Y Under the Radar · No. 24-cv-1871-AJB-MSB · Decided June 30, 2025

SUMMARY

The United States District Court for the Southern District of California granted Marriott International, Inc.’s motion for interlocutory sale of the vessel M/Y Under the Radar and authorization to credit bid. The court found that Marriott had maritime liens based on necessities provided through wharfage services and damages arising from maritime trespass. The court authorized a public auction and permitted Marriott to credit bid its secured indebtedness and qualifying custodial costs, excluding attorneys’ fees, subject to applicable local-rule requirements.

OPINION

1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 SOUTHERN DISTRICT OF
CALIFORNIA 10 11 MARRIOTT INTERNATIONAL, INC., Case No.: 24-cv-1871-AJB-MSB
dba SAN DIEGO MARRIOTT HOTEL & 12 MARINA, ORDER GRANTING PLAINTIFF’S 13
MOTION FOR INTERLOCUTORY Plaintiff, VESSEL SALE AND 14 v. AUTHORIZATION TO
CREDIT BID 15 M/Y UNDER THE RADAR, a 2001 (Doc. No. 16) 16 37.8-Foot Sea Ray
Sundancer Motor 17 Yacht, U.S. Coast Guard Official No. 1120637, AND ALL OF HER
ENGINES, 18 TACKLE, ACCESSORIES, 19 EQUIPMENT, FURNISHINGS AND
APPURTENANCES, in rem, 20 21 Defendant.

22 Presently before the Court is Plaintiff Marriott International, Inc.’s (“Plaintiff”) 23 Motion for
Interlocutory Vessel Sale of M/Y UNDER THE RADAR, a 2001 37.8-Foot 24 Sea Ray Motor
Yacht, U.S. Coast Guard Official No. 1120637 and all of her engines, 25 tackle, accessories,
equipment, furnishings, and appurtenances (“Defendant Vessel”) at 26 public auction and
permitting Plaintiff to credit bid a sum equal to its maritime lien claims.

27 (Doc. No. 16.) No appearance has been made in this action on behalf of the Defendant 28 1
Vessel. And no opposition has been filed to the instant motion. For the reasons discussed 2 below,
the Court GRANTS Plaintiff’s motion. 3 I. PROCEDURAL BACKGROUND 4 On October 15,
2024, Plaintiff commenced this action in admiralty against 5 Defendant Vessel by filing a Verified
Complaint for vessel arrest, interlocutory sale, and 6 for money damages for breach of maritime
contract, trespass, and quantum meruit.

(Doc. 7 No. 1, Compl.) On November 25, 2024, the Court issued an order authorizing the arrest of 8 the Defendant Vessel and appointing Plaintiff as Substitute Custodian thereof. (Doc. No. 9 7.) On February 20, 2025, an entry of clerk default was entered against Defendant Vessel. 10 (Doc. No. 14.)

On April 15, 2025, Plaintiff filed the instant motion for interlocutory vessel 11 sale and authorization to credit bid. (Doc. No. 16.) No opposition has been filed. 12 II. FACTUAL BACKGROUND 13 Plaintiff owns and operates Marriott Marquis San Diego Marina. (Doc. No. 1 ¶ 2.) 14 On March 12, 2009, Plaintiff entered into a Maritime Contract for Private Wharfage 15 (“Wharfage Contract”) with Michael Hohn, who is identified therein as the owner of 16 Defendant Vessel.

(Doc. No. 1-2, Exh. A to the Compl.) Plaintiff began providing wharfage 17 services for the benefit of Defendant Vessel on April 1, 2009. (Doc. No. 1 ¶ 6.) 18 Plaintiff is informed and believes that Michael Hohn passed away in February 2023. 19 (Id. ¶ 8.) Based on United States Coast Guard records showing that he jointly owned the 20 Defendant Vessel with Gail Hohn, she became the sole owner of the vessel upon Michael 21 Hohn’s passing.

(Id.) 22 In June 2023, Gail Hohn filed for bankruptcy protection, and in September 2023, the 23 bankruptcy court discharged her debts, including that to Plaintiff in the amount of 24 \$1,986.00 reflected in her filings. (Id. ¶ 9.) 25 On October 10, 2023, Plaintiff sent Gail Hohn a letter notifying her that Plaintiff has 26 elected to terminate the Wharfage Contract on November 13, 2023.

