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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

RESOURCE MARINE PTE, LTD.,

Plaintiff,

v.

SOLYM CARRIERS (LONDON)  
LIMITED, f/k/a AEGIS CARRIERS  
(A.C.E.) LTD, et al.,

Defendants.

No. 2:12-cv-2554-JAM-GGH

**ORDER HOLDING DECISION IN  
ABEYANCE PENDING LIMITED  
DISCOVERY**

This admiralty matter arises from the Rule B attachment of the M/V Sider Pink, a shipping vessel owned by Defendant Shine Navigation LTD ("Shine"), by Plaintiff Resource Marine PTE, LTD ("Plaintiff"). Magistrate Judge Hollows granted Plaintiff's motion to attach the M/V Sider Pink on October 12, 2012 (Doc. #7). Shine then moved the Court to vacate the attachment, and a hearing on that motion was held on October 29, 2012. The Court set the amount of substitute security at \$232,694.18 and delayed ruling on the motion to vacate the attachment pending further briefing by the parties. After reviewing the additional briefing (Doc. ##33-34), the Court holds that Plaintiff is permitted to

1 conduct limited discovery in accordance with the following order.

2  
3 I. BACKGROUND

4 This matter originated when the M/V Baltic Leopard, a vessel  
5 under Plaintiff's control, was subchartered to Defendant Aegis  
6 Carriers ("Aegis") for a period of 11.5 months. The charter  
7 agreement was guaranteed by Defendant Solym Carriers ("Solym").  
8 Plaintiff alleges that Aegis and Solym breached the charter  
9 agreement by returning the M/V Baltic Leopard before the 11.5  
10 month period expired, giving rise to alleged damages of  
11 \$232,694.18 (the "unpaid hire claim"). Plaintiff also alleges  
12 that the M/V Baltic Leopard was disturbed by the wake from a  
13 passing vessel in Port Harcourt, Nigeria on July 19, 2011 when it  
14 was under Aegis's control. Plaintiff claims that the ship surged  
15 forward and caused damage to the concrete terminal and the vessel  
16 itself. The Nigerian terminal claimed damages against the owner  
17 of the M/V Baltic Leopard, an entity named BLL, in excess of  
18 \$10,000,000 (the "unsafe berth claim"). BLL notified Plaintiff  
19 of the claim, but has yet to formally demand security from  
20 Plaintiff. Plaintiff instituted arbitration proceedings against  
21 Solym and Aegis in London for the unpaid hire claim, but did not  
22 include a claim for unsafe berth. Shine is not a party to the  
23 London proceedings.

24 As a result of damages arising from Plaintiff's unpaid hire  
25 and unsafe berth claims, Plaintiff seeks security from Defendants  
26 Primal Shimpmanagement, Inc. ("Primal") and Shine. Plaintiff  
27 alleges that Primal is a commercial operator for vessels  
28 beneficially owned by Nikolaos Papalios, including Shine.

1 Plaintiff therefore contends that Primal and Shine are corporate  
2 alter egos for Aegis and Solym and that all four entities are  
3 controlled by Mr. Papalios. Plaintiff contends that Shine's  
4 vessel, the M/V Sider Pink, is the proper subject of maritime  
5 attachment because it can rightfully serve as security for the  
6 unpaid hire and the unpaid berth claims. Plaintiff seeks limited  
7 discovery on its alter ego theory before the Court resolves  
8 Shine's motion to vacate the attachment on the M/V Sider Pink.

9 At the October 29, 2012 hearing, the Court reduced the  
10 amount of substitute security requested by Plaintiff from  
11 \$10,232,694.18 to \$232,694.18. The Court based its holding on  
12 the speculative nature of the unsafe berth claim. Plaintiff has  
13 not received a formal demand from BLL for damage caused by the  
14 M/V Baltic Leopard, meaning that Plaintiff may never incur  
15 liability for damage to the Nigerian Port. Accordingly, the  
16 Court held that Shine was not required to post security for the  
17 unsafe berth claim and reduced the substitute security to the  
18 amount claimed for the unpaid hire claim. After the October 29,  
19 2012 hearing, Shine posted substitute security and the M/V Sider  
20 Pink left the port in West Sacramento.<sup>1</sup>

21 The Court also requested additional briefing on whether  
22 discovery is available in the London proceedings between  
23 Plaintiff, Aegis, and Solym because the attachment of the M/V  
24 Sider Pink may be unnecessary if Plaintiff is entitled to  
25 discovery on its alter ego theory in London.

