RECENT DEVELOPMENTS IN SALVAGE LAW

Maritime Law Association, Salvage Committee, Fall 2006[1]

By:

Jason R. Harris, Esquire
Rountree, Losee & Baldwin, L.L.P.
Wilmington, North Carolina

The Puerto Rico Ports Authority v. Umpierre-Solares, et al., 456 F.3d 220 (1st Cir. July 27, 2006). Raising of dead ship is salvage subject to admiralty jurisdiction.

In 1989 LA ISLA NENA, owned by the Puerto Rico Ports Authority ("PRPA") sunk in navigable waters of San Juan Harbor during Hurricane Hugo. In 1991, the U.S. Army Corps of Engineers instructed PRPA to remove her because she was obstructing navigation. PRPA contracted with the Defendants who were to remove and dispose of the vessel. Defendants raised and moored her in 1992. The requisite permits made re-sinking the vessel unfeasible and the parties agreed that Defendants would dispose of her "in the most convenient and speedy way possible." At 223. Defendants were paid in 1992 but it is not clear whether the Defendants undertook further efforts to dispose of LA ISLA NENA. Four to six years later, the vessel became partially sunk again due to a storm.

In 2003, PRPA sued the Defendants, seeking specific enforcement of the contract

---

[1] Author's 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 case which is the subject of this update are cited as follows: "At [A.M.C. or 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 2006.

requiring Defendants to remove and dispose of the LA ISLA NENA. The District Court, applying admiralty law, dismissed the claim based on the doctrine of laches. On appeal, PRPA claimed that the district court lacked jurisdiction due to the "dead ship" doctrine which prescribes that a ship loses its status as a vessel subject to admiralty jurisdiction when its function is so changed that it has no further navigation function. At 224, citing *Mullane v. Chambers*, 333 F.d 322, 328 (1st Cir. 2003).

Without applying the test to determine whether LA ISLA NENA met the requisite personality traits to be considered a "dead ship,"[2] the court concluded that the nature of the transaction between PRPA and Defendants (a contract for the removal of a ship obstructing navigable waters) was maritime in nature. The case does not appear to decide whether a "dead ship" *not obstructing navigation* is subject to admiralty jurisdiction.

Finally, even assuming (without holding) that a 15-year statute of limitations applied,[3] PRPA's filing within such period does not save the 11-year old matter from being barred by laches. At 227. Defendants successfully argued that they would be prejudiced if they provided PRPA a free second refloat at no cost.

Paul W. Reiss, et al v. One Schat-Harding Lifeboat No. 120776 #1, et al., 2006 AMC 1401, 2006 WL 2388942 (D.S.C., May 30, 2006). Salvors awarded $49,500 plus costs and prejudgment interest and costs.

On September 22, 2004, the crew of the 800-foot Norwegian-flagged combination bulk/tanker vessel SKS TORRENS (en route from Houston, Texas to

[2] "Whether La Isla Nena was 'live' or 'dead' when it was lying at the bottom of San Juan Harbor, obstructing navigation, is of no consequence to our jurisdictional inquiry." At 225.
[3] Defendants argued that the two year statute of limitation for salvage contracts applied per 46 U.S.C. App. §730.

Norfolk, Virginia) discovered it was missing its FF800 free-fall life craft. The life craft, as opposed to conventional life crafts, was mounted on an ejector rack instead of davits. An agent for the SKS TORRENS undertook efforts to purchase a new life craft. Two days later, the missing life craft was recovered by the owner/captain and three mates of the F/V BOLD VENTURE, a fiberglass trawler fishing for wreckfish off the coast of South Carolina.

Captain Reiss testified that the F/V BOLD VENTURE was 100 nm out to sea when he spotted the lifeboat in 20-25 knot winds and 5-7 swells with a 3-4 wind chop on top. The fishing efforts were terminated and, over several hours, the unmanned life craft was boarded and towed to port without damage. The Court found considerable labor with skill and energy as well as risk to the crew from the impending peril of drifting unmanned in navigation channels during rough seas and hurricane season. At 1404-1405.

One issue before the Court involved *the Blackwall* factor concerned with the value of the property salved. There was no evidence that a life craft could have been found on the open market to fit the SKS TORRENS. The salved property had a replacement cost of approximately $126,000-$128,000 (inclusive of shipping expenses) and a used life craft in perfect condition could be worth $100,000. The Court assigned a fair value of $110,000. At 1405-1406.

In considering the degree of danger from which the property was rescued, the Court assigned significant weight to the life craft being a derelict vessel which presents an obstruction to navigation and a likely danger to commerce. Further, there was no evidence that the owner searched for it, attempted to locate it, vaguely knew where to

look for it, nor expressed any intention of finding her but instead considered her a total loss and attempted to replace her.

The Court awarded salvage in the amount of 45% of the value of the salved vessel, costs and prejudgment interest. The first mate received 10% of the award, the second mate received 9% of the award and the third mate received 8% of the award with the balance going to the owner/captain.

Joseph v. J.P. Yachts, LLC, 436 F.Supp.2d 254 (D.Mass., June 9, 2006). Salvor awarded $80,000 plus prejudgment interest and costs.

