

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

CASHMAN EQUIPMENT CORP.

CIVIL ACTION

VERSUS

NO: 08-4889

CON DIVE, LLC

SECTION: "S" (2)

ORDER AND REASONS

The Motion for Summary Judgment (Doc. #15) by plaintiff Cashman Equipment Corp. is **GRANTED**, awarding plaintiff a judgment in the amount of \$74,728.92, plus pre and post judgment interest, attorney's fees and costs. The motion is not opposed.

Defendant Con Dive executed a barge bareboat charter agreement with Cashman, for the chartering of vessel JMC 250, from October 19, 2007, until January 3, 2008. As a result of the agreement, Con Dive came to owe Cashman a total of \$106,480.35, which represents the charges for charter hire, an off-hire survey and barge clean-out expenses (plaintiff has attached copies of invoices supporting these charges). Con Dive provided payment in the amount of \$31,751.43, leaving a balance of \$74,728.92, exclusive of interest, fees and costs. The charter agreement provided for the payment of legal fees and costs in the event of legal action "arising out of or as a result of CHARTERER'S breach or default of any of the provisions and covenants of this charter."

Summary judgment is proper when, viewing the evidence in the light most favorable to the

non-movant, “there is no genuine issue as to any material fact and ... the moving party is entitled to judgment as a matter of law.”¹ If the moving party meets the initial burden of establishing that there is no genuine issue, the burden shifts to the non-moving party to produce evidence of the existence of a genuine issue for trial.²

The court finds that there is no genuine issue of material fact as a matter of law, which would preclude summary judgment in plaintiff’s favor. The motion for summary judgment is **GRANTED**, awarding plaintiff a judgment in the amount of \$74,728.92, plus pre and post judgment interest, attorney’s fees and costs.

New Orleans, Louisiana, this 15th day of July 2009.

A handwritten signature in black ink, reading "Mary Ann Vial Lemmon", written over a horizontal line.

**MARY ANN VIAL LEMMON
UNITED STATES DISTRICT JUDGE**

¹*Amburgey v. Corhart Refractories Corp.*, 936 F.2d 805, 809 (5th Cir. 1991); Fed. R. Civ. Proc. 56(c).

²*Celeotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986).