

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

H.R.M., INC., Plaintiff,
CIVIL Action NO. 3 : 96CV00037 (GLG)
April 3, 1997

-vs-

S/V EAGLE LIGHT, her
tackle, engines, equipment,
furnishings, etc., in rem,
and EDWARD MURRAY,
in personam,

Defendant.

14 Cottage Place
Waterbury, Connecticut

**BEFORE: THE HONORABLE GERARD L. GOETTEL, SENIOR
U.S.D.J.**

APPEARANCES:

For the Plaintiff:

KIRK M. H. LYONS, ESQUIRE
Lyons, Skoufalos, Proios & Flood
99 Park Avenue
New York, New York 10016

For the Defendant:

BRIAN FLANAGAN, ESQUIRE

Court Reporter:

Martha C. Marshall, RMR

Proceedings recorded by mechanical stenography, transcript produced by computer.

THE COURT: The following are the Court's finding of fact and conclusions of law. Starting with the findings of fact, I note that except for two issues that I'll discuss at the end, the facts are not truly in contest. The plaintiff H.R.M., Inc., a Rhode Island corporation with its principal office in Wickford, Rhode Island, is a professional commercial salvage and towing company. The company is dedicated to the salvage and towing of recreational vessels on the

water of Narragansett Bay, Block Island, and Rhode Island Sound, as well as, the Atlantic Ocean.

Plaintiff maintains a fleet of six fully equipped salvage vessels and other fully support berths, such as vehicles, radio communications, gear and computers. All of the plaintiff's salvage vessels have been outfitted and some have been custom built as quick response salvage vessels which are able to respond and render assistance in a short period of time. The value of plaintiff's vessels and equipment is over \$400,000. H.R.M. employs a number of licensed captains and deck hands to operate its salvage vessels. Among the vessels which H.R.M. owns and operates is the Motor Vessel KROPP SALVOR, a 26 foot Dusky hull twin diesel vessel specifically designed for salvage operations in shallow water.

During the months of June through September, the KROPP SALVOR was stationed and manned full time at Block Island. The value of the KROPP SALVOR is about \$85,000 and with the equipment aboard it was worth over \$100,000. Plaintiff maintains a 24 hour watch standing service 365 days of the year, although it is principally on Block Island only during the summer months, and the weekends in the late spring and early fall. It can, of course, respond to Block Island at other times, but a vessel is left continually stationed there.

H.R.M. monitors marine radio, E-mail, telephone traffic and stands ready, if called upon, or upon identifying a vessel in peril, to respond to any marine emergency that might occur in water described above. H.R.M. or Safe Sea is the name in which it is better known as a trade name, is a professional salvage and towing company.

Dr. Edward Murray was the owner of the sail vessel EAGLE LIGHT. The EAGLE LIGHT is a 33 foot Freedom sailboat which is also powered by a 25 horse power diesel engine and has a draft of approximately five feet. Its fair market value as of August 19, 1995 was about \$42,500.

Sometime between eight and nine in the morning of August 19th, '95, the defendant and a young man who was to become his son-in-law, set sail

aboard the EAGLE LIGHT from Branford, Connecticut, bound for Block Island which is part of the State of Rhode Island, albeit it's a long way from the mainland. The normal sail time between Branford and Block Island varies between eight and twelve hours, depending on weather conditions. Because of the direction of the wind, the transit took longer than anticipated with the result that the vessel arrived at the channel to Block Island Harbor long after sunset. During most of the sail the EAGLE LIGHT had counted winds from the northeast of approximately 15 to 20 knots. It was the intention of the defendant and his future son-in-law to meet the defendant's wife and daughter in Block Island and to have dinner there. They were waiting ashore for them to arrive and there was no direct communications between the vessel and the shore party to advise them of the delay. This caused Dr. Murray some considerable distress.

