

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

SUSQUEHANNA SANTEE	:	
BOATWORKS, INC.,	:	
Plaintiff	:	CIVIL ACTION
	:	NO. 01-4229
v.	:	
	:	
RIVER STREET FERRY, LLC et al.,	:	
Defendants	:	

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

RUFE, J.

July 15, 2005

Plaintiff Susquehanna Santee Boatworks, Inc. initiated this action for breach of contract and replevin, based on a contract between itself and River Street Ferry, LLC for the construction of a watercraft to be used as a water shuttle on the Savannah River in Savannah, Georgia. Defendants counterclaimed for breach of contract by Plaintiff. After a seven-day bench trial that took place over a period of three months, the Court now issues the following findings of fact and conclusions of law.¹

FINDINGS OF FACT

1. Plaintiff Susquehanna Santee Boatworks, Inc. (“Susquehanna”) is, and was at all relevant times, a Pennsylvania corporation engaged in the construction of aluminum boats with a principal place of business in Willow Street, Pennsylvania.

2. Defendant River Street Ferry, LLC (“River Street”) is a Georgia limited liability company established in 1999 to operate a water shuttle service on the Savannah River in Savannah,

¹ This case was reassigned to the undersigned from the calendar of the Honorable Stewart Dalzell on June 14, 2002, pursuant to the Eastern District of Pennsylvania’s procedure for random reassignment of cases. Although there has been a considerable delay between the bench trial and the issuance of the instant Findings of Fact and Conclusions of Law, this delay is attributable in part to repeated efforts by various court personnel to resolve this case through a consensual settlement. Unfortunately, these efforts were to no avail.

Georgia.

3. Defendant Jonathan Claughton is the President and part owner of River Street.

4. In 1999, the Georgia International Maritime and Trade Center Authority (the “Authority”) selected River Street River Boat Company, another company owned by Claughton, from a group of bidders to provide the operating personnel and management of a water shuttle service for the city of Savannah to transport civilians across the Savannah River between a new convention center and Westin Hotel.

5. Claughton created River Street Ferry, LLC to provide such water shuttle service.

6. The Authority also asked River Street to provide a vessel for interim use beginning December 1, 2000 until the Authority could acquire (a) vessel(s) of its own.

7. In early 2000, Claughton telephoned numerous boat builders, including Susquehanna, about constructing a suitable vessel for the interim water shuttle service.

8. When Claughton first contacted Susquehanna, he spoke with its owner, Jeffrey Harper. During this initial phone call, Claughton described the type of vessel River Street needed and stated that River Street would need the vessel to be ready for service in December 2000. Specifically, Claughton explained to Harper that River Street needed an enclosed vessel capable of operating in the high currents of the Savannah River and capable of holding 85 to 100 passengers. Claughton also explained that the vessel must be able to cross the river and dock every fifteen minutes.

9. Claughton had no prior experience with Susquehanna and knew little about Susquehanna’s boat building capabilities.

10. Following the initial phone call, Susquehanna sent Claughton some marketing

materials describing Susquehanna's boat building capabilities. After receiving these materials, Claughton again telephoned Susquehanna and spoke with Harper, who assured him that Susquehanna had the capability to construct the type of vessel River Street needed and that it would take Susquehanna approximately three months to complete such a vessel.

11. Claughton and Harper then continued negotiations over the size and type of vessel to be constructed. After agreeing on the construction of a United States Coast Guard ("USCG") certified vessel with a trapezoidal hull design, Claughton and Harper began contacting manufacturers of in-board jet drive propulsion systems. Ultimately, "Ultra Jet" jet drives from Ultra Dynamics were selected for use on the vessel.

12. On June 5, 2000, Susquehanna sent a contract (the "Original Contract") to Claughton for the construction of a pontoon boat (the "*Juliette Gordon Low*" or the "Vessel") in exchange for \$250,000.00, payable in four equal installments of \$62,500.00. The Original Contract stated that the Vessel would be completed by August 31, 2000.

13. On July 10, 2000, Harper received the executed Original Contract back from Claughton along with the first payment of \$62,500.00. Claughton had made several hand-written changes to the Original Contract, including changing the name of the purchaser from himself to River Street.

14. After Harper's receipt of the executed Original Contract, Claughton and Harper spoke over the telephone and Harper told Claughton that Susquehanna would not be able to complete the *Juliette Gordon Low* by August 31, 2000 because it had been waiting to receive the executed contract and payment from Claughton before it would begin construction.

