

1
2
3
4
5
6
7
8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
10

11 GB CAPITAL HOLDINGS, LLC,
12 a California Limited Liability
13 Company,

Plaintiff,

14 v.

15 S/V GLORI B, a 1977 Sailing
16 Vessel of Approximately 27-Foot
17 in Length, U.S.C.G. Official No.
18 598405 and All of Her Engines,
19 Tackle Accessories, Furnishings
and Appurtenances, in rem,

Defendant.
20

Case No.: 18cv312-WQH-AGS

ORDER

21 HAYES, Judge:

22 The matter before the Court is the motion to dismiss filed by Jeffrey G. Heston.
23 (ECF No. 21).

24 **I. PROCEDURAL BACKGROUND**

25 On February 2, 2018, Plaintiff GB Capital Holdings, LLC, as the agent of San Diego
26 Mooring Company, initiated this action by filing a verified Complaint. (ECF No. 1).
27 Jeffrey G. Heston, proceeding pro se, filed a Statement of Interested Parties stating “I,
28

1 Jeffrey G. Heston, am the sole owner of the Sailing Vessel ‘Glori B’, document number
2 598405 and herein-named Defendant in this matter before this Court.” (ECF No. 16).

3 On April 10, 2018, an arrest warrant for the Defendant sailboat was issued, and Pier
4 32 Marina was appointed as substitute custodian. (ECF No. 6).

5 On May 24, 2018, Heston filed a motion to dismiss pursuant to Fed. R. Civ. P.
6 12(b)(1). (ECF No. 21). On June 15, 2018, GB Capital filed a response. (ECF No. 24).

7 **II. ALLEGATIONS OF THE COMPLAINT**

8 GB Capital seeks in rem relief against the vessel for breach of maritime contract,
9 trespass, and quantum meruit. GB Capital alleges this Court has jurisdiction pursuant to
10 28 U.S.C. § 1331(1), and the Commercial Instruments and Maritime Lien Act at 46 U.S.C.
11 §§ 31301 et seq. (ECF No. 1 at 1–2, 9–10). GB Capital alleges that San Diego Mooring
12 Company (SDMC) supplied the Defendant sailboat a berth in San Diego Bay. *Id.* at 2. GB
13 Capital alleges that under the moorage contract, the vessel must undergo an annual safety
14 inspection. *Id.* at 2–3. GB Capital alleges that the owner of the boat, Heston, declined the
15 inspection. *Id.* at 3–4. GB Capital alleges that SDMC ordered Heston to remove the boat,
16 and that Heston refused. *Id.*

17 GB Capital alleges that the boat was towed to an impound location on March 25,
18 2016 and has not been retrieved. *Id.* at 4, 8. GB Capital alleges that Heston “has repeated
19 and consistently refused to submit his claims for resolution in binding arbitration,” as
20 ordered in the prior litigation. *Id.* at 7–8. GB Capital alleges that Heston has declined GB
21 Capital’s repeated offers to waive its claims against Heston and the vessel if Heston
22 “simply retrieves and relocates his vessel.” *Id.* GB Capital alleges damages of \$55,728.51
23 in accrued wharfage fees and other costs as of February 7, 2018. *Id.* at 9.

24 **III. THE PRIOR ACTION**

25 On April 15, 2016, Heston sued GB Capital under admiralty and maritime
26 jurisdiction to recover possession of the vessel and damages. *Heston v. GB Capital*
27 *Holdings, LLC*, Civ. No. 16cv912.

1 On July 1, 2016, GB Capital filed a motion to compel arbitration. Heston did not
2 file a response. On August 23, 2016, the Court ordered arbitration as to the moorage
3 contract.

4 On September 13, 2016, Heston filed a motion for relief from the Court's August
5 23, 2016 Order, pursuant to Federal Rule of Civil Procedure 60(b)(1)–(3). On December
6 15, 2016, the Court denied Heston's motion for relief from judgment.

7 On October 23, 2017, Heston filed a second motion for relief from the Court's
8 August 23, 2016 Order, on various grounds, including that the "Maritime Contract for
9 Private Wharfage" is not cognizable in admiralty. On January 5, 2018, the Court denied
10 Heston's motion for relief.

11 On January 26, 2018, Heston filed a notice of appeal. On August 21, 2018, the Court
12 of Appeals for the Ninth Circuit concluded this Court did not abuse discretion by denying
13 relief from the August 23, 2016 Order. On September 4, 2018, Heston filed a petition for
14 panel rehearing and petition for rehearing en banc with the Court of Appeals.

15 **IV. APPLICABLE STANDARD**

16 Rule 12(b)(1) of the Federal Rules of Civil Procedure allows a defendant to move
17 for dismissal for lack of subject matter jurisdiction. Fed. R. Civ. P. 12(b)(1). Plaintiffs
18 have the burden to establish that the court has subject matter jurisdiction over an action.
19 *Assoc. of Med. Colls. v. United States*, 217 F.3d 770, 778–79 (9th Cir. 2000). Federal
20 courts have limited jurisdiction, and "possess only that power authorized by Constitution
21 and statute, which is not to be expanded by judicial decree. It is to be presumed that a cause
22 lies outside this limited jurisdiction, and the burden of establishing the contrary rests upon
23 the party asserting jurisdiction." *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375,
24 377 (1994) (citations omitted).

