IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN

SHAMARAH HALLIDAY, **Plaintiff,** **vs.** **CRUISE SHIP EXCURSIONS, INC. d/b/a KON TIKI PARTY RAFT** **Defendant.**	CASE NO. ST-14-CV-146 ACTION FOR DAMAGES

MEMORANDUM OPINION

THIS MATTER is before the Court on a Motion To Stay filed by Defendant Cruise Ship Excursions, Inc. ("CSX") on April 4, 2016.[1] The Motion To Stay is based upon Plaintiffs filing of an *in rem* action in the District Court that alleges the same operative facts alleged herein. For the reasons set forth herein, the Motion will be denied.

BACKGROUND

Defendant CSX is the operator of the motor vessel Kon Tiki. CSX operates Kon Tiki in the territorial waters of the Virgin Island, where it offers social cruises to paying customers. Plaintiff Shamarah Halliday alleges that, on October 20, 2013, she boarded Kon Tiki with a number of friends for an evening of socializing in Charlotte Amalie Harbor. At around 10:00 p.m., Halliday allegedly fell into the harbor, after a railing on which she had been leaning cracked and gave way. She further alleges that

[1] Plaintiff opposed the motion and the Court heard oral arguments on June 30, 2016.

she almost drowned while waiting nearly "ten minutes" for Kon Tiki to turn around and for its crew to collect her from the "dark blackness of the night ocean." Halliday alleges that Kon Tiki lacked high-powered search lights and a life ring with a blinking light, which could have aided Kon Tiki's crew in rescuing her. She alleges that she sustained mental anguish, loss of enjoyment of life, and possible neurological damage from the incident.

PROCEDURAL HISTORY

On March 12, 2014, Halliday filed the instant Complaint in this Court which contains a single count of negligence/premises liability. Of note, and central to the instant motion, Halliday filed a Complaint in the District Court of the Virgin Islands on December 30, 2015 (the "Federal Complaint"), regarding the same set of operative facts described above. Halliday filed the Federal Complaint as an *in rem* proceeding against Kon Tiki pursuant to Fed. R. Civ. P. 9(h) and Supplemental Rule C(1). In the Federal Complaint, Halliday alleged one count of unseaworthiness and one count of maritime negligence. In response, and pursuant to Fed. R. Civ. P. Supplemental Rule C(6), CSX filed a statement of interest in Kon Tiki in the District Court. In addition, Kon Tiki's owner, Warwick Holdings, Inc. ("Warwick"), filed a statement of interest. The District Court did not order the arrest of Kon Tiki because Lloyd's of London filed a Letter of Undertaking for $750,000.[2] CSX alleges that the insurance policy underlying the Letter of Undertaking insures both CSX and Warwick.

[2] *See* Fed. R. Civ. P. Supplemental Rules C(3) & E(5).

CSX now asks this Court to stay this proceeding in order to allow the Federal Complaint to proceed via bench trial. It contends that Halliday filed the Federal Complaint to arrest Kon Tiki during the most profitable time of year in order to harass CSX and Warwick into a settlement. CSX argues that because Halliday subsequently filed the parallel complaint in federal court under admiralty jurisdiction, she should be stuck litigating in her most recent choice of forum. In response, Halliday argues that this Court should not stay this case because the "savings to suitors" clause gives this Court jurisdiction over the claims before it, regardless of whether there is an *in rem* action simultaneously proceeding in another court regarding the same set of operative facts. Furthermore, Halliday argues that the first filed rule should prevent this Court from staying this case.

ANALYSIS

CSX asks the Court to stay the proceedings before it, essentially because Halliday is pursuing the same claim in the federal court solely for tactical reasons.

I. SIMULTANEOUS IN REM AND IN PERSONAM CLAIMS

CSX argues that Halliday may not proceed simultaneously in two separate lawsuits against the same defendants on the same claim. In response, Halliday argues that the "savings to suitors" clause grants her the right to pursue an *in rem* claim against the vessel, Kon Tiki, and an *in personam* claim against the vessel's operator, CSX. She further argues that the named defendants in the two law suits are legally distinct.

