

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

TIMOTHY R. BARCLAY,

Plaintiff,

vs.

MARCUS M. FULLER, *In Personam*,
and NISAH ex-SARAH NICOLE,
Official No. 589077, and its engines,
tackle, gear, equipment and
appurtenances, *In Rem*,

Defendants.

3:11-cv-00169-TMB-JDR

RECOMMENDATION
REGARDING
MOTION FOR PRELIMINARY
INJUNCTION [3], MOTION FOR
SUMMARY JUDGMENT [13],
CROSS-MOTION FOR SUMMARY
JUDGMENT [16], REQUEST FOR
ORAL ARGUMENT [19] and
REQUEST FOR ORAL
ARGUMENT [20]

(Docket Nos. 3, 13, 16, 19 & 20)

The Court has before it numerous motions. Plaintiff, Mr. Barclay, filed the Motion at Docket 3 requesting the Court issue a preliminary injunction preventing the Defendant from using the Vessel. At Docket 13, the Defendant, Mr. Fuller, filed a Motion for Summary Judgment. At Docket 16, Mr. Barclay filed a Cross-Motion for Summary Judgment. At Docket 19 Plaintiff filed a Request for Oral Argument,

presumably regarding his Cross-Motion for Summary Judgment. And, at Docket 20, Plaintiff again filed a request for oral argument on both parties Motions for Summary Judgment.

The Motions identified above were filed with the Court prior to the Status Hearing held on February 16, 2012. The Court determined that it was necessary to address the jurisdiction of the Court prior to considering the above-named motions. The parties were directed to brief the jurisdictional issue. As part of that briefing, Plaintiff moved the Court to Amend the Complaint at Docket 29. The Court granted Plaintiff's Motion to Amend the Complaint at Docket 31 and the Amended Complaint was filed at Docket 32.

In light of the filing of the Amended Complaint and the pending jurisdictional matter, the Magistrate Judge recommends the Court Deny the Motions cited in the caption above without prejudice.

IT IS SO RECOMMENDED.

DATED this 4th day of April, 2012, at Anchorage, Alaska.

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

Pursuant to Rule 59(b)(3), Federal Rules of Criminal Procedure, **any objections will be considered by the District Court Judge** who will accept, reject,

or modify the recommendation, or resubmit the matter to the Magistrate Judge for additional consideration and recommendation. Failure to object in accordance with this rule waives a party's right to review.

Objections to this report and recommendation shall be served and filed no later than **CLOSE OF BUSINESS, Monday, April 9, 2012**. Responses to objections are due by **CLOSE OF BUSINESS, on Monday, April 16, 2012**. Objections and responses shall not exceed 5 pages in length, and shall not merely reargue positions presented in motion papers. Rather, objections and responses shall specifically designate the findings or recommendations objected to, the basis of the objection, and the points and authorities in support.