

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

MARTHA'S VINEYARD SCUBA)
HEADQUARTERS INC.,)
Plaintiff,)
)
v.) C.A. No. 00-11565-NG
)
THE WRECKED AND ABANDONED STEAM)
VESSEL R.M.S. REPUBLIC, *in rem*,)
Defendant.)
GERTNER, D.J.:

MEMORANDUM AND ORDER RE: PLAINTIFF'S MOTION FOR EXCLUSIVE SALVAGE
RIGHTS AS SALVOR-IN-POSSESSION OF DEFENDANT VESSEL AND
PRELIMINARY INJUNCTIVE RELIEF
July 19, 2005

Martha's Vineyard Scuba Headquarters, Inc. ("MVSHQ"), modern day pirates, have located what they believe to be millions of dollars in gold and coin. The problem is that the precious cargo is sitting at the bottom of the Atlantic Ocean, roughly 50 miles south of Nantucket, in a shipwrecked ocean liner. In all, it will cost MVSHQ several million dollars to bring the gold and coin to the surface. Before continuing this expensive and risky effort, MVSHQ asks this Court to grant it exclusive salvage rights as salvor-in-possession of the shipwrecked vessel, and to issue a preliminary injunction against interference by other opportunistic interlopers.

MVSHQ's request was time-sensitive since it was scheduled to begin its next, most expensive phase of expedition on the shipwrecked vessel on July 12, 2005. Accordingly, I held a hearing on July 8, 2005. After allowing the government the

remainder of the day to file an additional opposition, I electronically granted MVSHQ exclusive salvage rights and issued a preliminary injunction, with written findings to follow. See docket entry of July 9, 2005.

Since I can properly exercise *in rem* jurisdiction over the shipwreck, and because MVSHQ has established itself as a dutiful, continuous salvor of the shipwrecked vessel, I hereby **GRANT** MVSHQ exclusive salvage rights as salvor-in-possession of the shipwreck. And since I am persuaded that there are imminent threats of interference with MVSHQ's operations, I find that MVSHQ can show irreparable harm justifying a preliminary injunction. Accordingly, I hereby **GRANT** MVSHQ's request for a preliminary injunction [docket entry #76].

I. BACKGROUND

A. The Pirates, The Shipwreck and The Gold

1. The 1909 Accident

In January 1909, the R.M.S. REPUBLIC ("the shipwreck" or "the Republic") set sail from New York City, apparently to deliver \$3 million in gold to the government of Czar Nicholas II, who planned to use it to refinance loans from the British and French governments. About fifteen hours after departure and in heavy fog, the Republic was struck broadside by the bow of the FLORIDA ("the Florida"), a small Italian liner that was outside the boundaries of the normal path for westbound ships. See The

Republic, Skin Diver Magazine 19, 24 (July 1984). The Florida knifed halfway through the side of the Republic, flooding the latter's engine room. Id. The Republic's passengers, having no time to gather their belongings, were transferred to the Florida, which was not as severely damaged by the collision. Id.

Through the use of the newly invented wireless telegraph, the Republic sent out a distress signal of "CQD" ("Come Quick, Danger") (at the time, the "SOS" signal was in the process of being adopted by the United States). Id. The signal was picked up on Nantucket and quickly relayed to all nearby ships. Id. Within a few hours, several ships arrived to provide aid; after another ten hours, approximately 1,650 passengers were safely transferred from the damaged ships, with only four deaths. Id. Although the Coast Guard attempted to haul the Republic to shore, the Republic's bulkheads caved in and the steamship sank in 250 feet of water. Id. at 26.

2. The Modern Salvage Efforts

On August 12, 1981, after five years of preparatory research, and after two and a half days of at-sea searching, MVSHQ was able to locate and conduct diving operations at the wreck of the Republic, in the Atlantic Ocean approximately 50 miles south of Nantucket Island, Massachusetts. By July 4, 1983, MVSHQ was able to make a full-fledged positive identification of the Republic.

In 1983, 1985, 1987, and 2000, MVSHQ performed survey and salvage operations on the Republic, at a total cost of about \$2.5 million.¹ Despite extensive efforts in 1987, MVSHQ has not been able to reach the precious cargo because of limited information - thus far, survey and salvage efforts have been limited to the upper four decks of the vessel (the saloon, promenade, upper and middle decks). Although no gold was recovered, these expeditions did recover historically valuable artifacts, many of which are now on display at the Maritime Museum in Fall River. The gold is now presumed to be located deep inside the vessel's underbelly.

