

IN THE DISTRICT COURT OF THE VIRGIN ISLANDS
 DIVISION OF ST. THOMAS & ST. JOHN

* * * * *

REVERE HIGH YIELD FUND, LP.)	
)	
Plaintiff,)	
)	CIVIL NO. 16- CV - 06
v.)	
)	<i>IN REM</i> ACTION IN
<i>M/V MISTER B</i> , her tackle, gear,)	ADMIRALTY TO FORECLOSE
and all of her appurtenances, <i>in rem</i> ,)	FIRST PREFERRED SHIP
)	MORTGAGE
and)	
)	IN PERSONAM ACTION FOR
<i>M/V AUTO TRANS-IT</i> , her tackle, gear,)	DAMAGES
and all of her appurtenances, <i>in rem</i> ,)	
)	
and)	
)	
BOYSON, INC.; OCEAN LINK)	
ENTERPRISES, LTD.; ARTHUR’S LEGACY,)	
LLC; BREEZE SHIPPING, LLC; CHERYL)	
BOYNES-JACKSON, individually and as)	
trustee; NOEL U. BOYNES, SR.; BERNICE)	
MAHONEY-BOYNES; CHEMICA B.)	
JACKSON, as trustee; BERNICE C. BOYNES;)	
and MICHAEL JACKSON, SR.,)	
)	
Defendants.)	
_____)	

PLAINTIFF’S BRIEF ON CONFLICT ISSUE

COMES NOW the Plaintiff, REVERE HIGH YIELD FUND, LP (“Plaintiff” or “Revere”), through its undersigned counsel, pursuant to this Court’s order, and hereby submits this brief outlining its position concerning the conflict originally brought to the Court’s attention in Defendant’s Notice of Special Appearance for Purposes of Requesting Additional Time to File Responsive Pleadings Due to Conflicts (Docket No. 28).

1. Per this Court’s previous rulings and orders, there is little doubt that the Law Offices of

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Julie German Evert, P.C. (“Attorney Evert”) cannot represent all the Defendants at the same time in this lawsuit without running afoul of Virgin Islands Rules of Professional Conduct 211.1.7.

See Denero v. Palm Horizons Management, Inc., No. 2013-73, 2015 WL 5012126 (D.V.I.

August 21, 2015). Attorney Evert has already identified the conflict, informed all the

Defendants, and the Court. *See* Docket No. 28.

2. In this case, Revere has brought this lawsuit against the Defendants because Defendants have defaulted in their various loan obligations. Some of the Defendants are direct obligors on the loan obligations, and other Defendants are guarantors of the same loans. To further complicate the conflict issue, some of the Defendants are corporate entities and some are individuals, and some of those individuals are shareholders of the corporate entities. Even further, many, if not all, of the individuals are related to, and are possible heirs of, each other. Needless to say, in such a complicated situation, a “conflict may exist by reason of substantial discrepancy in the parties’ testimony, incompatibility in positions in relation to [Revere] or the fact that there are substantially different possibilities of settlement of the claims or liabilities in question.” *See Denero*, 2015 WL 5012126 at *4 (quoting Rule 1.7 comment 23).

3. Clearly a conflict will exist if Attorney Evert engaged in a joint representation. However, that does not appear to be the case in this instance; Attorney Evert has only entered a general appearance for Defendant, Boyson, Inc. With respect to the other Defendants, it is our understanding that Attorney Evert does not represent them, and never has. Instead, she has taken the prudent course of entering a Special Appearance only on their behalf, identifying the potential conflict, and requesting additional time for the other Defendants to engage or consult

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with independent counsel. *See* Docket No. 28. If upon development of the record the above understandings are proven correct, Attorney Evert has no conflict in continuing to represent Boyson, and the undersigned would have no objection.

4. Regardless of the conflict, the lawsuit must proceed. The Defendants have all been properly served with process and are subject to the jurisdiction of this Court. *See* Docket No. 26. In fact, the Defendants (except Boyson, Inc.) are in default for having failed to appear or answer through counsel. *See* FED. R. CIV. P. 55. The only reason Revere has not moved for entry of default against all the Defendants is because Revere was waiting on the interlocutory sale of the vessel.

5. The Court has inquired whether the interlocutory sale can be conducted without offending due process concerns for the Defendants if they have not yet appeared and answered through counsel. Revere submits that the sale can, and should, go forward regardless of the Defendant's actions.

6. First, all the Defendants have been served, and due process is satisfied. *A.L.T. Corp. v. Small Bus. Admin.*, 801 F.2d 1451, 1458 (5th Cir. 1986) ("Thus ordinarily all that due process requires in a civil case is proper notice and service of process and a court of competent jurisdiction.").

7. Second, the only entity to file a statement of interest in the M/V *Mister B* is Boyson, Inc. If anyone else had an interest in the vessel, they were required to file a statement of interest within 14 days of notice of the vessel's arrest. The vessel was arrested on January 22, 2016, and pursuant to LRA C.2, Revere caused notice of the arrest to be published in the *Virgin Islands*

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Daily News on March 2, 2016. *See* Docket No. 27. If anyone else had an interest in bonding out the vessel or otherwise halting the sale, they were required to appear and answer long ago, but have not done so.

8. Third, the procedural requirements for the interlocutory sale are clearly formulated and stated in the local rules for admiralty and maritime procedure. LRA E.12. If those rules are followed — and Revere will ensure that they are followed — then any due process concerns are alleviated. If for some reason there is an irregularity in the sale, then that irregularity can be brought to the Court's attention at the proper time pursuant to the local rules before the sale is confirmed by this Court.

9. In summation, there does not appear to be any reason to delay the interlocutory sale of *M/V Mister B*. Any conflict that the Defendants have is not a concern of Revere, and to delay the sale because Defendant's have failed to obtain non-conflicted counsel only serves to further prejudice the residents of St. John, hazard the vessel against hurricanes and inclement weather, cost Revere additional custodial fees, and diminish the proceeds realized from the sale of the vessel by increasing the pre-costs of sale, which prejudices both Revere and all the Defendants by reducing the value of the vessel realized and applied against the loan obligations that form the basis of this entire lawsuit.

WHEREFORE, Revere respectfully requests that the Court hold a hearing on the motion for interlocutory sale as soon as possible.

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Respectfully submitted,

Dated: July 21, 2016

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was electronically filed with the Clerk of Court pursuant to *LRCi. 5.4* with the CM/ECF system this 21st day of July, 2016, which will send a notice of electronic filing to the following Filing User constituting valid service pursuant to *LRCi. 5.4(i)(1)*:

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