

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

DELAWARE RIVER TOW, LLC,                   :       CIVIL ACTION  
                                                  :       NO. 04-2850  
      Plaintiff,                                :  
                                                  :  
      v.                                         :  
                                                  :  
VERNELL NELSON,                             :  
ALLSTATE INSURANCE CO., INC.,            :  
                                                  :  
      Defendants.                                :

M E M O R A N D U M<sup>1</sup>

EDUARDO C. ROBRENO, J.

FEBRUARY 10, 2005

This action arises out of a salvage contract and comes to the court under 28 U.S.C. § 1333, which provides federal district courts exclusive jurisdiction in any "civil case of admiralty or maritime jurisdiction." Plaintiff, Delaware River Tow, LLC ("Delaware Tow") is in the business of marine salvaging and towing. At all relevant times, Defendant Vernell Nelson was the owner of a 1992 Sea Ray 29-foot Yacht, registration number PA 11201345 (the "Yacht"). Delaware Tow and Defendant Vernell Nelson were parties to a standard form yacht salvage contract.<sup>2</sup> Additionally, the Yacht was covered by Allstate Insurance Co.

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<sup>1</sup>This Memorandum follows a bench trial between the above-captioned parties and serves as the Court's findings of fact and conclusions of law under Federal Rule of Civil Procedure 52.

<sup>2</sup> Defendant Nelson executed the salvage contract on the same day that Delaware Tow salvaged the Yacht.

policy number 76212113917 (the "Policy").

On or about February 9, 2004, the Yacht was docked at the Philadelphia Marine Center, on the Delaware River, in Philadelphia, Pennsylvania. Also on this date, at approximately 12:00 p.m., representatives of the Philadelphia Marine Center notified Delaware Tow that the Yacht had sunk while in its berth, i.e., while moored and docked, at the Philadelphia Marine Center. In response to this notification, Delaware Tow sent a towboat and crew to the Philadelphia Marine Center. The towboat and crew arrived at approximately 12:40 p.m. At approximately 1:30 p.m., upon evaluating the Yacht's circumstances, Captain Robert Hartman, Managing Partner of Delaware Tow, contacted Defendant Vernell Nelson. Defendant Nelson informed Captain Hartman that the Yacht was covered by the Policy and that he had notified his Allstate insurance agent, one Joseph DiGiacome, of the Yacht's circumstances.

At approximately 2:00 p.m., Defendant Nelson executed a standard form yacht salvage contract under which Delaware Tow was to undertake to salvage the Yacht on a "no cure, no pay" basis. The cost of the salvage, if successful, was \$4,654.50, representing \$150.00 per foot multiplied by twenty-nine feet, the length of the Yacht. According to Delaware Tow, however, this contract with Defendant Nelson was not a sufficient guarantee of payment for Delaware Tow to undertake the salvage. Rather,

Delaware Tow required a signed contract from Defendant Nelson, the yacht owner, plus one of the following three additional measures of security, or conditions precedent to its duty to undertake the salvage: (1) a certified check from the yacht owner, (2) a bond posted by the yacht owner, or (3) a claim number and authorization to salvage the boat from the yacht owner's insurance agent.

At approximately 2:30 p.m., Captain Hartman of Delaware Tow telephoned Mr. DiGiacome, the Allstate agent who issued the Policy on the Yacht and with whom Defendant Nelson had spoken previously that day. During the call,<sup>3</sup> Mr. DiGiacome orally represented himself as an agent of Allstate and confirmed that Allstate had issued a policy which covered the Yacht. Captain Hartman then informed Mr. DiGiacome that the Yacht had sunk and needed to be raised as soon as possible to minimize further damage to the Yacht, prevent possible damage to the dock to which it was moored and to adjacent water vessels, and prevent possible pollution to the Delaware River from the petroleum and other chemicals in the Yacht. Captain Hartman informed Mr. DiGiacome that Delaware Tow would charge \$4,654.50 to salvage the Yacht. Captain Hartman then asked DiGiacome for authorization to raise the Yacht.

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<sup>3</sup> The Court credits the testimony of Captain Hartman on all points and discounts the testimony of Mr. DiGiacome to the extent that it conflicts with Captain Hartman's.