Since the last major salvage effort in 1987, MVSHQ has diligently set out to uncover the precise whereabouts of the precious cargo. They have researched in the United States, Great Britain, France and Russia, including entering into an exclusive contract with Harland & Wolff, the Republic's shipbuilder, to provide details regarding the target areas believed to contain the gold cargo.

¹ MVSHQ positively identified the shipwreck in 1983 by comparing the vessel's remains with the original external "rigging" plan of the Republic, and by recovering dinner plates bearing the White Star Line name and markings. In 1985, MVSHQ performed an extensive survey of the Republic in preparation for a full-scale salvage operation. In 1987, MVSHQ, with the help of specialized contractors, spent 74 days salvaging the shipwreck, at a cost of over \$2.35 million. Unfortunately, the 1987 salvage operation was not able to reach the site of the gold, which is believed to be located in three small rooms at the bottom of the cargo area, roughly equivalent to an 80 story collapsed skyscraper. In 2000, MVSHQ resumed salvage operations, this time with the intent of uncovering the precise whereabouts of the cargo. For a more detailed account of these efforts, see Third Certification of Martin G. Bayerle, filed June 20, 2005.

Armed with new information and state-of-the-art underwater technology, MVSHQ has reconvened its salvage efforts and was ready to dive down to the ocean floor on July 12, 2005, with a weather date of July 20, 2005. The operation is a full-scale production: MVSHQ has chartered a vessel with crew, divers, underwater remote operated vehicles ("ROVs"), and C3D side scan sonar (three-dimensional mapping and surveying equipment). This next, and perhaps last, expedition will stretch into 2006. In all, MVSHQ expects to incur \$12-15 million dollars in costs before the gold is recovered from the Republic.

Expense is not the only risk incurred by MVSHQ. Salvage operations are time-sensitive; the salvage season in the North Atlantic consists only of the months of July and August due to tricky weather conditions throughout the rest of the year. Salvage operations are also hazardous; the Republic sank along a foggy shipping route, so collision with another vessel is a constant risk. And the shipwreck's extensive rotting and deterioration poses risks to the divers who dare to venture inside its caverns. Finally, there is the ever-present risk that, since the Republic's location is widely known, interlopers will attempt to salvage the precious cargo while MVSHQ is ashore.

B. Procedural History

MVSHQ is now seeking court protection for its risky investment. As salvor-in-possession with exclusive salvage

rights, MVSHQ has de facto insurance against rival salvors. A preliminary injunction against interference by rival salvors is crucial for MVSHQ to secure financial backing, without which the salvage operation would not be possible. Indeed, the Republic has been the subject of litigation since its discovery in 1981.

1. Intervenors

Following MVSHQ's public declaration of the Republic's wreck on July 4, 1983, it remained off-site for the remainder of July in order to give potential claimants an opportunity to respond. MVSHQ subsequently moved before Judge Skinner for permission to proceed with the salvage, and was granted such permission on August 1, 1983. About one month later, Northern Ocean Services, Inc. ("NOS"), moved to intervene in the case, claiming that it had a prior interest in the wreck, because it was the first to locate and identify the ship and was in the process of preparing salvage operations.

On September 9, 1983, Judge Skinner denied NOS' motion to intervene, stating that "a court may order a putative salvor off the site and permit another to conduct the salvage, if it appears that the first salvor is incompetent or not progressing with due dispatch, and the second salvor is ready, willing and able to carry out the project." Memorandum and Order, C.A. No. 82-3742-S, 2 (D. Mass. Sept. 9, 1983) (citing Hener v. U.S., 525 F.Supp. 350 (S.D.N.Y. 1981)). Judge Skinner determined that NOS did not

make a persuasive showing that MVSHQ was incompetent or not proceeding with due diligence, and denied the motion to intervene without prejudice. Id. at 3.

About three years later, in early 1986, a similar motion to intervene was brought by Marshallton, Inc. ("Marshallton"). Marshallton proposed to salvage the wreck of the Republic with the aid of International Underwater Contractors, Inc. ("IUC"). Together, they had already completed what they termed "Phase 1" of their salvage operation in October 1985, which involved surveying the wreck with an ROV and removing certain artifacts. After receiving notice from MVSHQ on December 5, 1985, that any claim to the wreck required adjudication before the Court, Marshallton moved to intervene, asking for permission to commence "Phase 2" of their operation.

