

Court of Claims of Ohio

The Ohio Judicial Center
65 South Front Street, Third Floor
Columbus, OH 43215
614.387.9800 or 1.800.824.8263
www.cco.state.oh.us

CHARLES F. BREDT

Plaintiff

v.

OHIO DEPT. OF NATURAL
RESOURCES

Defendant

Case No. 2007-01371-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

{¶1} For a number of years prior to May, 2006, plaintiff, Charles F. Bredt, stored his 1979 Pennyan 24' runabout boat at docking facilities owned and operated by Express Marine. Plaintiff acquired title to the boat in April 1989 when he resided at 3813 Faversham in University Heights, Ohio 44118. Plaintiff also received a watercraft registration issued by defendant, Department of Natural Resources ("DNR"), when he acquired title to the boat. Plaintiff renewed the watercraft registration for his boat every three years until March 1, 2005, when the last registration he obtained expired. When plaintiff last obtained a watercraft registration from DNR, the registration document reflected his address as 7300 Brecksville Rd., Independence, Ohio 44131. Plaintiff pointed out he has resided at this address since 1993 and prior watercraft registrations he received reflected this address.

{¶2} In September 2005, Scott McDaniel of Express Marine (Now Redfish Marine Services, Inc.) submitted a Title Search Request with DNR regarding the 1979 Pennyan boat titled to plaintiff. The Title Search Request was initiated as a preliminary step necessary to consider the 1979 Pennyan boat abandoned property and ultimately

auction the watercraft in compliance with the statutory directives of R.C. 4585.31.¹

¹ R.C. 4585.31 states:

“Auction Sales of Watercraft.

“As used in sections 4585.31 to 4585.34 of the Revised Code, ‘owner of any property’ or ‘owner of the property’ means an owner, lessee, or other person entitled to possession of the property.

“The owner of any property on which a watercraft or outboard motor valued at less than ten thousand dollars has been left for six months without permission may sell the watercraft or motor at public auction and recover the owner’s maintenance or repair charges, including parts and labor charges and dockage or storage charges, if all of the following conditions are met:

“(A) The owner of the property applies for a search of the records of the division of watercraft for the name and address of the owner of the watercraft or motor and for a search for any lien or mortgage thereon.

“(B) Upon receiving the result of the searches, the owner of the property sends notice by certified mail, return receipt requested, to:

“(1) The last known address of the owner of the watercraft or motor, to remove the watercraft or motor;

“(2) Any lienholder or mortgagee, stating where the watercraft or motor is located and any maintenance or repair charges, including parts and labor charges and dockage or storage charges. Unless the lienholder or mortgagee redeems the watercraft or motor within forty-five days after the return receipt is received by the sender, the lien or mortgage is invalid. The lienholder or mortgagee may, to the extent of the lienholder’s or mortgagee’s previously secured interest, assert a claim for any amount deposited in the county treasury for the watercraft or motor pursuant to section 4585.33 of the Revised Code.

“(C) The watercraft or motor remains unredeemed by the owner, lienholder, or mortgagee for forty-five days after the return receipts are recovered by the sender.

“(D) The owner of the property requests a watercraft dealer certified in accordance with section 1547.543 of the Revised Code or an independent marine surveyor and appraiser to appraise the watercraft or motor and secures written confirmation that the fair market value of the watercraft or motor is less than ten thousand dollars.

“(E) The owner of the property advertises the watercraft or motor will be sold at public auction. The advertisement of sale shall be published once a week for two consecutive weeks in the auction section of a newspaper of general circulation in the county where the watercraft or motor has been left without permission. The advertisement shall include a description of the watercraft or motor, the name of the owner, and the date, time, and place of the sale.

“(F) An auction sale is conducted on the property where the watercraft or motor was left without permission of the owner of the property, at which the highest bidder is the purchaser of the watercraft or motor. The owner of the property shall provide a reasonable period of time prior to the sale for prospective purchasers to examine the watercraft or motor. The owner of the property may bid at the sale.

