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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

PNC BANK, N.A.,

Plaintiff,

v.

BELINDA L. SMITH, in personam;
JACOB WINDING, in personam; B & B
Dreamin’ Hull No. GMKD283C505 (the
“Vessel”), its engines, machinery,
appurtenances, etc., in rem,

Defendant.

No. 2:10-cv-1916-JAM-EFB PS

FINDINGS AND RECOMMENDATIONS

The court previously granted plaintiff’s motion for summary judgment on its in rem claims against defendant B & B DREAMIN’, Hull No. GMKD283C505 (the “Vessel”) and found that plaintiff was entitled to foreclose on its security interest in the Vessel. ECF No. 161.¹ Accordingly, plaintiff was directed to file any documents needed for approval of the sale of the Vessel. Plaintiff now moves for issuance of an order authorizing the sale of the Vessel. Plaintiff also seeks permission to place a credit bid at the sale and instructions to the Clerk of Court to issue a Writ of Venditioni Exponas. ECF No. 173; *see* ECF No. 174 (proposed order authorizing

¹ This case, in which plaintiff is proceeding pro se, is before the undersigned pursuant to Eastern District of California Local Rule 302(c)(21). *See* 28 U.S.C. § 636(b)(1).

1 sale of Vessel and credit bid). Defendants did not file an opposition to the motion.²

2 Pursuant to the order granting plaintiff's motion for summary judgment on its in rem
3 claims against the defendant vessel, it is hereby RECOMMENDED that:

4 1. Plaintiff's motion authorizing the sale of Vessel and credit bid (ECF No. 173) be
5 granted;

6 2. Defendant B & B DREAMIN', Hull No. GMKD283C505, its engines, machinery,
7 appurtenances, etc., *in rem* ("the Vessel") be sold by the United States Marshal for the Eastern
8 District of California at public auction on a date available to the U.S. Marshal at the current
9 location of the vessel, Delta Boat Works, 106 W. Brannan Island Road, Isleton, CA 95641
10 ("Delta");

11 3. The Clerk of the Court be directed to issue a Writ of Venditioni Exponas for the sale of
12 the vessel, in the form attached hereto as Exhibit A.

13 4. A Notice of Sale, substantially in the form of the attached Exhibit B, be published by
14 plaintiff in the *Sacramento Bee* in accordance with Local Rule 171.

15 5. Plaintiff be authorized to credit bid at the sale up to the amount of the debt owing
16 (\$616,684.61 as of August 19, 2015)³ without having to make any deposit with the U.S. Marshal.

17 6. No minimum bid be set for the auction sale, and that bidding be made in increments of
18 at least \$500.00.

19 ////

20 _____
21 ² Defendants Jacob Winding and Belinda Smith did, however, file a notice of appeal,
22 seeking review of the court's March 16, 2015 findings and recommendations, the May 14, 2015
23 order adopting the findings and recommendations, and the August 11, 2015 order finding that the
24 U.S. Marshal has authority to complete the judicial sale of the vessel. ECF No. 168. Winding
25 and Smith also filed a notice stating that they are "actively in bankruptcy," presumably in an
26 attempt to automatically stay this case. *See* ECF No. 182; 11 U.S.C. § 362(a), (c)(3). However,
27 on July 11, 2016, the U.S. Court of Appeals for the Ninth Circuit dismissed defendants' appeal.
28 ECF No. 185. Furthermore, a review of the docket for the United States Bankruptcy Court for the
Eastern District of California reveals that neither Smith nor Winding currently have a bankruptcy
action pending. *See In re Winding*, 15-bk-28722 (Bankr. E.D. Cal.) (case closed June 30, 2016);
In re Smith, 16-bk-20499 (Bankr. E.D. Cal.) (case closed April 25, 2016).

³ Plaintiff may submit an updated accounting of the amount of the debt owed within 14
days of these Findings and Recommendations.

1 7. The successful cash bidder be required to pay the U.S. Marshal in accordance with
2 Local Rule 570(b) as follows:

3 a. at least \$1,000.00 or 10 percent of the amount of the successful bid, whichever
4 is greater, immediately at the time of the completion of the auction sale; and

5 b. The remainder of the balance of the purchase price be paid to the U.S. Marshal
6 in cash, certified check, or cashier's check within three days of the sale.

7 8. The Marshal be directed to file a report in compliance with Local Rule 570(e) after the
8 completion of the sale, but no later than one court day before payment of the balance is due.

9 9. The sale be ordered confirmed as a matter of course without any affirmative action by
10 the court if no written objections are timely filed with the court. The successful purchaser be
11 directed to present a form of order reflecting the confirmation of the sale for entry by the Clerk on
12 or after the fifth day of sale. *See* E.D. Cal. L.R. 570(g).

13 10. The Marshal be directed to transfer title to the purchaser upon presentation of the
14 confirmation order signed by the Clerk.

