

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

D&S MARINE SERVICE, L.L.C.

CIVIL ACTION

VERSUS

NO: 19-1702

JOSIAH ENCARNACION

SECTION: T

ORDER

Before the Court is a Motion to Strike Demand for Jury Trial¹ filed by D&S Marine Service, L.L.C. (“Plaintiff”). Defendant and plaintiff-in-counterclaim, Josiah Encarnacion (“Defendant”) has filed an opposition.² For the following reasons, the motion is **GRANTED**.

BACKGROUND

This case arises out of a Plaintiff’s complaint seeking a declaratory judgment that Plaintiff had no obligation to pay maintenance and cure to Defendant, its allegedly injured Jones Act employee.³ The complaint designated Plaintiff’s claim as an admiralty and maritime claim within the meaning of 9(h) of the Federal Rules of Civil Procedure, and Plaintiff, therefore, did not elect a jury trial.⁴ Defendant filed an answer and counterclaim asserting claims under the Jones Act and general maritime law.⁵ Defendant designated its claims for maintenance and cure, and associated damages, as admiralty claims brought pursuant to Rule 9(h), and simultaneously requested a trial by jury.⁶ Defendant subsequently filed an amended counterclaim and, again, asserted claims for maintenance and cure arising in admiralty pursuant to Rule 9(h) and requested a trial by jury.⁷

¹ R. Doc. 32.

² R. Doc. 38.

³ R. Doc. 1.

⁴ R. Doc. 1.

⁵ R. Doc. 8.

⁶ R. Doc. 8, ¶¶10-11.

⁷ R. Doc. 28, ¶¶11-12.

Plaintiff filed a motion to strike Defendant’s jury trial demand contending that it is well-settled within the Fifth Circuit that a plaintiff’s invocation of the admiralty jurisdiction precludes a trial by jury.⁸ Defendant contends that he is entitled to a trial by jury pursuant to Rule 38 and under 28 U.S.C. §1331(1).⁹

LAW AND ANALYSIS

Pursuant to Federal Rule of Civil Procedure Rule 9(h), a plaintiff whose claim is cognizable within the Court’s “admiralty or maritime jurisdiction and also within the court’s subject-matter jurisdiction on some other ground” may choose to designate the claim as an admiralty or maritime claim.¹⁰ Designating a claim as an admiralty or maritime claim under Rule 9(h) carries with it “numerous and important consequences.”¹¹ Particularly, a plaintiff who elects to bring a suit under admiralty jurisdiction is not entitled to a trial by jury.¹²

In this case, both Plaintiff and Defendant allege admiralty jurisdiction in their complaints. Plaintiff alleges “[t]his is an admiralty and maritime claim within the meaning of Rule 9(h) of the Federal Rules of Civil Procedure. Subject matter jurisdiction is conferred by 28 U.S.C. § 1333.”¹³ Defendant alleges that “[j]urisdiction is based upon the Jones Act, 46 USC 688, and the General Maritime of the United States [sic].”¹⁴ Such statements are considered a Rule 9(h) election. Furthermore, diversity jurisdiction is not pled in any complaint, answer, or counter-claim. Plaintiff and Defendant both opted to proceed in admiralty. Thus, Plaintiff and Defendant have invoked the distinct features and remedies of admiralty jurisdiction, including the procedural consequence of a non-jury trial. Therefore, this Court agrees Defendant’s jury demand should be stricken.

⁸ R. Doc. 32-1, p.2.

⁹ R. Doc. 38, p.2.

¹⁰ Fed. R. Civ. P. 9(h).

¹¹ *T.N.T. Marine Serv., Inc. v. Weaver Shipyards & Dry Docks, Inc.*, 702 F.2d 585, 586 (5th Cir. 1983).

¹² *Id.* at 587; *see also Becker v. Tidewater, Inc.*, 405 F.3d 257, 259 (5th Cir. 2005).

¹³ R. Doc. 1, ¶3.

¹⁴ R. Doc. 8, ¶1.

CONCLUSION

Accordingly, for the foregoing reasons, **IT IS ORDERED** that the Motion to Strike Demand for Jury Trial¹⁵ is **GRANTED** and the jury demand is stricken.

New Orleans, Louisiana, on this 24th day of January, 2020.


GREG GERARD GUIDRY
UNITED STATES DISTRICT JUDGE

¹⁵ R. Doc. 32.