IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR SUSSEX COUNTY

CITADEL ENGINEERING, INC.	)	
	)	
Plaintiff,	)	
v.	)	C.A. No. S08C-03-003 RFS
	)	
AMERICAN AEROSPACE CORPORATION and ROBERT D. PATTERSON,	)	
	)	
	)	
Defendants.	)	

MEMORANDUM OPINION

Decision after Bench Trial. Judgment entered in favor of Patterson and against Citadel.

Submitted Date: January 7, 2011
Decided Date: April 26, 2011

James E. Deakyne, Jr., Esquire, Tunnell & Raysor, P.A., Georgetown, Delaware, attorney for Plaintiff.

Richard E. Berl, Jr., Esquire, Smith O'Donnell Feinberg & Berl, LLP, attorney for Defendants.

STOKES, J.

Citadel Engineering, Inc. (Citadel) filed suit against American Aerospace Corporation (Aerospace) and Robert D. Patterson (Patterson) for economic damages pertaining to repair work on an airplane. Citadel argues that the airplane was not made airworthy within a reasonable time in breach of contract and that damage to a repaired engine delivered from Texas to Delaware was not timely discovered in violation of negligence and bailment principles. A default judgment had previously been entered against Aerospace. Patterson was the president and sole stockholder of Aerospace at the time of the alleged breaches. Citadel seeks to impose personal liability on Patterson. After consideration of the trial evidence and the post-trial arguments, judgment is entered in favor of Patterson and against Citadel.

Findings of Fact

(1) Citadel's president is Jeffrey Reed (Reed). Reed has an engineering background and is employed also by the Delaware Department of Transportation. He is also a graduate of the Citadel in South Carolina. Reed is a knowledgeable and sophisticated business person.

(2) Patterson was president and the sole shareholder of Aerospace in 2004, 2005, and through the month of July 2006. Patterson was a competent flight instructor and also had the background to repair aircraft to make them airworthy as required by the Federal Aviation Administration (FAA).

(3) Aerospace leased hangar space from Sussex County. Among its activities, Aerospace through Patterson as its president, repaired aircraft and entered tie down arrangements for nearby aircraft parking.

(4) Sometime in March 2005, Reed and Aerospace made an agreement whereby Aerospace would make necessary repairs to a Cessna aircraft owned by Citadel, described as a 1974 Cessna 310, N1306G (Cessna). It was a multi-engine aircraft. The purpose of the repairs was to make the Cessna airworthy under FAA regulations. Yearly surveys of aircraft were required, and aircraft cannot be flown without annual inspections and repairs. The annual inspection with repairs for the Cessna had to occur on or before July 31, 2005. Aerospace was aware of this date by virtue of Patterson's knowledge of the Cessna and its logs which reported the Cessna's maintenance and history.

(5) The agreement between Citadel and Aerospace was verbal; no written agreement was prepared. No time or payment terms were documented. From the conduct of the parties, Citadel expected to pay Aerospace for its reasonable time, services and materials. The expectation was for a lump sum payment when the Cessna was made airworthy. Aerospace agreed to perform the work for reasonable compensation and within a reasonable time.

(6) Aerospace had other aircraft which required attention from March 2005 through July of 2006.

(7) From March through July, 2005, Aerospace did not perform work on the Cessna. This gave Citadel the full and uninterrupted use of the Cessna through the time of the annual inspection. This was customary practice and was so understood by Citadel.

(8) From July 31, 2005 through mid-November of 2005, Aerospace did not perform much work on the Cessna. Fuel cells on the Cessna had to be replaced but this work was completed by Reed and his son between September and October of 2005. Patterson was available for assistance and Reed testified that this repair was under Patterson's direction.

(9) In November of 2005, Aerospace surveyed the Cessna. Repairs were reported that were necessary to make the Cessna airworthy. Among them, both of the Cessna's engines needed to be rebuilt. Citadel chose to send the engines to Devine Engine & Air Frame, Inc. ("Devine") in Texas. Citadel arranged for the shipment of the engines to Devine. Aerospace documented its findings by letter on December 1, 2005. Also, at the same time, Aerospace generated two records. One listed seven items that remained to be corrected and the other referenced eight repairs that had been done.

(10) The engines were returned from Texas and delivered to Aerospace in Georgetown on or about March 7, 2006. At that time, Aerospace informed Citadel of the pending delivery, and Citadel authorized Patterson to take delivery. Reed visited the hangar on the 7th and looked at the crates. No one observed external damage.

(11) Neither Citadel nor Aerospace opened the crates to inspect them on the 7th.