15. At the end of August 2000, Claughton visited Susquehanna at its Willow Street

facility to check on the progress of the *Juliette Gordon Low*. During this visit, Claughton and Harper, on behalf of River Street and Susquehanna, respectively, executed an Amended Contract, which, inter alia, decreased the length of the Vessel from sixty-five feet to sixty-four feet eleven inches and changed the completion date to October 31, 2000.²

16. The Amended Contract contained the following relevant provisions:

3. Payments. Purchaser shall pay to Builder the sum of \$250,000 as follows:

(a) Upon the signing of this agreement, \$62,500.00;

(b) Upon completion of hull inspection, \$62,500.00;

(c) Upon completion of roof assembly, \$62,500.00;

(d) Upon completion of vessel at Builder's manufacturing facility, \$62,500.00

Builder shall give prompt written notice to Purchaser on the happening of the above events. Purchaser shall have 5 days from the date of each respective notice to tender the appropriate payment.

...

5. Modification to Specifications. Any modification to the annexed specifications shall be confirmed in writing signed by both parties and any additional costs shall be borne by Purchaser. Such additional costs shall payable [sic] as part of the payment due under paragraph 3(d) , above.

6. Delivery Date. Builder shall deliver the Vessel, completed in accordance with the annexed specifications to Purchaser by the 31 day of October, 2000, but in the event of completion being delayed through amendments, additions or modifications to the specifications for any cause beyond Builder's exclusive control, the above delivery date shall be reasonably deferred. In the event Purchaser fails to make any payment due under paragraph 3, above within 7 days of such due date the above delivery date shall no longer apply. At the time of receipt of such delinquent amount Builder will advise as to a

² The agreement date on the Amended Contract was mistakenly left as June 5, 2000.

revised delivery date. . . .

7. Acceptance. Builder shall be deemed to have completed the construction of the Vessel in accordance with the specifications on successful completion of the USCG final inspection. Purchaser shall be responsible for all freight charges related to transporting the Vessel from Builder's manufacturing facility to Purchaser's location.

8. Passage of Title; Risk of Loss or Damage. Title to the Vessel shall pass to Purchaser on delivery to Purchaser at Builder's manufacturing facility. Delivery shall be deemed to have occurred on the earlier of written acceptance of the Vessel by Purchaser or placement of the vessel with freight carrier. . . .

12. Complete Contract; No Oral Modification. This agreement comprises the entire contract between the parties and no other warranties or representations are given or shall be implied from the written or oral negotiations that preceded this agreement. . . . The terms of this agreement may only be changed by a writing signed by the parties hereto.

17. During Claughton's August visit, Susquehanna completed a Builder's Certification and First Transfer of Title and Bill of Sale, listing River Street as the purchaser on both documents. These documents are dated August 30, 2000.

18. At the time of Claughton's August visit, Susquehanna had completed just one-half of one of the two hulls for the *Juliette Gordon Low*. The *Juliette Gordon Low* was only three percent (3%) complete at this time. (1/14/05 N.T. at 96).

19. On September 11, 2000, the USCG issued a Certificate of Documentation for the *Juliette Gordon Low* identifying River Street as the owner.

20. From September 19-21, 2000, Claughton again visited Susquehanna at its Willow Street facility. During this visit, Claughton asked Susquehanna to install an air conditioning system on the *Juliette Gordon Low*. Harper quoted River Street approximately \$12,000.00 in addition to the Amended Contract price as the cost of installing such air conditioning, and Claughton orally

agreed to this additional expense on behalf of River Street. The parties did not confirm this agreement in a signed document. The actual cost of installing the air conditioning system was \$12,945.

21. From October 18-20, 2000, Claughton made another visit to Susquehanna at its Willow Street facility to observe the progress of the Vessel construction. During this visit, Claughton and Harper discussed specific components for the *Juliette Gordon Low*, including the design of the pilot house and captain's chair, batteries, sound downs, and the bathroom size. Any differences between the items requested by Claughton and the specifications set forth in the Amended Contract were not confirmed in a signed document.

22. Claughton orally agreed to pay the additional cost of upgraded captain's chair. This upgrade cost \$906.00 in addition to the Amended Contract price.

