

IN THE TERRITORIAL COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. CROIX

BERNARD L. TONN, HENRY NEUMAN,)
and NEUMAN CARIBBEAN)
INTERNATIONAL, INC.,)

Plaintiffs,)

v.)

ST. CROIX MARINE & DEVELOPMENT)
CO., INC.,)

and)

LARRY ANGUS, d/b/a, ST. CROIX)
MARINE,)

Intervenor.)

CIVIL NO. 498/1984

ACTION FOR DAMAGES

RUSSELL B. JOHNSON, ESQUIRE
King Christian Hotel
P.O. Box 3649
Christiansted, St. Croix
U.S. Virgin Islands 00820
(809) 773-1234
(Attorney for Plaintiff BERNARD L. TONN
HENRY NEUMAN and NEUMAN CARIBBEAN INTERNATIONAL, INC.)

WINSTON A. HODGE, ESQUIRE
#35 King Street
Christiansted, St. Croix
U.S. Virgin Islands 00820
(809) 773-7725
(Attorney for Defendant ST. CROIX MARINE & DEVELOPMENT CO.,
INC.)

WARNER ALEXANDER, ESQUIRE
P.O. Box 3063
1B King Street
Christiansted, St. Croix
U.S. Virgin Islands 00820
(809) 773-3930
(Attorney for Defendant LARRY ANGUS)

PETERSEN, Judge

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MEMORANDUM OPINION
March 27, 1985

In this action for damages and indemnification Defendant has filed a Motion for Summary Judgment pursuant to FED. R. CIV. P. 56(c). For the reasons set forth below, this Court will deny the motion.

I.

This is an action for damages and indemnification arising out of an alleged bailment relationship between Plaintiff, Bernard L. Tonn and the above referenced Defendants. It is alleged that the Plaintiff delivered the vessel ("Gladness") to Defendant St. Croix Marine's boatyard for repair and storage and as a result of the Defendant's negligence the vessel has drastically decreased in value.

The Defendants assert that the issues presently before the Court are barred by the doctrine of res judicata in that this Court entered judgment against the Plaintiff on behalf of the Defendant for various costs and fees incurred for boat repairs and related services. See St. Croix Marine & Development Co. Inc. v. Bernard L. Tonn., Civil No. 1303/1981.

The Plaintiff concedes that the issue of damages relating to repairs and storage is precluded by the prior litigation but argues that Defendant's motion for summary

judgment should be denied because there are issues of fact relating to matters that arose subsequent to the September 31, 1981 judgment. Moreover, Plaintiff asserts that the Doctrine of res judicata is inapplicable to matters arising after entry of judgment on the merits if such matters could not have been raised and litigated in the prior proceeding.

II.

The question presented to this Court is whether the present action is barred by the doctrine of res judicata, in view of the Court's prior determination in St. Croix Marine & Development Co, Inc., v. Bernard L. Tonn., Civil. No. 1303/1981. Res judicata applies when a subsequent cause of action is identical to the original action. See Murphy v. Landsburg, 490 F.2d 319 (3d Cir. 1973). The scope of the doctrine is broad and the original judgment is conclusive, not only as to matters actually raised and litigated, but also as to matters that could have been raised and litigated. Id. at 322.

The defense of res judicata is valid only if the cause of action in the prior suit is identical to that in the subsequent proceeding. See Gedeon v. State Farm Auto. Ins. Co., 342 F2d 15 (3d Cir. 1969). In order for the Defendants to prevail on their motion for summary judgment the record

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must show that the prior action is identical to the relief sought in the instant case. "The party contending that an issue has been conclusively litigated and determined in a prior action has the burden of proving that contention." Restatement (Second) of Judgments Section 27 comment f.

The evidence presented suggests that the prior litigation involved a contractual relationship between Plaintiff, Bernard Tonn, and Defendant, St. Croix Marine ^{1/} whereby it was implicitly understood that Tonn would pay for repair and storage of the vessel. Tonn's failure to pay gave rise to the prior action which resulted in a judgment against Tonn September 30, 1981 in the amount of Nine Thousand Six Hundred and Seventy Two Dollars and Forty Nine Cents (\$9,672.42). Both parties are in accord that this precise issue is precluded and may not be relitigated. The issue, however, is whether matters arising subsequent to this Court's September 30, 1981 judgment are barred by the prior action.

The doctrine of res judicata operates only to bar repetitious suits involving the same cause of action. It rests upon considerations of judicial economy of time and

^{1/} The Plaintiff, Bernard Tonn, was the defendant in the prior litigation. For clarity, whenever reference is made to the prior action, the present Plaintiff who was then Defendant, will be referred to as Tonn.

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public policy favoring establishment of certainty in legal relations. See Sea-Land Services, Inc. v. Gaudet, 414 U.S. 659 (1974). The Plaintiff argues that this action is premised upon a survey taken December 12, 1983 which revealed that the vessel had drastically declined in value from Eighteen Thousand Dollars (\$18,000) in 1977 to a present value of Six Thousand Dollars (\$6,000). Plaintiff further asserts that this issue could not have been raised in the prior action in view of the fact that the sharp decrease in value was not known until the 1983 survey. He asserts that the decrease results from a breach of duty owed by the defendant to the Plaintiff.

The question of whether diminution in value of the vessel resulted from the Defendant's alleged negligent acts is factual in nature and cannot be resolved based upon the pleadings. Resolution of this issue requires a finding that a duty was owed to the Plaintiff by the defendant and that the duty was breached because the Defendant failed to exercise reasonable care under the circumstances. The exact standard of care can be ascertained by examining the nature of the relationship existing between the parties subsequent to the September 30, 1981 judgment rendered by this Court.

In reviewing the evidence presented by the parties there is confusion in the record as to the nature of the

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bailment relationship post-judgment. The defendant avers that a gratuitous bailment existed, thus requiring that the Defendant's conduct be measured by a lesser standard of care, whereas the Plaintiff asserts that the bailment was for hire. Exhibits "A" through "E" representing invoices sent to the Plaintiff from Defendant St. Croix Marine subsequent to this Court's September 30, 1981 Judgment negates the Defendant's claim that the bailment relationship is gratuitous. The invoices suggest that the Plaintiff was required to pay the Defendant for storage. In such case, the Defendant would properly be characterized as a bailee for hire and a higher standard of care for property entrusted to the Defendant would be required.

For the reasons set forth above, this Court finds that a question of material fact has been raised regarding the nature of the bailment relationship subsequent to the September 30, 1981 judgment. Viewing this matter in the light most favorable to the Plaintiff, this Court is unable to find that the Defendant is entitled to the relief requested as a matter of law. The value and amount of damage to the vessel involve matters that resulted from the findings of the 1983 survey. Whether the issues of the Defendant's negligence in this context could have been raised in the prior litigation must await further proceedings.

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For the reasons set forth above, the Defendant's
motion for summary judgment is hereby DENIED.



EILEEN R. PETERSEN
Judge