

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

IN ADMIRALTY

ODYSSEY MARINE EXPLORATION, INC.,

Plaintiff,

vs.

CASE NO.: 8:08-cv-1045-T-26MAP

THE UNIDENTIFIED, WRECKED AND
ABANDONED SAILING VESSEL, etc., *in
rem*,

Defendant.

_____ /

**UNOPPOSED
MOTION TO DISMISS AND TO VACATE WARRANT FOR ARREST**

Plaintiff, Odyssey Marine Exploration, Inc. (“Odyssey”), pursuant to Rule E(5)(c) of the Supplemental Rules for Certain Admiralty and Maritime Claims, Rule 41(a)(2) of the Federal Rules of Civil Procedure, and Local Admiralty Rule 7.05(i)(3), moves the Court to dismiss this action without prejudice and to vacate the Warrant for Arrest.

MEMORANDUM IN SUPPORT OF MOTION

After discovery of a shipwreck which was believed to be Admiral Balchin’s HMS *Victory*, lost in 1744, it was agreed in August 2008 between Odyssey and the Disposal Services Authority (“DSA”), under the Ministry of Defence for the United Kingdom (“MoD”), that Odyssey would undertake work at the site including preliminary archaeological excavation, identification and artifact recovery from the wrecksite. These operations were conducted with the understanding that when the wreck was formally

identified, Odyssey would work together with the DSA and other appropriate MoD and UK government personnel, to negotiate and implement an agreement covering future activities at the site. Odyssey conducted an extensive archaeological pre-disturbance survey of the site and at the request of the MoD recovered two bronze cannon; and, at their direction, presented them to the UK Receiver of Wreck. As compensation for the artifacts recovered from the shipwreck and presented to the UK Receiver of Wreck, Odyssey has reached agreement with the MoD to accept a salvage award of 80% of their value.

Pursuant to research conducted by Odyssey and the MoD, the cannon were identified as having originated from Balchin's HMS *Victory*, thereby confirming the identification of the shipwreck. It is Odyssey's understanding that Her Majesty's Government takes the position that it has not abandoned the shipwreck of HMS *Victory*; and, therefore, the shipwrecked vessel, its appurtenances and necessaries, and the personal effects of the officers and crew, are, on that basis, the property of Her Majesty's Government. Consequently, Odyssey is now prepared to move forward under English law as it may pertain to any additional activities relating to archaeological activities that may affect the shipwreck.

It has also been agreed that Odyssey will be actively involved in the ongoing process of planning and consultations to determine the ultimate disposition, management and protection of the site which is scheduled to be concluded during the second quarter of 2010. In the meantime, Odyssey will continue to provide archaeological, conservation and technical services, as needed, to Her Majesty's Government.

Odyssey recognizes that in a typical *in rem* action, upon dismissal, a motion or request to release the vessel from arrest would be submitted. However, in this case a piece of

glass was delivered to the U.S. Marshal for a symbolic arrest in order to obtain constructive *in rem* jurisdiction over the shipwreck, which lies underneath waters beyond any country's territorial waters or contiguous zone, and was then released to Odyssey as substitute custodian. (Docs. 10, 12.) Therefore, Odyssey believes it would be appropriate for the Court simply to vacate the Warrant for Arrest and dismiss this action.

As required by Local Admiralty Rule 7.05(i)(3), the undersigned counsel has confirmed that all costs and charges of the Marshal have been paid, and there are no other outstanding charges of the Court and its officers as contemplated by the local rule.

WHEREFORE, Odyssey asks the Court to dismiss this action without prejudice and vacate the Warrant for Arrest.

LOCAL RULE 3.01(g) CERTIFICATE OF COUNSEL

The undersigned counsel for Odyssey is authorized to represent to the Court that MoD has no objection to the Court's granting this motion.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on September 17, 2009, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system.

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