23. At the time of this October visit, despite the fact that the *Juliette Gordon Low's* completion date was October 31, 2000 under the Amended Contract, construction was complete on one hull only, and construction on the other hull and some walls was in its initial stages. The Ultra Jet drives had yet to be ordered.

24. On October 23, 2000, River Street wired a \$30,000.00 advance payment to Susquehanna so that Susquehanna could order the jet drives.

25. On November 22, 2000, Susquehanna billed River Street for the \$32,500.00 remaining on the second installment payment and for the entire third installment payment. Notwithstanding that Susquehanna had not achieved the milestones required for these installments to be due, River Street paid this bill on December 6, 2000.

26. Claughton next visited Susquehanna's Willow Street facility in mid-December 2000.

During this visit, Harper stated to Claughton that Susquehanna would complete the Vessel in approximately four weeks, so that the Vessel would be ready for operation during the Passenger Vessel Association meeting in Savannah in February 2001.

27. Throughout the construction process, Susquehanna experienced significant difficulties obtaining the USCG certifications required by the Amended Contract. These difficulties resulted from problems with approval of the jet drives supplied by Ultra Jet, from issues with the size of the trapezoidal hulls, and from uncertainty about whether the Vessel would be categorized as a pontoon or a catamaran. These certification problems delayed construction of the *Juliette Gordon Low* and its delivery to River Street.

28. In addition to these certification difficulties, completion of the Vessel was delayed by several other factors, including late delivery of critical parts and problems with transporting the Vessel prior to its completion from Susquehanna's Willow Street facility to a dock in New Castle, Delaware. These delays are attributable solely to Susquehanna's lack of organization and inexperience in building a vessel of this size and type.

29. After several additional months of delay, Susquehanna transported the Vessel to New Castle, Delaware in February 2001. The Vessel, which was substantially constructed, had to be disassembled and shipped in several pieces, requiring Susquehanna to reassemble it in New Castle. Susquehanna was responsible under the Amended Contract for the cost of this transport.

30. Claughton, under the impression that the Vessel would be completed shortly after its arrival in New Castle, brought a two member crew to the dock to sail the Vessel back to Savannah, Georgia, where it would be put into operation. When Claughton's employees realized that the Vessel was not ready for delivery to River Street, they helped Susquehanna complete construction,

working until they left on March 10, 2001. Susquehanna provided these employees with keys to the Vessel so they could continue to work on the Vessel even when no Susquehanna employees were present.

31. During March 2001, at its own expense, River Street retained Earl Reese, an electrical contractor, to perform certain electrical installations because Susquehanna's employees were not able to perform such installations on their own.

32. On March 5, 2001, River Street sent a letter to Susquehanna detailing the damages it had suffered as a result of Susquehanna's delay in delivering the Vessel and asking for compensation for those damages. Following receipt of this letter, Susquehanna ceased working on the Vessel completely, and responded by letter notifying River Street that it owed Susquehanna compensation well in excess of the contract price because of changes and modifications River Street had requested.

33. While it was working on the Vessel during the spring of 2001, River Street expended \$4,192.50 for life preservers that Susquehanna was contractually obligated to supply for the Vessel.

34. In mid-May 2001, the USCG finally approved the use of the Ultra Jet drives, and on May 29, 2001, it issued a Certification of Inspection for the Vessel.

35. In late May 2001, the parties engaged in negotiations on the amount still owing on the Vessel but could not reach accord.

36. On May 31, 2001, Claughton contacted Harper about scheduling a final inspection of the Vessel for June 7, 2001.

37. On June 5, 2001, Susquehanna's attorney sent Claughton a letter stating that if River Street failed to pay the final contractual installment of \$62,500 in addition to \$104,509.81 for

changes and modifications, Susquehanna would sell the Vessel to another buyer.

38. On June 6, 2001, Harper wrote to Claughton that Susquehanna would be unable to open the Vessel for a final inspection the next day.

39. At approximately 2:00 a.m. on June 7, 2001, without Susquehanna's knowledge, Claughton and David Lane, a licensed captain and employee of River Street, removed the Vessel from the dock in New Castle and drove it to Savannah, Georgia.

40. In removing the Vessel, Claughton was acting in his capacity as President of River Street. At no time did Claughton act in a personal capacity in his dealings with Susquehanna relating to the Vessel. Nor did Claughton ever possess the Vessel for personal use.