CSX cites *Miles v. Hansa Caledonia*,[3] for the proposition that Halliday may not simultaneously assert a claim *in rem* against a vessel under Fed. R. Civ. P. 9(h) and a common law claim *in personam* against CSX when the two claims are essentially identical.[4] In *Miles*, a dock worker was injured aboard the vessel M/V Hansa Caledonia and sued *in personam* and *in rem* in admiralty, asserting common law negligence against the vessel and the owner in a joint and several liability theory. The plaintiff aimed to simultaneously try an *in rem* claim before the bench under admiralty jurisdiction and an *in personam* claim against the owner before a jury. The vessel and owner moved to strike the demand for jury trial and argued plaintiff waived his right to a jury trial when he invoked admiralty jurisdiction, designating his claim as Fed. R. Civ. P. Rule 9(h). The plaintiff argued that the "savings to suitors" clause reserves common law remedies "in all cases where the common law is competent" to give such remedies.[5] Thus, the plaintiff argued, he ought to be allowed to preserve his right to a jury trial against the vessel's owner while also bringing an *in rem* claim against the vessel.[6] In rejecting the plaintiff's request for a jury trial, the *Miles* court held that the plaintiff could not disadvantage the vessel's owner by

[3] 2003 AMC 2389, 245 F. Supp. 2d 1261 (S.D. Ga. 2002).
[4] *Id.* at 2399.
[5] 28 U.S.C. § 1333(1).
[6] *Miles*, 245 F. Supp. 2d at 1262.

filing an *in personam* claim against the owner and an *in rem* claim against the vessel, to which the owner would have to post bond to prevent arrest of the vessel.[7]

Here, Halliday has only named CSX as a defendant in this case. Halliday did not name Warwick, the vessel's owner, as a defendant, nor has CSX impleaded Warwick. In the Federal Case, the only named defendant is the vessel, Kon Tiki. While CSX filed a "verified statement of interest" in the Federal Case, CSX has failed to demonstrate to this Court that asserting an interest in a vessel necessarily transforms an interested entity into a defendant in a particular case.[8] The Court agrees with Halliday that the Federal Complaint and this case implicate legally distinct defendants. Thus, inasmuch as *Miles* provides persuasive authority to determine the outcome of this Motion,[9] the Federal Complaint does not stand as a bar to Halliday's ability to proceed here.

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[7] *Id.* at 1268 (emphasis added); *see also Southeastern Marine, LLC v. Motor Yacht Ocean Club*, 2010 U.S. Dist. LEXIS 67493, *14 (M.D. Fla. June 21, 2010) (granting vessel owner's motion to strike plaintiff's jury trial request where the in personam claims were against the owner of the vessel and plaintiff had already taken advantage of maritime in rem procedures against the vessel).

[8] *United States v. 10,000 in United States Currency*, 2014 U.S. Dist. LEXIS 22577, *3 (D.N.J. Feb. 21, 2014) ("The timely filing of a verified statement of interest allows the court to hear all interested parties and to resolve the dispute without delay, and it also minimizes the danger of false claims."). While this Court does not contend that CSX is improperly engaged in the Federal Case, merely filing a verified statement of interest does not necessarily demonstrate a valid interest in the res of an *in rem* proceeding. The Federal District Court is the only authority properly charged with making such a determination.

