Mercante's *Sea Trials*

Admiralty Law: *"You Sunk My Battleship?"*

A yacht owner's vessel sank when it was launched after winter storage. Now that summer is behind us, boat owners will be thinking about winter storage ashore, so a recent federal court decision presents a 'see-worthy' fact pattern.

Winter-above water

The vessel owner brought his 40-foot cruiser to a marina for storage ashore for the winter (no battleship, but a great game that was!). This particular marina, however, did not have a service department that repaired, winterized or commissioned boats. It simply rented slips, provided onland storage facilities, hauled and launched boats, and assisted owners in finding contractors to service their boats. Thus, the cruiser's owner contracted with the marina only for hauling, winter storage and spring launching of his vessel. There was no dispute the cruiser was in good condition when hauled by the marina and the marina accepted possession of the vessel for the winter.

The vessel owner then retained an outside contractor to do the winterization, which involved draining all water out of the boat's systems and replacing the water with antifreeze. To accomplish this, the contractor opened the sea-strainer caps to clean out the strainer baskets and to run antifreeze through the cooling system. Upon completion of the winterization process, the contractor left the port side strainer cap loosely fitted, allegedly intentionally. The contractor did not mention anything about the loosely-fitted sea strainer cap, which required tightening at launching. The vessel owner paid the contractor for his services. The cruiser was then shrink-wrapped by a second contractor and stored on blocks for the winter season.

The vessel owner had access to his vessel while it was stored at the marina and had inspected the exterior of the vessel at times during the winter. The owner kept the keys for the vessel and did not give a set to either the marina or the winterization contractor.

Spring-under water

When spring sprang, the owner contacted the marina to request the boat be launched. Accordingly, the shrink wrap was removed, the boat was washed and waxed and zincs replaced.

The marina conducted a visual inspection of the exterior of the boat, including the drain plugs, and launched it. None of the marina personnel boarded the boat or visually inspected the interior or engine compartment before or after it was launched. The boat was secured in a slip and the marina employees secured for the day. When marina personnel arrived the next morning, the cruiser was found sunk. Trial time

Because the vessel sank and incurred significant damages, the marina did not charge the vessel owner a fee for the launching, but that was not enough to satisfy the owner. Litigation and a trial ensued.

Three causes of action were asserted against the marina for damages sustained to the vessel in the sinking. These were (i) breach of contract, (ii) negligence and (iii) breach of bailment. The vessel owner succeeded on two out of the three causes of action, and in law, as in song, two out of three ain't bad!

A contract for the storage and launch of a vessel is a maritime service contract. In maritime law, one who performs a service does so "with the implicit agreement to perform in a workmanlike fashion." Thus, that contract included an implied warranty of workmanlike performance requiring that the party providing the service to perform in a "workmanlike manner" and exercise "reasonable care."

A marine expert for the contractor testified at trial that leaving sea strainer caps loosely fitted was proper after the winterization process to bleed air.

There was also undisputed expert testimony that if a cursory inspection had been done when the vessel was afloat, the loosely-fitted sea strainer cap would have become visually and audibly obvious because the vessel would be taking on a large quantity of water through the sea strainer into the bilge space.

After listening to fact and expert testimony and reviewing the evidence, the federal judge determined that the use of "reasonable care" when launching a vessel includes boarding the vessel and completing a cursory inspection once in the water "to determine that the vessel is sound and not leaking." Based on the evidence, the marina was found not to have complied with this obligation and liable on the breach of contract count.

With respect to negligence, there was trial testimony that when an owner requests his or her boat be launched, it is expected that it would be put in the water and stay afloat. The party launching the boat has an obligation to make sure that there are no obvious defects or problems that will cause her to take on water, even if the owner does not explicitly request such an inspection.

The court found that a marina in the business of launching boats must exercise at least reasonable care in that process and that, here, its duty was breached when marina employees launched the boat and neglected to board the vessel or undertake any inspection once it was in the water. Since a cursory inspection would have revealed the obvious and audible incursion of water through the sea strainer cap, the court found that the failure to undertake a cursory inspection upon launching proximately caused the submersion. Plaintiff therefore proved at trial by a "preponderance of the evidence" all the elements of negligence. On the other hand, negligence was not proven against the contractor who winterized the vessel (also a defendant) because the contractor was not hired to launch or commission the vessel, just to winterize it properly.

With respect to the bailment claim, a contract for the storage or maintenance of a vessel typically constitutes a "bailment." A bailment (a contract formed as a matter of law) usually requires exclusive control by the facility (here, the marina). But, since the vessel owner and his own contractors had access to the vessel while it was in storage and the vessel owner kept the only set of keys, the court found that there was no exclusive control by the marina and no bailment relationship was created. This cause of action failed.

As the court determined that there was negligence and breach of contract, the marina was required to pay the full extent of the damages, plus prejudgment interest from the date of the loss at a rate of 6% per year.

Conclusion

No one would expect a boating season to end the very day it is set to begin. It must have been distressing for the owner to arrive at the marina with new season excitement to learn his vessel was on the bottom. This is a case where liability could have been shared equally between the marina and the winterizing contractor, who did not announce that he left one sea-strainer cap loose. But, a well-versed federal judge heard all the trial testimony and reviewed all evidence, leaving no loose ends - - so the judge's ruling is watertight!

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