On April 16, 1986, Judge Skinner granted Marshallton's motion to intervene, finding that MVSHQ had not yet met the applicable standard of exercising due diligence in its salvage efforts and being reasonably successful in such efforts. Memorandum and Order, C.A. No. 82-3742-S (D. Mass. Apr. 16, 1986) (citing Cobb Coin Co., Inc. v. Unidentified, Wrecked & Abandoned Sailing Vessel, 525 F.Supp. 186, 204 (S.D. Fla. 1981)). Judge Skinner noted that MVSHQ had only been to the site once in the two seasons since the Court had granted it permission to salvage, whereas Marshallton was ready to commence full salvage

operations, which it estimated would take thirty to forty days. Id. at 6. Accordingly, Judge Skinner granted Marshallton permission to proceed with its expedition until June 30, 1986, after which MVSHQ could again continue with its own operations.

During "Phase 2," Marshallton recovered several artifacts from the wreck and brought them into court pursuant to a motion for an award of title to the artifacts, and for exclusive salvage rights. Since Marshallton had brought its artifacts into Massachusetts, the Court asserted *in rem* jurisdiction over them, and on February 23, 1987, Judge Skinner granted Marshallton title to all property that it had recovered, while denying it exclusive salvage rights. Memorandum and Order, C.A. No. 82-3742-S, 11 (D. Mass. Feb. 23, 1987).² The First Circuit affirmed the decision on November 24, 1987. See Martha's Vineyard Scuba Headquarters, Inc. v. Unidentified, Wrecked and Abandoned Steam Vessel, 833 F.2d 1059 (1st Cir. 1987). Marshallton failed to move forward with its salvage efforts, while MVSHQ resumed its salvage operations.

MVSHQ once again faced an intervenor in its salvage efforts in 1999, when William Cleary ("Cleary") filed suit in the District Court of New Jersey, claiming salvage rights to the

² In the same order, Judge Skinner also denied yet another potential salvor - Wayne Childs ("Childs") - finding that while Childs had prepared an impressive plan by which to salvage the Republic, he had not actually taken any steps beyond preparation, and thus was not entitled to an injunction prohibiting MVSHQ and Marshallton from salvage operations.

Republic. However, the coordinates given by Cleary proved to be six miles away from the actual site of the shipwreck, and Cleary's suit was dismissed. Cleary then filed a claim in this action, and was allowed to intervene as a competing salvor in 2001. Between 2001 and 2005, Cleary was nowhere to be found. Indeed, on June 13, 2005, Cleary's counsel reported to the Court that it had long been unable to contact him, and in its opposition to MVSHQ's instant motion, the government noted that "Mr. Cleary is apparently no longer before this Court." Accordingly, Cleary's counsel of record moved to withdraw on June 21, 2005. The Court granted that motion on July 8, 2005. But then, in a last-ditch effort to intervene, Cleary independently contacted the Court by letter on July 8, 2005, the day of the preliminary injunction hearing, claiming that he was entitled to salvage rights.³

2. MVSHQ's Efforts to Obtain Exclusive Salvage Rights

In 2001, Judge Skinner declined (1) to exercise *in rem* jurisdiction over the shipwreck, and (2) to grant MVSHQ exclusive salvage rights. In so doing, the Court clarified that (1) *in rem* jurisdiction would be exercised if and when the facts so warrant,

³ In open court on July 8, 2005, I deemed Cleary's letter, dated July 7, 2005, a *pro se* pleading opposing preliminary injunctive relief and opposing an award of exclusive salvage rights to MVSHQ. Although I rejected his arguments his status as an intervenor remains unchanged.

and (2) MVSHQ would be entitled to exclusive salvage rights if it mounted "a continuous salvage operation." See Docket entry 38.⁴

MVSHQ argues that it has now established a continuous salvage operation and is thus deserving of exclusive salvage rights and injunctive protection against rivals. The government opposes MVSHQ's motion and disputes this Court's exercise of *in rem* jurisdiction over the shipwreck.

