



Mercante's Sea Trials



Admiralty Law: Finders Keepers?

We learned as kids the adage "Finders Keepers, Losers Weepers". And of course on land, that was correct. But at sea, admiralty law applies and nothing is as it seems. In admiralty, when something is found, we talk in terms of *salvage*, *arrest*, *abandonment*, *finds*, and *in rem* procedures.

Who has rights?

The law of admiralty is often ancient, sometimes unsettled and at times even in conflict depending on the jurisdiction. That's why at the first hint of salty dispute, people head to a maritime lawyer.

One local marine company discovered an abandoned barge full of scrap metal that had sunk over 20 years ago in the waters of Long Island Sound and knew that it would have good value these days and was worth the effort of salvaging. But, the company also realized that the difficulty was not in raising the cargo to the surface but securing sole possession and rights to sell the cargo as well as fending off rival 'treasure hunters'. It could be assumed that after 20 years the scrap metal was abandoned by its owner, but what about the rights, if any, of the marine insurance company that paid the owner for the loss? What rights do the boundary states of New York and Connecticut, or the U.S. Coast Guard have? Admiralty law provides procedural methods of dealing with these issues in a federal court sitting in admiralty. However, the procedures can vary if the shipwreck or cargo is of cultural, historical, social, or archaeological significance. But, with a 20 year old cargo of scrap metal, cultural, social, or historic significance was not a concern in the recent federal case of *Weeks Marine, Inc v. Cargo of Scrap Metal Laden Aboard Sunken Barge Cape Race*.

Tug Takes a Scrap

In 1984, the tug *Celtic* sank in the Long Island Sound while towing the barge *Cape Race* laden with a cargo of scrap metal. The location of the sunken barge is marked on navigation charts in 70 feet of water, yet no one has attempted to salvage the cargo. Weeks Marine, a professional salvage company commenced an admiralty action naming the cargo of scrap metal as the defendant. Yes, you heard right, the scrap metal cargo was the named defendant, not the tug company, cargo owner or marine insurance company. This form of "in rem" action against a vessel or cargo is common in admiralty law where, for example, the party suing is seeking to enforce a maritime lien against the 'thing' for services rendered such as supplying fuel oil or other services to a vessel, or as in this case requesting, either to be awarded salvage rights or a salvage award. Even in admiralty personal injury or cargo damage cases, it is not uncommon for the ves-

sel to be 'personified' and sued as the offending 'thing'. In admiralty law, things such as vessels and cargo can be 'arrested' until a dispute is resolved.

Here, Weeks Marine commenced suit in federal court seeking i) to arrest the underwater cargo, ii) to obtain a court Order to Show Cause why Weeks should not obtain exclusive rights to salvage the cargo, and iii) to have a temporary restraining order (TRO) or preliminary injunction issued to prevent rival salvors from interfering with Weeks' operations.

Injunctive Relief

The Court first took up the issue of the request for 'injunctive' relief. Admiralty recognizes the right of a first salvor to exclude others from participating in salvage operations, so long as the original salvor appears ready, willing, and able to complete the salvage project. Weeks was the first salvor of the cargo and therefore admiralty law would support Weeks' entitlement to exclusive salvage rights. But, injunctive relief is a remedy against a person or entity (known as an "in personam" action), while Weeks Marine had only only invoked 'in rem' jurisdiction against the cargo. According to the court, an *in rem* action is meaningless because things or property cannot be enjoined to do anything. In addition, to be entitled to injunctive relief, a plaintiff must first prove 1) that it is likely to suffer irreparable harm if the injunction is not issued; and 2) that it has a likelihood of success on the merits. The federal judge reviewed the record and felt that the 'irreparable harm' test was not satisfied particularly because the location of the scrap metal had been known for over 20 years and no rival salvor had yet attempted salvage at the site. Nor did it appear that any other salvors were waiting in the wings, or intended to interfere with the operation of bringing up scrap. Thus, the request for injunctive relief was denied. The judge suggested that Weeks could return to court and bring an *in personam* action seeking to enjoin rivals.

Salvage

Next up was the claim under the ancient maritime laws of "salvage". The federal judge properly noted that once a salvor saves property from marine peril, he or she obtains a maritime lien against the property saved. This "lien" is enforced by an admiralty *in rem* action against the property in federal court. There, the ultimate goal is to obtain a salvage award based on the value of the property salvaged. This was a potentially viable option for Weeks because it did file an *in rem* complaint against the scrap metal. However, for a salvage award to apply, some or all of the property has to be salvaged before an award may be considered. This is because "success" in

whole or in part is one of the three main elements of a salvage claim. A salvor has a maritime lien on some or all of the property "saved" which allows the salvor to then bring a suit *in rem* against the vessel or cargo or both.

There is in admiralty a 'Law of Finds' pursuant to which a party may seek full 'title' to property. This procedure is accomplished by an *in personam* action against a company or entity that may be a rival in claiming title to or ownership in the vessel or cargo or both. The trouble with this is that for old shipwrecks that appear to have been abandoned decades or even hundreds of years ago, who knows who owns it, or if anyone still cares. But when there is value in the shipwreck or cargo still aboard, no matter how old, someone will no doubt be asserting title or rights whether it be a state, nation or successor company to the owner or the marine insurance company.

In the final analysis, the federal judge noted that admiralty law may well give the plaintiff exclusive rights to salvage the cargo aboard the *Cape Race*. But, the judge determined that it was premature to issue an injunction against others, because some cargo had to be first brought to the surface to show success in whole or in part before the court would consider exclusivity of rights to further salvage operations or a salvage award. However, in certain circumstances disturbing a shipwreck and excavating her cargo has its own potential ramifications and permission from authorities may have to be obtained, particularly if the wreck and cargo is of historical, cultural, social, or archaeological significance. Of course, it is hard to conceive that a 20-year-old cargo of scrap metal would fall into the 'historic' or 'cultural' category such that any particular attention is being paid to it or that any special permission or permit would be required.

Postscript

Weeks Marine has since recovered 1,400 tons of the scrap metal cargo with no interference from rival salvors. So, another law we learned as kids applies, that "possession is nine-tenths of the law!"

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