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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

OLGA CIOBAN-LEONTIY,
Plaintiff,
v.
SILVERTHORN RESORT
ASSOCIATES, LP, a California Limited
Partnership, WATERWAY
HOUSEBOAT BUILDERS, a foreign
corporation, VOLVO PENTA OF THE
AMERICAS, LLC, a Delaware Limited
Liability Company, and DOES 1-50,
inclusive,
Defendants.

No. 2:17-cv-01626-MCE-DMC

ORDER

SILVERTHORN RESORT
ASSOCIATES, LP, a California Limited
Partnership,
Cross-Claimant,
v.
DMITRY GAIDUCHIK, MAKSIM
LEONTIY, VOLVO PENTA OF THE
AMERICAS, LLC, a Delaware Limited
Liability Company, and WATERWAY
HOUSEBOAT BUIDERS, a foreign
corporation,
Cross-Defendants.

1 VOLVO PENTA OF THE AMERICAS,
2 LLC, a Delaware Limited Liability
Company,

3 Cross-Claimant,

4 v.

5 DMITRY GAIDUCHIK, MAKSIM
6 LEONTIY, SILVERTHORN RESORT
ASSOCIATES, LP, a California Limited
7 Partnership, and WATERWAY
HOUSEBOAT BUIDERS, a foreign
corporation,

8 Cross-Defendants.
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11 Through the present action, Plaintiff Olga Cioban-Leontiy (“Plaintiff”) seeks
12 damages for personal injuries she sustained after jumping from a houseboat on Lake
13 Shasta, California and coming into contact with the vessel’s propeller. Plaintiff’s
14 Complaint was originally filed in Shasta County Superior Court on May 10, 2017, and
15 included causes of action for products liability and negligence. In addition to suing
16 Defendant Silverthorn Resort Associates, LP, Inc. (“Silverthorn”), the marina where the
17 houseboat had been rented, Plaintiff’s Complaint also originally named Volvo Penta of
18 America (“Volvo”), the manufacturer of the houseboat’s motor. On August 3, 2017,
19 Volvo removed the case to this Court, citing federal question jurisdiction under both the
20 Federal Boat Safety Act of 1971, 46 U.S.C. § 4301, et seq., and the Inland Navigation
21 Rules, 33 U.S.C. § 2701. Presently before the Court are two motions for summary
22 judgment. The first was filed on January 24, 2019, by Volvo with respect to Silverthorn’s
23 cross-claim against it. ECF No. 101. Then, on January 25, 2019, Silverthorn filed its
24 own motion for summary judgment, or alternatively for partial summary judgment (ECF
25 No. 105) on the three causes of action contained in Plaintiff’s then operative pleading.
26 Before addressing those Motions, which are now before this Court for adjudication, the
27 complicated and unusual history of this case must be discussed.

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1 Following removal to this Court, Plaintiff filed a First Amended Complaint (ECF
2 No. 17) on October 24, 2017 which named Waterway Houseboat Builders, the company
3 that actually constructed the vessel, as an additional Defendant. Silverthorn and Volvo
4 proceeded to file their own cross-claims for indemnity and contribution, but Waterway
5 was never served with the First Amended Complaint prior to the time Plaintiff voluntarily
6 dismissed it as a defendant on May 14, 2018. ECF No. 34. Plaintiff then proceeded to
7 enter into a stipulation with Volvo for dismissal in exchange for a waiver of costs. ECF
8 No. 43. Under the terms of that stipulation, Plaintiff represented to the Court and to the
9 remaining Defendant, Silverthorn, that it was “no longer pursuing product liability claims
10 against Volvo Penta and Waterway Houseboat Builders, but rather, is pursuing
11 Silverthorn under theories that do not involve Volvo Penta or Waterway Houseboat
12 Builders.” ECF No. 43, p. 2:3-5. Plaintiff thereafter filed a Motion for Good Faith
13 Settlement as to that settlement (ECF No. 53), which Silverthorn opposed on grounds
14 that Plaintiff’s First Amended Complaint, as then constituted, continued to contain
15 product liability claims despite Plaintiff’s apparent stipulation otherwise. At the time of
16 the hearing on Plaintiff’s Motion on August 16, 2018, the Court ordered the parties to
17 meet and confer within the next thirty days as to an amended pleading which could
18 resolve those differences. When Plaintiff declined to file any further amended pleading,
19 the Court denied the Motion for Good Faith Settlement on November 13, 2018,
20 reasoning that because Plaintiff’s First Amended Complaint still included products
21 liability claims implicating Volvo for which indemnity could be asserted, a settlement in
22 exchange only for a waiver of costs could not be deemed in good faith given the
23 potentially enormous damages being asserted by Plaintiff. ECF No. 88.

