United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit
FILED
December 19, 2025
Lyle W. Cayce
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No. 24-20525

CH Offshore, Limited,

Plaintiff—Appellant,

versus

Mexiship Ocean CCC S.A. de C.V.,

Defendant—Appellee.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 4:24-CV-219

Before Southwick, Higginson, and Wilson, *Circuit Judges*.

Stephen A. Higginson, *Circuit Judge*:

Appellant CH Offshore, Limited ("CH Offshore") sued Mexiship Ocean CCC S.A. de C.V. ("Mexiship Ocean") to secure a writ of maritime garnishment as security for an arbitration award. The arbitration proceedings related to Mexiship Ocean's breach of a charter party agreement (the "Charter Agreement") and continued wrongful possession of the chartered vessel (the "Vessel"). CH Offshore sought an attachment to certain funds in a U.S. bank account and argued that, despite another company being the named beneficiary of the account, Mexiship Ocean owned the specified funds.

The district court initially granted the writ of garnishment. After limited discovery, the district court vacated the writ, holding that there was no evidence supporting CH Offshore's argument that Mexiship Ocean owned the funds. The district court also denied CH Offshore's request for leave to amend its complaint to plead an alter ego theory of liability to secure the attachment.

On appeal, CH Offshore challenges both the district court's vacatur of the writ and the district court's denial of its request for leave to amend. For the reasons below, we vacate the district court's order and remand with instructions to grant CH Offshore leave to amend its complaint.

I.

A.

Plaintiff-Appellant CH Offshore, a Singapore-based company, "specializ[es] in the supply of offshore vessels used in the marine oil and gas industry." Defendant-Appellee Mexiship Ocean is a Mexico-based "marine oil and gas company." This case arises out of Mexiship Ocean's alleged breach of the Charter Agreement, which governed its charter of the Vessel from CH Offshore. This alleged breach has led to a "multi-year, multinational, charterparty dispute" and generated proceedings across Singapore, Mexico, and now, the United States.

The Charter Agreement, executed on May 21, 2021, provided that CH Offshore would charter the Vessel to Mexiship Ocean for an initial period of eighteen months. The agreement further stipulated that CH Offshore could terminate the agreement if Mexiship Ocean failed to promptly pay for the charter hire and if, upon notice, the failure to pay persisted. Once the charter period expired, Mexiship Ocean was to redeliver the Vessel in a timely manner. Failure to return the Vessel accordingly would result in an enhanced hire rate but would not extend the duration of the charter. The parties agreed to

resolve disputes about the Charter Agreement in arbitration in Singapore. The Vessel went into service with Mexiship Ocean in September of 2021, and the Charter Agreement thus expired in March of 2023.

To simplify the extensive—and contested—history of what ensued between the parties, CH Offshore claims that Mexiship Ocean failed to provide notice of intent to extend the charter, so CH Offshore notified Mexiship Ocean of its obligation to redeliver the Vessel at the charter expiration. In April of 2023, a month after the Charter expired, CH Offshore alleges it notified Mexiship Ocean of its breach and its failure to pay the enhanced hire rate during its continued possession of the Vessel. CH Offshore claims that Mexiship Ocean responded that the missed payments were CH Offshore's fault, and that CH Offshore would be liable for losses to Mexiship Ocean if it terminated the charter. CH Offshore subsequently responded with notice of termination and a demand for over $2.8 million in past due hire and for redelivery of the Vessel. CH Offshore claims to have continued to email Mexiship Ocean "at least six times" through June of 2023, to no avail. Even before the charter period expired and CH Offshore's claim for redelivery of the Vessel arose, the parties were already in arbitration proceedings. In September of 2022, CH Offshore initiated arbitration proceedings against Mexiship Ocean to recover damages for unpaid charter hire. Later, in May of 2023, with the Vessel still in Mexiship Ocean's possession, CH Offshore integrated its claim for the Vessel's redelivery in the arbitration proceedings, seeking an injunction requiring Mexiship Ocean to return the Vessel.

Mexiship Ocean ceased responding in the arbitration proceedings, despite both its legal obligation to do so under the Charter Agreement and a notification that the proceedings would continue regardless of its participation. On July 26, 2023, the arbitrator entered a Final Partial Award, which required Mexiship Ocean to remit unpaid charter payments in the amount of $1,685,488.44 and to redeliver the Vessel to CH Offshore. CH Offshore filed

a claim in a Singaporean court, seeking enforcement of the arbitration award against Mexiship Ocean. The Singaporean court entered an order affirming the award against Mexiship Ocean. To date, Mexiship Ocean has not paid CH Offshore or redelivered the Vessel.[1]