“(G) Immediately after the auction sale, the owner of the property executes an affidavit in triplicate, on a form prescribed by the secretary of state and provided by the clerk of courts, stating:

“(1) That the requirements of this section have been met;

“(2) The length of time that the watercraft or motor was left on the owner’s property without permission, as of the date of the auction sale;

“(3) The expenses incurred by the owner of the property in connection with the watercraft or motor as of the date of the auction sale, including the expenses of conducting the sale and, if the property

Apparently, the boat titled to plaintiff had been left at the Marine Express boat yard facility for a period exceeding six months without any dockage or storage costs paid. In response to the Title Search Request, DNR, in a document dated September 14, 2005, sent Marine Express information confirming a title to a 1979 Pennyan boat serial number PYB24492M79F was issued on April 25, 1989, to Charles F. Bredt who resided at 3813 Faversham, University Heights, Ohio. DNR also informed Marine Express that the registration for the 1979 Pennyan boat serial number PYB24492M79F had expired in 2005 and apparently had not been renewed. Acting on the supplied information and in accordance with statutory directive, Express Marine sent a certified letter (dated September 29, 2005), return receipt requested addressed to Charles F. Bredt at 3813 Faversham, University Heights, Ohio 44118. The certified letter contained notice of the impending auction of plaintiff's boat due to the fact plaintiff had left the boat on Marine Express (currently Red Fish Marine, Inc.) property without permission for a period of 60 months and 14 days. The watercraft was considered abandoned property and subject to auction under outlined statutory procedures. The certified letter informing plaintiff of the intended action of Marine Express was never delivered to plaintiff since he no longer resided at the University Heights address supplied by DNR. Pursuant to statutory directive (R.C. 4585.31(E)), Marine Express (currently Red Fish Marine, Inc.) advertised the impending auction of plaintiff's boat and other deemed abandoned watercraft in the auction section of a newspaper of general circulation in the county where the auction was to be held. Defendant submitted copies of the newspaper advertisements listing plaintiff's name, watercraft, and the site of the impending auction (newspaper advertisements dated May 5, 2006 and May 10, 2006). The 1979 Pennyan watercraft

is operated as a place of storage for charge, any accrued dockage or storage charges and any maintenance or repair charges, including parts and labor charges;

"(4) The name and address of the purchaser of the watercraft or motor at the auction sale and the amount of the purchaser's bid.

"(H) Upon payment of the bid price by the purchaser, the owner of the property presents the affidavit in triplicate required by division (G) of this section, the written confirmation of value required by division (D) of this section, and the return receipts required by division (B) of this section to the purchaser

serial number PYB24492M79F was auction in May 2006 for \$250.00.

{¶3} Plaintiff recalled he visited the Marine Express boat yard in late May 2006 and discovered his 1979 Pennyan boat had been auctioned as abandoned property. Plaintiff implied he never intended to abandon the boat, despite the fact he had not paid docking fees for over five years, failed to show he insured the boat beyond April 14, 2005, and allowed his boat registration to lapse in March 2005. Plaintiff contended the 1979 Pennyan boat was sold based on inaccurate information supplied by defendant regarding his address. Plaintiff claimed that but for defendant's act of forwarding address information listed on the 1989 boat title, Express Marine would not have auctioned the 1979 Pennyan boat and he would not have lost the boat. Plaintiff explained he had not resided at the University Heights listed on the boat title since 1993 and had registered the boat with DNR up to March 2005 listing his current Independence address. Plaintiff argued he ultimately lost his boat solely due to defendant's act in forwarding the address listed on his boat title. Consequently, plaintiff filed this complaint seeking to recover \$2,500.00, the statutory maximum amount of damages permitted in a claim of this type. Plaintiff implied defendant had a duty to supply Marine Express with his current address and defendant's breach of this duty was the sole proximate cause of the loss claimed. The filing fee was paid.

