LONG ISLAND Boating World

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SEA TRIALS

by James E. Mercante, Esq.

Court Ruling Gives New Meaning to "Home Sweet Home"

A boat by any other name is still a boat. A recent court decision, however, shows that if the boat has the comforts of home, such as a stateroom, galley, head, and air conditioning, the boat is a "dwelling." That designation was the key that released a vessel owner from liability in a personal injury ruling decided by a Niagara County judge.

In a case of first impression, Supreme Court Justice Ralph Boniello III ruled that the yacht, a 4300 Sovran model Tiara named *Cannonball*, had all the hallmarks of a "dwelling." This designation protected the vessel owner from liability under the Labor Law §§ 240 and 241.

The injury and the lawsuit Charles Lissow owned the Tiara. He noticed oil leaking from his vessel and contacted a representative of Cummins National Inc., the manufacturer of the two main engines. An employee of Cummins National, Daniel Zahoransky, inspected the Tiara at the Rochester Yacht Club and determined the vessel should be hauled for repairs. Lissow had the boat hauled nearby at Shumway Marine, a reputable local marina in Rochester. The Tiara was placed in a shed and secured on several 12-inch by 12-inch wooden blocks about 6 feet off the ground, ready for work to begin. When the mechanic, Zahoransky, arrived, he saw an A-frame ladder, in a closed position, lying against Cannonball's dive platform at the stern. The mechanic climbed up and down the closed ladder several times in the course of servicing the vessel. The next day, while disembarking the boat using the A-frame ladder, Zahoransky claimed the ladder shifted and he lost his balance and tumbled to the concrete floor, injuring his knee. There were no witnesses and the mechanic did not report the accident either to the owner or the marina. Nonetheless, he subsequently sued Lissow for money damages under New York Labor Law. The Labor Law, also known as the "scaffold law," is an unforgiving "strict liability" statute that protects injured workers who fall from heights and strips the owner of the structure of many defenses. Since he fell from a height from a structure, i.e. the vessel, plaintiff Zahoransky sued Lissow pursuant to §§ 240 and 240 of the Labor Law in New York Supreme Court, Niagara County.

The vessel owner and insurer's counterpunch Zahoransky moved for summary judgment, looking for a quick resolution by the judge without a trial, thinking the strict liability provisions of the Labor Law gave him a slam dunk. Because this case presented a rare confluence of labor and admiralty law, rather than raise the white flag, Lissow's marine insurer consulted admiralty counsel in New York City for ammunition in countering the charges. It was determined that the case was not only defensible, but winnable due to an exemption in the Labor Law for owners of one- or two-family dwellings. All that was needed were facts to support that Lissow's use of the 43-foot Tiara, and its amenities, qualified it as a floating home. Marine surveyor, Ron Alcus, of Alcus Marine Technical of Long Island, himself the owner of a Tiara yacht, was hired by the marine insurer to provide information about the nature of the engine repairs and specifics of Lissow's particular Tiara vessel. He found that *Cannonball* has two staterooms capable of sleeping up to six persons, two bathrooms, shower, kitchen, living room with all amenities, a separate dining area, and central air conditioning and heating. But, the key to the defense was learning from the vessel owner that *Cannonball* served as a second home where his family would regularly sleep overnight and take vacations and that Lissow annually deducted the mortgage interest associated with the loan on the yacht for income tax purposes because it was his second residence. Armed with this compelling evidence, the defense determined not only to oppose plaintiff's motion for summary judgment, but to counter with a cross-motion for summary judgment asking the judge to dismiss the complaint against Lissow based on the Labor Law's single-family dwelling exemption.

Labor Law Exemption

In 1980, the New York legislature carved out an exemption to the strict or absolute liability provisions of the Labor Law for owners of one-or two-family dwellings who contract for, but do not direct or control the contractor's work. The legislature's reasoning was practical: a homeowner should not be held to the same standards of liability as the owner of a commercial business, and homeowners are not in a position to direct and control a contractor's work or to protect themselves by purchasing appropriate insurance. But, to fall within the dwelling exemption, the yacht had to qualify as a "dwelling." A dwelling is defined in the Multiple Dwelling Law as "...any building or structure or portion thereof which is occupied in whole or in part as the home, residence or sleeping place of one or more human beings." Since this definition of dwelling is not restricted to a primary residence, there was room to argue that it should apply to a vessel. Courts in New York have held that the exemption for one-or two-family dwellings is not limited to a house or primary residence, and the law has been extended in court decisions to other dwellings such as a vacation home, an apartment, a cabin and even a barn. Although the exemption had never before been applied to a vessel, it has been extended beyond the primary residence to other "homes." This provided a basis to argue that a 43-foot pleasure yacht should be treated no differently that a vacation cabin or a barn, since Lissow and his family and friends enjoyed the private use of the yacht as a vacation residence for traveling, sleeping and eating. The yacht was for private use of the owner with no commercial purpose. Thus, the yacht should be considered a floating home, with all the amenities of any second vacation home, whether it is on land or at sea.

The Ruling Makes New Law

Justice Boniello noted that this was a case of "first impression" with respect to whether a yacht constitutes a "dwelling" within the meaning of the Labor Law statute. The judge determined that the important factor is the actual use to which the owner has put the property.

Having reviewed the vessel characteristics, the tax returns showing the mortgage interest deduction, the owner's use of the vessel, and having reviewed the legal briefs and heard oral argument, the judge agreed that the vessel qualified for the single-family dwelling exemption. In an opinion published in American Maritime Cases, 2006 AMC 2578, the judge determined that Lissow's motor yacht had all the amenities of a small home that was regularly used for the entertainment and enjoyment of his family. As a result, the court granted the vessel owner's cross-motion for summary judgment, dismissing the plaintiff's complaint in its entirety. Because the law and the judge's opinion were watertight, there has been no appeal.

Conclusion

As this case demonstrates, the confluence of admiralty and other law can make for seaworthy bedfellows. And, there truly is no place like home, even if it floats!

JAMES E. MERCANTE, admiralty partner with Rubin, Fiorella & Friedman LLP. Mr. Mercante represented the vessel owner and marine insurer in this case. E-mail address: jmercante@rubinfiorella.com.