The present action began with an accidental email. In January of 2024, CH Offshore was copied on an email between Mexiship Ocean's CEO, Edgardo Armando Perez Robert ("Mr. Perez"), and a representative from Seahorse Marine & Energy Joint Stock Company ("Seahorse") related to a charter between those two entities. The email included an attachment of a settlement agreement (the "Settlement Agreement") between Mexiship Ocean and Seahorse, which provided that Seahorse would return a deposit from Mexiship Ocean in an amount of $808,238.72 (the "Settlement Refund"). CH Offshore brought the present action to secure its debt—and enforce the arbitration award—by attaching the property that the Settlement Agreement revealed: Mexiship Ocean was to receive the Settlement Refund and direct it to a U.S. bank account at Vantage Bank, with the beneficiary listed as Mexiship Ocean CCC LLC ("Mexiship Texas"), a U.S. company. The complication central to the current dispute is whether defendant Mexiship Ocean or non-party Mexiship Texas owns the funds that CH Offshore seeks to attach.

B.

CH Offshore filed suit in the Southern District of Texas on January 19, 2024, seeking a writ of garnishment to attach funds held in the Vantage Bank account under Rule B of the Federal Rules of Civil Procedure Supplemental

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[1] In addition to the arbitration proceedings, CH Offshore filed suit in Mexico in November of 2022, where actions remain pending. CH Offshore also filed a separate action in the Eastern District of Texas, but that case was dismissed on July 25, 2025. The parties agreed to that dismissal in light of the case that is now before us.

Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions ("Rule B") and damages for "conversion of the Vessel arising out of [Mexiship Ocean's] unlawful refusal to return the Vessel." CH Offshore brought this suit to "enforce its Partial Final Award issued in" the Singapore arbitration and to "obtain security for its still pending claims." On January 23, 2024, the district court granted CH Offshore's request for a writ of garnishment against Vantage Bank up to the amount of $3,370,976.88.

On January 31, 2024, CH Offshore filed its First Amended Complaint. The amendment sought to increase the garnishment amount to a total of $22,370,976.88, reflecting 200% of the unpaid hire rates and the Vessel's value, and repeated the request for conversion damages. The district court then entered a superseding writ of attachment and garnishment in that amount on February 2, 2024.

On February 6, 2024, Mexiship Ocean made a restricted appearance under Rule E(8) and moved to vacate the writ on the basis of equitable vacatur. The district court denied the motion.

Thereafter, in March, non-party Mexiship Texas appeared and moved for vacatur, arguing that the attached funds belonged solely to Mexiship Texas, not Mexiship Ocean. In April of 2024, the district court ordered limited discovery and deferred ruling on Mexiship Texas's motion until after discovery. The district court ordered the parties to submit proposed orders with the "relevant authority and evidence gained from discovery" by July 5, 2024, and the deadline was later extended to September 30, 2024.

The discovery process—and the scope of discovery in particular—was the subject of numerous hearings. In April and June of 2024, a magistrate judge conducted hearings to facilitate completion of the discovery and ultimately set the bounds of discovery at materials and testimony related to "the interaction of Mexiship Texas and Mexiship [Ocean] with respect to the

transaction at issue," which included the "organization and structure at a high [] level" but did not go so far as to reach "their daily operations." The limited discovery resulted in the production of somewhere between 400 and 600 pages of documents from Mexiship Texas and Mexiship Ocean, as well as two depositions: Marisela Elizabeth Jazmin Flores as Mexiship Ocean's representative and Mr. Perez as a dual Mexiship Ocean / Mexiship Texas representative.

After the limited discovery period expired, CH Offshore filed a proposed order on September 30, 2024, stating that the district court should grant it leave to amend its complaint to join Mexiship Texas and Mr. Perez as named defendants under an alter ego theory of attachment and to plead "Texas state attachment law as an alternative basis for maintaining the attachment of the funds held at Vantage Bank." Mexiship Texas opposed this amendment, both in form and substance.

On November 22, 2024, the district court entered a final judgment on Mexiship Texas's motion to vacate the writ of maritime garnishment. The order vacated the garnishment, finding that there was "no evidence to support the premise that Mexiship Texas maintains any of Mexiship Ocean's property within the State of Texas, let alone in an account at Vantage Bank Texas." The order also found no good cause to grant CH Offshore leave to amend its complaint.

CH Offshore timely appealed. Mexiship Texas, as the party that moved for vacatur (rather than defendant Mexiship Ocean), responded as Appellee before us. We have jurisdiction over the appeal under 28 U.S.C. § 1291. Proceedings in the district court were stayed pending this appeal.

II.

"We review the district court's order vacating the Rule B attachment . . . for an abuse of discretion, though we weigh legal conclusions underlying the order *de novo*." *Ultra Deep Picasso Pte. Ltd. v. Dynamic Indus. Saudi Arabia Ltd.*, 119 F.4th 437, 440 (5th Cir. 2024) (citing *Malin Int'l Ship Repair & Drydock, Inc. v. Oceanografia, S.A. de C.V.*, 817 F.3d 241, 244 (5th Cir. 2016)). We also review "denials of leave to amend a complaint for abuse of discretion." *Jack v. Evonik Corp.*, 79 F.4th 547, 564 (5th Cir. 2023).