(12) Aerospace had commitments with other aircraft, and Aerospace did not open the crates until March 27, 2006. At that time, damage to one of the engines was discovered. Aerospace prepared a Special Discrepancy Report to document the damage. Aerospace determined the engine was not airworthy. On Citadel's behalf, Robert O. Danzi, a principal of Sussex Aero Maintenance, Inc. ("Sussex), confirmed the damage.

(13) Citadel had the engine sent to Devine to repair. It was repaired and returned to Delaware on July 3, 2006. On or about July 14, 2006, Citadel terminated its relationship with Aerospace. Citadel hired Sussex to take the Cessna and make it airworthy.

(14) Sussex made the Cessna airworthy on September 6, 2006.

(15) Citadel did not pay anything to Aerospace to make the Cessna airworthy.

(16) Aerospace cooperated with Citadel in making a claim against the carriers that were involved in the delivery of the damaged engine. Citadel made its claim on March 28, 2006. Citadel filed suit in the Superior Court on February 6, 2008 to recover damages, styled *Citadel Engineering, Inc. v. Pitt-Oltio Express, Inc. and Central Freight Lines, Inc.* ("carriers' claim").

(17) In its complaint on the carrier's claim, Citadel alleged in paragraphs 17(a) and (b) that Aerospace did not immediately inspect the Cessna because of its work on other aircraft. Citadel alleged that the engine was damaged before delivery to Aerospace in

Georgetown. The damages sought from the carriers include the ones later made against Patterson.

(18) When Citadel made its demand on the carriers on March 28, 2006, it did not assert claims against Aerospace or Patterson.

(19) On April 18, 2007, Aerospace demanded payment of $11,712.92 from Citadel for work on two open invoices issued in August of 2006. The invoices pertained to the work done for Aerospace's survey and repairs as detailed in its letter of December 1, 2005 and the two contemporaneous records. In a reply addressed to Aerospace on April 22, 2007, Citadel declined to pay, awaiting the outcome of its claim against the carriers and alleging damages beyond Aerospace's demand.

(20) Citadel settled its carriers claim for $4,500 and dismissed the Superior Court case on May 5, 2008. This sum partially covered the $5,742.49 expense for the engine repair that was paid by Citadel.

(21) After July of 2006, Patterson obtained a position with FAA. Under FAA regulations, Patterson could not take advantage of his FAA position by owning Aerospace and receiving financial benefits for FAA related work. Because of this restriction, Patterson distanced himself from Aerospace. The effort included a purported sale of Aerospace to a Charles Pickering. Patterson prepared two documents dated August 1, 2006, being minutes a special Board of Directors' meeting of Aerospace and a sales agreement between Aerospace and Pickering. However, the sale was not bona fide.

Pickering did not acquire the assets or stock of Aerospace. No consideration was received by Pickering. It was a futile effort to avoid FAA's conflict of interest limitations. In pursuit of this goal, Patterson had Pickering join him in signing a certificate of dissolution for filing with the Secretary of State on July 18, 2007. Patterson and Pickering signed the certificate as presidents of Aerospace. Pickering cooperated because of his friendship with Patterson.

(22) Patterson was fired by the FAA at the end of 2007; Patterson's involvement with Aerospace against FAA requirements contributed to his termination.

(23) In 2007, Patterson destroyed most of the Aerospace records. The destruction related to Patterson's attempt to hide his interest in Aerospace from the FAA. It was not done to avoid a claim by Citadel against Patterson personally for the damages claimed in this suit.

(24) Overall, Aerospace performed less than a day's work on the Cessna. Approximately 6 1/2 months were lost because of the engine repairs.

Conclusions of Law

(A) Citadel argues that Aerospace and Patterson breached a contract to make the Cessna airworthy within a reasonable time. However, an officer of a corporation is not personally liable for company contracts, and, if acting as an alter ego, the corporate veil can only be pierced in the Chancery Court.[1]

Patterson did not assume personal responsibility for the Aerospace agreement to make the Cessna airworthy, just as Reed did not assume personal responsibility for Citadel to pay for the work. Patterson's work could cause death if it were defective and for that reason he operated corporately together with insurance. The demand for payment of Aerospace's contract work in April of 2007, was made by letter from Aerospace; Citadel's response was directed to Aerospace. Fuel cells were shipped to Aerospace in September of 2005; the letter dated December 1, 2005 reflecting the survey was signed by Patterson as Director of Maintenance, American Aerospace Corporation. Contemporaneously two work sheets were prepared to show the scope of inspection with past and future repairs; these work sheets bear the title American Aerospace Corporation. Patterson acted as an agent of Aerospace; Aerospace's status as a principal was disclosed. At the time of Aerospace's termination, Reed confirmed this status by signing a chain of custody agreement regarding the transfer of the Cessna to Sussex. The agreement was signed by Patterson for Aerospace. Ultimately, Citadel sued, averring that Aerospace was a Delaware corporation and was a party with Citadel concerning work on the Cessna. While Citadel presented evidence that Patterson acted as Aerospace's alter ego after July 2006, those actions came after Aerospace's engagement with Citadel. They are not persuasive to show Patterson made a personal contract and acted outside Aerospace's business in 2005 - 2006. Nor does the Superior Court have jurisdiction to enter judgment on an alter ego basis.

