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REPUBLIC OF THE MARSHALL ISLANDS

IN THE SUPREME COURT
OF THE
REPUBLIC OF THE MARSHALL ISLANDS

IROIJ MICHAEL KABUA, et al.,

Plaintiffs,

v.

M/V MELL SPRINGWOOD, et al.,

Defendants.

Supreme Court No. 2016-001

OPINION

BEFORE: CADRA, Chief Justice; SEABRIGHT,* and SEEBORG,** Associate Justices
SEEBORG, A.J., with whom CADRA, C.J. and SEABRIGHT, A.J. concur:

I. INTRODUCTION

Appellants, customary and traditional owners of wetos on Ebeye (collectively the “Kabua Plaintiffs”),¹ filed suit arising out of the grounding of the M/V MELL SPRINGWOOD (the “Vessel”) in the lagoon waters in Kwajalein Atoll on May 8, 2015. The Kabua Plaintiffs seek monetary damages for injury allegedly caused to a reef in the lagoon and the associated “marine resources” by the grounding. In addition to pursuing an *in rem* action against the Vessel, the Kabua Plaintiffs filed an *in personam* action against the Vessel’s owners, Tammo Shipping Company Limited (“Tammo”), Mariana Express Lines Pte., Ltd. (“MEL”), which time-chartered the Vessel, Captain Myrta Grzegorz, and Pacific Shipping, Inc. Defendants Pacific Shipping and

* The Honorable J. Michael Seabright, Chief U.S. District Judge, District of Hawaii, sitting by designation of the Cabinet.

** The Honorable Richard Seeborg, U.S. District Judge, Northern District of California, sitting by designation of the Cabinet.

¹ Appellants are Iroj Michael Kabua, proceeding individually and on behalf of traditional landowners Jesse Riketa, Sears Kobency, Nelson Bolkeim, Rillong Lemari, Seagull James, Morrison Jr. James, Fapien Bellu, Centilla Bellu, Harrington Dribo, Hency Calep, Rosita Capelle, Kejjo Bien, Card Subillie, Juliet Kilma, Barkaj Bulele, Torwa Kajimwe, Joma Maie, and Jomi Maie.

Grzegorz never made an appearance in the action.

The High Court dismissed the *in personam* action with prejudice and the *in rem* action without prejudice. As to the former, the High Court found the Kabua Plaintiffs lacked standing to pursue their claims for two reasons: (1) the purported delegation of authority from the Environmental Protection Authority (“EPA”) to the Kabua Plaintiffs was not proper because the EPA Act does not provide the EPA with authority to bring a lawsuit for civil damages; and (2) the Kabua Plaintiffs have not shown that they have a legal interest in the reef that was damaged by the Vessel’s grounding. Additionally, the High Court found the Kabua Plaintiffs failed to state a claim for two reasons: (1) failure to assert a property interest in the damaged reef; and (2) failure to allege a valid delegation by the EPA to pursue a derivative action on its behalf. As to the latter, the High Court found the Vessel had not been arrested within the RMI’s territorial waters, and so there was no *in rem* jurisdiction. Prior to dismissing the Complaint, the High Court stayed the Kabua Plaintiffs’ motion for jurisdictional discovery, which the subsequent dismissal effectively denied. This appeal followed. Since the High Court correctly held the Kabua Plaintiffs lack standing, its decision is AFFIRMED.

II. BACKGROUND²

As noted above, the Vessel collided and became grounded on the bottom of the reef in Kwajalein Atoll in May 2015. After investigating the damage to the Reef, the Kabua Plaintiffs purportedly secured written authorization from the EPA’s Acting General Manager to pursue any environmental claims related to the Vessel’s grounding, including the right to sue, in August 2015. On October 21, 2015, the Kabua Plaintiffs filed this Complaint *in rem* and *in personam* as a putative class action against defendants. They alleged the Iroij, Alap, and Senior Dri-Jerbal constituted the three levels of land ownership and represented all persons having an interest in the land and natural resources at issue in this case. The Complaint specifies five causes of action: (1) maritime negligence; (2) unseaworthiness; (3) trespass; (4) public and private

² The factual background is based on the averments in the Complaint and is supplemented with relevant contextual information gleaned from the parties’ subsequent filings.