Upon hearing the price quoted and being asked for authorization to raise the Yacht, Mr. DiGiacome stated, "Do whatever is necessary to save the boat." Mr. DiGiacome then provided Captain Hartman with an Allstate claim number (Claim # 2596176434). After hearing this statement and receiving the Allstate claim number, Delaware Tow undertook to, and did, successfully salvage the Yacht. Delaware Tow then transported the Yacht to an out-of-water storage facility called Outboard Marine Services, which is located in Philadelphia. After the salvage, Defendant Nelson signed an invoice wherein he agreed to pay Delaware Tow \$4,654.50 for the salvage. Delaware Tow was never paid for its services by either Defendant Nelson or Allstate.

Based upon the above facts, Delaware Tow sued both defendants, seeking compensation for the price of salvage, \$4,654.50, plus interest, costs and attorneys fees. Defendant Nelson has failed to timely plead or otherwise respond to Delaware Tow's complaint; accordingly, the Clerk entered a default against Defendant Nelson on January 18, 2005, and the Court entered a judgment of default against him on February 7, 2005.

Based upon the pleadings and the testimony at the bench trial, the Court must now determine whether Allstate is liable for breach of written or oral contract, or under theories of

promissory estoppel and quantum meruit.<sup>4</sup> For the reasons that follow, judgment in the amount of \$4,654.50 will be entered in favor of Delaware Tow and against Allstate on Delaware Tow's alternative oral contract and promissory estoppel claims.

## II. DISCUSSION

### A. Subject matter jurisdiction

Under 28 U.S.C. § 1333, federal district courts have exclusive jurisdiction over maritime contracts.<sup>5</sup> See The Louisa Jane, 15 F.Cas. 949, 951 (D.C. Mass. 1873) ("Thanks to the great jurists, who were called upon to interpret the grant of admiralty

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<sup>4</sup> Under Federal Rule of Civil Procedure 15(b), "[w]hen issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings." Although Delaware Tow never used the phrase "promissory estoppel" in its pleadings or at trial, this theory of liability was tried by the consent of the parties during the bench trial, and counsel were expressly given the opportunity to argue it during their closing statements.

<sup>5</sup> Section 1333 provides:

The district courts shall have original jurisdiction, exclusive of the courts of the States, of:

(1) Any civil case of admiralty or maritime jurisdiction, saving to suitors in all cases all other remedies to which they are otherwise entitled.

(2) Any prize brought into the United States and all proceedings for the condemnation of property taken as prize.

28 U.S.C.A. § 1333.

jurisdiction contained in the constitution, we have retained a great part of the powers which anciently and of right belong to this court. We hold pleas of all maritime contracts, absolute or contingent, without being obliged to resort to fictions or indirections of any sort.") (emphasis added). Delaware Tow's written salvage contract with Defendant Nelson and its separate oral salvage contract with Allstate constitute maritime contracts. See id. ("It cannot be doubted that a contract to raise a vessel, sunk in navigable waters, is a maritime contract."). Additionally, the U.S. Supreme Court has held that admiralty jurisdiction extends to quasi-contractual claims that arise out of a maritime contract. See Archawski v. Hanioti, 350 U.S. 532, 535 (1956) ("[S]o long as the claim asserted arises out of a maritime contract, the admiralty court has jurisdiction over it."). In accordance with Archawski's holding, this Court has admiralty jurisdiction over Delaware Tow's promissory estoppel and unjust enrichment claims against Allstate.

B. Applicable law

It is established that "[w]ith admiralty jurisdiction comes the application of substantive admiralty law." Floyd v. Lykes Bros. S.S. Co., Inc., 844 F.2d 1044, 1047 (3d Cir. 1988). "To the extent that it is not inconsistent with admiralty principles, however, state contract law may be applicable to

maritime contracts." Ham Marine, Inc. v. Dresser Indus., Inc., 72 F.3d 454, 459 (5th Cir. 1995). Additionally, "[f]ederal maritime law [,which is but one source of admiralty law,] embraces the principles of agency." Archer v. Trans/Am. Serv., Ltd., 834 F.2d 1570, 1573 (11th Cir. 1988). Having found that Pennsylvania contract and agency law does not conflict with established admiralty principles relating to salvage contracts, the Court has considered the merits of this case by applying Pennsylvania contract and agency law.<sup>6</sup> See, e.g., Windsor Mt. Joy Mut. Ins. Co. v. Pozzi, 832 F. Supp. 138, 140 (E.D. Pa. 1993) ("Where . . . there is an absence of a controlling federal statute or an established rule of general maritime law, state law governs the scope and validity of contracts of marine insurance.").

