RECENT DEVELOPMENTS IN SALVAGE LAW

Maritime Law Association, Salvage Committee, Spring 2007[1]

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Stambaugh v. Maritrans, Inc., 2007 WL 2002607 (E.D.N.C. July 5, 2007). Court has no jurisdiction over salvage claim despite alleged environmental disaster avoidance.

On January 17, 2006, the tug VALOUR was towing a double-hulled barge carrying an estimated 5.7 millions of gallons of oil approximately 29 miles off the coast of North Carolina. Weather conditions and the situation aboard the tug deteriorated[2] and the tug's master released the barge. The VALOUR sank and two crew members died.

The VALOUR's owner hired Foss Maritime Company for Foss' tugboat, JUSTINE FOSS, to aid in the rescue efforts and to help retrieve the barge. The JUSTINE FOSS arrived on scene after the VALOUR sank but rescued some of the VALOUR's crew and, with the help of the Coast Guard, secured the barge and towed her to the nearest port: Wilmington, North Carolina.

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[1] Notes: A special thank you to Rountree, Losee & Baldwin, L.L.P. and its staff for their assistance with this undertaking; on citations: citations to the cases which are the subject of this update are cited as follows: "At [A.M.C. or, if no A.M.C. cite, other reporter page number];" questions or comments should be directed to Jason R. Harris of Rountree, Losee & Baldwin, L.L.P.; 2419 Market Street; Post Office Box 1409; Wilmington, North Carolina 28402-1409; (910) 763-3404; facsimile (910) 763-0320; jharris@rlblawfirm.com. Please note that this update is not exhaustive nor is it necessarily limited to the period since the last update authored in the Spring of 2007.

[2] Page 1 of the transcript of the radio traffic between the tug and Coast Guard illustrate how quickly the situation aboard a vessel at sea can transform from seemingly stable to immediately life threatening.

Two crew members of the JUSTINE FOSS (residents of Oregon) made a salvage claim against the interests of the VALOUR and her tow[3]. The owner of the VALOUR was a business organization formed under Delaware law with its principal place of business in Tampa, Florida and conducted no business in North Carolina. It moved to dismiss based on lack of jurisdiction as its sole contact with North Carolina was that the JUSTINE FOSS towed its barge to Wilmington.

In an admiralty case, the court may exercise jurisdiction over non-resident defendants by first looking at the law of the forum state. At 4, citing *Freudensprung v. Offshore Technical Servs., Inc.*, 379 F.3d 327 (5th Cir. 2004). The Court applied North Carolina's Long-Arm statute and determined that personal jurisdiction under that statute *was* satisfied.

However, the court applied a two prong test, concluding that *due process considerations limit personal jurisdiction* of the Maritrans defendants: (1) whether a defendant availed himself of the protections and laws of the forum state, by purposefully directing his actions toward North Carolina is sufficient to create a substantial connection, and (2) whether a defendant's connections to North Carolina constitute minimum contacts sufficient to satisfy notions of fair play and substantial justice. At 5, citing *Lesnick v. Hollingsworth & Vose Co.*, 35 F.3d 939, 945-6 (4th Cir. 1994).

Although the Court recognized that "[t]he potential environmental ramifications of towing a barge containing more than five million gallons of oil to a North Carolina port are serious…such an interest does not override the fact that defendants do not have the minimum contacts necessary to support personal jurisdiction" in North Carolina. At 6.

[3] Full disclosure: the editor's office represented the cargo interests.

The Court dismissed the case rather than transfer it noting that the plaintiffs failed to specify an alternate court in which they contended jurisdiction and venue are proper. At 7. Plaintiffs later dismissed against the remaining defendants and, as of September 26, 2007, had filed an action in federal district court in Galveston, Texas.

Boat Raising and Reclamation v. VICTORY, 2007 WL 2480363 (M.D.Fla. Aug. 29, 2007). Vessel interest's motion for summary judgment denied.

