

**In the United States District Court
for the District of Delaware**

INDIAN RIVER RECOVERY CO.,)
)
Plaintiff,)
)
v.)
)
THE FAITHFUL STEWART, Her)
Appurtenances, Furniture, Cargo, etc.) Civil Action 85 - 310 CMW
)
Defendant,)
)
v.)
)
STATE OF DELAWARE and OCEAN WATCH,)
)
Applicants for Intervention.)

Bayard J. Snyder, Esquire, of Phillips & Snyder, Wilmington, Delaware
Attorney for Plaintiff

Michael F. Foster, Assistant Attorney General, Department of Justice,
Wilmington, Delaware
Attorney for State of Delaware

Patrick Scanlon, Esquire, of Barros, McNamara & Scanlon,
Dover, Delaware
Attorney for Ocean Watch

OPINION

Wilmington, Delaware

June 11, 1986

**In the United States District Court
for the District of Delaware**

INDIAN RIVER RECOVERY CO.,)
)
) Plaintiff,)
)
) v.)
)
) THE THREE BROTHERS, Her)
) Appurtenances, Furniture, Cargo, etc.) Civil Action 85 - 311 CMW
)
) Defendant,)
)
) v.)
)
) STATE OF DELAWARE and OCEAN WATCH,)
)
) Applicants for Intervention.)

Bayard J. Snyder, Esquire, of Phillips & Snyder, Wilmington, Delaware
Attorney for Plaintiff

Michael F. Foster, Assistant Attorney General, Department of Justice,
Wilmington, Delaware
Attorney for State of Delaware

Patrick Scanlon, Esquire, of Barros, McNamara & Scanlon,
Dover, Delaware
Attorney for Ocean Watch

OPINION

Wilmington, Delaware

June 11, 1986

**In the United States District Court
for the District of Delaware**

INDIAN RIVER RECOVERY CO.,)	
)	
Plaintiff,)	
)	
v.)	
)	
SANTA ROSEA LEA, Her Apurtanences, Furniture, Cargo, etc.,)	Civil Action 85 - 312 CMW
)	
Defendant,)	
)	
v.)	
)	
STATE OF DELAWARE and OCEAN WATCH,)	
)	
Applicants for Intervention.)	

Bayard J. Snyder, Esquire, of Phillips & Snyder, Wilmington, Delaware
Attorney for Plaintiff

Michael F. Foster, Assistant Attorney General, Department of Justice,
Wilmington, Delaware
Attorney for State of Delaware

Patrick Scanlon, Esquire, of Barros, McNamara & Scanlon,
Dover, Delaware
Attorney for Ocean Watch

OPINION

Wilmington, Delaware

June 11, 1986

**In the United States District Court
for the District of Delaware**

INDIAN RIVER RECOVERY CO.,)	
)	
Plaintiff,)	
)	
v.)	
)	
ADELINE, Her Appurtenances, Furniture, Cargo, etc.,)	Civil Action 85 - 313 CMW
)	
Defendant,)	
)	
v.)	
)	
STATE OF DELAWARE and OCEAN WATCH,)	
)	
Applicants for Intervention.)	

Bayard J. Snyder, Esquire, of Phillips & Snyder, Wilmington, Delaware
Attorney for Plaintiff

Michael F. Foster, Assistant Attorney General, Department of Justice,
Wilmington, Delaware
Attorney for State of Delaware

Patrick Scanlon, Esquire, of Barros, McNamara & Scanlon,
Dover, Delaware
Attorney for Ocean Watch

OPINION

Wilmington, Delaware

June 11, 1986

**In the United States District Court
for the District of Delaware**

INDIAN RIVER RECOVERY CO.,)
)
) Plaintiff,)
)
) v.)
)
) CORNELIA, Her Appurtenances,)
) Furniture, Cargo, etc.,) Civil Action 85 - 314 CMW
)
) Defendant,)
)
) v.)
)
) STATE OF DELAWARE and OCEAN WATCH,)
)
) Applicants for Intervention.)

