

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Norfolk Division

COLONNA'S SHIPYARD, INC.,

Plaintiff,

v.

Civil No. 2:22cv395

COASTAL CEMENT CORPORATION,

Defendant.

MEMORANDUM ORDER

This matter is before the Court on a motion for a Temporary Restraining Order ("TRO") filed on October 14, 2022, by Defendant, Coastal Cement Corporation ("Coastal"). ECF No. 7. Though styled as a TRO, a review of the motion revealed that while this matter was plainly time sensitive, it did not warrant an immediate ruling. Furthermore, because the facts and legal questions are adequately presented in the motion and subsequent briefs, and oral argument would not aid in the decisional process, the Court finds that a hearing is unnecessary.¹ For the reasons set forth below, the Court **DENIES** Defendant's motion seeking a TRO.

A.

In February 2022, Coastal hired Plaintiff, Colonna's Shipyard, Inc. ("Colonna's"), to perform repairs on a vessel owned by Coastal (the "Vessel"). ECF No. 1, at 2. Prior to the

¹ Defendant did not request an emergency hearing after filing its motion, and instead contacted the Court to request a ruling, with or without a hearing, after the matter was fully briefed.

completion of the repairs, a dispute arose among the parties about the scope of the work performed, and the amount that Coastal owed Colonna's. ECF No. 9, at 3. Shortly thereafter, the parties reached an agreement on a partial payment for the initial repairs and a payment schedule for all additional repairs performed by Colonna's. ECF No. 15, at 2.² Since then, however, Coastal allegedly failed to adhere to this payment schedule, leaving multiple invoices unpaid. As a result, Colonna's filed a complaint in this Court alleging a breach of contract. ECF No. 1. In light of the complaint, the parties agree that Colonna's gained the right to assert a maritime lien over the Vessel and to seek arrest of the Vessel in order to secure its claim. See Fed. R. Civ. P., Supp. Admiralty R. C.

Following the completion of the repairs, Coastal transferred the Vessel to its "affiliate," Dragon Products Company ("Dragon"). ECF No. 9, at 3. Accordingly, Dragon "is now the registered owner of the Vessel, and [the Vessel] currently lays in Boston Harbor." Id. Today, Dragon is alleged to regularly use the Vessel to carry and unload cement from ocean-going vessels chartered by Dragon. Id. at 4. Based on these facts, Coastal waived formal service of the Complaint and began negotiations with Colonna's to prevent the

² The Court recognizes that there is a dispute as to whether this agreement was a "settlement" or an "amendment" to the original contract. The Court does not reach the merits of this dispute, however. Rather, it only acknowledges that the parties seemingly agreed to the remaining balance due on the completed and remaining repairs.

arrest of the Vessel. Id. at 3. Specifically, in exchange for Colonna's promise not to arrest the Vessel, Coastal offered to file a surety bond in the amount of \$3,400,000 as security for the damages sought by Colonna's in its Complaint. Id. Colonna's has not accepted Coastal's offer. Id.

As a result of Colonna's refusal to accept the proposed 3.4 million-dollar surety bond, an amount that is 50% greater than Colonna's damages claim in the case, Coastal's TRO seeks to enjoin Colonna's from arresting the Vessel. In Coastal's view, offering security prior to the initiation of an in rem action would prevent Coastal and its "affiliate," Dragon, from "suffer[ing] non-pecuniary and commercial damages that they would be unable to recover." ECF No. 9, at 2. Coastal also contends that it would prevent the "needless waste[]" of judicial resources. Id. Coastal represents that an arrest of the Vessel would needlessly require a court to "consider the merits of the in rem claim, review and issue a warrant . . . , hold a Rule E hearing, consider Coastal's bond application, and then release the Vessel from arrest on the posting of the bond in the arresting court." Id. at 11.

B.

Both an emergency TRO and a preliminary injunction can only be obtained when the movant makes a "clear showing" that: (1) it is "likely to succeed on the merits"; (2) it is "likely to suffer irreparable harm" without the requested injunctive relief; (3)

"that the balance of equities tips in its favor"; and (4) "that an injunction is in the public interest." Mountain Valley Pipeline, LLC v. W. Pocahontas Properties Ltd. P'ship, 918 F.3d 353, 366 (4th Cir. 2019) (quoting Winter v. Natural Res. Def. Council, Inc., 555 U.S. 7, 20 (2008)). As a form of interim relief, a TRO/preliminary injunction is uniformly characterized as "an extraordinary remedy involving the exercise of a very far-reaching power, which is to be applied only in the limited circumstances which clearly demand it." Centro Tepeyac v. Montgomery Cnty., 722 F.3d 184, 188 (4th Cir. 2013) (en banc) (citation omitted); see also Direx Israel, Ltd. v. Breakthrough Med. Corp., 952 F.2d 802, 811 (4th Cir. 1991).

C.

