

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

COASTAL DISTRIBUTORS, INC., ET AL.

CIVIL ACTION

v.

NO. 16-8744

DB SWING THOMPSON, her tackle, furniture,
apparel, appurtenances, etc., in rem, ET AL.

SECTION "F"

ORDER AND REASONS

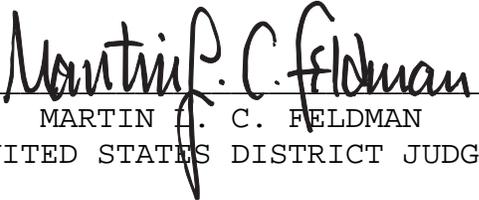
Local Rule 7.5 of the Eastern District of Louisiana requires that memoranda in opposition to a motion be filed eight days prior to the noticed submission date. No memoranda in opposition to Conrad Shipyard, LLC's Rule 60(a) and Rule 60(b) motion to amend order of dismissal with prejudice as to Conrad's claims, noticed for expedited submission on September 6, 2017, has been submitted.

Accordingly, because the motion is unopposed, and further, it appearing to the Court that the motion has merit,¹ IT IS ORDERED:

¹ On October 7, 2016, the Court entered a show-cause order, placing Plaintiff-Intervenor Conrad's claims on the call docket and ordering Conrad to show cause before November 7, 2016 as to why Conrad had not served Offshore Specialty Fabricators, Inc. or the DB SWING THOMPSON. Before the Court could address Conrad's non-service, the plaintiff (Coastal Distributors, Inc.) filed a motion

that Conrad's Rule 60 motion to amend order of dismissal is hereby GRANTED as unopposed. The Court's November 9, 2016 Order is hereby amended to reflect that Conrad's claims are dismissed without prejudice. The other aspects of the order shall remain unchanged.

New Orleans, Louisiana this 6th day of September, 2017.


MARTIN I. C. FELDMAN
UNITED STATES DISTRICT JUDGE

to dismiss the case with prejudice and represented that the entire case had been resolved. The Court granted the motion and dismissed the matter with prejudice. Apparently, the plaintiff had misrepresented to the Court that all claims had been resolved. Conrad now says it did not consent to the dismissal with prejudice; it submits that its claims should have been dismissed without prejudice under Rule 4(m) due to Conrad's failure to timely effect service. Accordingly, Conrad urges the Court to amend its order dismissing Conrad's claims with prejudice to a dismissal without prejudice.

The Fifth Circuit has affirmed the use of Rule 60(a) and 60(b) to correct or amend dismissals with prejudice to dismissals without prejudice. See, e.g., Rivera v. PNS Stores, Inc., 647 F.3d 188, 199 (5th Cir. 2011); McClure v. C.R. England & Sons, Inc., 199 F.3d 438 (5th Cir. 1999). Conrad has discovered that the vessel is now under arrest in this district in Civil Action 17-1595, and the sale of the vessel is imminent. Conrad seeks to amend this Court's order dismissing its claims with prejudice to reflect that its claims were dismissed without prejudice so that it may seek to recover (in another pending civil action in which the vessel is under arrest) some \$500,000 it says Offshore Specialty Fabricators owes to it. Because Rule 4(m) calls for dismissal without prejudice for failure to serve, and Rule 60(a) and (b) are appropriate vehicles to amend dismissals with prejudice to dismissals without prejudice, Conrad has persuaded the Court that the relief it seeks is warranted. The November 9 order shall be amended to reflect that Conrad's claims were dismissed without prejudice.