**Bayard J. Snyder, Esquire, of Phillips & Snyder, Wilmington, Delaware
Attorney for Plaintiff**

**Michael F. Foster, Assistant Attorney General, Department of Justice,
Wilmington, Delaware
Attorney for State of Delaware**

**Patrick Scanlon, Esquire, of Barros, McNamara & Scanlon,
Dover, Delaware
Attorney for Ocean Watch**

O P I N I O N

Wilmington, Delaware

June 11, 1986

Robert M. Wright
WRIGHT, Senior Judge

The State of Delaware and Ocean Watch, a not-for-profit corporation formed by sport scuba divers, dive-boat charter operators and fishing boat captains, have moved to intervene in each of five admiralty actions filed by Indian River Recovery Company ("IRRC") against what it alleges to be ancient shipwrecks.¹ On December 20, 1985, before Ocean Watch moved to intervene, the Court ordered IRRC to show cause why the Court should not quash the warrants it earlier had issued for the arrest of these wrecks and dismiss the actions. Because the Court decides to dismiss the actions, it need not reach the intervention issue.

DISCUSSION

On May 24, 1985, IRRC filed nearly identical complaints in admiralty against each of the five wrecks.² The complaints state that in April, 1984, IRRC located the abandoned wrecks and "proceeded to salvage a portion thereof." Complaint ¶ 5. The complaints further allege that IRRC has voluntarily rendered valuable salvage services in the past and will continue to do so in the future. Complaint ¶¶ 6, 7.

Relying on these allegations, the Court ordered on May 29, 1985, that a warrant issue for the arrest of each wreck and appointed two scuba divers

¹ The five actions filed by Indian River Recovery Company - 85-310, 311, 312, 313, 314 - have not been consolidated, but are virtually identical at this stage of the proceedings. For the sake of convenience, any papers to which the Court refers are those filed in No. 83-310.

² IRRC also has filed a complaint against a wreck it identified as The China, in which action Ocean Watch moved successfully to intervene. See Indian River Recovery Co. v. The China, 108 F. R. D. 383 (D. Del. 1985). This opinion does not involve The China.

nominated by IRRC to serve the warrants upon the wrecks. IRRC later filed a return of service in each action.

The State of Delaware moved to intervene in these actions on June 20, 1985. It claims an interest in the wrecks, which are located within the territorial waters of the State of Delaware, because (a) the State is owner of the submerged land upon which the wrecks are embedded; (b) pursuant to Del Code Ann., tit. 7, § 6151 (Supp. 1982), the Governor and Secretary of the Department of Natural Resources and Environmental Control have exclusive jurisdiction to convey a fee simple or lesser interest in the subaqueous lands of the state; (c) Section 6151(a) provides that no use of Delaware's submerged lands be undertaken except pursuant to a lease or grant; and (d) IRRC has no such lease or grant and therefore is in violation of § 6151. The State asserts that disposition of these actions as a practical matter may impair or impede its ability to protect its interest, and has moved to intervene as of right pursuant to Fed. R. Civ. P. 24(a)(2).

In a letter to counsel for IRRC dated December 5, 1985, the Court raised sua sponte the question of whether the Court should have additional tangible evidence that wrecks actually exist at the locations specified in the complaint, as well as details of the extent of salvage efforts performed or to be performed on each wreck, for subject matter jurisdiction to exist in each case. The Court formalized its request for this information on December 20, 1985, by entering an Order to Show Cause why the warrants for the arrest of each wreck should not be quashed and the cases dismissed. By letter that same day, the Court directed IRRC to "submit affidavits that describe with reasonable particularity the actual steps taken with respect to each of the vessels that are the subject of these five actions to satisfy the Court that

admiralty and maritime subject-matter jurisdiction exists." Among other things, the affidavits were to detail salvage services provided by IRRC to date.

Ocean Watch moved to intervene in these actions on March 3, 1986.³ IRRC filed affidavits and a letter memorandum concerning the Court's subject matter jurisdiction in these salvage actions on March 4, 1986. The affidavits reveal that IRRC "located" the shipwrecks solely as the result of research and investigation conducted by Harvey Harrington, Vice President of IRRC. The affidavits contain no indication that IRRC made any actual dives upon the wrecks prior to filing its complaints. Affidavits of the scuba divers who arrested the wrecks recite that they discovered "an abundance of ships' timbers, plankings and encrusted objects." There is no indication that IRRC recovered or brought to the surface any items from the wrecks.