41. River Street never paid Susquehanna the last contractual installment of \$62,500.

42. As Claughton did not deliver the Vessel on time, the Authority had to extend its contract with an interim operator through September 15, 2001. Thus, River Street was unable to put the Vessel into operation for the Authority until September 15, 2001, the earliest date when the interim operator could be called upon to cease operation.

43. As a result of Susquehanna's delay in completing the Vessel, River Street was unable to satisfy its contractual obligation to the Authority and lost the profit that would have resulted from the Vessel's operation from December 1, 2000 through September 15, 2001.

44. At the time of contracting, Susquehanna was aware that River Street was having the Vessel constructed for interim use as a water shuttle beginning December 1, 2000 until the Authority could acquire (a) vessel(s) of its own.

45. The Authority's agreement with River Street provided that River Street would receive \$9,350.00/month from the Authority for the lease of the Vessel.

46. The Authority's agreement with River Street provided that River Street would receive \$4,000.00/month in management fees.

47. The Authority's agreement with River Street provided that River Street would receive a permitted differential on labor cost management, which would, for the minimum hours of required vessel operation, equal \$10,000.00/month.

48. The Authority's agreement with River Street provided that River Street would receive five percent of all income that the water shuttle service utilizing the Vessel received from passenger ticket sales and other charges.

CONCLUSIONS OF LAW

1. This Court has jurisdiction over Plaintiff's claims and Defendants' counterclaims pursuant to 28 U.S.C. § 1332(a).

Breach of Contract (Complaint and Counterclaim)

2. Susquehanna and River Street entered into a binding contract on or about July 12, 2000 (the Original Contract) and entered into a binding amendment to the Original Contract on August 30, 2000 (the Amended Contract). Pursuant to the Amended Contract, Susquehanna was to construct a 64' 11" pontoon boat (the Vessel) for River Street in exchange for the total payment of \$250,000.

3. During construction of the Vessel, Claughton, on behalf of River Street, asked Susquehanna to install an air-conditioning system and upgraded captain's chair on the Vessel and agreed to pay for the cost of these additions. Thus, River Street is responsible for the cost of the air conditioning system and upgraded captain's chair in addition to the Amended Contract price. Accordingly, River Street agreed to pay Susquehanna a total of \$263,851 to construct the Vessel.

4. River Street did not agree to pay any other costs in addition to the Amended Contract price. Therefore, Susquehanna is not entitled to reimbursement for any other costs it claims were attributable to modifications and extras requested by River Street.

5. Susquehanna breached the Amended Contract by failing to deliver the completed Vessel to River Street by October 31, 2000, as required by the Amended Contract, or within a reasonable period thereafter.

6. “Lost profits in contract can be recovered if they can be established with reasonable certainty, were a proximate consequence of the breach, and were reasonably foreseeable.” River Road Development Corp v. Carlson Corp. - Northeast, Nos. Civ.A.89-7037, 90-2386, 1992 WL 212351, at *4 (E.D. Pa. Aug. 27, 1992).

7. River Street could not honor its agreement with the Authority because Susquehanna did not deliver the Vessel on time. Thus, River Street’s lost profits from its agreement with the Authority were proximately caused by Susquehanna’s breach of the Amended Contract.

8. At the time of contracting, Susquehanna was aware that the Vessel was being constructed for use as an interim water shuttle for the Authority beginning on December 1, 2000. Therefore, River Street’s lost profits resulting from Susquehanna’s failure to complete the Vessel on time were foreseeable to Susquehanna.

9. As a result of its nine and one-half month delay in the completion of the Vessel, Susquehanna is responsible for the \$88,825 in monthly lease income that River Street would have received from the Authority absent the delay.

10. River Street did not present evidence of its management costs, so the Court is unable to determine how much net income River Street would have received from the \$38,000 in

management fees it would have received from the Authority had Susquehanna completed the Vessel on time. As the Court will not speculate as to River Street's lost profits, it is unable to award any damages for loss of management fees.

11. The permitted differential on labor cost management that River Street was to have received pursuant to its agreement with the Authority equates to a reimbursement of River Street's labor costs for operation of the Vessel as a water shuttle. As such, it does not constitute lost profits, and River Street is not entitled to damages on this ground.

12. Similarly, the Court has not seen sufficient evidence of the amount of ticket sales and other income the Vessel would have earned had it been in operation by December 1, 2000. Thus, the Court is unable to determine River Street's lost profits from its five-percent share of these sales with reasonable certainty and cannot award damages for this loss.