nuisance; and (5) “Damages: EPA Derivation Action Right.” In November 2015, MEL filed a Rule 12(b)(5) and 12(b)(1) motion to dismiss for insufficient service of process and lack of subject matter jurisdiction. In December 2015, the EPA executed the Amended Delegation of Authority (“ADOA”), purporting to delegate to the Kabua Plaintiffs the right to seek civil damages for injury to the reef and the associated marine resources, retain 90% of any recovery, and pay 10% to the EPA. (The Kabua Plaintiffs’ Excerpts of Record (“ER”) at 33-35.) The Kabua Plaintiffs filed several motions in January 2016, including motions for entry of default against Tammo, Pacific Shipping, and Grzegorz, and a motion for leave to conduct jurisdictional discovery. In March 2016, Tammo and the Vessel (collectively the “Tammo Defendants”) filed a Rule 12(b)(6) motion to dismiss the *in personam* and *in rem* Complaint for failure to state a claim. The motions for entry of default were ultimately denied as to Tammo and Grzegorz, which are not on appeal.³

On June 20, 2016, the High Court granted MEL’s 12(b)(1) motion to dismiss, denied MEL’s Rule 12(b)(5) motion for insufficient service of process, and granted the Tammo Defendants’ 12(b)(6) motion to dismiss the *in personam* and *in rem* Complaint. Previously, the High Court had stayed the Kabua Plaintiffs’ motion seeking jurisdictional discovery. The High Court further concluded that their failure to state a claim upon which relief can be granted affected the entire Complaint, and mandated dismissal with prejudice. The Kabua Plaintiffs filed a notice of appeal on July 20, 2016.

III. STANDARD OF REVIEW

The High Court dismissed the Kabua Plaintiffs’ Complaint under Rule 12(b)(1) and Rule 12(b)(6) of the Marshall Islands Rules of Civil Procedure (“MIRCP”) for lack of standing and for failure to state a claim, respectively. This Court reviews the High Court’s ruling *de novo*. *Momotaro v. Benjamin*, 2 MILR 237, 241 (2004).

³ It is unclear from the record the status of Pacific Shipping in this action, as the High Court did not enter a default judgment against it in its Order. In any case, the issue is not on appeal.

A lower court's decision to permit or deny jurisdictional discovery is reviewed for abuse of discretion. *Boschetto v. Hansing*, 539 F.3d 1011, 1020 (9th Cir. 2008). The court's refusal to provide such discovery "will not be reversed except upon the clearest showing that denial of discovery results in actual and substantial prejudice to the complaining litigant." *Id.*

IV. DISCUSSION

A. Standing

The High Court correctly dismissed the Complaint under MIRC Rule 12(b)(1) for lack of subject matter jurisdiction. The Kabua Plaintiffs lack standing to pursue their claims for two reasons: (1) the purported delegation of authority from the EPA to Kabua was not proper because the EPA Act does not provide the EPA with the authority to bring a lawsuit for civil damages; and (2) they have not shown that they have a legal interest in the reef that was damaged by the Vessel's grounding. As the Kabua Plaintiffs concede, RMI law looks to cases from the United States for interpretation and application of the standing doctrine. A plaintiff bears the burden of demonstrating an injury-in-fact, fairly traceable to defendant's culpable conduct, that is likely, not merely speculative, and can be redressed by a favorable decision. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560-61 (1992). In a Rule 12(b)(1) facial attack on jurisdiction, the allegations of the complaint are accepted as true for purposes of the motion. *Safe Air for Everyone v. Meyer*, 373 F.3d 1035, 1039 (9th Cir. 2004); *U.S. ex rel. Lujan v. Hughes Aircraft Co.*, 243 F.3d 1181, 1189 (9th Cir. 2001) (no difference between allegations and underlying facts in assessing a 12(b)(1) motion).

1. EPA Delegation

The Kabua Plaintiffs insist the August 2015 letter⁴ from the EPA's Acting General Manager authorized them to pursue any environmental claims related to the Vessel's grounding,

⁴ They also rely on a letter dated December 2015 between the EPA Chairman, EPA General Manager, and the landowners of Kwajalein Atoll. The Complaint, however, was filed in October 2015 and was never amended to reflect the amended delegation. Such delegation would still be invalid for the reasons *inter alia*.