II. ANALYSIS

A. The Exercise Of In Rem Jurisdiction Over A Shipwreck Sitting In International Waters

The threshold question is whether this Court has jurisdiction over a sunken vessel that lies in international waters approximately 50 nautical miles away from American soil. While there are only a limited number of cases on the subject, a clear pattern over the past twenty years has emerged in which federal courts have exercised *in rem* jurisdiction over the remains of shipwrecks located outside their district's geographic boundaries. Of note, two hallmark circuit court cases support an admiralty court's exercise of *in rem* jurisdiction for the purposes of protecting a shipwreck salvor's interests:

In RMS Titanic, Inc. v. Haver, 171 F.3d 943 (4th Cir. 1999), the Fourth Circuit invoked "*constructive in rem*" jurisdiction to

⁴ In 2000, due to some confusion in the District Court Clerk's Office, the case number was changed from C.A. No. 82-3742 to C.A. No. 00-11565. Also note that this case was transferred from Judge Skinner to Judge Gertner on April 4, 2005.

permit it to adjudicate rights over the entire Titanic wreck. "Constructive in rem" jurisdiction, wrote the Haver court, is "imperfect" or "inchoate" *in rem* jurisdiction that gives the court shared sovereignty with other nations under the principles of *jus gentium*, or the law of nations. The goal, the court announced, was to protect salvors: "The principles of salvage law are intended to encourage persons to render prompt, voluntary and effective service to ships at peril or in distress by assuring them compensation and reward for their salvage efforts." Id. at 962.

In Treasure Salvors, Inc. v. Unidentified Wrecked and Abandoned Sailing Vessel, 569 F.2d 330 (5th Cir. 1978), the court rejected the government's challenge to *in rem* jurisdiction over a wreck located outside the territorial jurisdiction of the court. The court noted the impossibility of bringing the shipwreck's remains and cargo within the territorial jurisdiction of the court. In light of this impossibility, the court affirmed the authority of the district court to adjudicate title to objects both within and outside its territory.

The rationale laid out in Haver and Treasure Salvors is squarely applicable to the case at bar: It would be impossible for anyone to bring the Republic within the jurisdictional boundaries of any court. Moreover, no salvor is going to absorb all of the risks associated with salvaging the shipwreck's goods

without the sort of protection sought by MVSHQ. Thus, constructive *in rem* jurisdiction is a legally sound solution to an otherwise irreconcilable dilemma.

B. MVSHQ Has Established Itself As Salvor-In-Possession

As the Haver court described,

[upon] rendering salvage service, a salvor obtains a lien in the saved property by operations of law to secure payment of compensation and award due from the property owner. This lien attaches to the property to the exclusion of all others, including the property's true owner. And to facilitate enforcement of the lien, the salvor enjoys possessory interest in the property until the salvor is compensated. Because the salvor's lien is exclusive and prior to all others, so too, the salvor's possessory interest in the res is enjoyed to the exclusion of all others, including the res' true owner.

Haver, 171 F.3d at 963. Accordingly, a salvor-in-possession holds a constructive lien over the wreck and its cargo.

MVSHQ argues that it is entitled to this legal status because (1) it has salvaged a distressed ship and cargo in navigable waters; (2) it has conducted all of its salvage operations independently and voluntarily to rescue the shipwreck and its remains, including incurring high costs with no guarantee or contract between itself and the owners of the vessel, International Mercantile Marine Company (who ceased business operations in 1969); and (3) it has continuously, competently, and dutifully undertaken salvage efforts in a hostile and risky environment. For example, after the Court issued its order

denying MVSHQ exclusive salvage rights in May 2001, MVSHQ heeded the Court's directive and posted service on the shipwrecked vessel "in a conspicuous manner," as required by the Order Appointing Special Process Server issued on August 4, 2000. Such service included a Warrant of Arrest and the Verified Complaint.

Indeed, these efforts entitle MVSHQ to relief that "will protect the inchoate right of salvors in yet-to-be salvaged property for a reasonable period." Id. The appropriate relief is an award of exclusive salvage rights as salvor-in-possession.

C. Preliminary Injunctive Relief

1. Standard For Issuance of Preliminary Injunctions

The standard governing the issuance of preliminary injunctions in maritime cases is no different from the standard in typical civil cases. As this Court has previously stated,

A preliminary injunction is an extraordinary equitable remedy. It requires intervention by the Court on an emergency basis, without the usual careful procedures and litigation methods - the exchange of information in discovery, evidentiary hearings, the full and complete briefing of the issues. As such the law imposes on plaintiffs the substantial burden of convincing the Court that they are likely to succeed ultimately and further, that if emergency relief is not granted, they will be 'irreparably' harmed.

