

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

IN THE MATTER OF:

In the Complaint of KEVIN GINGRICH as
Owner of a 63' Viking Motor Yacht,
"Anxiolytic" Bearing Hull ID Number:
VKY63014E989, For Exoneration From or
Limitation of Liability,

Petitioner.

Civil Action No. 2:09-1898 (SDW)(MCA)

ORDER

September 8, 2010

**ORDER ADOPTING THE REPORT AND RECOMMENDATION
OF THE MAGISTRATE JUDGE**

This matter comes before the Court on the Report and Recommendation ("R&R") of United States Magistrate Judge Madeline C. Arleo filed July 21, 2010, concerning proposed claimant 1500 Harbor Boulevard LLC's ("Harbor LLC") motion for leave to file a late claim and to vacate the Court's January 12, 2010 Order granting Kevin Gingrich ("Petitioner") default judgment against all non-filing claimants, insofar as it applies to Harbor LLC, pursuant to Rule 55(c), 60(b)(1) & (6) and Supplemental Rule F(4). Oral argument was held before Judge Arleo on July 21, 2010. Petitioner filed his objections on August 2, 2010.

A magistrate judge's recommended disposition of a dispositive matter is subject to *de novo* review. *In re U.S. Healthcare*, 159 F.3d 142, 145-46 (3d Cir. 1998); *Temptations, Inc. v. Wager*, 26 F. Supp. 2d 740, 743 (D.N.J. 1998); *see also* Fed. R. Civ. P. 72(b). The Court has reviewed the R&R and the record on file in this matter, under the appropriate *de novo* standard, and agrees with Judge Arleo's analysis - articulated on the record at the July 21, 2010 oral argument - and ultimate conclusion that equity warrants that the Court's January 12, 2010 Order be vacated and Harbor LLC be allowed to file a late claim. (*See* July 21, 2010 Hearing Tr.

(hereinafter, "Tr.") 11-14.) Specifically, the parties are still at the early stages of discovery and there would be no prejudice to Petitioner by allowing a late claim by Harbor LLC. (See Tr. 12-13.) Additionally, this Court agrees with Judge Arelo's conclusion that Harbor LLC did not have actual notice of Petitioner's initial filing and is thus excused from missing the filing deadline. (See Tr. 13-14.) Therefore,

IT IS, on this 8th day of September, 2010,

ORDERED that the R&R of Magistrate Judge Arleo filed July 21, 2010, is **ADOPTED** as the conclusions of law of this Court; and it is further

ORDERED that Harbor LLC's motion (Docket Entry No. 49) is **GRANTED**; and it is further

ORDERED that the Court's January 12, 2010 Order (Docket Entry No. 30) Granting Petitioner Default Judgment Against All Non-Filing Claimants shall remain in effect for all proposed claimants except for Harbor LLC and shall be **VACATED** with respect thereto; and it is further

ORDERED that Harbor LLC's Proposed Verified Answer, Affirmative Defenses and Claim, in the form of Exhibit G as attached to the June 7, 2010 Affidavit of D. Mark Leonard, shall be deemed filed and served on all parties hereto as of this date for all purposes, including for the purpose of calculating such parties' time to respond thereto.

s/ Susan D. Wigenton, U.S.D.J.

cc: Magistrate Judge Madeline C. Arleo