

## [Delta November, LLC v. Baker](#)

United States District Court for the Southern District of Florida, Miami Division

August 22, 2011, Decided; August 23, 2011, Entered on Docket

Case Number: 10-10086-CIV-MARTINEZ-MCALILEY

### Reporter

2011 U.S. Dist. LEXIS 116000; 23 Fla. L. Weekly Fed. D 44; 2011 WL 4501118

DELTA NOVEMBER, LLC., a Florida Company, Plaintiff, vs. RICHARD BAKER, Defendant.

### Core Terms

vessel, oral contract, admiralty, allegations, fail to state a claim, Marine, repair, venue

**Counsel:** [\*1] For Delta November, LLC., a Florida Company, Plaintiff: Keith Steven Brais, Richard Dennis Rusak, Brais & Associates PA, Miami, FL.

**Judges:** JOSE E. MARTINEZ, UNITED STATES DISTRICT JUDGE.

**Opinion by:** JOSE E. MARTINEZ

### Opinion

#### ORDER DENYING MOTION TO DISMISS

THIS CAUSE came before the Court upon Defendant's Motion to Dismiss (**D.E. No. 11**). Plaintiff brought this action alleging breach of maritime contract / warranty of workmanlike performance (Count 1) and breach of marine bailment (Count 2). Defendant has brought the instant motion to dismiss alleging lack of jurisdiction, improper venue, and failure to state a claim on both counts.

#### **I. Factual Background**

In December 2009, Plaintiff Delta November, LLC ("Plaintiff") entered into an oral contract with Defendant Richard Baker ("Defendant") to repair the starboard engine of Defendant's vessel, the M/Y CJ, a 33-foot Chris-Craft fly bridge sportfish vessel (the "vessel"). Complaint ¶¶ 4, 5. At the time, the vessel was docked at its home dock, Worldwide Sportsman, and connected to shore-side power. Complaint ¶¶ 6, 7. Defendant began the repairs at Worldwide Sportsman, which is located in Islamorada, Florida. Complaint ¶ 6. Defendant then

requested permission to move the vessel [\*2] from Worldwide Sportsman to a berth behind Defendant's house in Tavernier, Florida. Complaint ¶ 8. Plaintiff granted permission for Defendant to shift the vessel to his own house. Complaint ¶ 8. Instead of moving the vessel to his own house, however, Defendant shifted the vessel to a berth located behind his neighbor's house. Complaint ¶ 9. When Defendant shifted the vessel, he failed to reconnect shore-side power. Complaint ¶ 10. Defendant also failed to monitor the vessel. Complaint ¶ 11.

While docked at Defendant's neighbor's house, the vessel began taking on water from the shaft's packing gland. Complaint ¶ 11. The vessel's onboard bilge pumps kept up with the intruding water until the battery life died. Complaint ¶ 11. If Defendant had connected the vessel to shore-side power or if he had monitored the vessel, he could have saved the vessel. Complaint ¶ 11. Instead, the vessel sank at its berth causing damage to its hull, machinery, appurtenances, and Plaintiff's personal property. Complaint ¶ 11.

Plaintiff also alleges that Defendant damaged the packing gland by improperly removing the starboard engine and failed to confirm the packing gland's integrity after removing the starboard [\*3] engine. Complaint ¶ 13.

#### **II. Standard**

"When considering a motion to dismiss, all facts set forth in the plaintiff's complaint 'are to be accepted as true and the court limits its consideration to the pleadings and exhibits attached thereto.'" [Grossman v. Nationsbank, N.A., 225 F.3d 1228, 1231 \(11th Cir. 2000\)](#) (quoting [Lopez v. First Union Nat'l Bank of Fla., 129 F.3d 1186, 1189 \(11th Cir. 1997\)](#)). "[Federal Rule of Civil Procedure 8\(a\)\(2\)](#) requires only 'a short and plain statement of the claim showing that the pleader is entitled to relief,' in order to 'give the defendant fair notice of what the ... claim is and the grounds upon which it rests.'" [Bell Atl. Corp. v. Twombly, 550 U.S. 544, 127 S.Ct. 1955, 1964, 167 L. Ed. 2d 929 \(2007\)](#) (quoting

[Fed. R. Civ. P. 8](#); [Conley v. Gibson, 355 U.S. 41, 47, 78 S. Ct. 99, 2 L. Ed. 2d 80 \(1957\)](#)). Thus, a plaintiff is not required to make detailed factual allegations; however, "a plaintiff's obligation to provide the 'grounds' of his 'entitle[ment] to relief' requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." [Twombly, 127 S.Ct. at 1964-65](#). "[T]he tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable [\*4] to legal conclusions." [Ashcroft v. Iqbal, 556 U.S. 662, 129 S.Ct. 1937, 1949, 173 L. Ed. 2d 868 \(2009\)](#). Factual allegations must be enough to raise a right to relief above the speculative level . . . on the assumption that all the allegations in the complaint are true (even if doubtful in fact)." [Id. at 1965](#).

