

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 08-60449-CIV-ZLOCH

CAPTAIN GEORGE CUSTER,

Plaintiff,

O R D E R

vs.

M/V "SEA BIRD", her engines,  
tackle, apparel, and other  
appurtenances, in rem, and  
SALSABOAT LTD., in personam,Defendants.  

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THIS MATTER is before the Court upon Plaintiff's Motion To Extend Deadline For Filing Motion For Summary Judgment (DE 33) and Plaintiff's Motion For Summary Judgment (DE 34). The Court has carefully reviewed said Motions and the entire court file and is otherwise fully advised in the premises.

By prior Order (DE 21), the Court set Pre-trial Conference for October 24, 2008, with all Motions For Summary Judgment due sixty (60) days beforehand. Thus, Plaintiff's Motion was due by August 25, 2008. Plaintiff filed the instant Motions (DE Nos. 33 & 34) on September 17, 2008. Plaintiff did not previously request an extension of time within which to file a Motion For Summary Judgment, although counsel has filed motions for extensions of time in other events. See, e.g., DE 26. Therefore, the instant Motions will be denied.

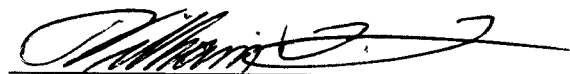
As an aside, the Court notes that the Plaintiff's Motion For

Summary Judgment (DE 34) appears to be no more than a motion for attorney's fees, as it contains no dispositive arguments. Further, Plaintiff failed to attach a copy of the alleged contract between the Parties. However, the Court infers from Plaintiff's pleadings that the contract did not contain a provision for attorney's fees because Plaintiff argues his entitlement to such solely on the basis of Florida Statutes § 627.428. The Court notes that said statute is contingent upon a judgment being entered in favor of a party. Fla. Stat. § 627.428 (2008). Thus, the instant Motion For Summary Judgment is premature, and it would be more appropriately filed after final disposition of the above-styled cause.

Accordingly, after due consideration, it is

ORDERED AND ADJUDGED that Plaintiff's Motion To Extend Deadline For Filing Motion For Summary Judgment (DE 33) and Plaintiff's Motion For Summary Judgment (DE 34) be and the same are hereby DENIED.

DONE AND ORDERED in Chambers at Fort Lauderdale, Broward County, Florida, this 25<sup>th</sup> day of September, 2008.



WILLIAM J. ZLOCH  
United States District Judge

Copies furnished:

All Counsel of Record