This Court's application of the TRO/preliminary injunction standard to the preliminary factual record begins, and ends, with addressing whether this Court is the appropriate court to resolve the propriety of attaching the Vessel. Rule C(2) of the Supplemental Rules for Admiralty and Maritime Claims ("Supplemental Rules") provides: "In actions in rem the complaint must . . . describe with reasonable particularity the property that is the subject of the action and state that it is within the district or will be during the pendency of the action." Fed. R. Civ. P., Supp. Admiralty R. C. Therefore, in order to establish "in rem jurisdiction in admiralty" under Rule C, "the

res must be present in the district when the suit is filed or during the pendency of the action." Platoro Ltd., Inc. v. Unidentified Remains of a Vessel, 508 F.2d 1113, 1115-16 (5th Cir. 1975). Once jurisdiction is established, Supplemental Rule C then enables a district court to "issue an order directing the clerk to issue a warrant for the arrest of the vessel or other property that is the subject of the action" if all conditions for an in rem action are met. Fed. R. Civ. P., Supp. Admiralty R. C.

To further discern the meaning of Rule C, the Court turns to Rule E of the Supplemental Rules for context. Supplemental Rule E instructs the Court on the release of attached or arrested property following the conferral of security in an in rem proceeding. Supplemental Rule E(3)(a) states: "in admiralty and maritime proceedings, process in rem or of maritime attachment and garnishment may be served only within the district." Fed. R. Civ. P., Supp. Admiralty R. E(3). Upon the "process of maritime attachment and garnishment" or when "process in rem is issued," Supplemental Rule E(5)(a) then provides that: "the execution of such process shall be stayed, or the property released, on the giving of security, to be approved by the court or clerk, or by stipulation of the parties, conditioned to answer the judgment of the court" Fed. R. Civ. P., Supp. Admiralty R. E(5).

Coastal asserts that "the right [of a district court] to place a res as substitute for a vessel not currently in [its] district"

is well documented. ECF No. 9, at 7. Caselaw cited by Coastal, which predates the 1966 adoption of the current Supplemental Rules for Admiralty and Maritime Claims and relies on the former rules, suggests that a few district courts have previously found it possible to sustain in rem jurisdiction "on the filing . . . of a stipulation for value as a substitute for the vessel, because it would in effect bring the 'property' within the district for purposes of the suit." J.K. Welding Co. v. Gotham Marine Corporation, 47 F.2d at 332, 335 (D.C.N.Y. 1931); see also The Providence, 293 F. 595, 596 (D.R.I. 1923); The Frank Vanderkerchen, 87 F. 763, 764 (D.N.J. 1898). However, the facts of those cases are different from the facts before the Court today as, among other things, the Vessel is not alleged to be in this district.

Notably, in both The Providence and J.K. Welding, the stipulations of value were agreed to and filed by the parties after the vessel, or property, were arrested while physically present in the jurisdiction of the court. Moreover, in The Frank Vanderkerchen, the parties conceded that although no arrest occurred, at the time the claim was filed, the vessel was "within the territorial limits over which [the] court had jurisdiction." The Frank Vanderkerchen, 87 F. at 764. In other words, in all of the above-mentioned cases, an initial in rem action was pursued in the jurisdiction where the property was present. In contrast, here, an in rem action was not pursued by Colonna's prior to the

filing of this motion, nor is the Vessel presently located in the territorial bounds of this Court's jurisdiction. Thus, on the question of whether this Court can enjoin Colonna's from arresting the Vessel in Massachusetts, this Court is not persuaded by Defendant's cited authority. Instead, on this issue, the Court finds the plain language of the Supplemental Rules controlling. Accordingly, for the reasons set forth above, Defendant's motion for a TRO/preliminary injunction is **DENIED**.

While the Court concludes that a TRO cannot, or alternatively should not, be issued in this District,³ nothing in the Court's Order should be construed as an indication that the Court has balanced the equities or otherwise made any findings on the pending motion for a TRO. Particularly, the Court does not attempt to answer the question of whether Coastal should be permitted to post substitute security, in excess of the amount in dispute, before the res has been arrested under Rule C of the Supplemental Rules. A response to this question, and the others presented within Defendant's motion, should come from the district where the Vessel is located at the time any such relief is sought, or the district

³ Although Plaintiff's opposition to the TRO does not explicitly call into question this Court's jurisdiction over the TRO motion, the Court declines to exercise its authority over the preliminary dispute even after assuming that the matter was permissibly raised in this Court. Instead, this Court concludes that because the crux of the preliminary dispute turns on the propriety of arresting the Vessel, the most appropriate judicial officer to resolve the dispute is a judge in the District where the Vessel is physically located.

where the Vessel will be "while the [in rem] action is pending."⁴
Fed. R. Civ. P., Supp. Admiralty R. C.

D.


In addition to Coastal's motion seeking a TRO, the Court recently received Dragon's motion for leave to intervene in Coastal's request for injunctive relief. ECF No. 17. In light of this Court's ruling denying the motion seeking a TRO, Dragon's motion to intervene in Coastal's motion for a TRO is **DENIED** as moot. ECF No. 17.

E.

For the foregoing reasons, the Court **DENIES** Coastal's motion for a temporary restraining order and **DENIES** as moot Dragon's motion to intervene in the TRO.

The Clerk is **REQUESTED** to send a copy of this Memorandum Order to all counsel of record.

IT IS SO ORDERED.

/s/ 

Mark S. Davis
CHIEF UNITED STATES DISTRICT JUDGE

Norfolk, Virginia
November 9, 2022

⁴ Presumably, should counsel for Colonna's bring an in rem action in Massachusetts, counsel, as an officer of the court, would be required to inform the assigned district judge of the pendency of this action and the bond offered by Coastal outside the arrest process.