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<sup>6</sup> A federal court sitting in admiralty must apply federal choice-of-law rules. See Calhoun v. Yamaha Motor Corp., 216 F.3d 338, 343 (3d Cir. 2000) (" If . . . our jurisdiction were to be grounded in admiralty, federal choice-of-law principles, first identified in Lauritzen v. Larsen, 345 U.S. 571 (1953), would apply."). Calhoun highlighted the federal courts' move from the traditional lex loci contractus rule toward the Restatement Second's "most significant relationship" analysis. The Court need not engage in an extensive analysis to determine that Pennsylvania has the most significant relationship to the transaction and occurrence. Pennsylvania is the place of contracting and performance, the place where the subject matter of the contract (the Yacht) is located, and at least two of the parties are domiciled in Pennsylvania. See Restatement (Second) of Conflicts § 188 (enumerating factors relevant to determining most significant relationship).

C. Is Mr. DiGiacome an agent of Allstate?

Plaintiff contends that Mr. DiGiacome acted at all times as Allstate's agent. Allstate does not appear to dispute this contention. In fact, according to Exhibit C to Allstate's motion for summary judgment, Mr. DiGiacome holds the title of Insurance Agent for Allstate, and Mr. DiGiacome's agency agreement with Allstate requires him to "provide customer service, including . . . assist[ing] in claims administration." Pl. Ex. 8 para. II.A. "The law is clear in Pennsylvania that the three basic elements of agency are: [1]the manifestation by the principal that the agent shall act for him, [2] the agent's acceptance of the undertaking and [3] the understanding of the parties that the principal is to be in control of the undertaking." Basile v. H & R Block, Inc., 761 A.2d 1115, 1120 (Pa. 2000) (citation and internal quotation marks omitted).

The facts support the conclusion that Mr. DiGiacome is an agent of Allstate who had apparent authority to act on Allstate's behalf. "Apparent authority 'results from a manifestation by a person that another is his agent, the manifestation being made [by the principal] to a third person.'" Ortiz v. Duff-Norton Co., Inc., 975 F. Supp. 713, 718 (E.D. Pa. 1997) (quoting Restatement (Second) of Agency § 8 cmt. a). Apparent authority "exists only to the extent that it is reasonable for the third person dealing with the agent to believe

that the agent is authorized." Ortiz, 975 F. Supp. at 718 (quoting Restatement (Second) of Agency § 8 cmt. c). In Ortiz, then District Judge Van Antwerpen also noted the following agency principle:

Where both the principal and the third party are equally innocent, and there has been a complete breakdown of communication between the principal and the third party, the liability is best placed on the party with the most control over the agent, i.e. the principal. Moreover, because the principal enjoys the benefits of employing an agent, it is only fair that the principal bear the burden of supervision.

Id. at 720. In light of these agency principles, Mr. DiGiacome had apparent authority to authorize Delaware Tow to salvage the Yacht. One, Allstate held Mr. DiGiacome out as its agent. Further, Mr. DiGiacome identified himself to Captain Hartman as an insurance agent of Allstate, and it was reasonable under the circumstances for Captain Hartman to rely upon this representation. Two, Mr. DiGiacome confirmed that the Yacht was insured under an Allstate policy. Three, Mr. DiGiacome provided Captain Hartman with a claim number generated by Allstate. Finally, Mr. DiGiacome authorized plaintiff to salvage the Yacht when he said, "Do what you have to do to save the boat." Considering these circumstances as a whole, Mr. DiGiacome's actions and statements bind Allstate.

D. Breach of written contract

On plaintiff's breach-of-written-contract theory of liability, the central issue is whether Delaware Tow and Defendant Nelson's contract binds Allstate where, even though Allstate never signed the contract, the contract states, "Owner and Underwriter [Allstate] shall be responsible . . . ." Fundamental contract law provides that "a person who is not a party to a contract cannot be held liable for a breach by one of the parties to a contract." Fleetway Leasing Co. v. Wright, 697 A.2d 1000, 1003 (Pa. Super. 1997). Since Allstate was never a party to the written contract between Delaware Tow and Defendant Nelson, it cannot be held liable for breach of it.

E. Breach of oral contract

In considering whether Delaware Tow has established that an oral contract existed, the Court must determine whether there has been an offer, an acceptance, and consideration. Nationwide Ins. Enter. v. Moustakidis, 830 A.2d 1288, 1292 (Pa. Super. 2003). "An offer is a manifestation of willingness to enter into a bargain, so made as to justify another person in understanding that his assent to that bargain is invited and will conclude it." O'Brien v. Nationwide Mut. Ins. Co., 689 A.2d 254, 258 (Pa. Super. 1997). Further, an "[a]cceptance of an offer is

a manifestation of assent to the terms thereof made by the offeree in a manner invited or required by the offer."