including the right to sue, and that the delegation was valid pursuant to 35 MIRC section 109(1) (“The Authority may, by written instrument, delegate any of its powers and functions to any person or body of persons . . .”). The High Court, however, properly considered the statute within the context of other provisions of the EPA Act. The EPA’s powers are delineated in 35 MIRC section 121. The Kabua Plaintiffs rely on 35 MIRC section 121(3)(d) (allowing the EPA to obtain the advice and services of any person), section 121(3)(e) (allowing the EPA to make contracts and other instruments for the supply of goods and services), and section 121(3)(h) (allowing the EPA to accept assistance in services from any sources) as support for its assertion that the EPA had the authority to delegate to them the power to bring a civil action for damages as a form of “service.” Yet, these provisions relate only to the EPA’s ability to obtain goods and services, not the power to bring a civil action for damages. The Kabua Plaintiffs also point to 35 MIRC section 121(3)(i), which states that the EPA can “detect, prosecute, or cause the prosecution of, any offenses committed in contravention of the provisions of [the EPA Act] and the regulations made under [the EPA Act.]” The Complaint, however, does not allege any such violations. Even if it did, 35 MIRC section 157 empowers the EPA to assess only civil penalties for such violations, not to bring a lawsuit for damages.⁵

Most damaging to the Kabua Plaintiffs’ position is 35 MIRC section 118, which states the Attorney General “*shall* provide legal assistance and representation to the [EPA] in any suit or prosecution brought by or against the [EPA] . . .” 35 MIRC § 118; *see also* 35 MIRC § 158(1) (“Where a person violates any provision of [the EPA Act], the Attorney-General may petition the High Court for a judgment awarding damages.”). Therefore, only the Attorney General could have brought the present claim and the purported delegation of authority from the

⁵ The Kabua Plaintiffs make the specious argument that the High Court erroneously interpreted the Complaint as seeking only civil damages from appellee-defendants despite the fact they also seek different relief, including an order to appellee-defendants to create a fund to repair and restore the environment, and social damages. Notwithstanding that characterization, an order adjudicating that appellee-defendants are obligated to pay money into the EPA fund and for “social damages” would constitute a judgment for civil damages.

EPA to the Kabua Plaintiffs is invalid.⁶

The Kabua Plaintiffs intimate that the delegation of authority was approved by the Attorney General, thereby negating any requirement that the Attorney General represent the EPA in this action. They, however, identify no statutory or regulatory provision supporting such a conclusion. Indeed, the statutory provision requiring the Attorney General to represent the EPA is *mandatory*, leaving no discretion for the Attorney General to waive the duty. 35 MIRC § 118. The fact that the Attorney General had not filed a case at the time the Complaint was filed is irrelevant, as it is within his prosecutorial discretion to do so. 35 MIRC § 158; *see also* RMI Const., Art. VII, § 3(3).⁷ Moreover, the Kabua Plaintiffs' assertion that the Attorney General approved the purported delegation in writing is not supported by the record. The identified emails show only that the Attorney General agreed "the legal counsel for Iroj Michael Kabua speak with the RMI EPA directly on this matter to resolve the outstanding claims for damages caused by the vessel." (Kabua ER at 42; *see also id.* ("It is clear that we agreed that the . . . claims of . . . [the Kabua Plaintiffs] and [their] legal counsel resulting from the incident proceed and be resolved by settlement or litigation.").)

The Kabua Plaintiffs further contend 35 MIRC section 116(2) authorizes the EPA to recover damages in addition to fines, emphasizing the provision's language that "any . . . fines or damages paid to or recovered by the [EPA] in any such suit or prosecution shall be credited to

⁶ Even if the Kabua Plaintiffs had secured a proper delegation of authority from the EPA, the proper party in interest under MIRC Rule 17 would be the EPA, not the Kabua Plaintiffs. The Complaint, however, fails to allege claims by or on behalf of the EPA and does not list the EPA as a plaintiff. Accordingly, dismissal would still be appropriate under MIRC Rule 17.

⁷ The Attorney General filed suit in May 2017 on behalf of the RMI and the EPA against appellee-defendants for the conduct at issue in this case, further undermining the Kabua Plaintiffs' contention that the EPA and/or the Attorney General delegated to them the right to bring a civil action for injury to the reef. (*See* MEL Supp. App'x B.) MEL's request for judicial notice of the May Complaint is granted, as the docket of the RMI High Court is part of the public record and therefore easily verifiable. 28 MIRC ch. 1, Rule 201. Further, the Kabua Plaintiffs acknowledge in their Reply that they moved to intervene in this case in September 2018.

the Fund of the EPA.” 35 MIRC § 116(2). Nothing in this statute, however, negates the statutory provisions of 35 MIRC sections 157 and 158, which provide that the EPA shall fix civil penalties and the Attorney General is the one that petitions the High Court for civil damages. Moreover, section 116(2) is in no sense inconsistent with the language of 35 MIRC section 118, which mandates that the Attorney General represent the EPA in any suit brought by that agency. When read in the context of the overall statutory scheme, section 116(2) provides only that the damages the Attorney General collects pursuant to his mandatory representation of the EPA must be deposited into the Fund. This is confirmed by 35 MIRC section 158(3), which provides that any damages resulting from the Attorney General’s petition to the High Court “shall be paid into the Fund of the Authority.” 35 MIRC § 158(3).