III.

"Maritime attachment is a distinctive admiralty remedy that was a part of American jurisprudence at the time the Constitution was adopted." *Ultra Deep Picasso*, 119 F.4th at 441 (quoting *Boland Marine & Indus., LLC v. Bouchard Transp. Co.*, No. 1:20-CV-66-LY-ML, 2020 WL 10051743, at *2 (W.D. Tex. Feb. 28, 2020)). As such, we recognize the important role it plays in the context of maritime disputes, wherein parties cross both jurisdictional and oceanic lines. In the federal context, Rule B provides an avenue for attaching a defendant's property in a maritime action for the purpose of "secur[ing] a respondent's appearance and [] assur[ing] satisfaction in case the suit is successful." *Malin*, 817 F.3d at 244 (quoting *Swift & Co. Packers v. Compania Colombiana Del Caribe, S.A.*, 339 U.S. 684, 693 (1950)). Texas state law also provides a parallel attachment law subject to separate requirements. *See, e.g.*, *Licea v. Curacao Drydock Co.*, 952 F.3d 207, 215 (5th Cir. 2015).

CH Offshore's challenges on appeal relate to both federal and state pathways for attachment. We take each claim in turn.

A.

CH Offshore first challenges the district court's vacatur of its Rule B attachment. The district court held a Rule E(4)(f) hearing,[2] in which the parties argued the permissibility of CH Offshore's Rule B attachment. Thus, we similarly consider whether CH Offshore has met its burden for a Rule B attachment. *See Ultra Deep Picasso*, 119 F.4th at 441. To meet this burden, we review whether CH Offshore has demonstrated each of four parts:

> 1) it has a valid prima facie admiralty claim against the defendant; 2) the defendant cannot be found within the district; 3) the defendant's property may be found within the district; and 4) there is no statutory or maritime law bar to the attachment.

Id. (quoting *Aqua Stoli Shipping Ltd. v. Gardner Smith Pty Ltd.*, 460 F.3d 434, 445 (2nd Cir. 2006), *abrogated on other grounds by Shipping Corp. of India Ltd. v. Jaldhi Overseas Pte Ltd.*, 585 F.3d 58 (2d Cir. 2009)). While our court has not "expressly endorsed *Aqua Stoli*'s four-part test," it has employed the test, emphasizing the first three requirements. *Ultra Deep Picasso*, 119 F.4th at 441 (discussing the third requirement); *K Invs., Inc. v. B.-Gas, Ltd.*, No. 21-40642, 2022 WL 964210, at *2 (5th Cir. Mar. 30, 2022) (per curiam) (discussing the first two requirements). We adopt the same approach here, requiring CH Offshore to demonstrate that each of the four test elements is met.

The parties agree as to all but the third element: (i) CH Offshore has made a valid prima facie admiralty claim; (ii) Mexiship Ocean is not found within the district; and (iv) there is no statutory or maritime law bar to the

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[2] This hearing was held pursuant to Supplemental Rule E(4)(f): "Whenever property is arrested or attached, any person claiming an interest in it shall be entitled to a prompt hearing at which the plaintiff shall be required to show why the arrest or attachment should not be vacated or other relief granted consistent with these rules."

attachment. *See Aqua Stoli*, 460 F.3d at 445. The only remaining issue is the third, whether Mexiship Ocean has property in the district.

Our court has recognized that "for maritime attachments under Rule B, the question of ownership is critical." *Malin*, 817 F.3d at 246 (cleaned up). Thus, the central question before the district court, and now on appeal, is whether Mexiship Ocean has a recognizable direct ownership claim over the Settlement Refund in the Vantage Bank account, despite Mexiship Texas being the account's named beneficiary.

In vacating the attachment, the district court held that there was "no evidence to support the premise that Mexiship Texas maintains any of Mexiship Ocean's property within the State of Texas, let alone in an account at Vantage Bank Texas." In so holding, the district court neither engaged with the Settlement Agreement's text, nor weighed any available evidence. Moreover, the district court cited no law in reaching its holding on this issue. CH Offshore argues that the district court "simply ignored the existence of evidence definitively showing Mexiship [Ocean]'s ownership of the funds – a *per se* abuse of discretion, given that evidence remained unrefuted after the discovery permitted by the court." Mexiship Texas contends, based solely on out-of-circuit authority, that CH Offshore has only offered conclusory allegations insufficient to satisfy Rule B. The parties cite little law to parse whether—and the extent to which—the evidence plausibly supports the Rule B attachment. [3]

[3] Between the district court order and the party briefs, only two cases were offered in interpreting ownership of the Settlement Refund, both located in Mexiship Texas's Brief in Opposition. *See Nea Armonia Shipping Co. v. Antco Shipping Co.*, 409 F. Supp. 967, 969 (M.D. Fla. 1976); *W. Bulk Carriers Austl., Pty. Ltd. v. P.S. Int'l, Ltd.*, 762 F. Supp. 1302, 1307 (S.D. Ohio 1991). These two cases, however, are neither binding nor on point for the purposes of parsing the Settlement Agreement.