Plaintiff salvor sought summary judgment on defendant vessel interest's claim that the salvage operation caused additional damage to the vessel and that plaintiff's employees stole equipment and other valuables from the vessel. The Court found sufficient evidence from which a reasonable fact finder could conclude that the salvor's actions resulted in additional damage to the vessel by: the salvor failing to wait until high tide to engage in salvage efforts and plaintiff using "unskilled labor" in its salvage crew. Plaintiff's summary motion judgment was denied.

Kahumoku v. Titan Maritime, LLC, 486 F.Supp.2d 1144 (D. Hawaii, Jan. 12, 2007). Gross negligence, actual malice and criminal indifference were not present, thereby precluding salvor's employee's claim for punitive damages.

On February 8, 2005, salvage operations were being undertaken to save the shipping vessel CAPE FLATTERY which ran aground on a reef a mile off of Barbers Point, Honolulu, Hawaii. The owner hired a marine salvage company to conduct the salvage operation which was being controlled and overseen by the Coast Guard. The salvor chartered barges and contracted for the barge's employees to work on the salvage

operation. Plaintiff, a subcontractor crane operator (longshoreman), was injured as a barge was being towed. His action included a claim against the salvor for punitive damages.

The conduct of the salvage participants referenced by plaintiff included: off-loading the distressed vessel's cargo from both sides (the plan was approved by the Coast Guard) in the face of advice otherwise; having tugs go to the salvage site to examine conditions to assess whether the plan of action posed was possible; pressuring another into mooring the barge on the exposed windward side of the distressed vessel; a statement that the salvor had insurance to cover damage (allegedly) amounting to a disregard for harm to the ships).

The Court noted that the under the reality of the "highly dangerous world of emergency marine salvage operations," such conduct did not rise to the requisite levels to show gross negligence, actual malice or criminal indifference, thereby precluding the employee's punitive damages award. At 1155.

Wells v. Roth, 2007 WL 1549447 (S.D. Fla., May 25, 2007). Fight on docks was not interference with salvor; no admiralty jurisdiction.

The TEXAS CREWED was moored at the Shrimp Road Docks, Stock Island in Kew West, Florida when she caught fire. The owner claimed that while he was fighting the fire, a deputy sheriff assaulted and arrested him using unreasonable force. The owner filed a civil action alleging interference with a salvor, among other claims.

The court concluded that the plaintiff's description of the damage and the desired remedy establish a tort claim for personal injuries rather than interference with a salvor. Particularly, plaintiff failed to allege that his rights to the vessel or its contents were

threatened by the defendant. The court went on to apply the admiralty jurisdiction test for torts and denied jurisdiction.

Michigan Marine Salvage and Services, Inc. v. McNeil Marine Ltd., 2007 WL 1585601 (E.D. Mich. May 31, 2007). Statute of limitations for suits for recovery of remuneration for rendering assistance or salvage services not applicable to claims based on breach of contract or quantum meruit.[4]

On July 10, 2004, the tug, EVANS MCKEIL, ran aground while towing the barge, OCEAN HAULER, causing debris to be set adrift. Michigan Marine Salvage and Services, Inc. ("MMSS") was engaged to remove the debris. The defendant owner, McNeil Marine Ltd., failed to pay for such services. MMSS sued McNeil Marine Ltd. seeking payment for the debris removal. The plaintiff asserted three counts: admiralty (for salvage services), contract, and quantum meruit. McNeil Marine Ltd. moved for summary judgment contending that all of the MMSS's claims were time-barred by 46 U.S.C. App. § 730.

§ 730 specifies that any suit for recovery of remuneration for assistance rendered or salvage services must be brought within two year of the date when such service was rendered. MMSS completed removal of the debris on July 20, 2004 but did not file its initial complaint until August 7, 2006. Consequently, the Court concluded that the admiralty count based on performance of "salvage services" was time barred per § 730.