Similarly, the Kabua Plaintiffs’ argument that section 158 is discretionary carries no weight, as that provision cannot be read in isolation from section 118. Simply because the Attorney General is not obligated to bring a lawsuit for civil damages on behalf of the EPA does not, on its own, empower the EPA to pursue such a lawsuit itself. Reading sections 158 and 118 together make clear that while the Attorney General is not *required* to petition the High Court for a judgment for damages, *only* the Attorney General can do so on behalf of the EPA. The discretionary nature of section 158 is consistent with the prosecutorial discretion afforded to the Attorney General under the RMI Constitution. RMI Const., Art. VII, § 3(3).⁸

The Kabua Plaintiffs rely on numerous random legal authorities, including the Trust Territory Environmental Quality Protection Act (“EQPA”), 63 TTC section 501, 507(6), 509(2) (Supp 1980), the Federal Water Pollution Control Act (“FWPCA”), the Safe Drinking Water Act, the Resource Conservation and Recovery Act, and the Solid Waste Disposal Act, to support the proposition that a citizen may commence a citizen’s suit on his or her own behalf. None of these legal authorities, however, has any bearing on interpretation of the MIRC or the RMI

⁸ The Kabua Plaintiffs’ argument that the Attorney General’s obligation under section 118 is not triggered because the EPA is not a party to this lawsuit is tenuous at best. The fifth claim of the Complaint asserts a derivative action on behalf of the EPA. Section 118 forecloses such an action because only the Attorney General can represent the EPA in any lawsuit.

Constitution, which decidedly foreclose such suits in this instance. Additionally, the Kabua Plaintiffs' reference to 35 MIRC section 117 does nothing to support their position, as that provision merely provides immunity to EPA members in lawsuits brought against the EPA. Cases from the United States relating to oil spills are similarly of little help to the Kabua Plaintiffs, as the Complaint does not allege how their commercial or subsistence fishing rights were harmed by the damage to the Reef. Even if it did, the RMI adopted the general maritime law of the United States, which prohibits recovery in tort for pure economic loss to persons whose property has not been physically damaged pursuant to the doctrine of *Robins Dry Dock & Repair Co. v. Flint*, 275 U.S. 303 (1927). 47 MIRC § 113; *Cf. In re Exxon Valdez*, 270 F.3d 1215, 1250-53 (9th Cir. 2001) (holding Alaska law permitting tort damages for pure economic loss was not preempted by federal general admiralty law in oil spill case). Although American jurisdictions have passed laws providing for recovery of pure economic losses for negligent torts, such as oil spills, the Kabua Plaintiffs identify no such law in the RMI. By the same token, their reliance on the Trust Territory case of *Guerrero v. Johnston*, 6 TTR 124 (Marianas 1972) is misplaced, as the court there found standing for an individual to challenge the government's allegedly illegal execution of a lease of public land to a corporation to construct a hotel, and did not address standing to sue for damage to submerged land below the high water mark. *Id.* at 127.

2. The Kabua Plaintiffs' Interest in Marine Areas Below the Ordinary High Water Mark

The Kabua Plaintiffs conceded in the High Court and on appeal that they do not have any ownership rights in the submerged lands. Indeed, we have emphasized that section 103 of Title 9, MIRC, states that "all marine areas below the ordinary high watermark belong to the government," and not to any private person or a group of private persons. *Zedkaia & Toring v. Marshalls Energy Co., Inc.*, S. Ct. Civi. No. 2012-001, at 5 (2015). Instead, the Kabua Plaintiffs assert they have standing based on its traditional rights as Iroij, Alap, and Senior Dri-Jerbal to act to protect and pursue damages for injury to natural resources, on behalf of themselves and of all persons similarly damaged. The Kabua Plaintiffs, however, fail to identify RMI law supporting

such a position.