Restatement (Second) of Contracts § 50. Finally, consideration "confers a benefit upon the promisor or causes a detriment to the promisee and must be an act, forbearance or return promise bargained for and given in exchange for the original promise." Channel Home Ctrs., Div. of Grace Retail Corp. v. Grossman, 795 F.2d 291, 299 (3d Cir. 1986) (interpreting Pennsylvania law).

In the present case, during Captain Hartman's phone call to Mr. DiGiacome, Captain Hartman quoted a salvage price to Mr. DiGiacome and then asked Mr. DiGiacome for authorization to raise the Yacht. In response, Mr. DiGiacome stated, "Do whatever is necessary to save the boat." Mr. DiGiacome also provided Captain Hartman with an Allstate claim number (Claim # 2596176434) assigned to the incident.

Under these circumstances, the Court concludes that Captain Hartman's description of the circumstances of the Yacht and price quote constitute an offer to undertake the salvage for the quoted price. In turn, Mr. DiGiacome's statement that Delaware Tow "do whatever is necessary to save the boat" and the furnishing of the claim number constitute an acceptance of Delaware Tow's offer to salvage the yacht for the quoted price. Finally, the agreement is supported by consideration. On one hand, Delaware Tow conducted the salvage of the Yacht in exchange

for Allstate's implied promise to pay the quoted price. As Captain Hartman testified at trial, "Delaware Tow is a business. It does not do work for free." On the other hand, Allstate, at the time, believed that salvaging the Yacht would reduce its potential liability under the Policy. Therefore, a valid oral contract existed between Delaware Tow and Allstate. Allstate breached this contract by refusing to pay Delaware Tow \$4,654.50.<sup>7</sup>

Having established that Allstate breached the oral contract, the Court will award Delaware Tow its "expectation" damages. An aggrieved party's "expectation interest" is its "interest in having the benefit of the bargain." ATACS Corp. v. Trans World Communications, Inc., 155 F.3d 659, 669 (3d Cir. 1998) (interpreting Pennsylvania law). An award of expectation damages is "designed to place the aggrieved in as good a position as would have occurred had the contract been performed." Id.

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<sup>7</sup> Allstate raised the statute-of-frauds defense for the first time at trial, arguing that any oral contract between it and Delaware Tow was not enforceable because Allstate had merely promised to pay the debt of Defendant Nelson. The Court need not decide, however, whether Allstate was in fact acting as a surety when it promised to pay Delaware Tow. Even assuming that the statute of frauds applied, the "leading object" or "main purpose" exception to the Statute of Frauds applies where "an oral promise to pay the debt of another was made to advance some pecuniary or business purpose of the promisor." Trumbull Corp. v. Boss Const., Inc., 801 A.2d 1289, 1293 (Pa. Commw. 2002). The Court concludes that Allstate's promise fits squarely within this exception, as Allstate's main purpose in authorizing the salvage and promising to pay was made primarily to minimize its own pecuniary loss.

Here, had Allstate performed its end of the bargain, Allstate would have been paid \$4,654.50 for its salvage. Accordingly, Delaware Tow is awarded \$4,654.50.

F. Promissory estoppel

Alternatively, Allstate may be held liable under the doctrine of promissory estoppel. Under this doctrine, "[a] promise which the promisor should reasonably expect to induce action or forbearance on the part of the promisee or a third person and which does induce such action or forbearance is binding if injustice can be avoided only by enforcement of the promise." Restatement (Second) of Contracts § 90. For a plaintiff to prove promissory estoppel, the plaintiff must prove "1) the promisor made a promise that he should have reasonably expected to induce action or forbearance on the part of the promisee; 2) the promisee actually took action or refrained from taking action in reliance on the promise; and 3) injustice can be avoided only by enforcing the promise." Edwards v. Wyatt, 335 F.3d 261, 277 (3d Cir. 2003) (interpreting Pennsylvania law).

First, Mr. DiGiacome's statement, "do whatever is necessary to save the boat," together with furnishing the claim number constituted an implied promise to pay Delaware Tow to salvage the Yacht. Moreover, given the facts conveyed to Mr. DiGiacome and the specific questions asked of him, Mr. DiGiacome should have reasonably expected that his statement and conduct

would induce Delaware Tow to incur the expense of salvaging the Yacht. Second, Delaware Tow reasonably relied on Mr. DiGiacome's authorization. Mr. DiGiacome acknowledged he was an Allstate agent, confirmed that a policy covering the Yacht had been issued by Allstate, and provided a claim number.