(Id. ¶11.) The letter 27 also advised that Plaintiff would waive the fees that were then due pursuant to the Wharfage 28 1 Contract in the amount of \$7,218.77, if the Defendant Vessel was removed by the 2 termination date. (Id.) Neither Gail Hohn nor anyone else removed the Defendant Vessel 3 by the termination date or thereafter. (Id.) 4 On March 8, 2024, Plaintiff inquired of PNC Bank whether it would retrieve the 5 Defendant Vessel or release their interest therein, as U.S. Coast Guard records showed that 6 its predecessor (National City Bank) recorded a Preferred Ship Mortgage encumbering the 7 Defendant Vessel, and bankruptcy records showed that Gail Hohn owned PNC bank a 8 “mortgage.” (Id. ¶¶ 12–13.)

PNC Bank responded that it would not pick up the Defendant 9 Vessel and that Plaintiff could apply for a mechanic’s lien. (Id. ¶ 13.) 10 Despite the termination of the Wharfage Contract, Defendant Vessel was not 11 removed from Plaintiff’s marina and remains there without authority. (Id. ¶ 14.)

Because 12 of the failure to pay fees due pursuant to the Wharfage Contract, Plaintiff alleges damages 13 calculated through October 31, 2024, in a sum not less than \$20,894.98. (Id. at ¶ 18.) 14 III. DISCUSSION 15 Through the instant motion, Plaintiff requests the Court: (1) find that

Plaintiff has a 16 preferred maritime lien; (2) order the interlocutory sale of Defendant Vessel at public 17 auction; and (3) authorize Plaintiff to credit bid at the auction a sum equal to its maritime 18 lien claims.

(Doc. No. 16-1.) 19 A. Preferred Maritime Lien 20 1. Maritime Lien 21 To begin, Plaintiff asserts that, under 46 U.S.C. § 31342(a), it has a statutorily 22 conferred maritime lien on the Defendant Vessel because it provides “necessaries” to the 23 Defendant Vessel.

The statute provides, in pertinent part: 24 [A] person providing necessities to a vessel on the order of the owner or a person authorized by the owner— 25 26 (1) has a maritime lien on the vessel; (2) may bring a civil action in rem to enforce the lien; and 27 28 1 (3) is not required to allege or prove in the action that credit was given to the vessel. 2 3 46 U.S.C. § 31342(a).

What constitutes “necessaries” within the meaning of the statute 4 “has been expanded to encompass any item which is ““reasonably needed for the venture 5 in which the ship is engaged.”” *Foss Launch & Tug Co. v. Char Ching Shipping U.S.A., 6 Ltd.*, 808 F.2d 697, 699 (9th Cir. 1987). 7 Here, Plaintiff has provided wharfage (storage) services to the Defendant Vessel at 8 its marina.

Storage of the Defendant Vessel is reasonably needed for its operations. Indeed, 9 Michael Hohn affirmed in the Wharfage Contract that he enters into the agreement for 10 private wharfage for the benefit of the Defendant Vessel. (Doc. No. 1-2 at 4.)

Thus, the 11 Court agrees with Plaintiff that it has provided necessities to the Defendant Vessel giving 12 rise to a maritime lien against the Defendant Vessel under the statute. See, e.g., *Ex parte 13 Easton*, 95 U.S. 68, 73 (1877) (“Wharf accommodation is a necessity of navigation, and 14 such accommodations are indispensable for ships and vessels and water-craft of every 15 name and description, whether employed in carrying freight or passengers, or engaged in 16 the fisheries”).

17 2. Preferred Maritime Lien 18 Plaintiff further contends that, under 46 U.S.C. § 31301, it has a statutorily conferred 19 preferred maritime lien against the Defendant Vessel “for damage arising out of maritime 20 tort”—namely, trespass. 46 U.S.C. § 31301(5)(B). “There is no distinct claim for maritime 21 trespass under the admiralty substantive body of law.

Accordingly, the Court looks to the 22 general common law to ascertain the requirements of a maritime trespass claim.” *Stuart 23 Cay Marina v. M/V SPECIAL DELIVERY*, 510 F. Supp. 2d 1063, 1074 (S.D. Fla. 2007). 24 Under the Restatement (Second) of Torts, one is liable for trespass if he intentionally: “(a) 25 enters land in the possession of another, or causes a thing or a third person to do so, or (b) 26 remains on the land, or (c) fails to remove from the land a thing which he is under a duty 27 to remove.” Restatement 2nd of Torts § 158.