{¶4} Defendant stated DNR complied with any statutory duty when supplying Express Marine with plaintiff's address as listed on the 1989 boat title. Defendant maintained DNR was not charged with a duty to supply Express Marine with all available addresses listed in any DNR records regarding plaintiff. Furthermore, defendant related DNR had no duty to provide Express Marine with plaintiff's listed address reflected on the expired watercraft registration for the 1979 Pennyan boat. Defendant pointed out Express Marine requested a Title Search Request for the 1979 Pennyan boat and DNR responded by supplying all title information in reference to that

boat held in its possession. Defendant insisted DNR had no duty to provide more information beyond what was requested. Also, defendant asserted no duty specifically owed to plaintiff was breached regarding the auctioning of declared abandoned property.

{15} Plaintiff filed a response maintaining defendant should have submitted the address listed on his expired watercraft registration rather than the address listed on his title when Express Marine filed a Title Search Request. Plaintiff suggested R.C. 4585.31 created a duty on the part of defendant to search all DNR records when the Title Search Request was made to confirm the proper address of the title holder. Plaintiff cited a portion of R.C. 4585.31(A), which provides for “a search of the records of the division of watercraft for the name and address of the owner of the watercraft;” claiming this statutory language required defendant to achieve a level of accuracy in forwarding his address to Express Marine. Plaintiff related if defendant provided his Independence address from his expired registration to Express Marine, he probably would have received service of the certified mail containing the boat auction information. Plaintiff stated that had he received prior notice of the auction he would not have had his watercraft sold. Plaintiff surmised defendant’s act of providing an old address prevented him from retaining his watercraft. According to documents supplied by Express Marine, the 1979 Pennyan watercraft serial #PYB24492M79F was in disrepair at the time of auction with a value of less than \$1,000.00. Documents also showed plaintiff owed Express Marine \$1,222.68 in unpaid storage costs at the time of auction.

{16} Plaintiff has failed to prove, by a preponderance of the evidence, that any act or omission on the part of DNR proximately caused the loss of his title to the 1979 Pennyan boat. Under R.C. 4585.31(A), DNR responded to the title request information from Express Marine by supplying the address plaintiff maintained on his 1989 Title to the 1979 Pennyan watercraft. R.C. 4585.31(A) does not create a duty on the part of DNR to conduct an exhaustive search of all records to attempt to find a current address. Furthermore, plaintiff as the owner of titled property carried responsibility to update his

own address records on the title to the watercraft.

{¶7} Additionally, the court finds sufficient evidence exists to establish plaintiff had in fact abandoned the 1979 Pennyan boat by the time Express Marine pursued the statutory auction sale of watercraft procedure. A property abandonment is the “relinquishing of a right or interest with the intention of never again claiming it.” *Labay v. Kaltrider*, Summit App. No. 22233, 2005 Ohio 1282 at ¶22 quoting Black’s Law Dictionary (7 Ed. 1999) 1432. In *Doughman v. Long* (1987), 42 Ohio App. 3d 17, 21 536 N.E. 2d 394, the court held that “[a]bandoned property then is property over which the owner has relinquished all right, title, claim, and possession with the intention of not reclaiming it or resuming its ownership possession or enjoyment.” In the instant claim, evidence has shown plaintiff voluntarily chose to allow his boat registration to lapse, failed to renew his insurance, and made no storage and dock fee payment to Express Marine for over five years. Plaintiff failed to update the address on his boat title or maintain a current address listing with Express Marine. The boat at the time of auction was considered in disrepair and plaintiff owed dock fees in excess of the appraised value of the watercraft. This evidence points to the conclusion plaintiff intended to abandon the vessel. Consequently, plaintiff has no right to pursue an action for the loss of property he did not own.



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ENTRY OF ADMINISTRATIVE
DETERMINATION

Having considered all the evidence in the claim file and, for the reasons set forth in the memorandum decision filed concurrently herewith, judgment is rendered in favor of defendant. Court costs are assessed against plaintiff.

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

Charles F. Bredt
7300 Brecksville Road
Independence, Ohio 44131

Charles G. Rowan
Department of Natural Resources
2045 Morse Road

Columbus, Ohio 43229-6693

RDK/laa

9/28

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