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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

PNC BANK, N.A., a National Association, as successor in interest to National City Bank,)	Case No. 2:10-cv-01916 JAM-EFB
)	
Plaintiff,)	ORDER DIRECTING UNITED STATES MARSHAL TO SELL VESSEL VIA JUDICIAL SALE PROCEDURES
)	
v.)	
)	
BELINDA L. SMITH, In Personam;)	
JACOB WINDING, In Personam; B&B DREAMIN', Hull No. GMKD283C505, its engines, machinery, appurtenances, etc. In Rem,)	
)	
Defendants.)	
)	
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AND RELATED COUNTER CLAIMS.)	
)	

On June 12, 2015, Plaintiff PNC BANK, N.A., a National Association ("PNC" or "Plaintiff") filed a motion for an order directing the United States Marshal to Sell Vessel via Judicial Sale Procedures ("Motion"). The Motion made the following recitals:

A. On or about July 20, 2010, the Complaint herein was filed praying that Defendant Vessel B & B DREAMIN', Hull No. RGMKD283C505, her engines, tackle, accessories, equipment,

1 furnishings and appurtenances (collectively "the Vessel") and all
2 other necessities thereunder appertaining and belonging, be
3 condemned and sold to pay Plaintiff's demands and claims and for
4 other proper relief. [ECF 1.]

5 B. On or about September 10, 2010, the Clerk of this Court
6 issued a Warrant for Arrest of the Vessel commanding the United
7 States Marshal for this District to arrest and take into custody
8 the Defendant Vessel and to detain the same in his custody until
9 further order of this Court respecting same. [ECF 11-1.]

10 C. On or about October 6, 2010, the Court issued its Order
11 Appointing Substitute Custodian and Authorizing Movement and
12 Inspection of Vessel entitling National Maritime Services, Inc.
13 ("Substitute Custodian") to assume the responsibility for
14 safekeeping the said Vessel to act as her substitute custodian
15 until further order of this Court. [ECF 13.] The Vessel is
16 presently located at Delta Boat Works, 106 W. Brannan Island Road,
17 Isleton, CA 95641 ("Delta Boat Works").

18 D. It later developed that the United States Marshal for the
19 Eastern District of California ("U.S. Marshal") declined to arrest
20 the Vessel on the ground that the Vessel is already in possession
21 of the Substitute Custodian.

22 E. On or about March 30, 2011, the Court issued its Revised
23 Order Deeming Vessel Arrested" and confirming the appointment of
24 National Maritime Services, Inc. as substitute custodian. [ECF 19.]

25 F. On or about May 14, 2015, the Court issued an Order
26 adopting the findings and recommendations of the United States
27 Magistrate with respect to, among other things, judicial
28 foreclosure of the Vessel, and directed Plaintiff PNC to file

1 additional papers seeking approval of the judicial sale mechanics
2 within 30 days. [ECF 161.]

3 G. On May 21, 2015, upon being contacted by counsel for PNC,
4 the U.S. Marshal indicated, relative to judicial sale of the
5 Vessel, or preliminary approval of sale mechanics, that it believed
6 that the U.S. Marshall never arrested the Vessel, does not have
7 custody of the Vessel, and therefore has no basis to proceed.

8 H. Under Fed. R. Civ. Pro. Supplemental Rule E(9)(b), the
9 U.S. Marshal has sole authority to conduct the judicial foreclosure
10 sale ordered by the Court. The cooperation of the U.S. Marshal is
11 therefore essential to complete the contemplated judicial
12 foreclosure sale previously ordered by the Court, including pre-
13 sale approvals and post-sale confirmations, as necessary.

14 Accordingly, GOOD CAUSE APPEARING, the Motion is GRANTED, and
15 it is ORDERED as follows:

16 1. The Court reiterates and confirms that, per prior order
17 of the Court [ECF 19], the Vessel is deemed arrested by the U.S.
18 Marshal and is under the present authority of the U.S. Marshal,
19 notwithstanding the fact that the U.S. Marshal did not actually
20 arrest the Vessel.

21 2. The U.S. Marshal accordingly has immediate authority and
22 obligation to take all appropriate action with regard to completion
23 of the judicial sale of the Vessel, to include appropriate Court
24 approvals, notices, sale, sale confirmation and remittance of sale
25 proceeds, as required by law.

26 3. The U.S. Marshal shall exercise such authority so as to
27 give effect to this Court's existing orders with respect to the
28 Vessel [ECF 19, ECF 161], as required by 28 U.S. C. § 566.

1 Plaintiff PNC Bank shall post the customary deposit required by the
2 U.S. Marshal.

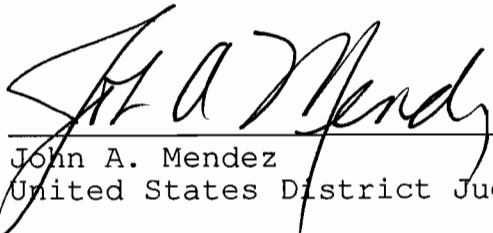
3 4. The U.S. Marshal may take physical custody of the Vessel,
4 and/or move the Vessel from its present location at Delta Boat
5 Works, to the extent necessary or convenient to facilitate the
6 completion of the judicial sale.

7 5. The U.S. Marshal and Plaintiff PNC Bank, via its counsel
8 of record herein are directed to cooperate with each other so as to
9 permit Plaintiff PNC Bank to obtain necessary Court approval of
10 notice and sale mechanics, as required by Local Rule 580 and
11 Court's Order of May 14, 2015 [ECF 161].

12 IT IS FURTHER ORDERED that the Clerk of this Court deliver
13 three (3) certified copies of this order to the United States
14 Marshal forthwith.

15 IT IS SO ORDERED.

16
17 Dated: August 11, 2015.



18 John A. Mendez
19 United States District Judge
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