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26 <sup>1</sup> The security posted by Shine serves as a legal substitute for  
27 the physical presence of the M/V Sider Pink. Despite the  
28 vessel's departure, the ultimate issue remains whether or not the  
attachment of the M/V Sider Pink is maintainable.

1 Federal jurisdiction exists over this admiralty action  
2 pursuant to 28 U.S.C. § 1333.

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4 II. OPINION

5 In maritime attachment proceedings, jurisdiction over the  
6 defendant is quasi in rem based on attachment of property in  
7 order to secure a claim brought by the plaintiff against the  
8 defendant. Orders for maritime attachment are governed by  
9 Federal Rule of Civil Procedure B found in the Supplemental Rules  
10 for Admiralty or Maritime Claims and Asset Forfeiture Actions.  
11 Rule B attachments are generally granted on an ex parte basis  
12 through a verified complaint supported by affidavit. Fed. R.  
13 Civ. P. B(1). A defendant may challenge maritime attachment  
14 through Rule E(4)(f), which entitles the owner of the attached  
15 property to a prompt hearing at which the plaintiff bears the  
16 burden to show why the attachment should not be vacated. A  
17 maritime attachment is proper if the following conditions are  
18 met: "(1) Plaintiff has a valid prima facie admiralty claim  
19 against the defendant; (2) defendant cannot be found within the  
20 district; (3) property of the defendant can be found within the  
21 district; and (4) there is no statutory or maritime law bar to  
22 the attachment." Equatorial Marine Fuel Mgmt. Servs. Pte Ltd. v.  
23 MISC Berhad, 591 F.3d 1208, 1210 (9th Cir. 2010). At a Rule  
24 E(4)(f) hearing, the plaintiff has the burden of showing  
25 reasonable grounds for the attachment, a standard comparable to  
26 the probable cause standard. KPI Bridge Oil Sing. PTE Ltd. v.  
27 Berlian Laju Tanker TBK PT ("KPI"), No. C 12-00710 WHA, 2012 U.S.  
28 Dist. LEXIS 37751, at \*5 (N.D. Cal. Mar. 20, 2012).

1           In this case, the Court held at the October 29, 2012 hearing  
2 that Plaintiff stated a prima facie unpaid hire claim against  
3 Aegis and Solym. It is undisputed that those defendants cannot  
4 be found within this district. Neither party has raised a  
5 statutory or maritime bar to the attachment. Accordingly, the  
6 only outstanding element is the third element, which requires  
7 Plaintiff to show that property of the defendants, Aegis and  
8 Solym, are found within the district.

9           The M/V Sider Pink is undisputedly owned by Shine, not Aegis  
10 or Solym. Plaintiff's verified complaint alleges that Shine,  
11 Aegis, Primal, and Solym are alter egos of one another as  
12 companies owned and controlled by Nikolaos Papalios such that  
13 they are not legally distinct entities. Plaintiff alleges that  
14 Primal and Solym regularly guarantee the performance and  
15 obligation of Aegis. Shine owns the M/V Sider Pink, but the  
16 terms of its mortgage identify Primal as the commercial manager  
17 of the vessel. Additionally, Plaintiff alleges that the mortgage  
18 on the M/V Sider Pink identifies Primal as the corporate  
19 guarantor of Shine and Mr. Papalios as the personal guarantor.  
20 Plaintiff therefore contends that the M/V Sider Pink can be  
21 properly attached as security for its claim against Aegis and  
22 Solym. Plaintiff argues that these facts, at the least, show  
23 that it is entitled to limited jurisdictional discovery on the  
24 alter ego issue. Shine responds to the allegations in the  
25 complaint by arguing that Plaintiff has not and cannot meet its  
26 burden to show that Shine, Primal, Aegis, and Solym should be  
27 regarded as anything less than separate corporate entities.  
28 Shine argues that the factors examined by federal courts to

1 determine alter ego status are not present here, and that the  
2 attachment should be vacated on that basis.

