

ENTERED

February 28, 2017

David J. Bradley, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

EPIC DIVING & MARINE SERVICES, LLC,	§	
	§	
Plaintiff,	§	
VS.	§	CIVIL ACTION NO. 4:16-CV-386
	§	
RANGER OFFSHORE, INC.,	§	
	§	
Defendant.	§	

ORDER

Pending before the Court is the plaintiff's, Epic Diving & Marine Services, Inc. ("the plaintiff" or "Epic"), motion for summary judgment. (Dkt. No. 14). The defendant, Ranger Offshore, Inc. ("the defendant"), filed a response in opposition to the motion and in the alternative moves the Court to stay the proceedings until a full and final award is granted by the arbitration tribunal ("Tribunal") (Dkt. No. 19). The plaintiff has filed a reply (Dkt. No. 20), to which the defendant has filed a surreply (Dkt. No. 29). After having carefully considered the motions, the replies, the record and the applicable law, the Court determines that the plaintiff's motion for summary judgment should be **DENIED** and the defendant's motion to stay is **GRANTED**.

On July 7, 2014, the parties entered into a Bimco Supplytime 2005 Time Charter (the "Charter") for the delivery of the Adams Challenge (the "Vessel") to the defendant. Pursuant to Section 34 of the Charter's Dispute Resolution Clause, "any dispute arising out of or in connection with this Charter Party shall be referred to arbitration in London in accordance with the Arbitration Act of 1996," with any arbitration subject to the rules of the London Maritime Arbitrators Association ("LMAA"). (Dkt. No. 14, Ex. 1-A, at 23). After the defendant secured possession of the Vessel, a dispute arose between the plaintiff and the defendant over the

payment of charter hire. The defendant refused to pay the plaintiff charter hire and the plaintiff demanded arbitration. On January 8, 2016, the Tribunal—which was comprised of two arbitrators—issued a partial final award in favor of the plaintiff in the amount of \$1,571,607.24, plus interest at the rate of 1% per month, for the unpaid charter hire.¹ On February 12, 2016, the plaintiff filed a Petition to Confirm Arbitration Award in this Court, pursuant to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards², asking the Court to enter an order confirming the partial final award entered by the Tribunal. On February 19, 2016, a third arbitrator was appointed to assist in resolving the plaintiff’s remaining claims as well as the defendant’s counterclaim to recover expenditures made in efforts to remedy alleged defects in the Vessel. A final ruling by the Tribunal is imminent.

The defendant maintains that confirmation of the plaintiff’s partial final award would promote a piecemeal review of this case and possibly interfere with the pending arbitration. As a consequence, it requests that the Court impose a stay to the proceedings until all claims and counterclaims are resolved by the Tribunal. The plaintiff does not dispute that arbitration is appropriate, but avers that confirmation of the Tribunal’s partial award is necessary.

As set forth in § 9 of the Federal Arbitration Act, if a claim or proceeding is filed in any district court upon any issue referable to arbitration under an written agreement for such arbitration, the court in which such suit is pending, shall on application of one of the parties stay the trial until such arbitration has been finalized. *See* 9 U.S.C.A. § 3. “A court ‘should consider

¹ The defendant argues that the Tribunal composed of two arbitrators voided its partial finding for the plaintiff because the Charter called for a panel of three arbitrators. Although the defendant did make an informal request to appoint a third arbitrator, which was denied, the defendant failed to submit a formal application requesting the same. The defendant also failed to appeal the Tribunal’s decision as provided for by the Arbitration Act of 1996. The court in *Brook* ruled that a party can waive its objections to formation of a panel by failing to timely preserve them. *See Brook v. Peak Int’l, Ltd.*, 294 F.3d 668 (5th Cir. 2002). The defendant failed to exhaust its available remedies regarding panel size at arbitration or on appeal. Thus, the defendant waived its right to contest the validity of the partial award issued by the two arbitrators on the basis that the Tribunal was improperly composed. The Court will not grant the defendant another opportunity to do so here.

² New York Convention, 9 U.S.C.A. §§201-208.

and weigh in each case, and at every stage of the litigation, the values of judicial economy, convenience, fairness, and comity' to decide whether to exercise pendent jurisdiction." *Parker & Parsley Petroleum Co. v. Dresser Indus.*, 972 F.2d 580, 586 (5th Cir. 1992). As the parties' claims and counterclaims are currently pending before the Tribunal, the Court is of the view that judicial economy would best be served by allowing the Tribunal to make all final decisions prior to this Court ruling on the plaintiff's motion. Furthermore, a Tribunal's ruling in favor of the defendant could dissipate the plaintiff's claim in this Court. Thus, the Court orders that this case be stayed, pending a full and final determination by the Tribunal. Accordingly, it is therefore, ORDERED that the plaintiff's motion for summary judgment should be **DENIED** and the defendant's alternative motion to stay is **GRANTED**.

It is so **ORDERED**.

SIGNED on this 28th day of February, 2017.

A handwritten signature in black ink, appearing to read "Kenneth M. Hoyt", written over a horizontal line.

Kenneth M. Hoyt
United States District Judge