25 A jurisdictional attack pursuant to Rule 12(b)(1) may be facial or factual. *White v.*
26 *Lee*, 227 F.3d 1214, 1242 (9th Cir. 2000). "In a facial attack, the challenger asserts that
27 the allegations contained in the complaint are insufficient on their face to invoke federal
28 jurisdiction. By contrast, in a factual attack, the challenger disputes the truth of the

1 allegations that, by themselves, would otherwise invoke federal jurisdiction.” *Safe Air for*
2 *Everyone v. Meyer*, 373 F.3d 1035, 1039 (9th Cir. 2004). In a facial attack on subject
3 matter jurisdiction, the court assumes the factual allegations of the complaint to be true and
4 draws all reasonable inferences in favor of the plaintiff. *Doe v. Holy See*, 557 F.3d 1066,
5 1073 (9th Cir. 2009).

6 In a federal court, subject matter jurisdiction may arise from either “federal question
7 jurisdiction” or “diversity jurisdiction.” *Caterpillar Inc. v. Williams*, 482 U.S. 386, 392
8 (1987); *see also* 28 U.S.C. §§ 1331–32. To invoke federal question jurisdiction, the
9 complaint must allege that the “action[] aris[es] under the Constitution, laws, or treaties of
10 the United States.” 28 U.S.C. § 1331. “The presence or absence of federal-question
11 jurisdiction is governed by the well-pleaded complaint rule, which provides that federal
12 jurisdiction exists only when a federal question is presented on the face of the plaintiff’s
13 properly pleaded complaint.” *Wayne v. DHL Worldwide Express*, 294 F.3d 1179, 1183
14 (9th Cir. 2002) (quotation marks omitted) (quoting *Caterpillar*, 482 U.S. at 392).

15 V. CONTENTIONS OF THE PARTIES

16 Heston contends that the Court lacks jurisdiction in this case because of the appeal
17 from the prior case. (ECF No. 21 at 4–5). Heston asserts that the Court of Appeals will
18 determine whether the moorage contract is a maritime contract, and that this Court lacks
19 jurisdiction to decide a question before the Court of Appeals. *Id.*

20 GB Capital contends that the appeal from the previous case does not prohibit this
21 Court from considering the nature of the moorage contract. *Id.* at 4–5. GB Capital asserts
22 that existing legal precedent establishes that contracts for wharfage services are maritime
23 contracts, which properly support in rem jurisdiction. *Id.* at 5–6. GB Capital contends no
24 legal authority supports Heston’s theory that the moorage contract is not a maritime
25 contract. *Id.* at 9. GB Capital asserts that Heston’s appeal from the previous case is
26 unrelated to whether the moorage contract is a maritime contract. *Id.* at 7–9. GB Capital
27 asserts that Heston failed to file a timely notice of appeal for issues regarding the nature of
28 the moorage contract, waiving arguments over the nature of the moorage contract. *Id.* GB

1 Capital asserts that Heston timely appealed this Court’s denial of Heston’s second motion
2 for relief under Fed. R. Civ. P. 60(b), and that the only issue before the Court of Appeals
3 is whether that denial was an abuse of discretion. *Id.* at 9.

4 **VI. DISCUSSION**

5 Federal courts exercise admiralty jurisdiction under the Constitution and
6 congressional statute. U.S. Const. art. III, §2, cl. 1; 28 U.S.C. § 1333(1); *see also Ventura*
7 *Packers, Inc. v. F/V Jeanine Kathleen*, 305 F.3d 913, 918 (9th Cir. 2002) (observing “the
8 Constitution fixed only the original jurisdiction of the Supreme Court, however, Congress
9 remains free to mold the scope of the federal courts’ admiralty jurisdiction as it pleases,
10 and it does so from time to time,” as for the Death on the High Seas Act and the Maritime
11 Lien Act).

12 A maritime contract supports admiralty jurisdiction under § 1331 if the nature and
13 character of the contract have “reference to maritime service or maritime transactions.” *Ali*
14 *v. Rogers*, 780 F.3d 1229, 1235 (9th Cir. 2015) (quoting *Norfolk S. Ry. Co. v. Kirby*, 543
15 U.S. 14, 24 (2004)). Contracts for wharfage are within admiralty jurisdiction under § 1331
16 “if wharfage is provided to a specific vessel.” *Royal Ins. Co. of America v. Pier 39 Ltd.*
17 *P’ship*, 738 F.2d 1035, 1037 (9th Cir. 1984) (citing *Ex Parte Easton*, 95 U.S. 68 (1877)).
18 Federal courts have exclusive jurisdiction over in rem actions in admiralty under § 1331.
19 *Ventura Packers*, 305 F.3d at 916–17 n.1.

20 Under the Maritime Lien Act, admiralty jurisdiction is also proper for disputes
21 regarding “the provision of necessaries,” which are “defined as ‘repairs, supplies, towage,
22 and the use of a dry dock or marine railway.’” *Id.* at 922–23 (citing 46 U.S.C. § 31301(4))
23 (“If a plaintiff demonstrates that he (1) provided necessaries (2) to a vessel (3) on the order
24 of the owner or a person authorized by the owner, then he may bring a civil action in rem
25 to a federal district court sitting in admiralty.”).

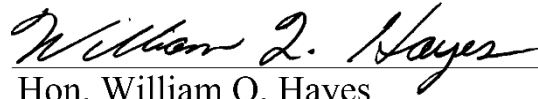
26 GB Capital alleges that Heston owns the Defendant vessel, and that Heston entered
27 a moorage contract with SDMC. GB Capital alleges that GB Capital incurred costs to
28 move and moor the Defendant vessel when Heston did not do so. The Court of Appeals

1 has issued no orders related to the nature of the moorage contract at issue in this case. The
2 requirements of admiralty jurisdiction are satisfied. The Court has subject matter
3 jurisdiction in this case.

4 **VII. CONCLUSION**

5 IT IS HEREBY ORDERED that Heston's Motion to Dismiss (ECF No. 21) is
6 denied.

7 Dated: November 29, 2018


8 Hon. William Q. Hayes
9 United States District Court

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28