We review the district court's order for abuse of discretion, which occurs when it "ignores or misunderstands the relevant evidence, and bases its decision upon considerations having little factual support." *McKinney ex rel. NLRB v. Creative Vision Res., L.L.C.*, 783 F.3d 293, 298 (5th Cir. 2015) (quoting *Arlook ex rel. NLRB v. S. Lichtenberg & Co.*, 952 F.2d 367, 374 (11th Cir. 1992)). To parse the district court's finding that there is "no evidence" to support the Rule B attachment, we first turn to the Settlement Agreement and the legal bases for interpreting its terms, before discussing the evidence produced thus far.

The Settlement Agreement provides a starting point for answering the question of ownership. Per the agreement, Mexiship Ocean was to receive the Settlement Refund from the other contracting party, Seahorse, in the amount of $808,238.72. Under CH Offshore's interpretation, the Settlement Agreement is evidence of Mexiship Ocean's ownership of the funds for three reasons: (1) the agreement states that Seahorse shall refund the balance "to Mexiship," where "Mexiship" is defined in the agreement to be Mexiship Ocean; (2) the agreement explicitly states that the refund will go to "Mexiship's designated bank account," indicating Mexiship Ocean's control over where the Settlement Refund is deposited; and (3) the agreement was executed by Mr. Perez in his capacity as CEO of Mexiship Ocean. Mexiship Texas takes a different view of the same provision in the Settlement Agreement: Mexiship Ocean designated the refund to go to a bank account where Mexiship Texas is the beneficiary, thereby giving ownership to Mexiship Texas.

While neither the district court order nor party briefing examines the Settlement Agreement with supporting law, there are relevant precedents on the question of ownership of the funds at issue and on the distinction between ownership and beneficiary status. Texas law on ownership is of particular import, as our court has held that when there is a void regarding how federal

maritime law would treat the type of interest at issue, we can "look to state law to determine property rights," because "precedent in federal admiralty law is so thin that we should turn to state law more directly on point." *Malin*, 817 F.3d at 246–47.

For one, our court has held that control, rather than named beneficiary status, is the primary factor in determining ownership. In the bankruptcy context, a panel of our court acknowledged that "control is the primary determinant of ownership of bank accounts . . . ." *In re IFS Fin. Corp.*, 669 F.3d 255, 262, 264 (5th Cir. 2012); *see also In re Southmark Corp.*, 49 F.3d 1111, 1116–17 (5th Cir. 1995) (noting that whether the debtor had "unfettered discretion to pay creditors of its own choosing, including its *own* creditors . . . is . . . particularly important" (footnotes omitted)). In *In re IFS*, our court drew on Texas garnishment law in particular, recognizing that "Texas law counsels that the legal titleholder to a bank account is not always the owner of its contents," and that courts should "examine the individual facts of each case," rather than the legal relationship between the parties. *In re IFS*, 669 F.3d at 262. There, our court considered whether the debtor IFS (similar to Mexiship Ocean) could be required to discharge debts from bank accounts it did not own because it had obscured the movement of money in related entities called Interamericas (similar to Mexiship Texas). *Id.* We found that "control over funds in an account is the predominant factor in determining an account's ownership." *Id.* (citing *In re Southmark*, 49 F.3d at 1116–17). There was "no formal document show[ing] IFS's authority over [the] accounts," which one party argued "evince[d] IFS's intent to defraud by intentionally avoiding a paper trial [sic] which would allow creditors to easily identify its assets." *Id.* Moreover, "IFS was Interamericas' only operating company in its final years and . . . its only shareholder with any value." *Id.* Evidence of control was decisive, where IFS "exercised such control over

the[] accounts that it had de facto ownership over the[] accounts, as well as the funds they contained." *Id.* at 264.

Our court has further explained the threshold for ownership when, as is the case with Mexiship Ocean, the debtor directs the funds:

> If the debtor determines the disposition of funds from the third party and designates the creditor to be paid, the funds are available for payment to creditors in general and the funds are assets of the estate. In this event, because the debtor controlled the funds and could have paid them to anyone, the money is treated as having belonged to her for purposes of preference law whether or not she actually owns it.

Caillouet v. First Bank & Tr. (*In re Entringer Bakeries, Inc.*), 548 F.3d 344, 350 (5th Cir. 2008) (per curiam) (quoting *In re Southmark*, 49 F.3d at 1116 n.17).

