

**SAIPAN CONSTRUCTION AND
SALVAGE, INC.**

vs.

**M/V "SAIPAN LADY", her
tackle, engine and appurtenances,
in rem.**

**Civil Action No. 82-0046
District Court NMI**

Decided November 15, 1983

1. Evidence - Judicial Notice
Court may take judicial notice of its own records.

**2. Admiralty - Attachment -
Prior Liens**

Although a sale of a marine vessel by a Court proceeding in rem and properly exercising maritime jurisdiction frees the vessel from all prior liens, the same is not true of an action in personam where the ship is merely attached as security for a personal judgment; in the latter case the title to the vessel is no better than similar title to any other species of property and does not possess the particular maritime virtue of being "good against the world."

**3. Admiralty - Attachment -
Prior Liens**

Where claimant invoked the local jurisdiction of the Court, and did not proceed in rem against the vessel but rather attached the vessel pursuant to a duly authorized writ of attachment and then sold it pursuant to a writ of execution, the purchaser of the vessel, and his subsequent assignees, took the ship subject to prior liens in accordance with the applicable laws on execution sales.

4. Admiralty - Maritime Liens
Under principles of insurance law and under the Maritime Lien Act, claims of an

insurer for unpaid premiums do not give rise to a maritime lien. Federal Maritime Lien Act, 46 U.S.C. §§971 et seq.

**5. Admiralty - Jurisdiction - In
Rem Proceeding**

An in rem proceeding against a ship is the distinctive remedy of an admiralty court and is administered exclusively by a federal court; a plaintiff may only proceed in rem in federal court either where the action is to enforce a maritime lien or where otherwise so allowed by a statute of the United States. Fed.R.Civ.P. Supp. Rule C(1).

6. Admiralty - Jurisdiction

Where insurance company's claim for insurance premiums did not create a maritime lien and because there is no federal statute which otherwise authorizes the action, it necessarily follows that the Court did not have subject matter jurisdiction over the in rem claim against the vessel in a previous proceeding brought by the insurance company and the insurance company thus did not hold a valid judgment against the vessel.

7. Admiralty - Jurisdiction

Where Court was acting without proper admiralty jurisdiction for plaintiff to proceed in rem against a ship, but it appears on the face of the record to have had in personam jurisdiction over defendant, plaintiff held a valid attachment writ on defendant's interests in the vessel.

8. Attachment

A writ of attachment secures only that interest in the property to which the debtor has a legal claim.

9. Attachment

Where debtor's interest in ship was subject to prior maritime liens and ship was subsequently sold to satisfy those claims,

judgment creditor could not execute writ of attachment on ship because debtor's interest had been extinguished.

FILED
Clerk
District Court

NOV 15 1983

For The Northern Mariana Islands
By [Signature]
Deputy Clerk

IN THE DISTRICT COURT
FOR THE
NORTHERN MARIANA ISLANDS

SAIPAN CONSTRUCTION AND
SALVAGE, INC.

CIVIL ACTION NO. 82-0046

Plaintiff,

vs.

DECISION

M/V "SAIPAN LADY", her
tackle, engine and appurte-
nances, in rem,

Defendant.

DECISION

The facts of this case comprise another chapter in the troubled saga of the M/V Saipan Lady, a 115 foot motorized ketch of wooden construction weighing approximately 85 tons.^{1/}

^{1/} The Court adopts, for the purposes of this motion, the facts alleged in the pleadings of this case as the parties differ not as to the material facts, but as to their legal implications. Additionally, the Court takes judicial notice of the proceedings of the following related cases: Falstrom Pty. Ltd. et. al. v. Arthur Maxwell Thompson, Civil No. 81-0041 (D.N.M.I. default entered Sept. 18, 1981) (hereinafter referred to as Falstrom v. Thompson or Falstrom) and Micronesian Insurance Underwriters, Inc. v. Saipan Sailing Cruises, Inc. and "Saipan Lady", Civil No. 81-0066 (D.N.M.I. default entered Jan. 15, 1982) (hereinafter referred to as MIU v. Saipan Sailing Cruises, Inc.). The Court may take judicial notice of its own records. Shuttlesworth v. City of Birmingham, 394 U.S. 156, 89 S.Ct. 935, 22 L.Ed.2d 162 (1969); Saxton v. McDonnell Douglas Aircraft Co., 428 F.Supp. 1047 (N.D.Cal. 1977); 9 Wright and Miller, Federal Practice and Procedure § 2410 (1971).

1 The ship was purchased in 1981 as part of a business
2 venture wherein the ship would be used as a floating restaurant
3 operating in and around the waters of Saipan. For various reasons,
4 the venture failed. In a contract action by Falstrom, an investor
5 of the ill-fated enterprise, against, among others, Saipan Sailing
6 Cruises (SSC), the alleged alter ego of a co-venturer, the Court
7 ordered the public sale of the M/V Saipan Lady, owned by defendant
8 therein, to satisfy a default judgment in favor of Falstrom.