(B) Citadel contends that Aerospace and Patterson were negligent by waiting until March 27, 2006 to inspect the engines. Citadel contends the 20-day period was not justified. However, Aerospace was not paid or required to make an inspection. Aerospace contacted Citadel beforehand, and Reed authorized Aerospace to accept delivery. Reed viewed the crates as well on March 7th and could have opened them. There is no persuasive evidence that Aerospace agreed to perform a special inspection. Danzi opined that inspections should be performed immediately upon delivery. However, his testimony was largely based on his personal opinions rather than from standard trade practices. Also, Danzi developed personal and business ties to Reed and Citadel that continued after Sussex's repair of the Cessna through trial. Consequently, his testimony is discounted. Under the circumstances, Aerospace did not have a legal duty to inspect them on the delivery date. Even assuming the existence of an obligation for purposes of argument, a 20-day delay was inconsequential. Citadel was able to sue and its claims were settled with the carriers.

(C) Citadel argues Aerospace and Patterson breached a bailment contract. For sure, Aerospace was in a position of a bailee for hire as it had the Cessna in its possession for repairs.[2] To accept delivery, Aerospace had to sign the shipping receipt. The giving of a "clean receipt" waives only damages that could have been observed on the outside of the crates. The shippers would have liability for hidden damage given sufficient proof.[3] In its carriers' claim, Citadel asserted that Aerospace had other work during the 20-day

period and that when the crates were opened, the engine damage was readily seen. Citadel documented the damage by taking pictures. Under the CARGO LOSS AND DAMAGE CLAIM form, a claim could be made within 9 months of delivery and suit brought within 2 years. Under these circumstances, the 20-day "delay" was not unreasonable.

(D) Whether on a contract or tort basis, Citadel's damage claims were not proven to a reasonable degree of probability. Citadel seeks damages for $3,371.04 incurred by Reed for a replacement aircraft for him to attend a hurricane conference in Florida on April 10, 2006. Yet the engines were sent to Texas on November 25, 2005. There was no indication that they would be repaired and returned in time for the Florida trip. Reed made arrangements for the hurricane conference on November 26, 2005. The risk of delay for Devine to make repairs in Texas was known and assumed.

Citadel claims loss of use damages from April 10, 2006 through September 5, 2006 when the Cessna became airworthy. The April 10th date was calculated because of the hurricane conference. The evidence does not establish that the Cessna would have been made airworthy between March 7 and April 10. Rather, as was the experience by Sussex, the time would be substantially longer. The damaged engine was returned to Texas for repair on March 28th and the repaired engine returned to Delaware on July 3, 2006. Any loss of use claim cannot include this period. At best, it would have to cover the period of July 4, 2006 - September 5, 2006. But Citadel had the Cessna repaired by

Sussex. Aerospace and Sussex had other scheduled aircraft work, and the time necessary to make the Cessna airworthy would not be materially different. Citadel argues that Aerospace should have been making repairs while the engine was undergoing repair in Texas. No written document requires a piece meal effort. It was not unreasonable for Aerospace to devote an overall effort upon the return of the repaired engine. Citadel did not make any deposits or partial payments from which a greater obligation could be found.

Also, the claimed damages for loss of use are predicated on Reed's and his son's estimates for the time the plane would be used by them. However, their personal use does not translate into a loss to Citadel at the commercial rate presented at trial. Reed controlled Citadel. It is not credible that family would be charged at the same rate as strangers would be charged. A market basis for third party use of the Cessna was not adequately established. The testimony of Reed's son, Brian, is speculative. Citadel has failed to prove its damages by reasonable certainty.[4]

Before concluding, another matter must be addressed. At a discovery hearing on September 18, 2009, Citadel sought an order to compel the production of Aerospace documents including those destroyed by Patterson in 2007. The Honorable T. Henley Graves asked Patterson "where are the documents he is seeking?" Patterson's response was "I do not know." From the trial evidence, this does not appear to be a candid response.