### III. Analysis

#### A. Subject Matter Jurisdiction

Defendant asserts that this complaint lacks subject matter jurisdiction. Specifically, Defendant alleges that does not fall within admiralty jurisdiction under [28 U.S.C. § 1333](#) because the vessel at issue was not in working condition and therefore does not fall within the meaning of "vessel" under the statute. "Title [1 U.S.C. § 3](#) provides the default definition of 'vessel' for the entire United States Code." [Crimson Yachts v. Betty Lyn II Motor Yacht, 603 F.3d 864, 872 \(11 Cir. 2010\)](#) (citing [Stewart v. Dutra Constr. Co., 543 U.S. 481, 490, 125 S. Ct. 1118, 160 L. Ed. 2d 932 \(2005\)](#)). "The word 'vessel' includes every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water." [1 U.S.C. § 3](#). "In deciding whether a watercraft is a vessel, 'the focus . . . is the craft's capability, not its present use or station.'" [Crimson Yachts, 603 F.3d at 872](#) [\*5] (quoting [Bd. of Comm'rs of the Orleans Levee Dist. v. M/V Belle of Orleans, 535 F.3d 1299, 1310 \(11th Cir. 2008\)](#)). Even boats and ships that have been wrecked, submerged, and then towed to drydock for extension repairs may qualify as vessels. See [Crimson Yachts, 603 F.3d at 873](#) (discussing cases involving heavily damaged watercraft that still qualified as vessels). "[T]here is no reason why a vessel which has been withdrawn from navigation but which is still technically capable of being used in navigation should escape the provisions of the [Federal Maritime Lien Act]". [Id. at 873 n. 6](#) (quoting 2 Benedict on Admiralty §§ 38 at 3-26 (7th ed. rev. 1998)). The vessel in this case was capable of floating when Defendant took possession of it, and there is no allegation that its navigation system was damaged. Therefore it was technically capable of being used in

navigation and qualifies as a vessel.<sup>1</sup>

#### B. Venue

Defendant argues that venue [\*6] is improper because Plaintiff has failed to allege that damages accrued in this district. In this case, Plaintiff has alleged that the damage occurred in the southern district of Florida, specifically in Tavernier, Florida. Moreover, this is an *in personam* admiralty action, and Defendant was properly served in this district. "Venue in an *in personam* admiralty action has long been established as proper wherever a motion can be served upon the libellee." [In re McDonnell-Douglas Corp., 647 F.2d 515, 516 \(5th Cir. 1981\)](#) (internal citations omitted). Accordingly, the Court concludes that venue is proper.

#### C. Failure to State a Claim

Defendant argues that Plaintiff failed to state a claim in Count 1 for two reasons: first, because Plaintiff, a corporation, failed to plead that its principal or agent entered into the oral contract with Defendant, and second, because oral contracts are unenforceable in admiralty. These arguments are without merit. Defendant did not cite any law and the Court is not aware of any law requiring a Plaintiff to assert affirmatively that oral contracts with corporations were made through their agents. See [Ace American Ins. Co. v. First Choice Marine, Inc., No. 8:07-CV-1473-T-17TBM, 2010 U.S. Dist. LEXIS 76598, 2010 WL 3125945, at \\*6 \(M.D. Fla. July 29, 2010\)](#) [\*7] (accepting as true allegation that the plaintiff entered into an oral contract with the defendant corporation even though the allegation did not state anything about the defendant corporation's agent).

Contrary to Defendant's assertion, oral contracts are enforceable in admiralty. See [Sweet Pea Marine, Ltd. v. APJ Marine, Inc., 411 F.3d 1242, 1249 \(11th Cir. 2005\)](#) (stating that "[f]ederal admiralty jurisdiction is invoked by a claim that an oral contract regarding the repair of a vessel was breached" and laying out the elements of such a claim). The warranty of workmanlike performance is an implied warranty that is imposed on a maritime service contractor and requires services to be performed with reasonable care, skill and safety.

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<sup>1</sup> Because this case was brought pursuant to admiralty jurisdiction rather than diversity jurisdiction, it is not necessary for the Court to address Defendant's arguments regarding whether Plaintiff established \$75,000 threshold required under [28 U.S.C. § 1332](#).

[Vierling v. Celebrity Cruises, Inc., 339 F.3d 1309, 1315 \(11th Cir. 2003\)](#). In Count 1, Plaintiff has adequately alleged a breach of the warranty of workmanlike performance in an oral contract for repair. The Court therefore finds that Count 1 should not be dismissed for failure to state a claim on the grounds listed by Defendant.

Defendant also asserts that Count 2 should be dismissed for failure [\*8] to state a claim. Specifically, Defendant asserts that Plaintiff failed to allege that Defendant had exclusive possession and control of the vessel to the exclusion of Plaintiff, as required for a breach of marine bailment claim. On the contrary, however, paragraph 18 of the complaint specifically alleges that "Defendant had exclusive possession of the

Vessel and property to the exclusion of Plaintiff." Complaint ¶ 18. For the purposes of this motion, the Court accepts that allegation as true. Therefore, it is

**ORDERED AND ADJUDGED** that Defendant's Motion to Dismiss (**D.E. No. 11**) is **DENIED**.

DONE AND ORDERED in Chambers at Miami, Florida, this 22 day of August, 2011.

/s/ Jose E. Martinez

JOSE E. MARTINEZ

UNITED STATES DISTRICT JUDGE