[9] The Court notes that the circuits are split as to whether a plaintiff may bring an *in rem* claim against a vessel and an *in personam* claim against the vessel's owner. *See e.g. Hamilton v. Unicoolship, Ltd.*, 2002 U.S. Dist. LEXIS 346, *7, 2003 AMC 1772 (S.D.N.Y. 2002) ("The Circuits are split on the availability of jury trials in [actions in which a plaintiff brings both an *in rem* and *in personam* claim on the same set of operative facts]") (collecting cases); *Luera v. M/V Alberta*, 635 F.3d 181, 195 (5th Cir. 2011) (preserving plaintiff's jury trial right and trying all claims, *in rem* and *in personam*, to a jury); *Ghotra by Ghotra v. Bandila Shipping*, 113 F.3d 1050, 1057 (9th Cir. 1997) ("In light of the fact that the Ghotras could have brought two separate actions, one consisting of the in personam claims brought under diversity and one consisting solely of the in rem claim, which could then have been consolidated into one action under Federal Rule of Civil Procedure 42(a), we find no reason to penalize the Ghotras by ruling that the decision to

II. STAYING STATE/TERRITORIAL COURT CLAIMS

Many courts have stayed state court claims while allowing federal maritime actions arising out of the same set of operative facts to proceed. But, the context in which state court cases are stayed differs significantly from the immediate case. Typically, these cases involve a situation in which a vessel's owner preemptively initiates a limitation of liability action under 46 USCS § 30501, *et. seq*. (the "Act"), or else raises such an action as a defense to a lawsuit arising out of an injury occurring aboard the vessel. The Act limits a vessel owner's liability for injuries occurring aboard the vessel in limited circumstances. In a scenario in which a limitation action is raised, a federal district court often stays all non-limitation claims while it resolves the extent of the vessel owner's liability.[10]

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combine the two into one single action constituted an election to proceed in admiralty alone without the right to jury trial.").

[10] *See Jackson v. Red Hook Boat Services, Inc.*, 51 V.I. 888, 892 (D.V.I. 2009) (staying all non-limitation actions which could impact the owner's right to limit his liability in the vessel); *In re Skyrider*, 1990 U.S. Dist. LEXIS 16510, *24, 1991 AMC 1956 (D. Haw. 1990) *citing Olympic Towing Corp. v. Rebel Towing Co.*, 419 F.2d 230, 235 (5th Cir. 1969) ("Recognizing that inequities can result if such other non-limitation proceedings are allowed to continue [sic] the admiralty court is generally acknowledged to possess broad injunctive power to ensure the orderly and effective operation of the Limitation Act.") (internal quotations omitted); *In Re Complaint of Paradise Holding, Inc.*, 795 F.2d 756, 761 (9th Cir. 1986) (staying state court proceedings against both the vessel's owner and non-owners pending limitation actions); *Odeco Oil & Gas Co., Drilling Div. v. Bonnette*, 74 F.3d 671, 675 (5th Cir. 1996) (staying state court claims and allowing limitation action to proceed because parties seeking indemnification and contribution from vessel owner were claimants for purposes of Limitation Act and would not stipulate to limitation of owner's liability and further recognizing the adverse impact on the victim's procedural election provided by the savings to suitors clause); *but see Lewis. v. Lewis & Clark Marine, Inc.*, 531 U.S. 438 (2001) (affirming district court's decision to allow victim's state court claims to proceed simultaneously with federal proceeding when the vessel owner's rights to limitation are not at stake).

When non-limitation proceedings surround a cause of action for which a limitation action has been filed by a vessel's owner, the federal court possesses "broad" injunctive power to stay all non-limitation actions, including related state court claims.[11] In *Jackson v. Redhook Boat Services, Inc.*,[12] the Virgin Islands District Court recognized and exercised its power to enjoin all non-limitation claims arising out of an accident on a water taxi in the Virgin Islands. In *Jackson*, a number of passengers were injured aboard a water taxi on transit from St. Thomas to St. John. Following the accident, a number of injured passengers filed suit in federal district court against the owner. The vessel's owner filed a separate limitation of liability action to limit its liability to the value of the vessel. In addition, the owner filed an application to enjoin all other proceedings arising from the accident in question. The federal district court subsequently stayed all pending claims against the owner arising from the accident and conducted a bench trial to determine whether the victims' injuries resulted from negligence and, if so, whether it was with the privity or knowledge of the owner.[13] Similarly, in *In Re Complaint of Paradise Holding, Inc.*,[14] the Ninth Circuit Court of Appeals upheld a district court order enjoining all non-limitation claims pending disposition of limitation proceedings. *Paradise Holding* recognized the tension between allowing a vessel owner to limit its liability