In light of precedents holding that the ownership inquiry goes beyond the named beneficiary in the Settlement Agreement to the question of which entity has control, we turn to the evidence produced in the limited discovery period to understand whether any of it is probative of Mexiship Ocean's alleged ownership or control—or whether it was permissible for the district court to conclude there was "no evidence."

At this stage, we are not making any determination as to the weight of the evidence available. We do, however, recognize that the evidence produced outside of the four corners of the Settlement Agreement is relevant to consider. First, Mexiship Texas provided wire evidence that it sent the funds to Seahorse in the first instance, arguing that the money therefore is being rightfully returned to Mexiship Texas. Additional complexity is introduced in Mr. Perez's declaration, where he explained that the funds from Seahorse "are a refund of a deposit provided *through* Mexiship [Texas]." Through initial discovery, it surfaced that another related entity—Mexiterm Gas Supply

SAPI de CV ("Mexiterm"), a Mexico-based company—provided the funds that Mexiship Texas wired to Seahorse.

We find it curious that neither the agreement between Mexiterm and Mexiship Texas to invest the funds, nor the agreement between Mexiship Texas and Mexiship Ocean to ultimately pay for the charter with Seahorse was codified. As such, evidence of how these parties interacted, including how and why funds were transferred among entities, is illuminating as to the question of where control of the funds lay. In particular, the parties produced evidence that Mr. Perez—given his roles across the Mexiship entities—may have had the ability to direct the funds. Mr. Perez is both the majority owner and the sole administrator of Mexiship Ocean, while also being the sole owner, the sole member, the manager, and the only employee of Mexiship Texas, and a director of Mexiterm. Mr. Perez confirmed that he was the only authorized signatory of the Vantage Bank account on behalf of Mexiship Texas, and it was he who directed the original deposit from the Vantage Bank account to Seahorse for its charter with Mexiship Ocean (and the company maintains no meeting minutes or records to confirm). In spite of the evidence proffered of fund transfers, Mexiship Texas claims that it and Mexiship Ocean "do not do business together and are not engaged in any joint venture, partnership, or other undertaking with each other. As such, there are no financial transfers, loans, guarantees etc. with, for, by, or between each other." But, as CH Offshore argues, if Mexiship Ocean "had obtained funding based on an arms-length transaction, then there would have been documents detailing usual loan terms."

Taken as a whole, the evidence on the record thus far is complex. However, in light of our court's precedent on ownership, the district court erred in holding that there was "no evidence" to support attachment at this stage. For example, Mexiship Ocean, as the named party to the Settlement Agreement, chose to send the Seahorse funds to the Vantage Bank account,

but without any codification of an investment relationship between Mexiship Ocean and Mexiship Texas, Mexiship Ocean did not apparently *have to* send the Settlement Refund to Mexiship Texas. Additionally, the Settlement Agreement was signed and executed by Mr. Perez, who has a significant role with both Mexiship entities and acknowledged that the initial deposit from Mexiship Texas to Seahorse on Mexiship Ocean's behalf was done at his direction. On the other hand, Mexiship Texas is the Vantage Bank beneficiary and provided proof that it sent the deposit to Seahorse in the first instance.

There is at least sufficient evidence that requires further analysis and explication from the district court, especially as it pertains to the question of control vis-à-vis ownership. Because the evidence of control is complex but was not discussed in the district court's order, we find that the district court abused its discretion by failing to engage with the relevant evidence and caselaw regarding the Rule B attachment. *See McKinney ex rel. NLRB*, 783 F.3d at 298. The district court remains closest to the evidence produced, especially given the lengthy discovery disputes in this case, and is therefore well-positioned to draw out where control and, therefore, ownership of the Settlement Refund lies on remand.

B.

The second issue on appeal is whether the district court erred in denying CH Offshore leave to amend its complaint. CH Offshore included its request for leave to amend in a proposed order—filed in place of a typical brief at the district court's direction—in response to Mexiship Texas's motion to vacate the writ of garnishment. CH Offshore sought leave to amend to include a state-law basis for attachment using an alter ego theory of liability.[4]

[4] As discussed above, CH Offshore's core claim for attachment rests on the terms of Mexiship Ocean's Settlement Agreement and attaching to the Settlement Refund. But the parties also dispute the extent to which CH Offshore could reach additional funds in

CH Offshore contends that it only has to plead a plausible case that the money at issue is properly garnishable under some legal theory for attachment to be issued and that leave to amend should be freely given. Mexiship Texas opposes the request for two reasons: first, the filing of a proposed order is insufficient under Rule 15 without a motion for leave to file an amended complaint; and second, there is no good cause to justify amendment. The district court's order spills little ink on this claim. The order states only that CH Offshore has not demonstrated good cause to warrant leave to file an amended complaint, with no further reasoning or citation for support.