Sometime slightly before 9:30 in the evening or, to use the military terminology, 2130, the EAGLE LIGHT arrived at the green channel buoy number C-5 which marks the northeast boundary to the navigation channel which leads into Great Salt Pond, a body of water surrounded by Block Island. Dr. Murray was quite familiar with the channel and the island, having spent considerable time there and being an experienced seaman. However, the night was extremely dark. The light which Dr. Murray's future son-in-law was using to pick out bouys suddenly failed, leaving the vessel in almost complete darkness. The vessel circled around a bit trying to find the next buoy in question and in the course of that navigated into shallow waters and ran aground at approximately 2145 hours about 200 feet off the rocky ocean shore which is North of the breakwater entrance of Great Salt Pond.

Dr. Murray and his passenger tried on numerous occasions to free the vessel by using its auxiliary engines, but without success. When she ran aground she had her sails down and was under auxiliary power only. She had been proceeding at a very slow speed but was nevertheless was hard aground. Although the defendant was a contract member of a towing service which would have come to get him called Sea Tow, he nevertheless radioed the plaintiff directly and requested their services within minutes of running aground. Thereafter, he made a couple of repeated pleas to expedite rendering immediate assistance. Had the defendant waited for Sea Tow to

come out from the mainland, it would have been an hour or two more delay in getting to him. Dr. Murray continued to be concerned about his wife and daughter waiting on shore for him not knowing necessarily what was occurring to him.

After the calls were placed to the plaintiff, the motor vessel KROPP SALVOR, which was located in Block Island's Boat Basin, responded quickly to the repeated request for assistance, arriving at the grounding site sometime between 2145 and 2200 hours on August 19th. Upon arriving on the scene, the salvage master, Captain Peter Andrews, after ascertaining the degree peril, implemented a simple salvage plan to extricate the EAGLE LIGHT off the strand. The KROPP SALVOR was in some peril herself in entering shallow water coming within five feet of the EAGLE LIGHT. The KROPP SALVOR's deck hand, which was a volunteer, passed a towing hoser (hawser) to the EAGLE LIGHT's crew. After ensuring that the EAGLE LIGHT was not taking on water, the KROPP SALVOR slowly began to tow the sailboat seaward from its strand in the seas. The EAGLE LIGHT was then moved slowly into deeper water finding that the vessel was in a safe condition for towing. The KROPP SALVOR towed the EAGLE LIGHT into Block Island's inner harbor and placed it in a mooring that designated anchorage within the harbor.

After the vessel was safely in the mooring, Captain Andrews boarded the EAGLE LIGHT and met with the Defendant Murray. He presented him with a form, which was entered earlier, acknowledged that the vessel had successfully completed its services. The form also had a good deal of other information on it, including that the services that had been rendered were pure salvage. Dr. Murray states that the lighting conditions were such that he could not read the form at the time he signed it.

It was Dr. Murray's belief that he would be charged for services at a rate of around \$127 an hour for commercial towing. This was based on his past experience on hearing radio messages from the plaintiff concerning his towing rates.

This will be fairly brief.

(Recess.)

THE COURT: Prior to the services being rendered, parties did not discuss how compensation would be calculated for services rendered. Dr. Murray offered to pay for the services with a credit card, however, he was told that they simply wanted the name of his insurance carrier.

The following morning Captain Andrews returned and performed an underwater inspection of the EAGLE LIGHT's hull. During his dive he saw evidence that the vessel's keel had come in contact with hard objects and that the propeller blades were bent, indicating contact with rocks.

At a later time repairs were performed on the EAGLE LIGHT's hull and propeller and cost less than five hundred dollars. Consequently, the post casualty value of the EAGLE LIGHT was about \$42,000.

Ultimately, the Plaintiff submitted a bill to Dr. Murray's insurance carrier directly in the amount of \$12,100, plus seeking 18 percent interest.

The disputed issues in this case concern the nature of the strand, its composition, and the sea conditions at the time of the stranding. The Court finds that the ocean bottom where the vessel ran aground was rocky. There were other areas not too far away where the bottom was sand, but at certain points there were substantial rocks in the area and the defendant's vessel had the misfortune to land on some of those rocks. While the weather at the time of the grounding was wind from the north, northeast at 15 to 20 knots, with choppy seas of two to three feet, the stranded vessel was to a degree within the lee of the land with the result that the winds and seas were slightly less in the area where it stranded. However, the vessel was subject to a certain amount of movement on the rocky bottom.