First, they point to several provisions of the RMI Constitution. In particular, Article X, section 1(1) and (2), maintain the customary law and traditional practice concerning land tenure, issues related to land tenure, and the alienation or disposition of land in the RMI. These provisions, however, relate to the landowner's rights with respect to those lands in which he or she has an *ownership* interest. As discussed, the Kabua Plaintiffs acknowledge they do not have an ownership interest in the submerged lands. Moreover, to broaden the definition of "land" to include submerged lands would conflict with section 103 and *Zedkaia*. The Kabua Plaintiffs present no reasonable argument to do so. Similarly, their invocation of Article II, sections 5(5) and (9) of the RMI Constitution misses the mark. That section relates to just compensation when land rights are taken. Again, these provisions relate to the landowner's rights with respect to those lands in which he or she holds an ownership interest, and the Kabua Plaintiffs concede they have no such interest.

Next, the Kabua Plaintiffs attempt to find statutory support for their position by invoking sections 103(e) and (f). They maintain that, by traditional rights and custom, their land ownership includes rights to the surrounding marine resources. Section 103(1)(e), however, specifically provides that the traditional and customary right of landowners to control the use of, or material in, marine areas below the ordinary high water mark are subject to, and limited by, the inherent rights of the RMI government as the owner of such marine areas. Furthermore, the Kabua Plaintiffs have not shown that they were specifically granted any legal interest to the submerged lands at issue, thus precluding the application of section 103(1)(f).

The Kabua Plaintiffs call upon case law to shore up their position, but each is readily distinguishable. First, *Gyosen Hoken Chuokai v. Emila Zedkaia*, RMI High Court Civil No. 1994-040, did not decide whether landowners were entitled to civil damages on account of a vessel grounding because that issue was stipulated between the parties. (*See* MEL Supp. App'x

C-1 at ¶ 6.)⁹ The case was an interpleader action brought solely to determine who had customary law ownership rights to Jitini Weto. (*Id.* at ¶¶ 3, 8-10.) Relatedly, the Kabua Plaintiffs’ reliance on the Supreme Court of the Federated States of Micronesia’s (“FSM”) decision in *M/V Kyowa Violet v. People of Rull ex rel. Mafel*, 16 FSM Intrm. 49 (App. 2008) (“*Kyowa Violet*”) is misplaced. That case recognized Yap’s repeal of the Trust Territory Code (“TTC”) provisions regarding government ownership of submerged lands and the express recognition in the Yap Constitution of the traditional rights and ownership over natural resources and the marine space. *Kyowa Violet*, 16 FSM Intrm. 49, at 58. Unlike Yap, however, the RMI has not repealed the substantive provisions of the TTC recognizing government ownership of submerged lands, but instead adopted it as its own law. *See Zedkaia*, S. Ct. Civil No. 2012-001, at 6 (noting that section 103 mirrors the substantive provisions of 67 TTC section 2). In that sense, the FSM case of *State of Pohnpei v. KSVI No. 3*, 10 FSM Intrm. 53 (Pon. Tr. Div. 2001), *aff’d sub nom. Kitti Mun. Gov’t v. State of Pohnpei*, 13 FSM Intrm. 503 (App. Div. 2005) is more on point. There, the court held the law of Pohnpei incorporated the TTC provisions regarding ownership of submerged lands to find the State of Pohnpei, and not private plaintiffs, owned submerged lands within the Pohnpei lagoon. *Id.* at 65-66; *see also* 13 FSM Intrm. at 509 (noting Pohnpei had not repealed the TTC nor did its constitution contain a provision overriding the TTC provision at issue). Indeed, private ownership of submerged lands has been abolished since the beginning of the Japanese administration of the territory in 1934. *See Zedkaia*, at 6. Since that period, ownership of the submerged land passed to the Trust Territory, and subsequently to the RMI under 67 TTC section 2. *See also* 9 MIRC §§ 102, 103 (expressly assuming government ownership of land the prior Japanese administration owned or maintained within RMI territory).