Here IRRC invokes the Court's admiralty and maritime jurisdiction, see 28 U. S. C. § 1333(1) (1982), and purports to state salvage claims. A valid salvage claim seeks conceptually to enforce a maritime lien and contains three elements: (1) a marine peril; (2) service voluntarily rendered; and (3) success in whole or in part. The Sabine, 101 U.S. 384 (1880); see G. GILMORE AND C. BLACK, THE LAW OF ADMIRALTY, 534-35 (2d ed. 1975). No valid salvage claim exists if any one of these three elements is missing.

³ Ocean Watch asserted the same grounds for its intervention here as in six similar but unrelated salvage actions filed by Maritime Systems International, Inc., C. A. 86-611-13, 646-48, in which actions the Court allowed Ocean Watch to intervene for two limited purposes. See Maritime Systems International Inc. v. The Unidentified, Wrecked and Abandoned Vessel, C. A. 86-611 (D. Del. June 10, 1986).

IRRC filed its salvage claims based solely upon Harrington's research.⁴ It made no dives on the wrecks before warrants issued for their arrest. No items were recovered. In essence, IRRC has conducted no salvage activities on the wrecks.

IRRC apparently faces the threat of prosecution by the State of Delaware if it salvages the wrecks without the state's permission. See Del. Code Ann. tit. 7, § 6151 (1983).⁵ IRRC states that it presently is negotiating with the state to obtain salvage leases, and asks that the Court stay dismissal of the action until permits issue and IRRC's future success in salvaging the wrecks can be ascertained. A prospective salvor's relationship with the state and its reasons for not salvaging any part of a wreck are simply beside the point, however, in determining whether that party has alleged a valid salvage claim against an ancient wreck.

Moreover, allegations in the complaints about the existence and location of ancient wrecks based upon research and investigation alone do not satisfy the Court that such vessels actually rest at that location or exist at all. The existence of a vessel and a maritime lien upon it, which in these cases arises from salvage activities, are essential for an action in rem to exist. See Fed. R. Civ. P. Supp. Rule C. In the absence of physical evidence that a wreck exists at the location alleged and that the salvor has been successful in

⁴ The validity of Harrington's research and conclusions have been called into serious question in letters and memoranda submitted by Mr. Joseph Amrhein as amicus curiae.

⁵ Had IRRC undertaken salvage activity and risked prosecution, the Court might have faced a preemption issue similar to that in Cobb Coin v. Unidentified, Wrecked & Abandoned Sailing Vessel, 525 F. Supp. 186 (S. D. Fl. 1981).

whole or in part in salvaging the wreck⁶ before the complaint is filed, the Court is not satisfied that conditions for an action in rem exist and that a warrant for the arrest of the wreck should issue.

Here IRRC filed the five salvage actions prematurely. The Court did not satisfy itself at the time that conditions for an action in rem existed, and improvidently ordered that warrants for the arrest of the vessels issue. See Fed. R. Civ. P. Supp. Rule C (3). It is now apparent that IRRC has conducted no on-site salvage activities to date at the locations where its divers served the warrants of arrest. Affidavits that timbers and other encrusted objects exist at those sites do not remedy the absence of success in whole or in part, a necessary element of any salvage action, nor do they satisfy the court that a salvagable wreck is located there. Q. Maritime Systems International Inc. v. The Unidentified, Wrecked and Abandoned Vessel, C. A. 86-611 (Slip Op. at 3, n. 3)(D. Del. June 10, 1986) (salvor's affidavit stated with particularity nature and condition of wrecks).

The Court accordingly will quash the warrants of arrest and dismiss the five salvage actions. IRRC can initiate new actions by filing new complaints once it physically has performed salvage activities on actual wrecks located at the sites and can satisfy the Court that valid actions in rem exist.

An order will enter in conformity with this opinion.

⁶ A salvor can satisfy this requirement by bringing one significant artifact, such as a coin or piece of the ship's railing, from the wreck to the surface. See e. g. Cobb Coin Co. v. Unidentified, Wrecked and Abandoned Sailing Vessel, 525 F. Supp. 186, 191 (S. D. Fla. 1981)(Cobb Coin I)(salvage action initiated by arresting cannon brought up from ocean floor).