

Bouhan Falligant Partner Todd Baiad Featured in TradeWinds

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NewLead Holdings has filed a wrongful arrest claim against a group of financial firms led by Ray Capital, alleging that they seized a bulker even though there was no default of the debt at the centre of the dispute.

The Greek shipowner's filings come as a counterclaim to a lawsuit in the US federal court, in which the quartet of creditors arrested the 35,400-dwt bulker Newlead Castellano (built 2013) at Savannah, Georgia, in April.

Indiana-based Ray, Oppenheim Capital, Cheyenne Holdings and Labroy Shiptrade are seeking to foreclose on \$7.17m remaining to be paid on promissory notes issued by NewLead, including \$1.67m that Ray says has gone unpaid after maturity.

The bulker and tanker owner's legal team, led by New York maritime lawyer Thomas Tisdale, allege that Ray failed to use sales of NewLead shares to pay down the loan as required under an amendment to the notes.

That means there is no default, they argue, so Ray cannot foreclose on its mortgage. And it also means no defaults have been triggered under the debt held by the other firms, the lawyers argue.

NewLead contends that Ray's decision not to sell the shares was a breach of the company's warranty.

"If Ray Capital had complied with the aforementioned warranty, there would be little — if any — balance left to be paid on the maturity date," said company spokeswoman Elisa Gerouki.

"It was on the basis of that understanding that NewLead agreed to an amendment to the promissory note to pay in cash any remaining balance that existed on the maturity date."

In legal papers, Ray's lawyers have denied that the company could have used sales of NewLead stock to collect its debt on the promissory note. The price of the shares, which trade in the US over-the-counter (OTC) market, had declined to be worth less than a penny apiece by June of last year.

The lawyers, led by Neil Quartaro at Watson Farley & Williams and Todd Baiad at Bouhan Falligant, argue that NewLead's own filings show that the share sales would have yielded only \$300,000, though they deny even this amount

was possible.

“[The] plaintiffs' only way to be paid is by foreclosing on the vessel,” they wrote.

Meanwhile, Gerouki says NewLead is also assessing whether a former company executive breached his fiduciary duty in connection with the negotiations with Ray.

Practice Areas

- Banks & Financial Institutions
- Foreclosures & Workouts

Attorneys

- Todd M. Baiad