UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
CIVIL MINUTES – GENERAL

Case No.	**2:22-cv-04468-MCS-GJS**	Date	May 29, 2024
Title	***Atlantic Specialty Ins. Co. v. Top Sealand Int'l Co., Ltd.***		

Present: The Honorable Mark C. Scarsi, United States District Judge

Stephen Montes Kerr	Not Reported
Deputy Clerk	Court Reporter

Attorney(s) Present for Plaintiff(s):	Attorney(s) Present for Defendant(s):
None Present	None Present

Proceedings: (IN CHAMBERS) ORDER RE: SUPPLEMENTAL BRIEFING (ECF NO. 66)

I. RIGHT TO JURY TRIAL

The Court ordered supplemental briefing on whether this case should be tried to the Court or to a jury. (Order 1–2, ECF No. 66.) Defendant Top Sealand International Co., Ltd., and Plaintiff Atlantic Specialty Insurance Company filed supplemental briefs. (Def.'s Suppl. Br., ECF No. 67; Pl.'s Suppl. Br., ECF No. 68.)

A. Background

Plaintiff brought this damaged cargo case in June 2022. (Compl., ECF No. 1.) In its initial complaint, Plaintiff invoked the Court's admiralty jurisdiction, (*id.* ¶ 2), but included a demand for jury trial, (*id.* at 1). Defendant did not appear to defend, and Plaintiff moved for default judgment on the complaint, (Mot. for Default J., ECF No. 22), which the Court denied for failure to satisfy Rule 8, (Order Re: Mot. for Default J., ECF No. 26).

Thereafter, Plaintiff filed a first amended complaint again invoking the Court's admiralty jurisdiction, (FAC ¶ 1, ECF No. 27), this time without a jury

demand, (*see generally id.*). Defendant answered this amended complaint. (Answer., ECF No. 34.) The parties filed a joint Rule 26(f) scheduling report stating that "[t]his is a court trial," (First Scheduling Rep. 9, ECF No. 36). Later that same day, Plaintiff filed a second scheduling report that was substantively the same except it included the missing scheduling worksheet, which had the "Court Trial" box checked.[1] (Second Scheduling Rep. 12, ECF No. 37).[2] The Court took the scheduling hearing off calendar, (Text Only Entry, ECF No. 39), and issued an order setting a jury trial, (Order Re: Jury Trial, ECF No. 40).

At the hearing on the parties' motions for summary judgment, Plaintiff informed the Court that the parties did not agree on whether this action is to be tried to the Court or to a jury. (Mins., ECF No. 56.) Plaintiff later applied ex parte for an amendment of the scheduling order setting a court trial. (EPA, ECF No. 60.) Defendant opposed. (Opp'n, ECF No. 63.)

B. Discussion

"The Seventh Amendment preserves a party's right to a jury trial as it existed at common law." *Craig v. Atlantic Richfield Co.*, 19 F.3d 472, 475 (9th Cir. 1994) (citing U.S. Const. amend. VII). "Since there was no common law right to a jury trial in admiralty cases, the Seventh Amendment does not apply to suits that invoke only a federal court's admiralty jurisdiction." *Id.*; *see also McCrary v. Seatrain Lines, Inc.*, 469 F.2d 666, 668 (9th Cir. 1972) ("A shipowner has the right, if exercised by a timely designation, to asset through Rule 9(h) recourse to traditional admiralty practice and thus to obviate the jury trial on the third-party claim.").

Plaintiff's consistent designation of this action as falling under the Court's admiralty jurisdiction forecloses the issue. "When a claim is cognizable either at law or in admiralty, the pleader may elect to proceed in admiralty, without a jury, by filing an identifying statement under Rule 9(h)." *Emerson G.M. Diesel, Inc. v. Alaskan Enter.*, 732 F.2d 1468, 1471 (9th Cir. 1984). Plaintiff's jury demand was effectively a nullity from the beginning.

[1] Defendant asserts that Plaintiff marked the court trial designation without Defendant's knowledge. (Def.'s Suppl. Br. 3.)

[2] Pinpoint citations of the scheduling report refer to the page numbers assigned by the CM/ECF system.

Rule 38(d)'s requirement that a jury demand only be withdrawn "if the parties consent" is inapplicable here. For one, Plaintiff had no right to make a jury demand to begin with. *See* Fed. R. Civ. P. 38(e) ("These rules do not create a right to a jury trial on issues in a claim that is an admiralty or maritime claim under Rule 9(h)."). But even if Plaintiff had made such a demand, it would have been able to retract it without Defendant's consent.

Emerson G.M. Diesel is on point. In that case, a third-party plaintiff brought a claim "'in admiralty and at law,' and demanded a jury trial." *Emerson G.M. Diesel*, 732 F.2d at 1470. Third-party Plaintiff later decided "to proceed without a jury in admiralty," informing the court at a pretrial conference and by filing a formal waiver of jury demand. *Id.* at 1471. The appellant–third-party defendant objected, arguing that under Rule 38, the third-party plaintiff could not withdraw the jury demand unilaterally. *Id.* The Ninth Circuit disagreed, holding that the third-party plaintiff "could amend its third-party complaint under Rule 9(h) and proceed in admiralty without [the appellant's] consent." *Id.* at 1471–72. Like the appellant there, Defendant here "cannot claim surprise, because the claim was designated" as in admiralty "from the very beginning." *Id.*; *see also McCrary*, 469 F.2d at 668.

Defendant's cases do not compel a different answer. *Fitzgerald v. U.S. Lines Co.*, 374 U.S. 16 (1963), in which an injured sailor was entitled to a jury trial, is distinguishable because the plaintiff asked for a jury trial and brought his claim under the Jones Act, which allows a negligence claim to be brought at law and is inapplicable here. *Id.* at 17. Similarly, in *Vodusek v. Bayliner Marine Corp.*, 71 F.3d 148, 151 (4th Cir. 1995), the plaintiff brought her wrongful death claim at law. And in *In re Lockheed Martin Corp.*, 503 F.3d 351, 357–58 (4th Cir. 2007), the party seeking a jury trial brought a counterclaim with a jury trial right. The same is true for *Wilmington Trust v. U.S. Dist. Court for Dist. of Hawaii*, 934 F.2d 1026, 1027–28 (9th Cir. 1991).

C. Conclusion

For the reasons stated above, this case will be tried to the Court, not a jury.

II. ADR

The Court also ordered the parties to meet and confer as to the parties' availability for mediation and desired ADR procedure as well as a final pretrial conference and trial. (Order 2.) The parties filed a joint status report detailing their

preferences. (Status Rep., ECF No. 69.) Based on the parties' positions, the Court refers the parties to ADR Procedure No. 2. The Court resets the deadline to complete mediation to July 31, 2024. The Court reminds the parties that if any party foresees an issue with the settlement conference requirements, it may file a motion for relief.

The Court resets the final pretrial conference to September 30, 2024, at 2:00 p.m. The Court resets the trial to October 22, 2024, at 8:30 a.m.

IT IS SO ORDERED.