We review this issue for abuse of discretion as well, both as to the question of whether the request for leave was properly made and as to whether there was good cause. *See Williams v. Integon Nat'l Ins. Co.*, 132 F.4th 801, 805 (5th Cir. 2025). Federal Rule of Civil Procedure 15(a) provides that a plaintiff may amend his or her complaint "only with the opposing party's written consent or the court's leave," and "[t]he court should freely give leave when justice so requires." FED. R. CIV. P. 15(a)(2). Our court applies a "presumption in favor of allowing pleading amendments" and generally requires district courts to justify denials of leave to amend in explicit terms. *Marucci Sports, L.L.C. v. Nat'l Collegiate Athletic Ass'n*, 751 F.3d 368, 378 (5th Cir. 2014) (quoting *Mayeaux v. La. Health Serv. & Indem. Co.*, 376 F.3d 420, 426 (5th Cir. 2004)); *see also Life Partners Creditors' Tr. v. Cowley* (*In re Life*

Mexiship Texas's Vantage Bank account. To reach these additional funds, CH Offshore initially pled that Mexiship Ocean operates as an alter ego of Mexiship Texas, such that any of the latter's funds could be reached to secure the debt of the former. Due to Rule B, which requires the defendant to not be present in the jurisdiction with the property, an alter ego claim would necessarily destroy federal jurisdiction—*i.e.*, with a successful alter ego theory, if Mexiship Texas is found in the district, Mexiship Ocean would inherit the same jurisdictional properties. CH Offshore admits as much and does not present this argument on appeal as a basis for its existing Rule B attachment claim. Instead, as discussed further below, it intends to plead an alter ego theory purely in the alternative to its Rule B claim.

Partners Holdings, Inc.), 926 F.3d 103, 125 (5th Cir. 2019) ("Rule 15(a) evinces a bias in favor of granting leave to amend." (cleaned up)).

1.

Mexiship Texas first objects to the format of CH Offshore's request, arguing that there must be a motion for leave to amend and a proposed amended complaint. Southern District of Texas local rules do not require a motion format, but Rule 7(b) of the Federal Rules of Civil Procedure states that "[a] request for a court order must be made by motion." FED. R. CIV. P. 7(b). The district court did not address whether its denial of CH Offshore's request for leave to amend is based on this rule. But our court has held that the inquiry does not end here. Submitting a request for leave to amend in a proposed order, as opposed to a motion per Rule 7(b), is not grounds for denial—it is the substance of the proposed order that is determinative.

In *United States ex rel. Willard v. Humana Health Plan of Texas Inc.*, our court held that "Rule 15(a) applies where plaintiffs 'expressly requested' to amend even though their request 'was not contained in a properly captioned motion paper.'" 336 F.3d 375, 387 (5th Cir. 2003) (quoting *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 701 (5th Cir. 1988)). Further, the requirement of a formal motion need not always be met "so long as the requesting party has set forth with particularity the grounds for the amendment and the relief sought." *Id.* In *Willard*, our court ultimately found no grounds for the amendment, as the request was confined to just two sentences. *Id.* In contrast, CH Offshore's request was detailed in a thirty-page order.

In applying Rule 15(a), our court has affirmed that, "[a]lthough we have not provided strict guidelines as to what constitutes a sufficient request for leave to amend, it is clear that *some* specificity is required." *Thomas v. Chevron U.S.A., Inc.*, 832 F.3d 586, 590 (5th Cir. 2016). The court's

reasoning in *Thomas* provides an apt parallel for the proposed order here. There, following the district court's permission to file supplemental briefing on the motion for summary judgment, the plaintiff filed a supplemental brief that again included a request for leave to amend. *Id.* at 590–91. On appeal, our court in *Thomas* determined that the proposal was sufficient because it (1) "gave notice of the substance of [the] proposed amendments" (2) "provided a plausible basis for liability," and (3) sought relief that was "presumably the same as that outlined in [the] original petition." *Id.* at 591–92.

CH Offshore's proposed order provided sufficient specificity of the grounds to amend and the justifications for doing so. As in *Thomas*, CH Offshore is seeking to add an alternative claim, which stems from its findings in limited discovery, and would result in relief similar in nature to CH Offshore's existing federal Rule B attachment claim. Thus, the format of the proposed order is an insufficient basis to deny leave to amend, and we must consider whether the district court had substantive grounds for denial.

2.

"Leave to amend is in no way automatic, but the district court must possess a substantial reason to deny a party's request for leave to amend." *Weyerhaeuser Co. v. Burlington Ins. Co.*, 74 F.4th 275, 288 (5th Cir. 2023) (quoting *Marucci Sports, L.L.C.*, 751 F.3d at 378). Under the "presumption in favor of allowing pleading amendments, courts of appeals routinely hold that a district court's failure to provide an adequate explanation to support its denial of leave to amend justifies reversal." *Mayeaux*, 376 F.3d at 426. However, the district court's failure to explain is not grounds for reversal when "justification for the denial is 'readily apparent'" on the record or "ample and obvious" on the record. *Marucci Sports, L.L.C.*, 751 F.3d at 378 (quoting *Mayeaux*, 376 F.3d at 426). Here, we reverse the district court's denial of leave to amend because we do not see obvious grounds for denial, and the

district court gave no explanation for its finding that there was no good cause to amend.