Boston's Children First v. City of Boston, 62 F.Supp.2d 247, 253 (D. Mass. 1999) (citations omitted).

To prevail on a motion for a preliminary injunction, MVSHQ must satisfy the Court (1) that it is substantially likely to

succeed on the merits of its claims; (2) that there is a significant risk that irreparable harm will follow absent entry of an injunction; (3) that the benefits flowing from the injunction will, on balance, outweigh the burdens imposed on the defendant; and (4) that the injunction is consistent with the public interest. Matrix Group Ltd., Inc. v. Rawlings Sporting Goods Co., Inc., 378 F.3d 29, 33 (1st Cir. 2004); Charlesbank Equity Fund II v. Blinds To Go, Inc., 370 F.3d 151, 162 (1st Cir. 2004).

Since I have granted MVSHQ exclusive salvage rights as salvor-in-possession of the shipwrecked Republic, as discussed supra, the likelihood that MVSHQ will succeed on the merits of its claims is plainly high. Since the defendant - the shipwrecked vessel - will not incur any burdens as a result of the preliminary injunction, the third prong is a non-issue. Finally, as the courts in Haver, 171 F.3d 943, and Treasure Salvors, 569 F.2d 330, explained, "it is the assurance of compensation and reward that provides the inducement to seamen and others to embark in [salvage] undertakings to save life and property Public policy encourages the hardy and adventurous mariner to engage in [] laborious and sometimes dangerous [salvage] enterprises." Haver, 171 F.3d at 962 (citing The Blackwall, 77 U.S. 1, 14 (1869)). The only prong that requires greater attention is irreparable harm.

2. The Risk of Irreparable Harm to MVSHQ Absent An Injunction

Since MVSHQ located the Republic, there have been no less than four, and probably more, interlopers that have attempted to interfere with MVSHQ's salvage efforts. Each time, MVSHQ's efforts were jeopardized, and each time, MVSHQ had to appear in federal court to defend its operations. Indeed, the press surrounding the discovery and salvage of the Republic has been widespread. The shipwreck's whereabouts are commonly known in maritime circles. Because it cannot closely guard the site of the shipwreck, MVSHQ faces the intimidating risk of losing its investment - millions of dollars and over twenty years of diligent effort - while its back is turned. In addition, were a rival to attempt to salvage the shipwreck, there would be serious risks to the structural integrity of the ship and the safety of the artifacts lying within. Interlopers like Cleary have done precisely that - traveled to the Republic's coordinates while MVSHQ was onshore and attempted to salvage goods haphazardly from the shipwreck.⁵

Under similar circumstances, the courts in both Haver, 171 F.3d 943, and Treasure Salvors, 640 F.2d 560, approved of the

⁵ In a declaration, Cleary reports that, in July 1998, he "was a passenger onboard the diving charter vessel SEEKER where we dived the shipwreck of the 1909 White Star [sic] Liner RMS REPUBLIC." With the help of another scuba diver onboard, Rodney Nairne, Cleary allegedly "recovered portholes from the shipwreck." Decl. of William P. Cleary at 1, Resp. Mem. of Law In Supp. of Intervenor's Mot. to Dismiss, filed February 28, 2001.

issuance of injunctive relief, as long as the proscriptions dictated by the injunction were narrowly tailored.

Here, the preliminary injunction requested by MVSHQ is narrowly tailored to alleviate the threat of clandestine salvage operations. This Court is persuaded that the threat of such clandestine operations is great and, should it become a reality, irreparable;⁶ MVSHQ would have no way of identifying who the interloping pirates were and thus the salvaged goods would be unrecoverable. A preliminary injunction gives MVSHQ a legal deadbolt on the property to which it has been awarded title.

III. CONCLUSION

For the reasons discussed herein, MVSHQ is hereby **GRANTED** exclusive salvage rights as salvor-in-possession of the shipwrecked vessel known as the Republic. MVSHQ's request for a preliminary injunction is hereby **GRANTED**.

SO ORDERED.

Dated: July 19, 2005

s/ NANCY GERTNER U.S.D.J.

⁶ During oral argument on July 8, I rigorously questioned MVSHQ as to the threat of harm from rival salvors. After hearing MVSHQ's description of efforts by rival salvors, like Cleary, I am convinced that, absent an injunction, the safety of the Republic and its goods, as well as MVSHQ's weighty investment in the salvage operation, would be in jeopardy.