MMSS asserted that the statute of limitations as to the admiralty count should be tolled because it did not have a reasonable opportunity to arrest the vessel within the

[4] Authored with Jarrett McGowan, a 2L, enrolled in Admiralty Law at Campbell University, Norman A. Wiggins School of Law taught by the editor.

two year period and because it claimed that it was led to believe that any claim that it had against McNeil Marine Ltd. would be settled pursuant to negotiations during that period. Evidence was introduced showing that the MMSS had plenty of opportunity to arrest the vessel within the two year period and that a single face-to-face meeting between the parties' principals ending in harsh words could not have deceived plaintiff into believing that its claim would be settled. Therefore, the Court denied the plaintiff's motion to toll the statute of limitations.

The Court, narrowly interpreting § 730, concluded that neither the contract count (based on diversity) and quantum merit count (no specific jurisdiction basis alleged) fell within the ambit of § 730 because MMSS did not "render assistance" directly to the EVANS MCKEIL but merely cleaned up debris set adrift when the EVANS MCKEIL ran aground. The Court distinguished the instant case from *Suarez Corp. Indus., Inc. v. R.M.S. Titanic*, 130 F.Supp.2d 558 (S.D.N.Y. 2001) (funding and services for a salvage expedition leading to claims of breach of contract, fraudulent misrepresentation, conversion, quantum meruit and the like alleging federal maritime jurisdiction were barred by § 730).

Atlantis Marine Towing, Inc. v. THE M/V PRISCILLA, et al.; and THE M/V CURE ALL, et al., 491 F. Supp. 2d 1096 (D. Fl. June 4, 2007).[5] No indemnification for salvage absent contract or negligence.

On May 14, 2004, the M/V CURE ALL, a 57' Ferretti motor yacht, had an inflatable tender tied up to its stern which caught fire while moored directly in front of the M/V PRISCILLA, a 63' Hatteras Sport fish motor yacht, at Monty's Marina in

[5] Authored with Erin Morris, 3L enrolled in Admiralty Law at Campbell University, Norman A. Wiggins School of Law, taught by the editor; University of Miami, 2004. Upon graduation, Ms. Morris plans to join the United States Military as JAG Officer.

Miami, Florida. Employees of Atlantis Marine Towing, Inc, ("Atlantis"), which maintained its place of business at Monty's Marina, extinguished the fire and sought a salvage award against both vessels, "claiming that its voluntary rendering of services saved both the PRISCILLA and the CURE ALL from fire damage." At 1098.

The PRISCILLA sought summary judgment as to Atlantis' salvage claim contending: "(1) the law does not allow recovery for salvage from a vessel that received an incidental benefit from a salvor's services to another vessel; and (2) because the undisputed facts illustrate that the PRISCILLA was never in danger of being damaged by the fire, Atlantis is not entitled to a salvage award against the PRISCILLA." At 1098. The PRISCILLA asserted a cross-claim for indemnification against the CURE ALL, alleging that the CURE ALL was solely responsible for the fire. The CURE ALL sought summary judgment on the PRISCILLA's cross-claim, "arguing that admiralty law does not allow for vicarious liability or indemnification under these facts." At 1098.

The Court denied the PRISCILLA's motion for summary judgment, holding that factual determination was required to conclude whether there was a marine peril and whether the benefit conferred upon the PRISCILLA by the Atlantis' employees was incidental to services rendered to the CURE ALL.

The Court granted the M/V CURE ALL's motion for summary judgment on the M/V PRISCILLA's cross-claim for indemnity because (a) there was no contractual relationship between the parties and (b) there was no showing of negligence because the causation element was not satisfied despite keys being left in the tender's ignition, prior thefts at the marina, the instant fire, and someone running away from the scene.

Phaeton Services, LLC v. Cove Fleeting, Inc., et al. 2007 WL 1853518 (E.D. La., June 27, 2007). Oral contract to share equally in salvage proceeds enforced.[6]

In December 2005, plaintiff Phaeton Services, LLC, entered into an agreement with Lamont Murphy to salvage his dredge, the ST. ANTHONY. Phaeton enlisted the aid of defendants Cove Fleeting, Inc. and LAD Salvage, LLC, to assist in the salvage. Pursuant to a verbal agreement, the parties agreed to cooperate in the salvage and to split evenly the proceeds after payment of costs and expenses.

