

Atlantic Coast Marine Group Inc. v. Hannye & Phoenician Yachts Ltd.

Facts

- January 5/6, 2020, Hannye and Atlantic Coast began discussing a proposed transaction whereby Atlantic Coast Marine would be hired to salvage the vessel from a position of peril off the coast of Virginia
- Captain Lee Sykes executed the proposed salvage contract and emailed it to Hannye around 9 am January 6
- Around 11 am, Sykes sent an email about billing, also requesting prompt response due to the narrow weather window
- Hannye responded at about 5 pm saying nothing but had attached a signed heavily modified version of the contract
- Hannye didn't mention the modifications, so Sykes in reliance on Hannye's affirmation that he "signed the contract," Captain Sykes successfully traveled to Virginia and successfully ungrounded the vessel on January 7
- On the morning of January 8, Sykes emailed Hannye saying "I returned home late last night and just getting back to my desk. My office or myself have still not received the signed copy of the contract back as of this morning. As you are aware, the vessel was successfully floated yesterday and is awaiting towage to Cape Charles facility... Please reply to this email with the signed copy of the contract at your earliest convenience."
- Hannye responded "check your spam folder... Contract was sent Monday" (January 6)
- January 8 is when Sykes discovered that Hannye had modified the proposed contract without telling Sykes
- Atlantic Coast rejected the modifications because "no meeting of the minds on the handwritten additions" and sent Hannye a bill, which he didn't pay; Atlantic Coast demanded that Hannye arbitrate according to the terms in the disputed contract but he refused

Analysis

- It is well-settled that "arbitration is a matter of contract and a party cannot be required to submit to arbitration any dispute which he has not agreed to submit"
- 2-factor analysis to determine whether the parties agreed to arbitrate
- "I signed the contract" was an ambiguous statement but not a misrepresentation; such an ambiguous statement cannot be construed to have been one that was reasonably calculated to induce Atlantic Coast to forego investigation into whether Hannye had agreed to the proposed contract because the same day, Hannye sent Sykes the modified proposed contract on the email chain on which they had been corresponding, demonstrating that Hannye had not agreed
- Atlantic Coast had the opportunity to exercise reasonable diligence into the terms of the modified proposed contract to illuminate what Hannye's statement meant but failed to do so, the element of reasonable reliance is lacking

Holding

- The court concluded that no North Carolina court would recognize Petitioner's purported reliance on Hannye's statement as a basis for holding that the proposed contract is enforceable
- Atlantic Coast failed to demonstrate that the parties formed a legally-binding contract, so the court concluded that the disputed contract's arbitration clause cannot be enforced

Cape Waterman, Inc. v. M/V AVA PEARL (2021)

Facts

- Marine towing company brought action against passenger ferry operations, seeking a salvage award for rescuing the ferry after its engines failed
- On May 27, 2018, the AVA PEARL lost all engine power off the coast of Martha's Vineyard and called "mayday" (AVA PEARL is a 105' high-speed catamaran passenger ferry operated by Rhode Island Fast Ferry)
- Vessels operated by Sea Tow Cape and Islands responded and, with some assistance from the Tug SIRIUS, towed the AVA PEARL into dock
- Plaintiff Cape Waterman, Inc. DBA Sea Tow Cape and Islands ("Sea Tow") brought a salvage claim against Defendants M/V AVA PEARL and Rhode Island Fast Ferry
- On May 27, 2018, just before noon, the wind was out of the east-Northeast with wind speeds of 15 to 25 knots and wave heights were between 4' and 6' (Captain Parker, who crewed the Tug SIRIUS that day said that waters around Oak Bluffs can be difficult to navigate, even "violent" when the wind blows from the northeast)
- That day, when clearing the jetties that protect Oak Bluffs harbor, the AVA PEARL struck three waves, each between 3' to 6', in quick succession; the AVA PEARL's two main engines immediately lost power and the vessel began to drift west-northwest, perpendicular to land slightly towards shore
- Unknown to Captain Bessinger of the AVA PEARL, the waves had caused a small portable heater he kept in the wheelhouse to bounce, hitting the engines' emergency stop button
- The emergency buttons, which were just ahead of Captain Bessinger's station, prevent the vessel's engines from starting or operating until and unless they are disengaged
- Captain Bessinger didn't realize the emergency stop buttons had been engaged, so all his attempts to restart the engines from the wheelhouse failed
- With the approaching shoreline, Captain Bessinger ordered the crew to prepare to drop the anchor and he went to the stern to reset the engines in the engine room; he returned to the wheelhouse and his further attempts to restart the engines also failed
- He saw that his crew incorrectly deployed the anchor by putting over the passenger rail instead of between the center deck opening but ordered them to drop the anchor because he believed they didn't have time for them to redeploy the anchor and he issued a mayday distress call
- Once the rode became taught, the tension caused the passenger railing to break, so then the rode began to press against the gunwale; the passenger railing was supported by aluminum stanchions which were polished on the passenger-facing sides but not on the other sides; as the vessel turned with the wind, the rode wrapped around a stanchion and Captain Bessinger assigned a crew member to watch for signs of wear in the line
- Captain Bessinger told the Coast Guard that the anchor was holding but that he needed towing assistance "as soon as possible"

- Within three minutes of the mayday distress call, SEA TOW Defender got underway in Falmouth and radioed the Coast Guard and AVA PEARL (Sea Tow Defender is one of the fleet of similar vessels owned by Sea Tow)
- Tug SIRIUS arrived while SEA TOW was rounding East Chop and they decided to switch off for the final mile into Vineyard Haven
- Several hours after the passengers disembarked in Vineyard Haven, SIRIUS and SEA TOW moved AVA PEARL to another dock, Captain Bessinger discovered that the emergency stop was engaged; once he disengaged the button, the engine fired over and no parts of the engine were damaged
- Captain Bessinger thanked the captain of the SEA TOW and that he “saved our ass” but didn’t make any agreement over compensation because he’s not AVA PEARL’s owner
- Rhode Island Fast Ferry offered to pay a towing bill which SEA TOW rejected, asserting that it’s efforts exceeded a simple tow and that they were entitled to a salvage award

Analysis

- Defendants conceded the 2nd and 3rd elements, that is “service voluntarily rendered when not required as an existing duty or from a special contract” and “success in whole or in part, or that service rendered contributed to such success” therefore, only “marine peril” is at issue
- A master’s requests for assistance are strong evidence that a marine peril is genuine and that the salvor’s efforts, if voluntary and successful, are worthy of reward
- Anchoring the vessel didn’t make it free from peril
- A vessel’s loss of capacity to maneuver, either by engine failure or otherwise, generally constitutes marine peril
- Captain Bessinger’s communication with the Coast Guard revealed that he wasn’t sure how much longer the anchor would hold and the anchor was incorrectly deployed, which added further risk, seen by the fact that Captain Bessinger stationed a crew member to watch for chafing
- Factors for setting salvage award in descending order are (1) degree of danger from which the property was rescued, (2) value of the property saved, (3) risk incurred in saving the property from the impending peril, (4) promptitude and skill displayed, (5) value of the property employed by the salvors and the danger to which it was exposed, and (6) labor expended in rendering the salvage service

Holding

- AVA PEARL was in marine peril
- The Court set the award at \$66,500