

United States District Court
Southern District of Texas

ENTERED

May 30, 2018

David J. Bradley, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

GULF MARINE FABRICATORS, LP,	§	
	§	
Plaintiff,	§	
VS.	§	CIVIL ACTION NO. 2:16-CV-430
	§	
THE ATP INNOVATOR, <i>et al</i> ,	§	
	§	
Defendants.	§	

FINDINGS OF FACT AND CONCLUSIONS OF LAW

In personam Defendants Amerindo Services, Ltd. (Amerindo) and Blue Sky Langsa Ltd. (Blue Sky), along with Amerindo in its capacity as Claimant to the in rem Defendant, ATP INNOVATOR, appeared in this case and answered by and through their attorneys. D.E. 25, 26, 57, 58. On April 11, 2018, counsel for Amerindo and Blue Sky withdrew from representation in this case. D.E. 109. On the same date, the Court issued its “Order Regarding Proceedings Affecting Amerindo and Blue Sky” (D.E. 111), giving the Amerindo and Blue Sky Defendants notice that, as business entities, they were required to appear by counsel, that trial would proceed on May 14, 2018, and that failure to appear by attorney may result in the Court striking their pleadings and entering a default judgment against them without further notice.

On May 14, 2018, the Court called this case for a bench trial. The Amerindo and Blue Sky Defendants did not appear in any form or capacity. The Court enters their default. The in rem Defendant ATP INNOVATOR was sold at auction on May 1, 2018, pursuant to this Court’s Order of April 19, 2018, and only the proceeds of the sale remain

subject to this Court's in rem jurisdiction. D.E. 115. Plaintiff Gulf Marine Fabricators, LP (Gulf Marine) and Intervenor ASRC Energy Services Omega, LLC (Omega) were excused from appearance, having previously appeared in open court on May 9, 2018, agreeing to present trial on the pleadings and exhibits.

On May 4, 2018, Gulf Marine and Omega filed their "Joint Pretrial Order for Bench Trial of May 14, 2018," reciting a number of admissions of fact and an agreed proposition of law that the ATP INNOVATOR is a vessel under the General Maritime Law. D.E. 117. The trial exhibits were filed on May 14, 2018. D.E. 119. After reviewing the admissions of fact and exhibits of record, the Court issues the following findings of fact and conclusions of law:

1. A floating structure such as the INNOVATOR is a vessel if it "is practically capable of being used to transport people or cargo over water." *Lozman v. City of Riviera Beach, Fla.*, 568 U.S. 115, 121 (2013).
2. Under *Lozman*, "a structure does not fall within the scope of this statutory phrase unless a reasonable observer, looking to the [structure's] physical characteristics and activities, would consider it designed to a practical degree for carrying people or things over water." *Id.*
3. Looking to its physical characteristics and activities as admitted in the joint pretrial order and as evidenced in the exhibits, the ATP INNOVATOR is, in fact, designed to a practical degree for carrying people or things over water.
4. The Court adopts as facts the parties' "Admissions of Fact" contained in the

Joint Pretrial Order (D.E. 117, pp. 6-11).

5. The ATP INNOVATOR is a vessel under the General Maritime Law.

The parties are ORDERED to file their respective motions regarding any claims they may have to the proceeds of the sale of the ATP INNOVATOR as a result of the Court's finding that the ATP INNOVATOR is a vessel on or before July 14, 2018.

ORDERED this 30th day of May, 2018.



NEELVA GONZALES RAMOS
UNITED STATES DISTRICT JUDGE