3 The Ninth Circuit has not enumerated specific factors that  
4 must be present to show a corporate alter ego relationship, but  
5 it has held that piercing the corporate veil "requires that the  
6 controlling corporate entity exercise total domination of the  
7 subservient corporation, to the extent that the subservient  
8 corporation manifests no separate corporate interests of its  
9 own." Chan v. Soc'y Expeditions, Inc., 123 F.3d 1287, 1294 (9th  
10 Cir. 1997) (quotations omitted). Common ownership is not  
11 sufficient to pierce the veil between corporations, and bare  
12 assertions of alter ego status do not warrant attachment.  
13 Stevedoring Servs. of Am. v. Ancora Transp., N.V., 59 F.3d 879,  
14 883 (9th Cir. 1995).

15 At this stage, it is unlikely that Plaintiff has alleged  
16 facts sufficient to show total domination by one of the corporate  
17 defendants over the others such that Plaintiff's alter ego theory  
18 provides a jurisdictional basis for the ongoing attachment of  
19 Shine's substitute security. A lack of supporting facts standing  
20 alone does not necessarily mean that the attachment must be  
21 immediately vacated because the Ninth Circuit requires limited  
22 jurisdictional discovery where it might demonstrate facts  
23 sufficient to show a basis for jurisdiction. Harris Rutsky & Co.  
24 Ins. Servs., Inc. v. Bell & Clements Ltd., 328 F.3d 1122, 1135  
25 (9th Cir. 2003). At least one court has determined that this  
26 rule applies to maritime attachment cases where an alter ego  
27 theory is alleged, and further discovery might yield facts  
28 sufficient to show the theory's validity. KPI, 2012 U.S. Dist.

1 LEXIS 37751, at \*11.

2 In the present matter, Plaintiff has alleged facts with  
3 supporting evidence sufficient to show that further  
4 jurisdictional discovery may well produce evidence sufficient to  
5 justify attachment of Shine's substitute security. The Court  
6 also reviewed the parties' briefing on the discovery available in  
7 the London proceedings on the unpaid hire claim. Shine makes a  
8 somewhat persuasive argument that Plaintiff never asked for  
9 discovery on its alter ego theory, so it should not now be  
10 allowed to proceed with such discovery in this district. Shine  
11 is correct that this case would be much cleaner if Plaintiff had  
12 sought and was denied discovery in London, making discovery in  
13 this district more clearly necessary. Shine is not, however, a  
14 party to the London arbitration, and it is at least excusable  
15 that Plaintiff did not seek discovery from a non-party in the  
16 London proceeding. The Court therefore finds that it would be  
17 inequitable to deny jurisdictional discovery in this district  
18 based on what did or did not occur in the London proceeding.  
19 Accordingly, the Court finds that limited jurisdictional  
20 discovery may lead to facts constituting a jurisdictional basis  
21 for attaching Shine's property. Limited discovery is therefore  
22 proper.

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24 III. ORDER

25 For the foregoing reasons, the Court reserves decision on  
26 Shine's motion to vacate the attachment and dismiss Plaintiff's  
27 complaint. Plaintiff may engage in the following jurisdictional  
28 discovery, which must be narrowly addressed to Plaintiff's alter

1 ego theory:

2 1. Ten document requests;

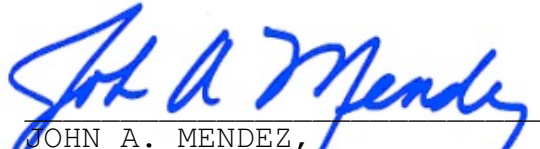
3 2. Twenty interrogatories; and

4 3. Four depositions not to last longer than 7 hours each.

5 The parties must submit a joint discovery and briefing schedule  
6 on the alter ego issue to the Court within 20 days. At the close  
7 of discovery, Plaintiff may submit a 20 page brief in support of  
8 its position, and Defendant may respond with a 20 page brief.  
9 Neither party may file a reply. The attachment will then be  
10 maintained or vacated on the papers unless a hearing is  
11 determined to be necessary.

12 IT IS SO ORDERED.

13 Dated: December 18, 2012

  
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JOHN A. MENDEZ,  
UNITED STATES DISTRICT JUDGE

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