Phaeton supplied four workers as well as non-suitable or inoperable equipment, while the defendants hired extra workers and supplied their own equipment. Mr. Murphy paid the defendants $238,000.00 which, after reasonable and necessary costs, left $31,062.50 in profit which they failed or refused to share with Phaeton.

The defendants argued that the agreement included a deduction of prior debt that Phaeton owed the defendants and that Phaeton was not entitled to any proceeds of the salvage.

The Court found that there was a valid oral contract governing a traditional maritime activity under maritime law. It further held that the burden of proving prior debt and the agreement to pay the debt from the proceeds of the salvage was on the defendants. The defendants offered no evidence of the existence of the prior debt or the agreement to pay the debt from the proceeds of the salvage. Therefore, the Court concluded that the defendants failed to carry their burden of proof and were ordered to pay Phaeton one-half of the proceeds, $15,531.25, plus pre-judgment interest.

[6] Authored with Russell C. Alexander, 2L, Norman A. Wiggins School of Law; Graduate of University of North Carolina-Chapel Hill, Double Major: Ancient/Medieval History and Peace, War, and Defense.

<u>Miami Yacht Divers Inc., v. M/V ALL ACCESS</u>, 2007 WL 2484309 (S.D. Fla. Aug. 29, 2007). Underwater dive serviceman performing salvage not entitled to uplift in salvage award.[7]

On October 4, 2005, the South Florida area, including Ft. Lauderdale, was being impacted by Hurricane Wilma. An un-named vessel broke free of its moorings and floated down the Del Mar Canal, located in the Las Olas area of Ft. Lauderdale, and became entangled with the dock lines of M/V SOUTHERN CROSS. The owner of the SOUTHERN CROSS, Pablo Muñ oz, called Daniel Delmonico, of Miami Yacht Divers, Inc. ("Miami Yacht"), to disentangle the SOUTHERN CROSS from the un-named vessel. Delmonico, dressed in free-diving gear—a mask, fins, and snorkel—got into the water and began cutting lose the entangled lines. As Delmonico worked, he was alerted to the M/V ALL ACCESS floating down the canal which opens directly into the Intracoastal Waterway. Delmonico, still in his free-diving equipment, jumped into the canal, grabbed a line attached to the stern of the ALL ACCESS and secured her to a piling with the help of Muñ oz who was standing on the side of the canal. The salvage operation took between twenty and thirty minutes.

But for the salvage operation, the ALL ACCESS would have continued down the canal and may have damaged itself, other vessels, or docks. The post-casualty value of the ALL ACCESS was $300,000.

Miami Yacht proved that a salvage occurred for which it should be compensated, the Court found that this was a low level salvage as the labor expended by the salvors

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[7] Authored with Catherine L. Hamilton, third year law student enrolled in Admiralty Law at Campbell University, Norman Adrian Wiggins School of Law taught by the editor. Graduate of the University of North Carolina at Chapel Hill.

(including swimming to the vessel) was minimal and no special skills were used. The value of the equipment employed by the salvors was negligible. The risk incurred by the salvor in securing the property was low to moderate despite the recent hurricane, debris in the water, heavier than normal current, and winds. It was doubtful that any damage the ALL ACCESS would have suffered, or caused, would have been severe. The post-casualty value of the ALL ACCESS was $300,000. And finally, it is doubtful that any damage the ALL ACCESS would have suffered, or caused, would have been severe.

In conclusion, the Court found that Miami Yacht was entitled to a voluntary salvage award of 7.5 percent of the ALL ACCESS's post-salvage value—the median value between 5 and 10 percent that the defendant's expert suggested a low level salvage is worth.

Although professional salvors are entitled to an increment in a salvage award to encourage professional salvage profession, because the majority of Miami Yacht's business is dedicated to underwater dive services, despite Delmonico salvaging 20 vessels in the preceding 15 years, Miami Yacht was found not to be a professional salvor and thus not entitled to an uplift. Miami Yacht was awarded $22,500.00 plus prejudgment interest.