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United States District Court
Central District of California

DIANE GOODWIN,
Plaintiff,
v.
BLAINE E. WOODS; VIRGINIA M.
BROWN; AZURE SEAS, in rem,
Defendants.

Case No. 2:14-cv-07210-ODW(AS)

**ORDER HOLDING SERVICE IN
ABEYANCE AND TO SHOW
CAUSE RE: LACK OF
PROSECUTION**

I. INTRODUCTION

On September 4, 2015, in response to the Court's Order (ECF No. 21), Plaintiff Diane Goodwin requested that the Court hold service on Defendant Azure Seas in abeyance for ninety days. (ECF No. 25.) For the reasons discussed below, the Court **GRANTS IN PART** Plaintiff's request, and shall hold service in abeyance for thirty days. On or before **October 28, 2015**, Plaintiff must either move to arrest the vessel, or must show cause, in writing, why this action should not be dismissed for lack of prosecution.

II. BACKGROUND

On July 18, 2012, Plaintiff filed this action in the United States District Court for the Southern District of California. Plaintiff alleges that she was a passenger

1 aboard the vessel Azure Seas when she fell and injured herself. (Compl. ¶ 6.)
2 Plaintiff named the vessel's captain (Blaine Woods) and the vessel's owner (Virginia
3 Brown) as in personam defendants, and named the vessel Azure Seas as an in rem
4 defendant. (*Id.* ¶¶ 2–5.) On January 17, 2013, Plaintiff voluntarily dismissed her
5 claims against Woods and Brown. (ECF No. 6.) On March 8, 2013, the court held
6 service on the Azure Seas in abeyance. (ECF No. 9.) However, on April 25, 2014,
7 the court declined to continue holding service in abeyance. (ECF No. 11.)

8 On August 25, 2014, Plaintiff moved to transfer this case to the Central District
9 of California. (ECF No. 13.) Because service of process in in rem maritime actions
10 can be effected only in the judicial district in which the action is pending, Fed. R. Civ.
11 P. E(3)(a), and because the vessel moved from Oceanside, California, to Santa
12 Barbara, California, while the action was pending, Plaintiff argued that it was
13 necessary to transfer this action to the Central District. The court granted Plaintiff's
14 motion, and the matter was transferred to this Court. (ECF No. 14.)

15 On December 20, 2012, Plaintiff filed a parallel action in state court against the
16 same defendants. (ECF No. 25.) Plaintiff's counsel has since dismissed Woods from
17 that action because they could not locate and serve him. (*Id.*) Brown passed away in
18 2014, and an amended complaint naming her heirs was filed in December 2014. (*Id.*)
19 However, to date, Plaintiff has been unable to serve Brown's heirs. (*Id.*) Plaintiff
20 represents that she intends to dismiss the state court action if she cannot serve the
21 heirs prior to September 2016. (*Id.*)

22 III. DISCUSSION

23 It appears to the Court that this matter is languishing without any meaningful
24 attempts to bring it to conclusion. Although the courts must hold the “[i]ssuance and
25 delivery of process in rem . . . in abeyance if the plaintiff so requests,” Fed. R. Civ. P.
26 E(3)(b), this applies only where (1) the vessel is outside the court's jurisdiction and
27 (2) “it is clear that the vessel will be within the Court's jurisdiction ‘shortly.’”
28 *Norfolk Shipbuilding & Drydock Corp. v. USNS Truckee*, 629 F. Supp. 779, 781 (E.D.

1 Va. 1985); *see also Internatio-Rotterdam, Inc. v. Thomsen*, 218 F.2d 514, 515 (4th
2 Cir. 1955). Here, the Azure Seas was apparently “docked for many years” in
3 Oceanside, California, while this matter was venued in the Southern District of
4 California. (ECF No. 13.) The vessel is now docked in Santa Barbara, California.
5 (*Id.*) There is no reason why service could not have been effected on the vessel by
6 now.

7 Plaintiff’s explanation for not serving the vessel is unpersuasive. Plaintiff
8 argues that she is attempting to prosecute the state court action against the in
9 personam defendants first so as not to interrupt the business operations of the vessel’s
10 owners by arresting the vessel.¹ (ECF No. 25.) However, it appears that the state
11 court matter has stalled while Plaintiff attempts to serve Brown’s heirs, and Plaintiff
12 provides no evidence that she has been diligent in those attempts. Moreover, it would
13 seem that this is the precise situation where a prejudgment maritime lien on the vessel
14 would provide a plaintiff with critical leverage in pursuing maritime tort claims. *See*
15 *Merchants Nat. Bank of Mobile v. Dredge Gen. G. L. Gillespie*, 663 F.2d 1338, 1345
16 (5th Cir. 1981) (noting that maritime torts give rise to maritime liens); *Riffe Petroleum*
17 *Co. v. Cibro Sales Corp.*, 601 F.2d 1385, 1389 (10th Cir. 1979) (noting that maritime
18 lien arises “automatically” at the same time the cause of action arises). Plaintiff’s
19 counsel should concern themselves with the diligent prosecution of their client’s
20 claims rather than with the business interests of the vessel’s owners. Plaintiff cannot
21 sit on this case just because it is an in rem action.

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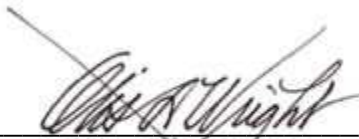
28 ¹ In maritime cases, in rem service is effected by arresting the vessel. Fed. R. Civ. P. E(3).

1 **IV. CONCLUSION**

2 The Court will hold service in abeyance for thirty days from the date of this
3 Order. However, on or before **October 28, 2015**, Plaintiff must either move to arrest
4 the vessel, or must show cause, in writing, why this action should not be dismissed for
5 lack of prosecution. No hearing will be held. The Court cautions Plaintiff that, absent
6 an exceptionally compelling reason, the Court will dismiss the action if Plaintiff has
7 not moved to arrest the vessel by that date.

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9 **IT IS SO ORDERED.**

10 September 25, 2015

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13 **OTIS D. WRIGHT, II**
14 **UNITED STATES DISTRICT JUDGE**