Therefore, Patterson is required to show cause why he should not be sanctioned on Friday, May 13, 2011 at 11:00 a.m. On or before Monday, May 9, 2011, Citadel's counsel shall file an affidavit relating to its legal fees and expenses that were incurred in the September 18th hearing.[5]

Considering the foregoing, judgment is entered against Citadel, together with costs and in favor of Patterson subject to sanctions that may be assessed against Patterson.

IT IS SO ORDERED.

Richard F. Stokes, Judge

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END NOTES

1. *Thomas v. Hobbs*, 2005 WL 1653947, *2 (Del. Super.). According to the Restatement (Third) of Agency, § 6.01 (2006):

> When an agent acting with actual or apparent authority makes a contract on behalf of a disclosed principal,
>
> (1) the principal and the third party are parties to the contract; and
> (2) the agent is not a party to the contract unless the agent and third party agree otherwise.

Similarly, the court in *Brown v. Colonial Chevrolet Co.,* 249 A.2d 439, 441-42 (Del. Super. Ct. 1968), found that officers are not personally liable for a corporate contract as long as they do not act to bind themselves individually.

2. In *Hartford Mutual Ins. Co. v. Precision Auto Body, Inc.* 2001 WL 34075400 (Del.Com.Pl.), the court stated as follows:

> A bailment is defined as the delivery of a thing in trust for some special object or purpose, and upon a contract, express or implied, to conform to the object or purpose of the trust. Where goods are delivered to another under a bailment, it is the duty of the bailee to exercise reasonable care with respect to the property under the terms of the bailment. The required degree of care is such as is reasonably necessary to prevent loss or damage to the property.
>
> In any action based on negligence, the plaintiff has the burden of proving lack of care by the defendant. The general rule is that proof of delivery of goods to a bailee and failure of the bailee to return them makes it a *prima facie* case, and the burden is cast upon the bailee to proceed with evidence rebutting the inference of negligence. Stated otherwise, where a bailment exists and the item was in good condition upon delivery to the bailee and is not returned in the same condition, the presumption of negligence arises which the bailee must rebut. (Internal citations omitted.)

Citadel argues on a contract basis, that is, the alleged failure to return the engine to Citadel in an undamaged condition. For a contract claim, Citadel would have to show the delivery of the Cessna to Aerospace in an undamaged condition, the promise by Aerospace to safe keep it, and its breach by the failure to do so. Aerospace would have the burden to show that it did not cause the damage.

This subject is discussed in 46 Am Jur POF.3d 361, Sec. 8, Bailee's Liability for Damage, Loss, or Theft of Bailed Property. No damages were caused by the 20-day delay. The engine was damaged in transit and the 20-day period was of no consequence in the bigger picture of making the Cessna airworthy.

3. In concealed damage cases, a plaintiff can overcome a clear delivery receipt with other admissible evidence. 67 A.L.R.2d 1028, 1048 Conclusiveness of receipt clauses in bill of lading, § 8; 36 Transportation Law Journal 177 "The Evolution of Motor Carrier Liability Under the Carmack Amendment Into the 21st Century" at 183-184; *U.S. Aviation Underwriters, Inc. v. Yellow Freight Sys., Inc.,* 296 F.Supp.2d 1322 (S.D. Ala. 2003). This case was cited at page 184 of the Transportation Law Journal as follows: "Plaintiff's insured had shipped a jet engine by truck from Alabama to Virginia via defendant Yellow. Yellow delivered the engine and obtained the consignee's signature on its delivery receipt under the legend '[r]eceived in good condition except as noted,' with no damage notation or exception. One day later, following transportation of the engine to another area via forklift, an employee of the consignee noticed the engine was damaged. Although Yellow argued the undisputed evidence demonstrated that the shipment had been delivered in good condition, the court nonetheless ruled that 'reliable, substantial circumstantial evidence of condition [at time of delivery] will suffice to prove a *prima facie* case.'" The court continued "[s]ubstantial and reliable circumstantial evidence, direct evidence or a combination of the two may be employed to prove the second element of the claim." (Internal citations omitted.) The second element is the requirement to show the shipment was delivered damaged at destination.

4. *Brasby v. Morris*, 2007 WL 949485, *6 (Del.Super.); *Indianapolis Life Insurance Co. v. Hentz*, 2008 WL 4453223, *5 (M.D.Pa.). Moreover, the damages claimed are economic. They are recoverable, if at all, under contract but not on a negligence basis. The economic loss doctrine precludes recovery where a breach of contract remedy exists. There are no personal injury or property damage claims asserted by Citadel.

5. At all times, Patterson's counsel acted professionally.