

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

HONORABLE RICARDO S. MARTINEZ

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

NORTHRIM BANK,

Plaintiff,

v.

PEARL BAY SEAFOODS, LLC, JOSEPH
MARTUSHEV, MIRON I. BASARGIN,
ALEXANDER I. KALUGIN, NIKOLAI
IGNATIEVICH BASARGIN, and
IOASOPH MARTUSHEV, *in personam*; and
the Vessel GLACIER BAY, Official Number
600325, *in rem*,

Defendants.

IN ADMIRALTY

Case No. 2:23-cv-01042-RSM

**ORDER APPOINTING SUBSTITUTE
CUSTODIAN**

THIS DAY THIS CAUSE CAME ON TO BE HEARD upon the Verified Motion of the Plaintiff Northrim Bank (“Northrim”) by and through its attorneys of record, Lane Powell PC, seeking the appointment of a Substitute Custodian for the defendant Vessel GLACIER BAY, Coast Guard Official No. 600325, pursuant to LAR 135 of the Local Rules of the Western District of Washington, and this Court, upon consideration thereof, FINDS:

THAT the defendant Vessel GLACIER BAY Coast Guard Official No. 600325 (GLACIER BAY) is a fishing vessel currently within the Western District of Washington and this Court has jurisdiction over the *res* pursuant to 28 U.S.C. § 1333(1) and Rule C and Rule E of the Supplemental Rules of Admiralty Or Maritime Claims And Asset Forfeiture Actions (SARs) to the Federal Rules of Civil Procedure.

ORDER APPOINTING SUBSTITUTE CUSTODIAN - 1
CASE NO. 2:23-cv-01042-RSM

LANE POWELL PC
1420 FIFTH AVENUE, SUITE 4200
P.O. BOX 91302
SEATTLE, WASHINGTON 98111-9402
206.223.7000 FAX: 206.223.7107

1 THAT GLACIER BAY is owned 100% by Defendant Pearl Bay Seafoods, LLC, a limited
2 liability company organized under Alaska law, with its principal place of business in Alaska.

3 THAT the GLACIER BAY is currently moored at Fisherman's Terminal at 3919 18th
4 Avenue West, Seattle, WA 98119 within the Western District of Washington.

5 THAT Pearl Bay Seafoods, LLC executed a Preferred Ship Mortgage securing
6 indebtedness in the maximum aggregate principal amount of \$600,000.00, exclusive of costs,
7 interest, attorneys' fees, and legal expenses pursuant to 46 U.S.C. § 31321 and constitutes a
8 maritime lien against the GLACIER BAY. The Vessel Mortgage was filed and recorded with the
9 National Vessel Documentation Center for the United States Coast Guard on June 10, 2020 at 6:50
10 p.m. in Batch Number 76965800, as Document No. 3 in compliance with the Commercial
11 Instruments and Maritime Liens Act, 46 U.S.C. §§ 31321 – 31330.

12 THAT Plaintiff Northrim Bank has filed a Verified Complaint *in rem* seeking the arrest of
13 the GLACIER BAY, her engines, machinery, boats, tackle, apparel, furniture, propellers, bow
14 sprits, masts, ramps, rigging, anchors, cables, chains, capstans, outfit, tackle, tools, pumps and
15 pumping equipment, apparel, furniture, fittings and equipment, spares, spare parts and all other
16 appurtenances to the GLACIER BAY pursuant to SAR Rule C and Rule E. Dkt. 1.

17 THAT Plaintiff Northrim has filed a Verified Motion to Arrest the GLACIER BAY.

18 THAT the GLACIER BAY will be arrested by the United States Marshal pursuant to an
19 Order that has been presented contemporaneously to this Court.

20 THAT once the Vessel is arrested, Marine Lenders Services, LLC (Marine Lenders) will
21 assume control of the GLACIER BAY for a daily fee in the amount of \$125.00 per day plus all
22 necessary expenses.

23 THAT Plaintiff Northrim Bank will directly satisfy all fees of Marine Lenders and pay
24 Marine Lenders all monthly moorage fees due to Port of Seattle Fisherman's Terminal facility in
25 the amount of \$2,275.00 including any fee for the proportionate consumption of electricity.

26 THAT the fees and expenses to be charged by the Substitute Custodian for safekeeping
27 will be less than the cost of leaving the property in the custody of the United States Marshal.

1 THAT the proposed Substitute Custodian has no interest in the outcome of the litigation
2 for arrest of the GLACIER BAY.

3 THAT the proposed Substitute Custodian Marine Lenders, has agreed to assume the
4 responsibility of safekeeping of the GLACIER BAY and has consented to act as its custodian until
5 further Order of this Court.

6 THAT the Substitute Custodian will provide routine services required for the safekeeping
7 of the GLACIER BAY for a fee of \$125.00 per day.

8 THAT the ordinary and regular services to be performed by the Substitute Custodian will
9 include providing inspections of the mooring lines and bilges and the costs paid to the Substitute
10 Custodian for this service by plaintiff Northrim Bank will be deemed expenses *in custodia legis*.

11 THAT the Vessel will be maintained at its current location at Fisherman's Terminal in
12 Seattle at the moorage facility operated by the Port of Seattle, and Plaintiff Northrim Bank will
13 pay the moorage fees directly to the Substitute Custodian.

14 THAT the GLACIER BAY will not be moved without an Order of this Court and no person
15 except the appointed Substitute Custodian Marine Lenders will be allowed to enter the GLACIER
16 BAY for any purpose. A Court Order shall be required for any other person to board the GLACIER
17 BAY.