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[11] *See In re Skyrider*, 1990 U.S. Dist. LEXIS 16510 at *24.
[12] 51 V.I. 888 (D.V.I. 2009).
[13] *See Jackson*, 51 V.I. at 892.
[14] 795 F.2d 756 (9th Cir. 1986).

and ensuring the plaintiffs right to a jury trial.[15] Ultimately, the Ninth Circuit recognized that the limitation concerns trumped the plaintiffs right to a jury trial.[16]

CSX also discusses *Lewis. v. Lewis & Clark Marine, Inc.*[17] in support of its argument that this case should be stayed.[18] In *Lewis*, a deck hand sued a vessel's owner in Illinois state court for negligence after he was injured aboard the vessel. In anticipation of the suit, the owner initiated a limitation action in federal court and the court enjoined the state proceedings pending the outcome of the limitation proceedings. Pursuant to stipulations regarding the owner's liability, the district court lifted the stay on the state court case.[19] The U.S. Supreme Court overturned the Eight Circuit's reversal of the district court, thus, affirming the district court's holding.[20]

CSX cites to *Lewis* for the proposition that state and federal cases regarding the same subject matter should not proceed simultaneously. But, CSX fails to highlight that in *Lewis*, the federal district court, not the state court, issued a stay on the state court proceedings while it sorted out the owner's limitation on liability. More importantly, the district court lifted the stay once it concluded that the owner's statutory rights to limit its liability were not at stake.

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[15] *In Re Complaint of Paradise Holding, Inc.*, 795 F.2d at 761.
[16] *Id.*
[17] 531 U.S. 438 (2001).
[18] CSX has not moved to stay the Federal Case.
[19] *Lewis*, 531 U.S. at 456.
[20] *Id.*

As elaborated above, the statutory grant of authority to stay state court claims while a federal case and a state case progress simultaneously rests with the federal district court, and the stays were granted only in instances where there was an issue of limitation on liability. CSX cannot point the court to a single case in which a state or territorial court has stayed its own case in order to allow a federal court case to proceed. To be sure, even if the Court were to overlook its jurisdictional barrier, like *Lewis*, limitation of liability rights are not at issue here because neither Kon Tiki nor Warwick are parties here.[21]

Given the statutorily conferred power to enjoin all non-limitation proceedings surrounding a maritime cause of action enjoyed *solely* by the federal district court,[22] this Court finds that it would be error to grant CSX's Motion to Stay. CSX has not provided any case law upon which the Court could grant its Motion and extend a stay over these proceedings simply because Halliday filed a similar suit against the non-party Kon Tiki in federal district court, despite the apparent strong-arm motivation for filing said suit more than one year after filing in this Court.

[21] In addition, CSX has represented to this Court that it has no reason to believe that its resources or the value of the vessel cannot satisfy Plaintiff's claims.
[22] *See* 46 U.S.C. § 30511(c); Fed. R. Civ. P. Supplemental Rule F(3)-(4).

CONCLUSION

CSX has not demonstrated that it is entitled to a stay. CSX has not cited any case, nor could the Court find any case, where a state court stayed its action while allowing the federal *in rem* case to proceed.

Therefore, CSX's Motion To Stay will be denied. An order consistent with this opinion will be entered.

DATED: July 29, 2016

Kathleen Mackay
Kathleen Mackay
Judge of the Superior Court
of the Virgin Islands

ATTEST:
ESTRELLA H. GEORGE
Acting Clerk of the Court

BY: Lori B. Tyson
LORI BOYNES TYSON
Court Clerk Supervisor 7/29/16

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