

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR KENT COUNTY

JAMES R. EMMONS, )  
 ) C.A. No. 02A-09-001 JTV  
Plaintiff Below - )  
Appellant, )  
 )  
v. )  
 )  
DAVID RUSSELL, )  
 )  
Defendant Below - )  
Appellee. )

*Submitted: February 3, 2003*

*Decided: May 30, 2003*

James R. Emmons, *Pro Se*. Frederica Delaware.

A. Richard Barros, Esq., Barros, McNamara, Malkiewicz & Taylor, Dover, Delaware. Attorney for Appellee.

*Upon Consideration of Appellant's Appeal  
From Decision of the Court of Common Pleas*

**AFFIRMED**

**VAUGHN, Resident Judge**

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## **ORDER**

Upon consideration of the briefs of the parties and the record of the case, it appears that:

1. The appellant, James Emmons, appeals from a decision of the Court of Common Pleas which denied his claim against the defendant, David Russell. The proceeding in the Court of Common Pleas was an appeal from a decision of the Justice of the Peace Court which also denied the plaintiff's claim.

2. David Russell is the owner and captain of a commercial fishing boat, The Tradewinds, which operates out of Bowers Beach, Delaware. Mr. Emmons chartered the boat for two fishing expeditions which were scheduled for June 5 and June 12, 2001. He paid a \$1,200 advance for the two trips. The cost of each was \$600 plus \$30 for each passenger over the first 20.

3. Mr. Emmons informed Captain Russell that he wanted his party to go to the Miah Maull Lighthouse, a fishing area in the Delaware Bay. On June 5, Captain Russell did set out for Miah Maull Lighthouse with Mr. Emmons' party. While en route he spoke by radio with two other charter boat captains who were already there. They informed him that Miah Maull Lighthouse was overcrowded and there were no fish. Based upon this information, Captain Russell changed course and went to Fourteen Foot Bank, another fishing area. Although Mr. Emmons said nothing that day, he was upset that his party had been diverted to Fourteen Foot Bank. On June 7 he canceled the scheduled June 12 expedition, contending that Captain Russell breached their agreement because his party was not

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taken to Miah Maull Lighthouse on June 5 as agreed. After deducting the cost of the first trip, which was \$630<sup>1</sup>, and \$150 as a non-refundable deposit on the canceled, second trip, Captain Russell refunded to Mr. Emmons the balance of his \$1,200 advance payment, or \$420. Mr. Emmons' then filed suit in the Justice of the Peace Court seeking return of the \$780 which the captain had retained.

4. When addressing appeals from the Court of Common Pleas, the court sits as an intermediate appellate court.<sup>2</sup> As such, its function is the same as that of the Supreme Court.<sup>3</sup> Therefore, the court's role is to "correct errors of law and to review the factual findings of the court below to determine if they are sufficiently supported by the record and are the product of an orderly and logical deductive process."<sup>4</sup> Appellate courts are bound by findings of fact made by the trial court that are supported by substantial evidence on the record, and are the product of an orderly and logically deductive process.<sup>5</sup> If substantial evidence exists for a finding of fact, this Court must accept that ruling, as it must not make its own factual

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<sup>1</sup> There were 21 persons in Mr. Emmons' party.

<sup>2</sup> *State v. Richards*, 1998 Del. Super. LEXIS 454 (Del. Super. 1998).

<sup>3</sup> *Baker v. Connell*, 488 A.2d 1303 (Del. 1985).

<sup>4</sup> *State v. Huss*, 1993 Del. Super. LEXIS 481, at \*2 (Del. Super. 1993) (*citing Levitt v. Bouvier*, 287 A.2d 671, 673 (Del. 1972)).

<sup>5</sup> *Shahan v. Landing*, 643 A.2d 1357 (Del. 1994); *Downs v. State*, 570 A.2d 1142, 1144 (Del. 1990).

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conclusions, weigh evidence, or make credibility determinations.<sup>6</sup>

5. Captain Russell testified that he informed Mr. Emmons when they first discussed the trips that the final determination as to where in the bay each charter would go could not be made until the day of the trip. He also testified that when he left the dock on the day of the June 5 trip, he intended to go to Miah Maull Lighthouse; that it was standard practice to communicate with other captains about fishing and safety conditions; that he decided to go to Fourteen Foot Bank when he learned over the radio that Miah Maull Lighthouse was overcrowded; that overcrowding at Miah Maull Lighthouse can create unsafe conditions; that as captain and owner of the boat he is responsible for the safety of the boat, passengers and crew; and that Mr. Emmons' party seemed generally content with the trip and caught about 45 to 50 trout that day. Finally, he testified that the \$150 was kept in accordance with his usual cancellation policy, which was standard in the business, and that in the short period of time between the cancellation and the date of the second trip, he could not obtain another set of passengers to take the place of Mr. Emmons' party. Witnesses called by Captain Russell corroborated his testimony concerning the events on the day of the trip, the captain's responsibility for safety, and standard practices in the charter fishing boat business.

6. The Court of Common Pleas accepted Captain Russell's account of what had taken place. It concluded that the captain did not make an absolute promise to

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<sup>6</sup> *Johnson v. Chrysler*, 213 A.2d 64 (Del.1965).

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take Mr. Emmons' party to Miah Maull Lighthouse and that he reserved the right to make a final decision on the day of the trip. It also concluded that Captain Russell's testimony that he decided to take the boat to Fourteen Foot Bank because of overcrowding at Miah Maull Lighthouse was credible and justified the change of plan. It also concluded that the people in the party were happy during the trip, that they caught fish, and that no complaints were made that day. For these reasons, the Court of Common Pleas concluded that Mr. Emmons had not established a breach of contract. It also concluded that Mr. Emmons' cancellation of the second trip was actually a breach of contract on his part and that he was not entitled to recover the \$150 cancellation charge. These findings and conclusions find ample support in the testimony of Captain Russell and his witnesses.

7. Mr. Emmons urges the Court to follow an 1869 United States Supreme Court decision entitled *The Harriman*.<sup>7</sup> That case involved a charter agreement, referred to therein as a charter-party, for the use of the vessel B.L. Harriman to carry steam-coal to the Spanish fleet off the coast of South America in a war between Spain and the Republics of Chile and Peru. A dispute arose when the Spanish fleet dispersed, apparently due to unsuccessful naval operations. The owner of the boat returned to his port of origin. The issue was whether under the terms of the charter agreement the vessel should have continued on to Valparaiso. The United States Supreme Court affirmed a decision of the Circuit Court for the District of California

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<sup>7</sup> 76 U.S. 161.

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for the charterer which construed the charter agreement as requiring the owner of the vessel to continue to Valparaiso. The case was decided upon its facts, including the particular provisions of the charter agreement. The facts of *The Harriman*, however, are readily distinguishable from the facts of this case. In this case the court below determined that Captain Russell expressly reserved the right to determine the destination of The Tradewinds on the day of the trip and that his decision to go to Fourteen Foot Bank instead of Miah Maull Lighthouse for safety reasons was not a breach of the party's agreement.

8. The trial court's findings and conclusions are free of legal error and are supported by substantial evidence. Accordingly, the decision of the Court of Common Pleas is ***affirmed***.

**IT IS SO ORDERED.**

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Resident Judge

oc: Prothonotary  
cc: Order Distribution  
File