28 1 In support of its trespass claim, Plaintiff alleges that despite having terminated the 2 Wharfage Contract and given Gail Hohn notice of the termination and an opportunity to 3 remove the Defendant Vessel, it remains there without authority, and hence, in the capacity 4 of a trespasser. (Doc. No. 1 ¶¶ 20–21.) Plaintiff states that because of the Defendant 5 Vessel’s trespass, Plaintiff has been damaged in an amount not less than \$20,894.98 6 (calculated through the month in which the action was filed).

7 Based on the foregoing, the record supports a finding of trespass because the 8 Defendant Vessel remains in Plaintiff’s marina despite termination of their Wharfage 9 Contract, and because the Defendant Vessel’s apparent owner, Gail Hohn, has failed to 10 retrieve the Defendant Vessel from the marina despite being afforded notice to do so. There 11 being no evidence to the contrary, the Court finds Plaintiff has a preferred maritime lien 12 under 46 U.S.C. § 31301(5)(B) for damages arising out of maritime trespass.

See, e.g., 13 Stuart Cay Marina, 510 F. Supp. 2d at 1075 (“[W]hile [the vessel’s] initial entry might be 14 fairly exempt from classification as a trespass, their continued presence after such innocent 15 entry might just as fairly bring a trespass claim into existence.”). 16 B. Interlocutory Sale 17 Next, Plaintiff moves the Court to order an interlocutory sale of the Defendant 18 Vessel. “The interlocutory sale of a vessel is not a deprivation of property but rather a 19 necessary substitution of the proceeds of the sale, with all of the constitutional safeguards 20 necessitated by the in rem process.” *Ferrous Fin.*

Servs. Co. v. O/S Arctic Producer, 567 21 F. Supp. 400, 401 (W.D. Wash. 1983). Rule (E)(9)(a)1 of the Federal Rules of Civil 22 Procedure, Supplemental Rules for Admiralty and Maritime Claims governs interlocutory 23 vessel sales and provides: 24 On application of a party.. the court may order all or part of the property sold—with the sales proceeds, or as much of them as will satisfy the judgment, 25 paid into court to await further orders of the court—if: (A) the attached or 26 27 1 In its motion, Plaintiff references the former Rule (E)(9)(b) of the Federal Rules of Civil Procedure, 28 Supplemental Rules for Certain Admiralty and Maritime Claims.

(Doc. No. 16-1 at 13.) 1 arrested property is perishable, or liable to deterioration, decay, or injury by being detained in custody pending the action; (B) the expense of keeping the 2 property is excessive or disproportionate; or (C) there is an unreasonable delay 3 in securing release of the property. 4 Plaintiff need only establish one of the three provisions listed in Rule E(9)(a)(i) to merit an 5 order for an interlocutory sale.

See *Bank of Rio Vista v. VESSEL CAPTAIN PETE*, No. C 6 04-2736CW, 2004 WL 2330704, at *2 (N.D. Cal. Oct. 14, 2004). The Court discusses each 7 provision in turn. 8 1. Deterioration, Decay, or Injury 9 Plaintiff argues that the Defendant Vessel is subject to “deterioration, decay, or 10 injury” under the first provision of Rule E(9)(a)(i) because it is sitting idle in salt water and 11 will continue to deteriorate if it is not operated.

(Doc. No. 16-1 at 15.) However, Plaintiff 12 has not provided the Court with any evidence that the Defendant Vessel is particularly 13 susceptible to deterioration, decay, or injury beyond the generalized assertion that unused 14 vessels inevitably deteriorate over time. Absent specific evidence showing deterioration, 15 decay, or injury, the Court does not find an interlocutory sale of the Defendant Vessel 16 warranted under Rule E(9)(a)(i)(A).