15 11. The proceeds from the sale be ordered deposited into the registry of the court pending
16 the court's determination of the disposition of such proceeds.

17 These findings and recommendations are submitted to the United States District Judge
18 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
19 after being served with these findings and recommendations, any party may file written
20 objections with the court and serve a copy on all parties. Such a document should be captioned
21 "Objections to Magistrate Judge's Findings and Recommendations." Failure to file objections
22 within the specified time may waive the right to appeal the District Court's order. *Turner v.*
23 *Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

24 DATED: September 13, 2016.

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27 EDMUND F. BRENNAN
28 UNITED STATES MAGISTRATE JUDGE

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Exhibit A

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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

PNC BANK, N.A.,

Plaintiff,

v.

BELINDA L. SMITH, in personam;
JACOB WINDING, in personam; B & B
Dreamin' Hull No. GMKD283C505 (the
"Vessel"), its engines, machinery,
appurtenances, etc., in rem,

Defendants.

No. 2:10-cv-1916-JAM-EFB PS

WRIT OF VENDITIONI EXPONAS

TO: THE UNITED STATES MARSHAL FOR THE EASTERN DISTRICT OF CALIFORNIA:
YOU ARE HEREBY COMMANDED to cause the Defendant Vessel B & B DREAMIN', Hull
No. GMKD283C505, its engines, machinery, appurtenances, etc. *in rem* in the above-entitled
action (the "Vessel"), to be sold on _____, or as soon thereafter as is practical in lawful
manner pursuant to the Order of the Court on file herein, after notice of the sale is published daily
for at least four (4) calendar days before the sale, in accordance with Rule 570(a) of the Local
Rules of Admiralty and in rem Rules, and you shall pay the proceeds from the sale into the
Registry of this Court and filed this Writ with your return thereon with the Clerk of the Court
forthwith after such sale.

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Exhibit B

1 William J. Sexton (State Bar No. 164929)
2 **HEMAR, ROUSSO & HEALD, LLP**

3 15910 Ventura Boulevard
4 12th Floor
5 Encino, California 91436
6 (818) 501-3800 phone
7 (818) 501-2985 fax

8 Refer to File Number: 4158-20093272/WS

9 Attorneys for Plaintiff
10 PNC BANK, N.A.

11 **UNITED STATES DISTRICT COURT**
12 **EASTERN DISTRICT OF CALIFORNIA**

13 PNC BANK, N.A., a National Association,
14 as successor in interest to National City
15 Bank,

16 Plaintiff(s),

17 vs.

18 BELINDA L. SMITH, In Personam;
19 JACOB WINDING, In Personam; B & B
20 DREAMIN', Hull No. GMKD283C505, its
21 engines, machinery, appurtenances, etc. In
22 Rem,

23 Defendants.

24 CASE NO. 10-CV-1916-JAM-EFB
25 **IN ADMIRALTY**

26 **[Proposed]**
27 **NOTICE OF UNITED STATES**
28 **MARSHAL'S SALE**

**John Mendez, United States District
Judge**

29 **AND RELATED COUNTER CLAIMS**

1 By virtue of an order for sale issued by the above-entitled court on _____,
2 and a Writ of Venditioni Exponas issued pursuant thereto, directing to and commanding me to
3 make the sale of the vessel B & B DREAMIN', Hull No. GMKD283C505, its engines,
4 machinery, appurtenances, etc. *in rem* ("the Vessel"), notice is hereby given that, on
5 _____, at _____ pm, at Delta Boat Works, 106 W. Brannan
6 Island Road, Isleton, CA 95641, to the highest and best bidder. The Vessel may be inspected
7 by contacting the United States Marshal at (916) _____.

8 Terms:

9 1. No minimum bid is set for the auction sale. Bidding shall be made in increments
10 of at least \$500.00.

11 2. Plaintiff PNC Bank is authorized to credit bid at the sale up to the amount of the
12 debt owing (\$616,684.61 as of August 19, 2015) without having to make any deposit therefore
13 with the US Marshal.

14 3. The successful cash bidder shall pay the US Marshal a deposit of either
15 \$1,000.00 or 10% of the amount of the successful bid, whichever is greater, immediately at the
16 time of the completion of the auction sale, and the balance of the purchase price shall be paid to
17 the US Marshal within three (3) days. All payments are to be made in cash or certified
18 funds/cashier's check.

19 4. Unless written objection to the sale is made and filed with the Court within three
20 (3) days following the sale, the sale shall be confirmed without motion and the US Marshal
21 shall transfer title to the Vessel upon presentation of the Court's order confirming such sale.

22 5. The proceeds of this sale will be paid forthwith into the Court Registry pending
23 Court determination of the disposition of such proceeds.

24 Dated in Sacramento, California, this ____ day of _____, 2015.

25 UNITED STATES MARSHAL FOR THE
26 EASTERN DISTRICT OF CALIFORNIA

27 By: _____
28 Deputy United States Marshal