Finally, Defendant Nelson has defaulted in this action so that unless Allstate pays Delaware Tow for its services, Delaware Tow will be unlikely to collect. That Allstate ultimately denied the insurance claim for lack of coverage does not absolve Allstate of liability. Rather, at the time Mr. DiGiacome authorized the salvage, Allstate had an interest in limiting damage to the Yacht, the dock, adjacent vessels, and preventing chemicals from polluting the water in the event that coverage was established. Having attempted to protect its own interest, it would be unjust for Allstate to shift liability to an innocent third party, i.e., Delaware Tow, whom Allstate induced to perform.<sup>8</sup> Moreover, in light of "the definite and

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<sup>8</sup> The conclusion reached here is consistent with the strong public policy in favor of "encourag[ing] the hardy and industrious mariner to engage in these laborious and sometimes dangerous enterprises." The Clarita, 90 U.S. 1, 16 (1874); see also Southernmost Marine Servs., Inc. v. One (1) 2000 Fifty Four Foot (54') Sea Ray named M/V POTENTIAL, 250 F. Supp. 2d 1367, 1377 (S.D. Fla. 2003) ("The public policy underlying salvage awards in the Admiralty Court is to hold out a continuing incentive to undertake the physical and financial risk entailed in salvage operations . . . .") (citations and internal quotation marks omitted).

substantial character" Delaware Tow's reliance and its reasonableness, and the extent to which Delaware Tow's reliance was foreseeable by Allstate, this injustice can only be avoided by enforcing Allstate's promise. See Restatement (Second) of Contracts § 139(2) (listing circumstances relevant to determining whether injustice can be avoided only by enforcement of the promise).

Delaware Tow having established liability on the theory of promissory estoppel, the "remedy granted for breach may be limited as justice requires." Restatement (Second) of Contracts § 90. As indicated above, however, "[t]he preferred basis of contract damages seeks to protect an injured party's 'expectation interest.'" ATACS Corp., 155 F.3d at 669. Delaware Tow reasonably relied upon Allstate's implied promise to pay it \$4,654.50 to salvage the Yacht. Had Allstate performed, Delaware Tow would have received its expectation interest of \$4,654.50. The Court finds no reason to limit this award. Therefore, Delaware Tow should be awarded \$4,654.50 as an alternative to its contractual award.

G. Unjust enrichment.

To recover on an unjust enrichment theory, Delaware Tow must prove "[1] benefits conferred on defendant by plaintiff, [2]

appreciation of such benefits by defendant, and [3] acceptance and retention of such benefits under such circumstances that it would be inequitable for defendant to retain the benefit without payment of value." Styer v. Hugo, 619 A.2d 347, 350 (Pa. Super. 1993). The touchstone of the equitable doctrine of unjust enrichment is that the party against whom recovery is sought, here Allstate, must have wrongfully received a benefit that would be unconscionable to retain. Hershey Foods Corp. v. Ralph Chapek, Inc., 828 F.2d 989, 999 (3d Cir. 1987) (interpreting Pennsylvania law). Delaware Tow has not made out a case under this theory because, despite having the benefit of discovery, Delaware Tow has not identified the benefits it conferred on defendant. Delaware Tow contends that Allstate has "avoided additional costs, fines, penalties, and sanctions which would have resulted from the sunken yacht's location in navigable waters." Although Delaware Tow speculated about the benefits conferred upon Allstate by the salvage, Delaware Tow offered no proof to substantiate its contention. Accordingly, its unjust enrichment claim should fail.

### III. CONCLUSION

In light of the foregoing, Delaware Tow has established the liability of Allstate for breach of oral contract and under the doctrine of promissory estoppel. On these alternative

claims, judgment will be entered in favor of Delaware Tow and against Allstate, and Delaware Tow will be awarded \$4,654.50. An appropriate order follows.

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

DELAWARE RIVER TOW, LLC,                   :       CIVIL ACTION  
                                                  :       NO. 04-2850  
    Plaintiff,                                 :  
                                                  :  
    v.                                           :  
                                                  :  
VERNELL NELSON,                             :  
ALLSTATE INSURANCE CO., INC.,             :  
                                                  :  
    Defendants.                                :

ORDER

**AND NOW**, this **10th** day of **February, 2005**, in consideration of the Court's Memorandum of today's date, it is hereby **ORDERED** that judgment shall be entered in favor of Plaintiff and against Defendant Allstate in the amount of \$4,654.50.

**AND IT IS SO ORDERED.**

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**EDUARDO C. ROBRENO, J.**