9 Falstrom v. Thompson, supra, n.l.

10 On November 15, 1981, the ship was sold for one dollar
11 (\$1.00) to Falstrom, an amount insufficient to satisfy Falstrom's
12 judgment. This execution sale was not then, and is not now,
13 challenged.

14 The misfortunes of the M/V Saipan Lady continued into
15 November of 1981 when Typhoon Hazen drove the vessel aground in
16 the shallow water off Micro Beach, Saipan. This case concerns
17 the subsequent salvage operations performed by the plaintiff
18 herein.

19 Plaintiff contends that, in July 1982, it commenced
20 operations to relocate the ship in more secure and deeper waters.
21 Using heavy equipment and wire cables, plaintiff moved the ship
22 into Smiling Harbor. Plaintiff alleges that it subsequently
23 secured and maintained the ship and commenced repairs.^{2/}

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25 ^{2/}The M/V Saipan Lady, now in the custody of plaintiff as substi-
26 tute custodian, has since been moved, upon stipulation of the
parties, to the Seaplane Ramp, Lower Base, Saipan.

1 In this action, plaintiff seeks compensation in the
2 amount of \$25,000 for its salvage operations. Pursuant to the
3 Supplemental Rules for Certain Admiralty and Maritime Claims,
4 plaintiff had the M/V Saipan Lady arrested on August 24, 1982 and
5 for a period of three weeks thereafter had published a notice of
6 the vessel's arrest and of the impending action.

7 Several parties entered the action at this time, filing
8 claims against the vessel as required under Supplemental Rule
9 C(6). Micronesian Insurance Underwriters, Inc. (MIU) is one of
10 these claimants, filing a claim on September 13, 1982. MIU bases
11 its claim on a default judgment entered by this Court against
12 SSC and the M/V Saipan Lady (MIU v. Saipan Sailing Cruises,
13 supra, n.1). The suit involved the collection of unpaid insurance
14 premiums on a policy issued on the M/V Saipan Lady to SSC. In the
15 matter now before the Court, MIU lays claim to the vessel by way
16 of a maritime lien or a judgment lien, either of which, MIU
17 asserts, would entitle it to an interest in the proceeds of any
18 future judicial sale of the M/V Saipan Lady.

19 On April 22, 1983, plaintiff filed a motion to dismiss
20 MIU's claim arguing that unpaid insurance premiums do not give
21 rise to a maritime lien and alternatively, that the judicial sale
22 ordered in Falstrom v. Thompson, extinguished all prior liens on
23 the vessel. Plaintiff subsequently withdrew its motion.

24 On October 18, 1983, plaintiff renewed its motion which
25 was heard on October 28, 1983.

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1 [2,3] An initial matter is in need of resolution before the
2 merits of MIU's claim are addressed. Plaintiff asserts that the
3 sale of the M/V Saipan Lady in the Falstrom case was a maritime
4 sale, thereby extinguishing all prior claims against the ship.
5 While it is true that a sale of a marine vessel by a Court
6 proceeding in rem and properly exercising maritime jurisdiction
7 frees the vessel from all prior liens,^{3/} the same is not true of
8 an action in personam wherein the ship is merely attached as
9 security for the personal judgment. In such a case, the title to
10 the vessel is no better than similar title to any other species
11 of property and does not possess the particular maritime virtue
12 of being "good against the world." 1 Benedict on Admiralty (7th
13 Ed. 1981), § 125; The Knapp, Stout and Co. Company v. McCaffrey,
14 177 U.S. 638, 20 S.Ct. 824, 44 L.Ed.2d 921 (1900). The Falstrom
15 plaintiffs invoked the local jurisdiction of the Court, and did
16 not proceed in rem against the M/V Saipan Lady; rather, the
17 vessel was attached pursuant to a duly authorized writ of attach-
18 ment and sold pursuant to a writ of execution. Therefore, the
19 purchaser of the vessel, and his subsequent assignees, took the
20 ship subject to prior liens in accordance with the applicable
21 laws on execution sales. Does MIU have a surviving claim?

22 Maritime liens are statutorily created under the Federal
23 Maritime Lien Act (46 U.S.C.A. 971, et. seq.). Section 971,
24 defines the sources of maritime liens:

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26 ^{3/} See 2 Benedict on Admiralty § 64 (7th Ed. 1981); Morrissey v. SS A and J Faith, 238 F.Supp. 877 (N.D. Ohio 1964).

1 Any person furnishing repairs, supplies,
2 towage, use of dry dock or marine railway, or
3 other necessities, to any vessel, whether
4 foreign or domestic, upon the order of the
5 owner of such vessel, or of a person autho-
6 rized by the owner, shall have a maritime
7 lien on the vessel, which may be enforced by
8 suit in rem, and it shall not be necessary
9 to allege or prove that credit was given to
10 the vessel.

