

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

INDEPENDENT BANK OF TEXAS,

Plaintiff,

vs.

M/V JANICE RUTH II, Official
Number 1116444, her engines, gear,
tackle, and appurtenances, *In Rem*,
and THE MARTHA REYNOLDS
TRUST, *In Personam*,

Defendants.

3:11-cv-00128-TMB-JDR

RECOMMENDATION
REGARDING
MOTION FOR DEFAULT
JUDGMENT IN REM AND
IN PERSONAM

(Docket No. 40)

The Plaintiff filed its *Motion for Default Judgment In Rem and Order of Sale* (Docket 40) on November 17, 2011, in order to foreclose on a preferred ship mortgage. The Plaintiff filed a Verified Complaint setting forth the terms and conditions of the Promissory Note and the Preferred Ship Mortgage, which provides

security for the Note.¹ This Court previously made an *Entry of Default In Rem* at Docket 39 and default was entered against The Martha Reynolds Trust at Docket 29. The Court has reviewed the Motion and Memorandum filed at Docket 40 and the affidavits of S. Richard Shook, Steven J. Shamburek and Randyl Meigs, filed at Dockets 41, 42 and 44, respectively.

The Magistrate Judge is satisfied that the Plaintiff has met its notice requirements for service under Local Rule (c)-3. The Plaintiff published notice of the arrest of the Vessel in the Anchorage Daily News on September 14, 2011 and published the same in The Valdez Star on September 21, 2011.² Additionally, the Plaintiff has filed proof that the Trustee for the *In Personam* Defendant, The Martha Reynolds Trust, was served with the Summons and Complaint.³

The Plaintiff is seeking a Judgment which includes the principal sum owed, totaling \$748,542.00, accrued interest totaling \$101,668.74 (through October 21, 2011), continued interest accruing at a rate of \$374.27 per day (after October 21, 2011), late fees totaling \$1,120.05, costs in the amount of \$14,772.08, *in custodia legis* expenses of the U.S. Marshal totaling \$3,508.00, and Plaintiff's attorneys' fees

¹See *Promissory Note*, Docket 1-1; *Preferred Ship Mortgage*, Docket 1-2.

²See *Affidavit in Support of Entry of Default*, Docket 38; *Publication of Notice of Arrest*, Docket 32.

³See *Affidavit in Support of Entry of Default*, Docket 28.

in the amount of \$37,107.50. These sums, interest, costs and fees are due in accordance with the terms of the Promissory Note and Mortgage.⁴

The Magistrate Judge HEREBY RECOMMENDS the Court find the *In Rem* Defendant liable for the amounts outlined above and grant Plaintiff's Request for entry of Judgment *In Rem*. The request for Judgment *In Personam* should be deferred, subject to renewal, as it may be renewed when a request for a deficiency judgment, if any, is determined after the sale of the Vessel. In the interest of justice, and in order to expedite the business of the court, this Recommendations shall be deemed a Final Recommendation.

DATED this 21st day of November, 2011, at Anchorage, Alaska.

/s/ John D. Roberts
JOHN D. ROBERTS
United States Magistrate Judge

⁴See Docket 1-1; 1-2.