The passengers aboard the EAGLE LIGHT were not in any danger. They had a dinghy with them and they were only a few hundred feet from shore. Indeed, the water was sufficiently shallow, being low tide, that they could very likely have walked to shore had they had to. However, the vessel was subject

to a degree of peril. If left where it was until the tide rose enough to free it, it would have sustained additional damage to its bottom.

Conclusions of law: This is a claim for marine salvage which is an admiralty or maritime claim within the meaning of Rule 9(H) within the Federal Rules of Civil Procedure, and within admiralty and maritime jurisdiction of this Court by virtue of 28 U.S.C. Section 1333. The Court has jurisdiction over both the cause of action and the parties. Venue is proper.

Case is governed by general maritime law as it is an admiralty and maritime case. Three elements are necessary to establish a valid marine salvage claim: one, a marine peril; two, services voluntarily rendered were not required by an existing duty or from a special contract; and three, success in whole or in part with contribution to such success by service rendered by the SALVOR.

There's no dispute that the later two elements were present here. The only disputed element, as mentioned earlier, was the extent of maritime peril.

When a large vessel is driven aground on rocks or shells or reefs, it must be considered in a state of peril. The degree of peril to a smaller recreational vehicle is not as large, but there still is a degree of peril. The peril, as I mentioned earlier, is to further damage to the vessel's bottom. While a large vessel, which is stranded, runs the risk of cracking its bottom because it's only suspended on certain points, the smaller vessel, in particular one with a fiberglass hull, does not have that same sort of risk. It can, however, sustain further damage to its bottom.

There was no prior meeting of the mind as between the parties as to what type of services were being rendered or what the compensation would be. Dr. Murray was not apprised that the plaintiff would seek remuneration on the law of salvage. However, he is not an inexperienced person with the law of the sea in that he has done extensive sailing and has worked in boat yards in the summer. He apparently, however, did not consider the possibility that the services rendered would be treated as a salvage operation entitling the plaintiff to remuneration far in excess that could be claimed simply on a time basis.

In computing the amount of salvage award, the Court is still governed by a case which is more than 125 years old, namely the Blackwall, 77 U.S. 10 decided in 19 -- excuse me, 1869. The factors to be considered are: (1) the time, labor and materials expended by the SALVOR which here were relatively minimal; (2) the promptitude, skill and energy deployed in rendering the services, which were of a fairly high degree, although not requiring unusual expertise; (3) the value of the property risked and employed by the SALVOR, and the degree of danger to which the SALVOR's property was put. There was a degree of danger to the SALVOR's property here, however, it was not great. The value of the property saved, which we've already discussed, and the degree of danger from which the property was rescued which, as I've indicated earlier, was slight but nevertheless there.

I find that although the degree of peril was not great, the plaintiff is nevertheless entitled to an award for salvage services. In light of the skill exercised, the weather and sea conditions present, and the degree of peril to both vessels, the Court sets that salvage award at \$9,000. In some instances an equitable uplift is appropriate. In the B. V. Wijsmuller case it was done in part because of the extreme inflation that was being experienced at that time. This has not been a heavy inflationary period and we do not see a need for an equitable uplift. On the other hand, we do find that prejudgment interest is warranted in this admiralty case. We award interest at the rate of seven percent from August 19th, 1995, to the date of judgment.

The Clerk is directed to enter judgment in plaintiff's favor in the amount of \$9,000 plus interest at seven percent from August 19th, 1995 to the date of judgment, along with costs.

Is there any aspect of the case either factually or legally that I have failed to rule on?

MR. LYONS: No, Your Honor.

MR. FLANAGAN: No, I don't believe there is, Your Honor.

THE COURT: All right, gentlemen. Thank you very much. This was a nice,

quick case.

CERTIFICATE

I, Martha C. Montelongo, RPR-CM, hereby certify that the foregoing pages are a complete and accurate transcription of my original stenotype notes taken in the matter of H.R.M., Inc. vs. Eagle Light, et al which was held before the Honorable Gerard L. Goettel, Senior U.S.D.J., at 14 Cottage Place, Waterbury, Connecticut, on April 3, 1997.

Martha C. Montelongo, RPR-OM
Official Court Reporter