Our court has generally held that district courts should consider numerous factors when determining whether to grant leave to amend, including "1) undue delay, 2) bad faith or dilatory motive, 3) repeated failure to cure deficiencies by previous amendments, 4) undue prejudice to the opposing party, and 5) futility of the amendment." *Smith v. EMC Corp.*, 393 F.3d 590, 595 (5th Cir. 2004); *see also SGK Props., L.L.C. v. U.S. Bank Nat'l Ass'n*, 881 F.3d 933, 944 (5th Cir. 2018); *Weyerhaeuser*, 74 F.4th at 288. CH Offshore discusses these factors in its brief on appeal, but Mexiship Texas neglects to respond with any specificity. Because any one of these factors may have provided the basis of the district court's denial for lack of good cause, we take each in turn briefly to confirm whether any such factor provides an obvious basis for denial.

First, leave to amend would not cause any undue delays below; CH Offshore submitted its request in its proposed order in response to Mexiship Texas's motion to vacate, and the district court ruled on both issues at the same time. Second, as CH Offshore correctly notes, there is "no evidence of bad faith apparent in CH Offshore's request," and, importantly, there is no assertion of bad faith from Mexiship Texas. The third factor is less applicable here, as this amendment to plead alternative grounds came after the period of limited discovery, on the basis of what was produced in the discovery, and was not aimed at curing deficiencies in the initial complaint. And fourth, there is no claim that this amendment would lead to undue prejudice.

The central and final factor for further examination is whether amendment would ultimately be futile. To examine futility, we review CH

Offshore's proposed alter ego claim in the alternative to its Rule B claim and likely bases for support.[5]

An "amendment is futile if it would fail to survive a Rule 12(b)(6) motion." *Marucci Sports, L.L.C.*, 751 F.3d at 378. As such, our court reviews a "proposed amended complaint under 'the same standard of legal sufficiency as applies under Rule 12(b)(6).'" *Id.* (quoting *Stripling v. Jordan Prod. Co.*, 234 F.3d 863, 873 (5th Cir. 2000)). In so reviewing, "[t]he question . . . is whether in the light most favorable to the plaintiff and with every doubt resolved in his behalf, the complaint states any valid claim for relief." *Collins v. Morgan Stanley Dean Witter*, 224 F.3d 496, 498 (5th Cir. 2000) (quoting 5 Charles A. Wright & Arthur R. Miller, FEDERAL PRACTICE & PROCEDURE § 1357, at 601 (1979)). Accordingly, we look to whether CH Offshore's proposed order provides a sufficient basis for an alternative pleading, including whether state law provides an applicable cause of action and whether there is a basis for alter ego attachment.

First, the state law claim. Section 61.001 of the Texas Civil Practice and Remedies Code (the "Code") provides that attachment is available if: "(1) the defendant is justly indebted to the plaintiff; (2) the attachment is not sought for the purpose of injuring or harassing the defendant; (3) the plaintiff

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[5] Mexiship Texas contends that CH Offshore was "clearly and unequivocally abandon[ing] its Rule B pleadings" by requesting leave to amend, pointing to the conclusion of CH Offshore's proposed order, in which it states that the "forthcoming amended complaint, [] will omit Rule B as the basis for garnishment." However, we understand this to be a one-off departure from the entirety of the proposed order, which characterizes the request for leave to amend as providing the opportunity to plead an *alternative* basis, so it is not reason alone to find there to be no good cause. Moreover, CH Offshore made its forthcoming alternative pleading known to the court during hearings on the necessity and scope of conducting limited discovery. CH Offshore specifically noted that, if there were a sufficient basis to plead alter ego, then it would do so in the alternative, under a recognition that an alter ego theory would destroy jurisdiction under Rule B.

will probably lose his debt unless the writ of attachment is issued; and (4) specific grounds for the writ exist under Section 61.002." TEX. CIV. PRAC. & REM. CODE ANN. § 61.001. At this stage, CH Offshore would likely meet the first three requirements for the very reasons the writ was initially granted under Rule B. For the fourth requirement, it is possible that CH Offshore could meet the criteria for an attachment on a number of specific grounds, such as (a) "the defendant is not a resident of this state or is a foreign corporation or is acting as such," (b) "the defendant has hidden or is about to hide his property for the purpose of defrauding his creditors", or (c) "the defendant owes the plaintiff for property obtained by the defendant under false pretenses." TEX. CIV. PRAC. & REM. CODE ANN. § 61.002. Thus, under the Rule 12(b)(6) standard and resolving this question "in the light most favorable to the plaintiff and with every doubt resolved in his behalf," it would not be futile for CH Offshore to add a state law claim for relief. *Collins*, 224 F.3d at 498.