See *Vineyard Bank v. M/Y Elizabeth I*, No. 08CV2044 17 BTM (WMC), 2009 WL 799304, at *1 (S.D. Cal. Mar. 23, 2009) (stating that a general 18 assertion of a vessel's deterioration without evidence of specific injury does not satisfy the 19 "deterioration, decay, or injury" provision of Rule E(9)(a)(i)); cf. *Merchants Nat. Bank of 20 Mobile v. Dredge General G.L.*

Gillespie, 663 F.2d 1338, 1342 (5th Cir. 1981) (upholding 21 district court's decision to grant interlocutory sale in part due to deterioration of the vessels 22 when district court received expert testimony detailing the deterioration of the defendant 23 vessels due to corrosion and rust, and thus requiring costly overhaul, because they sat idle). 24 2. Excessive or Disproportionate Expense 25 Plaintiff next asserts that the sale of the Defendant Vessel is justified under Rule 26 E(9)(a)(i)(B) because the expense of maintenance while the vessel is in custody is 27 excessive and disproportionate.

(Doc. No. 16-1 at 17–20.) "Maintenance expenses of 28 1 several thousand dollars per month, particularly where Defendant has made no attempt to 2 answer Plaintiff's Complaint or secure the Vessel's release, are excessive and 3 disproportionate." *Vineyard Bank*, 2009 WL 799304, at *2 (citation omitted). 4 In support of its maritime lien claims, Plaintiff submitted a declaration from a 5 licensed yacht broker, Ray Jones.

(Doc. No. 16-2.) Mr. Jones estimates that the Defendant 6 Vessel has a fair market value of approximately \$10,000.00. (Id. at 4.) As of June 2025, 7 substitute custodian fees have totaled at least \$20,000.00 and continue to grow. (Doc. No. 8 16-1 at 20.) And neither Gail Hohn nor PNC Bank (or anyone else) have answered 9 Plaintiff's Verified Complaint or made any effort to secure the Defendant Vessel.

Because 10 the total expenses are more than the fair value of the Defendant Vessel and no one has 11 attempted to secure its release, the Court finds that the expense of keeping the Defendant 12 Vessel is disproportionate to its value.

Accordingly, the Court finds that an interlocutory 13 sale of the Defendant Vessel is justified under Rule E(9)(a)(i)(B). See *Vineyard Bank*, 2009 14 WL 799304, at *2. 15 3. Unreasonable Delay in Securing Release 16 Plaintiff also contends that because there has been no attempt in retrieving the 17 Defendant Vessel, there has been an unreasonable delay in securing the release of the 18 property, warranting a sale under Rule E(9)(a)(i)(C).

Courts typically grant a motion for interlocutory sale only if the defendant has been afforded a reasonable amount of time to post a bond to secure the vessel. See *Bank of Rio Vista v. Vessel Captain Pete*, 2004 WL 21 2330704, at *2 (N.D. Cal. Oct.14, 2004). When a defendant has been afforded at least four months to secure the vessel but has not filed any response or made any attempt to obtain the vessel's release, courts may grant interlocutory sale based upon unreasonable delay.

Vineyard Bank, 2009 WL 799304, at *2. Here, neither Gail Hohn, PNC Bank, nor anyone else has answered Plaintiff's Verified Complaint or filed any response to this action or the instant motion. At this point, more than six months have passed since the Defendant Vessel's arrest on December 13, 2024. No one has attempted to secure its release.

Given these circumstances, the Court finds that there has been unreasonable delay in securing the Defendant Vessel's release. Accordingly, ordering the interlocutory sale of the Defendant Vessel is justified under Rule 4 E(9)(a)(i)(C). See *id.* *** Considering the disproportionate cost of maintaining the Defendant Vessel and the unreasonable delay in securing its release, the Court finds an interlocutory sale warranted under Rule E(9)(a)(i) and GRANTS Plaintiff's motion for interlocutory sale of the Defendant Vessel.

C. Authorization to Credit Bid Finally, Plaintiff requests authorization to credit bid at the auction of the Defendant Vessel. (Doc. No. 16-1 at 21.) Under Local Rule E.1(e)(2): When the court determines on the merits that a plaintiff or plaintiff in intervention has a valid claim senior in priority to all other parties, that plaintiff in intervention foreclosing a property recorded and endorsed preferred mortgage on, or other valid security interest in the vessel may bid without payment of cash, certified check or cashier's check, up to the total amount of the secured indebtedness as established by affidavit filed and served on all other parties no later than seven (7) days prior to the date of sale.