18 THAT the Substitute Custodian has custodial liability insurance with policy limits in the
19 amount of \$2,000,000.00 to protect the Substitute Custodian from liability assumed in receiving
20 the Vessel for custodianship and in performing the services undertaken as well to keep and protect
21 the property while in the custody of the Substitute Custodian. The United States Marshal is
22 covered by the liability policy as an additional insured.

23 THAT Northrim Bank agrees to release the United States and the United States Marshal
24 from any and all liability and responsibility arising out of the care and custody of the GLACIER
25 BAY, from the time the Marshal transfers possession of the Vessel to the Substitute Custodian
26 until the GLACIER BAY is released or sold and agrees to hold harmless and indemnify the United
27

1 States and the Marshal from any and all claims whatsoever arising out the Substitute Custodian's
2 possession and safekeeping.

3 THAT the proposed Substitute Custodian, accepts appointment as Substitute Custodian
4 and possession of the GLACIER BAY and will keep the Vessel safe for the duration of his
5 appointment as the Substitute Custodian. All costs and expenses for the safekeeping of the
6 GLACIER BAY, including the daily fee of the Substitute Custodian, his expenses and moorage
7 charges will be submitted to plaintiff Northrim Bank who shall be responsible for all costs in
8 maintaining the Vessel from the date of arrest and such charges will be deemed expenses *in*
9 *custodia legis*.

10 IT IS THEREFORE ORDERED AND ADJUDGED that the United States Marshal for the
11 Western District of Washington, be and is hereby authorized and directed to surrender possession
12 of the vessel GLACIER BAY, Coast Guard Official No. 600325, its engines, machinery, masts,
13 sails, boats, bow sprits, anchors, cables, chains, rigging, tackle, apparel, furniture, capstans, outfit,
14 tools, spare parts, pumps, fishing gear, electronics, freights and all of their equipment and
15 appurtenances thereto and all personal property whether then owned or later acquired, whether
16 onboard or not onboard and any and all additions, improvements or replacements made after the
17 date of the Preferred Ship Mortgage to the Substitute Custodian, Marine Lenders, and that upon
18 such surrender, the United States Marshal shall be discharged from his duties and responsibilities
19 for the safekeeping of the GLACIER BAY and shall be held harmless from any and all claims
20 arising out of the Substitute Custodian or possession and safekeeping of the GLACIER BAY.

21 IT IS FURTHER ORDERED that the United States Marshal shall incur no further costs or
22 charges arising out of the arrest and custody of the GLACIER BAY without further Order of this
23 Court.

24 IT IS FURTHER ORDERED that Marine Lenders who is capable of safekeeping the
25 GLACIER BAY and performing the duties of Substitute Custodian, be and is hereby appointed
26 the Substitute Custodian of the GLACIER BAY and is hereby authorized to retain the Vessel in
27 its custody for possession and safekeeping for compensation in the amount of \$ 125.00 per day for

1 a monthly fee of \$3,750.00, in addition to all necessary expenses to initially secure the Vessel in
2 the amount of \$1,650.00, an hourly fee for movement of the Vessel or attending repairs in the set
3 by the Court, and an annual fee of \$9,630.00 for insurance until further Order of this Court. There
4 shall not be any subsequent increase in the cost of the custodianship or movement of the property
5 or changes in the arrangements except upon further Order of this Court.

6 IT IS FURTHER ORDERED that Northrim must directly pay compensation for the
7 Substitute Custodian, including safekeeping, moorage, shifting or movement or other expenses
8 incident to the custody of the GLACIER BAY during the pendency of this litigation, directly to
9 the Substitute Custodian. All expenses for safekeeping of the GLACIER BAY while in the
10 custody of the Substitute Custodian shall be deemed administrative expenses upon motion of the
11 Plaintiff Northrim Bank after the release or judicial sale of the GLACIER BAY and will be costs
12 *in custodia legis*.

13 IT IS FURTHER ORDERED that the Substitute Custodian shall grant marine surveyor
14 Thomas Liang access to the GLACIER BAY under the supervision and control of the Substitute
15 Custodian, for the sole and limited purpose to allow Thomas Liang to perform a condition and
16 valuation survey to provide to the Port Risk and Pollution insurers who are requiring the marine
17 survey as a condition to maintain insurance coverage on the GLACIER BAY during the pendency
18 of this litigation. The fees for the Substitute Custodian to attend the marine survey, and all fees of
19 Thomas Liang to conduct the marine survey shall be costs *in custodia legis*.

20 IT IS FURTHER ORDERED that plaintiff's counsel is directed to serve a copy of this
21 Order on the owner of the GLACIER BAY and is relieved from any obligation to serve a copy on
22 the master of the GLACIER BAY.

23 SO ORDERED AND ADJUDGED on this the 18th day of August, 2023.

24
25
26 

27 RICARDO S. MARTINEZ
UNITED STATES DISTRICT JUDGE

1 Presented by:

2 LANE POWELL PC

3

4 By s/Katie Smith Matison

Katie Smith Matison, WSBA No. 20737

Jesse Miles, WSBA No. 58096

5

matisonk@lanepowell.com

milesj@lanepowell.com

6

Attorneys for Northrim Bank, N.A.

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

ORDER APPOINTING SUBSTITUTE CUSTODIAN - 6
CASE NO. 2:23-cv-01042-RSM

112246.0337/9457937.1

LANE POWELL PC
1420 FIFTH AVENUE, SUITE 4200
P.O. BOX 91302
SEATTLE, WASHINGTON 98111-9402
206.223.7000 FAX: 206.223.7107