Jerry and Mary Lou Prescott owned J.P. Yachts, LLC which purchased the M/Y LADY MAZIE, an 85-foot vessel constructed and purchased in 2000 for $2,960,000. Jerry Prescott was a Tow Boat U.S. member subject to a Boat U.S. Towing Agreement which distinguishes services for vessels "soft" aground versus "hard" aground and "salvage" situations.

On September 2, 2003, the M/Y LADY MAZIE grounded close to a rocky beach with wind and waves pushing the vessel toward the beach. Prescott, an experienced, licensed master, described the problem at 5 a.m. to the Tow Boat U.S. affiliate, New Bedford Marine, as a simple dragged anchor. New Bedford Marine dispatched a vessel custom built for towing with the idea that it could pull the yacht to deeper water and reset the anchor and such services would be at an hourly rate.

Upon arrival, the situation was worse than represented as 18 inches of the vessel's bottom paint was visible, 2-4 foot waves were rolling into the vessel pushing her to shore, there were winds of 13-17 knots gusting to 25-29 mph and she was listing to port. At 260.

New Bedford Marine recognized and advised a mate that this was not the tow situation they anticipated performing at an hourly rate basis but was instead a salvage. A second vessel designed for work in shallow water was dispatched to assist. There was no oral meeting of the minds about the terms of the contract to continue the effort. However, the effort continued.

The parties recognized that the tide was coming in and the vessel could gradually be refloated. New Bedford Marine's vessels' hawsers attached to the LADIE MAZIE and kept her from washing ashore. With the further aid of the tide and the yacht's bowthrusters, she was refloated at approximately 10:20 a.m. but the salving vessels did not start arriving back to shore until about 5:00 p.m. The notable lack of damage to the LADY MAZIE ultimately led the court to believe that the salvage was not negligent and that the vessel she was merely soft aground.

While testing the running gear, Prescott caused one of the New Bedford Marine vessels to capsize and its captain dove into the water to get clear of the vessel. A third New Bedford Marine vessel reported to the scene to provide the man who went overboard with a suit to protect him from hypothermia. The capsized vessel was righted and towed to shore.

The court concluded that there was a salvage as there was sufficient marine peril and, despite an initial agreement for a tow, voluntary service not pursuant to a contract. In applying the *Blackwall* factors and noting that New Bedford Marine was a professional salvage service, the Court found the services to be predominantly towage in a low risk danger situation, with non-exemplary skill and effort expended by the salvors. It awarded the salvor $80,000 plus prejudgment interest from the date the salvage services were rendered plus costs. The salvors sought consideration for their skill and

effort in preventing or minimizing damage to the environment likely to occur had the vessel sunk. The Court recognized that some courts outside of the applicable circuit considered such efforts but in this situation, "even considering this factor it would not alter the award." At 273.

Air Crash at Belle Harbor, N.Y. on November 12, 2001, 2006 A.M.C. 1340, 2006 WL 1288298 (S.D.N.Y. May 9, 2006).[4] Admiralty jurisdiction over airplane crash cases.

On November 12, 2001,[5] American Airlines Flight 587 carrying 260 people took off from John F. Kennedy International Airport in Queens, New York destined for Santo Domingo, Dominican Republic. Less than two minutes after takeoff, at an altitude of approximately 2,500 feet, while over Jamaica Bay, the vertical stabilizer and ruder separated and fell into the water. Without a vertical stabilizer, the aircraft was incapable of flight and it crashed into the residential neighborhood of Belle Harbor on Rockaway Peninsula. At 1344.

The Court concluded that there was admiralty jurisdiction over the cases involving passenger decedents. The test, pursuant to *Executive Jet Aviation, Inc. v. City of Cleveland*, 448 F.2d 151 (6th Cir. 1971), involved an analysis of whether there was a maritime nexus and satisfactory locality to permit admiralty jurisdiction. Federal courts have concluded "nearly unanimously" that transoceanic and island voyages, but for air travel, would have been by sea and therefore have a significant relationship to maritime activity. At 1353. The Court ruled that the nexus element was satisfied when

---

[4] While not clearly within the confines of salvage law, the implications of the application of the *Executive* Jet case are probative to the salvage practitioner and the salvage committee which discussed this issue at the Fall 2004 meeting in the context of *Historic Aircraft Recovery Corp. v. Wrecked and Abandoned Voight F4U-1 Corsair Aircraft*, 294 F. Supp 2d., 2004 AmC 625 (D.ME.November 24, 2003).

[5] Readers may recall the initial concern of many that this incident, in light of the proximity (in both time and location) to the tragedies of September 11, 2001, was the result of a terrorist attack.

considering that the aircraft was scheduled for arrival at the Dominican Republic and an aircraft sinking in the water could create a hazard for navigation. As to locality, the Court was asked to face the dilemma which the United States Supreme Court declined to resolve in *Executive Jet*: where does a tort involving contact with both land and water occur? Here, the loss of the vertical stabilizer and rudder over Jamaica Bay made the deaths of the passengers inevitable, and the route involved only a few miles that were not over navigable waters which were, in part, the basis for the Court to find sufficient maritime locality.

While not clearly within the confines of salvage law, the implications of the application of the Executive Jet case are probative to the salvage practitioner.