Next, CH Offshore's alternative pleading would rest on an alter ego relationship between Mexiship Ocean and Mexiship Texas. Namely, CH Offshore would bring a state law attachment claim to reach additional funds in the Vantage Bank account and, therefore, seeks to pierce the corporate veil between Mexiship Texas and Mexiship Ocean. Because this is a state law claim, Texas law regarding alter ego would apply. *See Ledford v. Keen*, 9 F.4th 335, 339 (5th Cir. 2021).

"Texas law permits courts to 'disregard the corporate fiction . . . when the corporate form has been used as part of a basically unfair device to achieve an inequitable result.'" *Ledford*, 9 F.4th at 339. Texas law applies alter ego by considering the "total dealings," to determine if there is "such unity between the [parties] that the separateness of the corporation has ceased." *Mancorp, Inc. v. Culpepper*, 802 S.W.2d 226, 228 (Tex. 1990) (citing *Castleberry v. Branscum*, 721 S.W.2d 270, 276 (Tex. 1986)); *see also Villar v. Crowley*

Maritime Corp., 990 F.2d 1489, 1496 (5th Cir. 1993) (discussing Texas law providing three categories in which to pierce the veil, including when the "corporation is the alter ego of its owners or shareholders").

Our court has also applied a "laundry list" of factors for consideration when piercing the veil for liability purposes, including: common stock ownership, common directors, financing relationships between the parties, the subsidiary operating with inadequate capital, daily operations that are intertwined, and lack of observation of basic corporate formalities, such as keeping books and records and holding board meetings. *See United States v. Jon-T Chems., Inc.*, 768 F.2d 686, 690 n.6, 691–92 (5th Cir. 1985) (noting that "federal and state alter ego tests are essentially the same" and citing factors from *Nelson v. Int'l Paint Co.*, 734 F.2d 1084, 1093 (5th Cir. 1984) (applying Texas state law)). In the context of jurisdictional veil-piercing instead, if that were required in the present case, our court has considered similar alter ego factors under Texas state law but acknowledged that there are different elements of proof. *See Licea*, 952 F.3d at 213 (discussing Texas state jurisdictional alter ego factors).

For the purposes of the futility inquiry, we need only be concerned that CH Offshore can adequately plead an alter ego theory to support its state law attachment claim. And from limited discovery, a number of facts emerged. To briefly summarize, Mr. Perez occupies roles across both Mexiship Ocean and Mexiship Texas that bestow wide-ranging authority. Mexiship Texas does not have any offices separate from Mexiship Ocean's, and Mr. Perez conducts Mexiship Texas's business by making use of Mexiship Ocean's resources, such as his Mexiship Ocean-domain email address. Further, Mr. Perez has addressed the business model: "The relationship of the companies is very simple. I own both companies, *Mexiship Ocean [] is used for operations of Mexiship* and *Mexiship [Texas] is the financing arm of Mexiship*." The companies irrefutably have a business relationship of some sort—as

evidenced by Mexiship Texas (the financing arm) sending the deposit to Seahorse for Mexiship Ocean's (the operating arm) charter at Mr. Perez's direction and discretion—but the companies deny any such relationship altogether.

Ultimately, "[a]lter ego determinations are highly fact-based, and require considering the totality of the circumstances in which the instrumentality functions." *Bridas S.A.P.I.C. v. Gov't of Turkm.*, 345 F.3d 347, 359 (5th Cir. 2003). "In making an alter ego determination, a court is 'concerned with reality and not form, [and with] how the corporation operated.'" *Bridas S.A.P.I.C. v. Gov't of Turkmenistan*, 447 F.3d 411, 416 (5th Cir. 2006) (quoting *Jon-T Chemicals, Inc.*, 768 F.2d at 693). Such factual determinations are the prerogative of the district court. But with no explanation from the district court on its Rule 15 analysis, and in light of the foregoing evidence that is already available and that is probative of the alter ego factors, we cannot deduce that no such grounds for CH Offshore's alternative claim exist.

* * *

As the above discussion details, this is not an instance in which "justification for the denial is readily apparent." *Marucci Sports, L.L.C.*, 751 F.3d at 378 (cleaned up). Because the district court provided no explanation for its denial despite CH Offshore's detailed arguments in favor of leave to amend, we reverse the denial as an abuse of discretion.

IV.

For the foregoing reasons, we VACATE the district court's order, which vacated the maritime writ of garnishment and denied CH Offshore leave to amend its complaint, and REMAND with instructions to grant CH Offshore leave to amend its complaint.