Finally, the Complaint itself contains no averments of what traditional rights the Kabua Plaintiffs are asserting and they may not now offer references to specific customs related to the

⁹ MEL’s request for judicial notice of the *Gyosen* Complaint is granted, as the docket of the RMI High Court is part of the public record and therefore easily verifiable. 28 MIRC ch. 1, Rule 201.

use and possession of water (e.g., “Mour Wot Lojet,” “Mo Jojet,” “Mo Lojet Mwo,” “Mo reefs,” and “Mo land”) on appeal. *See Likinbod & Alik v. Kejlat*, 2 MILR 65, 66 (1995) (“An appeal is on the record; it is not a new trial. Additional evidence, including statements of purported fact in counsel’s argument, will neither be accepted nor considered.”); *see also Kramer & PII v. Are & Are*, 3 MILR 56, 64 (2008) (“[E]very inquiry into the custom involves two factual determinations. First, is there a custom with respect to the subject of the inquiry? And, if so, the second is: What is it?” (quotations omitted)). The Kabua Plaintiffs also assert here, as they did below, that they claim to hold rights to fish weirs, traps, fishing rights in shallow water, and piers, buildings, and other construction over or on the reef abutting their land by customary law which were damaged by the Vessel’s grounding. Section 103(1)(a) and (c) provide for such exceptions for private ownership below the ordinary high water mark, but the Complaint makes no reference to the Kabua Plaintiffs’ ownership of such things, let alone any facts to suggest that any of them were damaged. The Complaint’s allegations refer only to the damage to the reef, coral, and their attendant marine resources.¹⁰ Because the Complaint was appropriately dismissed without prejudice under Rule 12(b)(1), it is not necessary to review the High Court’s dismissal under Rule 12(b)(6).

B. Jurisdictional Discovery

The Kabua Plaintiffs argue the High Court erred when it stayed their motion for jurisdictional discovery in February 2016, because the court effectively denied that motion by dismissal of the Complaint with prejudice. They assert they should be given an opportunity to discover facts that would support their allegations of jurisdiction, such as the “exact nature of the relationships between the Defendants, their Agents, partners and representatives.” (Opening Brief at 30.) The High Court’s decision to deny jurisdictional discovery should not be reversed

¹⁰ The Kabua Plaintiffs assert for the first time on appeal that their claim of customary rights in the reef should be determined by the Traditional Rights Court (“TRC”) in a separate action. Their argument has no merit. They did not ask the High Court to refer this issue to the TRC and they make no argument to suggest a “substantial question has arisen within the jurisdiction of” the TRC within the meaning of Article VI, section 4(4) of the RMI Constitution.

except upon the “clearest showing that denial of discovery results in actual and substantial prejudice to the complaining litigant.” *Boschetto*, 539 F.3d at 1020. Discovery may be appropriately granted where pertinent facts bearing on the question of jurisdiction are controverted or where a more satisfactory showing of the facts is necessary. *Id.* Here, the Kabua Plaintiffs provide no explanation as to why discovery into the “Defendants, their Agents, partners and representatives” would cure any of the defects identified above. Accordingly, there are no grounds to disturb the High Court’s denial of jurisdictional discovery.

C. Dismissal of the *In Rem* Action

The Kabua Plaintiffs contend the High Court erred in dismissing its *in rem* action with prejudice. Contrary to their contention, the High Court did not do so, as reflected in the language of its decision. They double down in their Reply, asserting *no* dismissal *in rem* should have been ordered. The Kabua Plaintiffs conceded at the High Court hearing, however, that the vessel was never arrested, that *in rem* jurisdiction was not established, and that if the vessel returned, they could re-file their lawsuit.¹¹ (Tr. Hrg. at 76:24–77:2.) It is hornbook law that admiralty practice requires a vessel’s arrest in order to maintain an *in rem* action against it. *Dluhos v. Floating & Abandoned Vessel*, 162 F.3d 63, 68 (2d Cir. 1998). The High Court’s dismissal of the *in rem* action without prejudice was proper.

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¹¹ The representation in their opening brief that they did not relinquish their *in rem* cause of action and opposed dismissal threatens to undermine their duty of candor to the Court. Similarly, their assertion in Reply that requiring them to file a new complaint whenever the vessel returned to RMI’s jurisdiction is “beyond reasonable,” (Reply to Tammo at 10 n.6), is anything but.

V. CONCLUSION

Based on the foregoing, the High Court's June 20, 2016 Order Granting Motion to Dismiss is AFFIRMED.

Dated: September 6, 2019

/s/ Daniel N. Cadra

Daniel N. Cadra
Chief Justice

Dated: September 6, 2019

/s/ J. Michael Seabright

J. Michael Seabright
Associate Justice

Dated: September 6, 2019

/s/ Richard Seeborg

Richard Seeborg
Associate Justice