

IN THE UNITED STATES DISTRICT COURT
 DISTRICT OF SOUTH CAROLINA
 CHARLESTON DIVISION
 IN ADMIRALTY

AMERIS BANK, formerly doing business)	Civil Action No.: 2:09-cv-2865
as ISLAND COMMUNITY BANK, NA,)	
Plaintiff,)	
)	
vs.)	
)	CONSENT ORDER GRANTING
SAILING VESSEL "YAMAYA" Official)	AND ORDER SETTING ASIDE
Number 640613, her engines, bowsprit,)	PREVIOUS ORDER
anchor, cables, chains, rigging, tackle, apparel,)	DATED MARCH 8, 2010
furniture and all accessories hereunto)	
appertaining and belonging to her, <i>in rem</i> , and)	
CHARLESTON LUXURY SAILING)	
CHARTERS, INC., PALMETTO SPINE)	
CENTER, and HUBERT ALAN FAULK,)	
<i>in personam</i> ,)	
Defendants.)	

IT APPEARING TO THE COURT that Plaintiffs and Defendants have filed a Motion to Set Aside Consent Order Substitution of new Consent Order.

The parties agreed to the terms of a Consent Order on March 8, 2010; however, after the Order was approved and issued by the Court, Defendants were notified that based on representations by the U.S. Marshal, Defendants and the U.S. Marshal are unable to comply with all of the terms of the Consent Order. Initially, this Court Sets Aside the previous Order dated March 8, 2010 and puts the parties back in their original positions.

Plaintiff originally filed a Motion for Interlocutory Sale of S/V YEMAYA, her engines, sails, tackle, apparel, and appurtenances. The parties have informed the Court that they have now resolved several issues and,

The Court being of the opinion that said motion is well founded and with the consent of the parties, hereby GRANTS the motion and

ORDERS that the vessel bearing Official Number 640613, also known as S/V YEMAYA, her engines, tackle, apparel, and appurtenances, be sold as is, where is, by the Marshal of this Court, free and clear of all liens, claims, mortgages and encumbrances, on May 3, 2010, 2010 at 10:00 o'clock a.m. at the U.S. Post Office Lobby, Broad at Meeting Streets, Charleston, South Carolina 29401;

ORDERS that the Plaintiff, on behalf of the United States Marshal, shall give notice of the public sale of the vessel and her engines, tackle, apparel, and appurtenances by advertising same in The Post and Courier for four (4) days, between three (3) and fourteen (14) days prior to the date of such sale. Said Notice shall specify the time and place of the sale, and that prospective buyers, may, on application to the Marshal or Substitute Custodian and at such times and manner as the Marshal or Substitute Custodian may direct, view the vessel and her engines, tackle, apparel and appurtenances at their own risk for the purpose of inspection;

ORDERS that the minimum bid for the vessel at the public sale will be THIRTY-TWO THOUSAND FIVE HUNDRED AND XX/100 DOLLARS (\$32,500.00);

ORDERS that the sale of the vessel and her engines, sails, tackle, apparel, and appurtenances will be to the highest and best bidder and that said bidder will be required to deliver to the Marshal at the time of the sale ten percent (10%) of the bid price in cash, cashier's check or certified check, and within two (2) days of the date of the sale the remaining ninety percent (90%) of the bid price in cash, cashier's check or certified check, with the acceptance of all cashier's checks conditioned on their payment;

ORDERS that at least twenty four (24) hours prior to the date of the Interlocutory Sale, the Interlocutory Sale may be cancelled by agreement of the parties to this action;

ORDERS that upon payment of the debt owed to Ameris Bank, including collection costs, attorney's fees and *custodial legis* expenses, by Hubert Alan Faulk, Charleston Luxury Sailing Charters, Inc., and/or Palmetto Spine Center, Ameris Bank agrees to cancel the Sale, as long as the sale has not occurred;

ORDERS that if the successful bidder at such sale fails to deliver to the United States Marshal the full amount of their bid, the Marshal, the successful bidder or any party to this action may move the Court for relief, which motion for relief shall be heard summarily, or at the latest, within ten (10) days of said sale, upon written notice to the Marshal, the successful bidder and all parties to this action;

ORDERS that Ameris Bank, as holder of a preferred ship mortgage, is allowed at the interlocutory sale to credit bid up to TWO HUNDRED AND ONE THOUSAND EIGHT HUNDRED FIFTY-SEVEN AND 10/100 (\$201,857.10) DOLLARS, the amount secured by a mortgage on the vessel;

ORDERS that all court costs, Marshal's fees and expenses, substitute custodian fees, clerk's fees, takes and costs of sale, shall be deducted from the proceeds of the sale;

ORDERS that when the vessel is next placed in the water, the Defendants shall have the opportunity to remove all personal items; and

ORDERS that the Marshal shall bring and deposit the proceeds of said sale into the registry of this Court pending the further disposition of this action.



DAVID C. NORTON
UNITED STATES DISTRICT JUDGE

Charleston, South Carolina
April 15, 2010

WE CONSENT:

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