

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 93-10024-CIV-KING

UNITED STATES OF AMERICA, THE BOARD
OF TRUSTEES OF THE INTERNAL TRUST
FUND OF THE STATE OF FLORIDA, and
THE STATE OF FLORIDA DEPARTMENT OF
NATURAL RESOURCES,

plaintiffs,

v.

M/V MISS BEHOLDEN, (St. Vincent and
Grenadines Official Number 2844) her
engines apparel, tackle,
appurtenances, etc., in rem,

and

BLUE FIELDS SHIPPING, INC. a Florida
corporation, BLUEFIELDS MARINE,
LTD., a foreign corporation, LOUIS
O'MEIR, HAROLD BENEDICT and ADRIAN
BENEDICT, in personam,

Defendants,

ORDER GRANTING PARTIAL SUMMARY JUDGMENT

THIS CAUSE comes before the Court on the Report and
Recommendation of Magistrate Judge William C. Turnoff Dated
November 27, 1995 and Plaintiff's Motion For Summary Judgment
Regarding Damages, filed September 13, 1995. No response to
Plaintiff's motion was filed.

This Court entered an Order Granting the United States' Motion for Partial Summary Judgment June 27, 1994. That order established that Defendant's are strictly liable in personam to the United States for damages to be proved at trial. Plaintiff, United States, now moves this Court for summary judgment regarding damages, contending that there are no real issues of material fact to be decided.

Summary Judgment

Summary judgment is appropriate only if "there is no genuine issue as to any material fact and . . . the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). "The party seeking summary judgment bears the exacting burden of demonstrating that there is no dispute as to any material fact in the case." Warrior Tomigbee Transp. Co. v. M/V Nan Fung, 695 F.2d 1294, 1296 (11th Cir. 1983) (citations omitted). "In assessing whether the movant has met this burden, the courts should view the evidence and all factual inferences therefrom in the light most favorable to the party opposing the motion." Clemons v. Dougherty County, Ga., 684 F.2d 1365, 1368 (11th Cir. 1982) (citation omitted). Although it is incumbent upon the responding party to "set forth specific facts showing that there is a genuine issue for trial," Fed. R. Civ. P. 56(e), "[t]he burden on the non-moving party is not a heavy one; he simply is required to show specific facts, as opposed to general allegations, that present a genuine issue worthy of trial." 10A Charles A. Wright, et al., Federal

Practice and Procedure § 2727 (1983) (citing First Nat'l Bank of Az. v. Citiss Serv. Co., 88 S.Ct. 1575, 1593 (1968)).

ANALYSIS

In this case, Plaintiff, United States, has met its burden of proof establishing that no genuine issue of fact exists to preclude summary judgment regarding damages. Within the Motion For Summary Judgment, Plaintiff has provided a damage assessment and restoration plan report (the report) that describes the injury and lost services of the sanctuary resource known as Western Sambo Reef. The report details the amount of habitat to be created to compensate for lost services, and describes the replacement/restoration plan, including rubble removal, reef replacement, and transplantation on injured spurs and reef replacement modules.

The report, prepared by the National Oceanic and Atmospheric Administration, gives a summary of estimated restoration and response costs, including restoration/habitat creation costs, monitoring costs, damage assessment and response costs, and interest. The Motion details why the United States is entitled to recover these various costs under the National Marine Sanctuary Act, discussing liability, liability in rem, and defenses.

CONCLUSION

As discussed above Defendants have offered no evidence to refute these facts. They have not responded to the Plaintiff's Motion For Summary Judgment Regarding Damages, filed September 13,

1995.

To meet their burden of proof, Defendants must do more than merely rely on the pleadings. They must offer some affirmative evidence whether by affidavit or exhibit tending to show the existence of a genuine issue of material fact. Since Defendants have chosen not to respond and since there is no evidence in the record tending to dispute the facts asserted by the United States, the Court will accept the facts described above as true.

Accordingly, after a careful review of the record, and the Court being otherwise fully advised, it is

ORDERED and ADJUDGED that the United State's Motion For Summary Judgment Regarding Damages, filed September 13, 1995 be, and the same is hereby GRANTED.

DONE and ORDERED in chambers at the United States District Courthouse, Federal Justice Building, Miami, Florida, this 1st day of December, 1995.

JAMES LAWRENCE KING
JAMES LAWRENCE KING
U.S. DISTRICT JUDGE
SOUTHERN DISTRICT OF FLORIDA

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