13. Susquehanna is also responsible for reimbursing River Street for the \$4,291 that River Street paid for life preservers for the Vessel. After adding this amount to the \$88,825 in lost lease income, Susquehanna is liable to River Street for a total of \$93,116 in damages resulting from its breach of contract.

14. River Street breached the Amended Contract insofar as it did not pay Susquehanna: 1) the final \$62,500 installment required under the Amended Contract; and 2) the \$13,851 in additional costs to which it had agreed during construction. These payments were due at the very least when River Street removed the Vessel from New Castle. Therefore, Susquehanna is entitled to a credit of \$76,351 against the damages it owes River Street.

15. Susquehanna is therefore liable for \$16,765 in damages to River Street as a result of its breach of the Amended Contract.

Quantum Meruit

16. Susquehanna cannot recover under its quantum meruit claim because an express written contract existed between it and River Street. Accordingly, Susquehanna's recovery is limited to the provisions of the Amended Contract. Hershey Foods Corp. v. Ralph Chapek, Inc., 828 F.2d 989, 999 (3d Cir. 1987) ("Under Pennsylvania law, the quasi-contractual doctrine of unjust enrichment [is] inapplicable when the relationship between the parties is founded on a written agreement or express contract. Where an express contract governs the relationship of the parties, a party's recovery is limited to the measure provided in the express contract; and where the contract fixes the value of the services involved, there can be no recovery under a quantum meruit theory.") (internal quotations and citations omitted); Schaefer v. Stewartstown Development Co., 647 A.2d 945, 947 (Pa. Super. Ct. 1994) ("Because the relationship between the parties was founded on an express contract, the doctrine of quantum meruit was inapplicable.").

Replevin³

17. Under Pennsylvania law, "[t]he focus in a replevin actions [sic] is strictly limited to title and right of possession; all matters foreign to those limited issues are expressly excluded from consideration and are not available as defenses or counterclaims." Ford Motor Credit Co. v. Caiazzo, 564 A.2d 931, 933 (Pa. Super. Ct. 1989).⁴

18. On August 30, 2000, Susquehanna transferred ownership of the *Juliette Gordon Low* in its incomplete form to River Street by executing a First Transfer of Title and Bill of Sale. On

³ By Order dated September 17, 2004, the Court dismissed Plaintiff's replevin claim in its entirety.

⁴ In its opposition to Defendants' Renewed Motion to Dismiss Plaintiff's Replevin Count, Susquehanna confusingly cites to case law relating to the tort of conversion. As Susquehanna did not assert a cause of action for conversion in its Complaint, the Court addresses only the merits of Susquehanna's replevin count herein.

September 11, 2000, after application by River Street, the USCG issued a Certificate of Documentation identifying River Street as the owner of the *Juliette Gordon Low*. Therefore, River Street had title to the Vessel and was its legal owner when Claughton and Lane removed it from the dock in New Castle and sailed it to Savannah, Georgia. Because River Street had title to the Vessel, its possession thereof was not unlawful. Consequently, Susquehanna's replevin claim against River Street fails.⁵

19. Claughton acted at all times on behalf of River Street and not in a personal capacity. Therefore, because Susquehanna's replevin claim fails against River Street, it necessarily fails against Claughton as well.

An appropriate Order follows.

⁵ Susquehanna's argument that Claughton did not act as the owner of the Vessel before he removed it from the dock is not supported by the facts. Claughton, on behalf of River Street, tried repeatedly to resolve what was a difficult situation by attempting to negotiate the appropriate amount to pay Susquehanna before taking River Street's Vessel. Claughton removed the Vessel after Susquehanna threatened to sell the Vessel if River Street did not satisfy Susquehanna's excessive monetary demands. The Court finds this act to be consistent with the actions of someone who believed that his company owned the Vessel at the time. Throughout this dispute, Defendants tried to make the best of a bad business situation in an effort to minimize River Street's monetary and pecuniary losses.

Accordingly, the Court enters **JUDGMENT** in favor of River Street and against Susquehanna in the amount of \$16,765.00.

The Clerk of Court shall **CLOSE** this case for statistical purposes.

It is so **ORDERED**.

BY THE COURT:

/s/ Cynthia M. Rufe

CYNTHIA M. RUFÉ, J.