11 [4] MIU asserts that a lien for unpaid insurance premiums
12 can be created under the "necessaries" language of section 971.
13 However, it has been consistently held that, under principles of
14 admiralty law and under the Maritime Lien Act, claims of an
15 insurer for unpaid premiums do not give rise to a maritime lien.
16 The Prilla, 21 F.Supp. 383, 385 (D.Mass. 1937); Grow v. Steel Gas
17 Screw Loraine K, 310 F.2d 547, 549 (6th Cir. 1962); West of England
18 Ship Owners v. Patriarch Steamship Co., 491 F.Supp. 539, 544
19 (D.Mass. 1980); 2 Benedict on Admiralty § 37 (7th Ed. 1981).
20 Therefore, MIU's contract for insurance alone gives MIU no interest
21 in the vessel.

22 What then, if any, is MIU's interest in the M/V Saipan
23 Lady? Any interest which MIU may now claim could only have arisen
24 from the proceedings and judgment in MIU v. Saipan Sailing Cruises,
25 supra. In that case, MIU sought to invoke the admiralty juris-
26 diction of this Court to proceed in rem against the ship; in
27 addition, MIU included a local action against SSC for breach of
28 contract. The vessel was ordered arrested on October 27, 1981.^{4/}

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30 ^{4/} Although no return on the arrest warrant is evidenced on the face
of the record, the outcome of this motion would not be different
should the Court question the validity of the arrest; therefore,
it is assumed for this motion that the ship was properly arrested

1 MIU obtained a default judgment which is now relied upon to
2 support a claim on the M/V Saipan Lady. Upon closer examination
3 of MIU v. Saipan Sailing Cruises, the Court now notes a serious
4 jurisdictional defect; MIU's attempt to invoke the admiralty
5 jurisdiction was flawed.

6 [5,6] An in rem proceeding against a ship is the distinctive
7 remedy of an admiralty court and is administered exclusively by a
8 federal court. 1 Benedict on Admiralty (7th Ed. 1981) § 124.
9 A plaintiff may only proceed in rem in federal court either where
10 the action is to enforce a maritime lien or where otherwise so
11 allowed by a statute of the United States. Supplemental Rules
12 C(1). As the Court herein decides that MIU's claim for insurance
13 premiums did not create a maritime lien and as the Court is
14 unaware of a federal statute which otherwise authorizes the
15 action, it necessarily follows that the Court in MIU v. Saipan
16 Sailing Cruises did not have subject matter jurisdiction over the
17 in rem claim against the M/V Saipan Lady. The judgment of a
18 court acting without proper jurisdiction is a nullity; it is not
19 voidable, but simply void. Elliot v. Pearsol, 1 Pet. 328, 7
20 L.Ed.164 (1828); In Re Sawyer, 124 U.S. 200, 8 S.Ct. 482, 31
21 L.Ed.402 (1887); Vallely v. Northern Fire and Marine Ins. Co.,
22 254 U.S. 348, 41 S.Ct. 116, 65 L.Ed. 297 (1920); Harris v. Illinois-
23 California Express, 687 F.2d 1361 (9th Cir. 1982). Therefore,
24 MIU does not hold a valid judgment against the M/V Saipan Lady.

25 [7] While the Court was acting without proper federal
26 jurisdiction, it appears on the face of the record to have had in

1 personam jurisdiction over SSC. Therefore, MIU held a valid
2 attachment writ on SSC's interests in the vessel.

3 [8] A writ of attachment secures only that interest in the
4 property to which the debtor has a legal claim. Hetrick v. Paris
5 Jet, Inc., 64 Cal.App. 3d 158, 134 Cal.Rptr. 285 (Ct.App. 1976);
6 Richion v. Mahoney, 62 Cal.App. 3d 603, 133 Cal.Rptr. 262 (Ct.App.
7 1976); Bergin v. Waterson, 279 F.2d 193 (10th Cir. 1960); The
8 Belfast v. Boon (7 Wall 624), 19 L.Ed. 266, 272 (1868); Kinnison
9 v. Guaranty Liquidating Co., 115 P.2d 450, 454 (Cal. 1981); MIU,
10 then, attached only SSC's interest in the vessel. SSC's title,
11 at the time of MIU's attachment, was subject to several maritime
12 claims (the validity of which remain to be determined) as well as
13 prior attachment liens. Dispositive, for the purposes of this
14 motion, is the attachment lien of Falstrom in Falstrom v. Thompson.

15 [9] Falstrom had the ship arrested on July 23, 1983, three
16 months prior to MIU's order of arrest; therefore, MIU's interest
17 was subject to the full satisfaction of Falstrom's claim. Fal-
18 trom subsequently obtained a default judgment against SSC and had
19 the ship sold to satisfy its judgment. Upon sale of the vessel,
20 SSC lost its interest in the ship and could lay claim only to these
21 proceeds which exceeded Falstrom's claim. Since the sale proceeds
22 did not satisfy Falstrom's personal judgment, SSC's interest in
23 the ship and the proceeds was extinguished. Therefore, upon
24 obtaining its judgment against SSC, MIU was unable to execute on
25 its attachment writ as SSC no longer possessed an interest in the
26 M/V Saipan Lady.

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In conclusion, MIU now possesses only a personal judgment against SSC and has no claim, by way of a maritime or judgment lien, on the M/V Saipan Lady. Plaintiff's motion to dismiss is accordingly GRANTED.

DATED this 15th day of November, 1983.



JUDGE ALFRED LAURETA