

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 05-23105-CIV-HUCK/O'SULLIVAN

BROWARD MARINE, INC., et al.,
Plaintiffs,

v.

S/V ZEUS,
Defendant.

BROWARD MARINE, INC., et al.,
Supplemental Plaintiffs,

v.

MARINA FUNDING GROUP, INC., et al.,
Defendant.

ORDER

THIS MATTER is before the Court pursuant to the Supplemental Defendants' Verified Motion to Dismiss Complaint in Proceedings Supplementary and Show Cause Memorandum (DE# 139, 6/3/09). Having reviewed the applicable filings and law, it is

ORDERED AND ADJUDGED that the Supplemental Defendants' Verified Motion to Dismiss Complaint in Proceedings Supplementary and Show Cause Memorandum (DE# 139, 6/3/09) is **DENIED without prejudice** to raise the issues discussed in the motion following the December 17, 2009 evidentiary hearing on the proceedings supplementary.

BACKGROUND

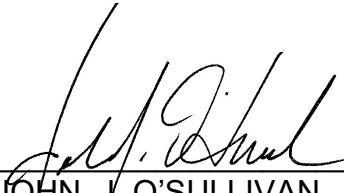
On March 28, 2008, plaintiff BMI Investment Group, LLC as successor by assignment to Broward Marine, Inc. and BME Investment Group, LLC as successor by assignment to Broward Marine East, Inc. (collectively, "Plaintiffs"), obtained a final judgment in the amount of \$67,302.77 against defendant Double Eagle Yachts, Inc. (hereinafter "Double Eagle"). See Final Judgment Awarding Costs (DE# 117, 3/28/09). The plaintiffs moved for proceedings supplementary to satisfy the outstanding judgment. See Plaintiffs' Motion to Commence Proceedings Supplementary and to Implead Third Parties and Memorandum in support thereof (DE# 126, 12/19/08). On March 19, 2009, the Court issued an Order Commencing Proceedings Supplementary to Execution and Impleading Third Parties (DE# 136, 3/19/09). Pursuant to this Order (DE# 136), the following third parties were impleaded: Marina Funding Group, Inc., Burrell Industries, Inc., Larry A. Zink, Esq. and Glenn Straub. Id.

On June 3, 2009, the third party defendants filed Supplemental Defendants' Verified Motion to Dismiss Complaint in Proceeding Supplementary and Show Cause Memorandum (DE# 139, 6/3/09). On July 7, 2009, the plaintiffs filed their response in opposition. See Plaintiffs' Memorandum of Law in Opposition to Supplemental Defendants' Verified Motion to Dismiss Proceedings Supplementary and Show Cause Memorandum (DE# 143, 7/7/09). No reply was filed. On October 19, 2009, the Court held a hearing on the instant motion.

Third party defendants seek to dismiss the instant proceedings supplementary for failure to state a cause of action upon which relief may be granted. See Supplemental Defendants' Verified Motion to Dismiss Complaint in Proceeding

Supplementary and Show Cause Memorandum (DE# 139, 6/3/09). For the reasons stated at the October 19, 2009 hearing, the Court finds that the legal arguments are intertwined with the factual allegations such that the factual issues will be resolved at the December 17, 2009 evidentiary hearing on the proceedings supplementary.

DONE AND ORDERED, in Chambers, at Miami, Florida this 19th day of October, 2009.



JOHN J. O'SULLIVAN
UNITED STATES MAGISTRATE JUDGE

Copies provided to:

United States District Judge Huck
All counsel of record

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