Civ. L. Rule E.1(e)(2). Plaintiff represents that, apart from itself, no party has asserted any maritime lien claim against the Defendant Vessel. (Doc. No. 16-1 at 21.) Because "it is the only maritime lien claimant," Plaintiff argues, its claim "is, by definition, senior to all other claims in this action." (*Id.*)

In turn, Plaintiff requests the Court to authorize a credit bid at the auction up to the lien amount attested under oath in the Verified Complaint (\$20,894.98) and which will be established by affidavit pursuant to Local Rule E.1(e)(2), plus its actual and demonstrable costs of suit, including U.S. Marshal, substitute custodian and other custodia legis expenses, to be calculated through the date of the vessel sale at the rates provided by this Court's Order Appointing Substitute Custodian and Authorizing Movement of Defendant Vessel.

(Id.) 3 Provided that Plaintiff complies with Local Rule E.1(e)(2) by establishing the total 4 amount of the secured indebtedness by affidavit filed and served on all other parties no 5 later than seven days prior to the date of the sale, the Court GRANTS Plaintiff's request 6 to credit bid at the auction of Defendant Vessel. See California Yacht Marina--Chula Vista, 7 LLC v. S/V OPILY, No. 14-CV-01215-BAS BGS, 2015 WL 1197540, at *5 (S.D.

Cal. Mar. 8 16, 2015). 9 IV. CONCLUSION 10 For the reasons stated herein, the Court GRANTS Plaintiff's Motion for 11 Interlocutory Vessel Sale and Authorization to Credit Bid. (Doc. No. 16.) Accordingly, 12 IT IS HEREBY ORDERED that: 13 1.

The United States Marshal be and hereby is directed and empowered to sell 14 the Defendant Vessel and her engines, tackle, accessories, equipment, furnishings and 15 appurtenances, as is, where is, at public sale at the first available time and date, after having 16 first caused notice of said sale to be published daily in a newspaper of general circulation 17 within the City of San Diego, California for at least seven days immediately before the date 18 of sale as required by Local Rule E.1(e)(1).

Such public notice must specify the date, time 19 and location for the sale of the Defendant Vessel; 20 2. Consistent with Local Rule E.1(e)(2), such public notice must specify that the 21 last and highest bidder at the sale will be required to deposit with the U.S. Marshal a 22 certified check or a cashier's check in the amount of the full purchase price not to exceed 23 \$500, and otherwise \$500 or ten percent (10%) of the bid, whichever is greater, and that 24 the balance, if any, of the purchase price shall be paid by certified check or cashier's check 25 before confirmation of the sale or within three days of dismissal of any opposition which 26 may have been filed, exclusive of Saturdays, Sundays and legal holidays; 27 3.

Any proceeds of said sale must be held by the United States Marshal or 28 1 || deposited by the United States Marshal in the Registry of this Court, pending further Order 2 || of this Court; 3 4. Plaintiff, being the only claimant in this action and having demonstrated the 4 || seniority of its lien, is authorized pursuant to Local Rule E.1(e)(2) to credit bid at the 5 || auction of the Defendant Vessel, without payment of cash, in the amount attested to in its 6 || Verified Complaint (\$20,894.98, through October 31, 2024) plus actual and demonstrable 7 || costs of suit through the date of the sale, including U.S. Marshal and other custodia legis 8 || expenses, with such costs and expenses to be calculated at the rates specified and 9 || authorized in the Order Appointing Substitute Custodian and Authorizing Movement of 10 Defendant Vessel.

However, as Plaintiff's maritime necessities lien interest in the 11 || Defendant Vessel does not, as a matter of law, include attorneys' fees, such fees are not to 12 || be included in any credit bid Plaintiff makes; 13 5. Should Plaintiff elect to credit bid, it must file and serve all parties with its 14 || Notice of Intent to Credit Bid and affidavit establishing the total amount of its secured 15 ||

indebtedness no later than seven days prior to the date of the sale of the Defendant Vessel, 16 |} as required by Local Rule E.1(e)(2); and 17 6.

Pursuant to Local Rule E.1(e)(2), if within three days of the auction date, 18 exclusive of Saturdays, Sundays, and legal holidays, no written objection to the sale of the 19 || Defendant Vessel is filed, the sale will stand confirmed as of course, without the necessity 20 || of any affirmative action thereon by a judge, except that no sale will stand confirmed until 21 buyer has complied fully with the terms of the purchase.

22 IT IS SO ORDERED. 23 ||Dated: June 30, 2025 © g 24 Hon. Anthony J.Battaglia 25 United States District Judge 26 27 28 10