24 In the meantime, Silverthorn filed a Motion for Judgment on the Pleadings on
25 August 31, 2018 (ECF No. 66) on grounds it could not ascertain what factual
26 contentions, if any, Plaintiff asserted against Silverthorn, given the fact that the Amended
27 Complaint

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1 includes only allegations against Silverthorn, Volvo and Waterway jointly.¹ In the
2 absence of both Volvo and Waterway as Defendants, and given Plaintiff's assertion that
3 it makes no products liability claims against either of those parties, Silverthorn argued it
4 cannot reasonably ascertain just what product liability claims are in fact being asserted
5 against it at this juncture since the products liability allegations of the Amended
6 Complaint as then constituted drew no effective distinction between the respective roles
7 of Silverthorn, Waterway and Volvo in the circumstances surrounding this lawsuit.

8 Reasoning that the First Amended Complaint provided no factual specifics
9 whatsoever as to Silverthorn, the Court granted Silverthorn's Motion by Order filed
10 February 6, 2019, and directed Plaintiff to file a further amended pleading by
11 February 20, 2019 if she chose to do so. ECF No. 115. Plaintiff subsequently filed her
12 Second Amended Complaint on February 20, 2019. ECF No. 119. The Court's review
13 of the Second Amended Complaint indicates that it is directed against Silverthorn, only,
14 and appears to eliminate the products liability causes of action previously alleged in the
15 First Amended Complaint, instead relying only on negligence and purported "strict
16 liability" claims. In addition, the factual averments made against Silverthorn are
17 substantially different in that they appear to focus not on the absence of a propeller
18 guard but instead on Silverthorn's alleged failure to provide appropriate safety
19 information to the occupants of the houseboat after it was rented and before the boat
20 was taken out on Lake Shasta.

21 The Motions for Summary Judgment now before the Court were both filed before
22 Plaintiff's now-operative Second Amended Complaint. Volvo's Motion as to Silverthorn's
23 crossclaim against it is premised on claims made against Volvo in the context of its
24 answer to a now-superseded First Amended Complaint. ECF No. 21. Whether or not
25 Silverthorn will continue to pursue that cross-claim in the wake of Plaintiff's Second
26 Amended Complaint remains to be seen, particularly given Plaintiff's apparent

27 ¹ The Court notes that Silverthorn's Motion originally also contained a request that the matter be
28 remanded back to state court. By Notice filed November 2, 2018 (ECF No. 85), however, Silverthorn
withdrew that request and consequently the remand request was not further considered.


1 elimination of any products liability claims. Consequently, Volvo's Motion for Summary
2 Judgment (ECF No. 101) is DENIED, without prejudice to being renewed should
3 circumstances warrant at a later date.

4 Silverthorn's own Motion for Summary Judgment (ECF No. 105), as directed
5 specifically to the three causes of action pleaded by Plaintiff in the prior First Amended
6 Complaint, is similarly rendered moot by the filing of a Second Amended Complaint and
7 is therefore also DENIED without prejudice to being renewed as this litigation
8 progresses. For now, the docket reveals that Silverthorn has properly filed a Motion to
9 Dismiss (ECF No. 121) as to the Second Amended Complaint. Until the pleadings are
10 clarified, any further request for summary judgment would be premature given the fact
11 that just what claims Plaintiff may ultimately be permitted to pursue against Silverthorn
12 remains unclear. Moreover, whether or not Silverthorn will continue to pursue its cross-
13 claim against Volvo following the Second Amended Complaint is equally uncertain.

14 In sum, then, the Motions for Summary Judgment filed on behalf of Cross-
15 Defendant Volvo and Defendant Silverthorn (ECF Nos. 101 and 105) are both DENIED,
16 without prejudice to being renewed once the scope of Plaintiff's Second Amended
17 Complaint, and any cross-claims based thereon, has been ascertained.²

18 IT IS SO ORDERED.

19 Dated: April 15, 2019

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21 MORRISON C. ENGLAND, JR.
22 UNITED STATES DISTRICT JUDGE

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² Having determined that oral argument would not be of material assistance, the Court ordered both motions submitted on the briefs in accordance with E.D. Local Rule 230(g).