

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

**MICHAEL WILLIAMSON,  
et al.,**

**Plaintiffs,**

**vs.**

**Case No. C2-06-292  
Judge Edmund A. Sargus, Jr.  
Magistrate Judge Terence P. Kemp**

**RECOVERY LIMITED  
PARTNERSHIP,  
et al.,**

**Defendants.**

**OPINION AND ORDER**

On March 31, 2008, the Court directed the parties to address whether it had subject-matter jurisdiction over the claims brought by Michael Williamson, the Estate of Don C. Craft, Kirk O'Donnell, John Lettow, Timothy McGinnis, Fred Newton, William Watson, Chris Hancock, Dale Schoeneman and International Deep Sea Survey, Inc. ("IDSS")(collectively the "*Williamson* Plaintiffs"). The Court therefore deferred ruling on Defendants' motions to dismiss until such time as it was satisfied that federal question jurisdiction extended to the matters brought by the *Williamson* Plaintiffs.<sup>1</sup> For the reasons that follow, the Court concludes that it does have subject-matter jurisdiction. Defendants' are granted leave to file motions to dismiss consistent with this Opinion and Order.

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<sup>1</sup> The Court denied the motions without prejudice, subject to reactivation, if appropriate, following resolution of the matters related to subject-matter jurisdiction.

**A. Subject-Matter Jurisdiction Over the Williamson Plaintiffs' Claims**

On March 31, 2006, the *Williamson* Plaintiffs filed a civil action in the Court of Common Pleas for Franklin County, Ohio. The *Williamson* Plaintiffs are individuals who contracted to participate in the *S.S. Central America* search and recovery efforts, and IDSS, a company that leased sonar equipment to Defendant Recovery Limited Partnership. As part of the compensation offered to Plaintiffs for their work, the individual Plaintiffs and Defendant Thompson entered into non-disclosure agreements, which prohibited disclosure of information related to the *S.S. Central America* project, and entitled Plaintiffs to a fraction of a percentage of the total recovery of the shipwreck. IDSS also agreed to be compensated, in part, based on a percentage of the net recovery from the operation.

On April 24, 2006, Defendants removed the lawsuit to this Court, alleging federal-question jurisdiction under 28 U.S.C. § 1331 and admiralty jurisdiction under 28 U.S.C. § 1333. Specifically, Defendants asserted that removal was proper because the dispute centered upon contractual salvage rights and was thus governed by federal maritime law. On July 28, 2006, the *Williamson* Plaintiffs filed an identical civil action in the Southern District of New York alleging that each Plaintiff had a maritime claim against the Defendants.

After removal of this case in the Southern District of Ohio, however, the *Williamson* Plaintiffs amended their complaint, and deleted their claim for salvage. In their amended complaint, the *Williamson* Plaintiffs allege breach of contract, conversion, constructive trust, breach of fiduciary duties, and request an accounting. Defendants then filed motions to dismiss the *Williamson* Plaintiffs' amended complaint on state-law grounds. Defendants asserted in their

motions to dismiss that the contracts between the *Williamson* Plaintiffs and Defendants were not maritime in nature. Because Defendants had removed the case based on federal question/admiralty-law grounds, and then argued in their motions to dismiss that the remaining claims before the Court were purely matters of state law, the Court questioned, *sua sponte*, whether it had subject matter jurisdiction.

At the same time, Defendants and the *Williamson* Plaintiffs were fighting this exact jurisdictional battle in the Southern District of New York. Defendants there, as they had here, maintained that the contracts between them and Plaintiffs are not maritime contracts and, therefore, federal jurisdiction did not apply. The district court in New York found that the non-disclosure and lease agreements, which are at issue in this case, are maritime in nature. *Williamson v. Recovery Ltd. P'ship*, No. 06Civ.5724, 2006 WL 102089 (S.D. N.Y. Jan. 16, 2007). Defendants appealed this decision to the United States Court of Appeals for the Second Circuit.<sup>2</sup> With agreement of the parties in this case, the Court held its decision regarding subject-matter jurisdiction over the *Williamson* Plaintiffs' claims in abeyance pending resolution of the parties' appeal of the New York district court's decision. The Court also denied the Defendants' Motions to Dismiss without

On August 23, 2008, the Court of Appeals for the Second Circuit issued its decision finding that the contracts are maritime. The Court of Appeals held specifically:

Here, the contracts reference maritime service or maritime transactions. The contracts concern: non-compete agreements, whereby the hired workers promised not to work on the waters off the shore of the Carolinas in exchange for a portion

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<sup>2</sup> Defendants also appealed the district court's decision related to attachment orders issued under the Admiralty Rules of Procedure, and other matters not relevant to the instant matter.

of the proceeds from a potential recovery effort of a shipwreck in the ocean; non-disclosure agreements, whereby the hired workers promised not to discuss the work they were doing on a ship in the Atlantic Ocean; and the lease of equipment for use in the search for the *S.S. Central America* in the Atlantic Ocean. While the Defendants may be correct in stating that these are just standard non-compete, nondisclosure, and lease contract agreements, they are incorrect in arguing that the contracts are therefore not maritime contracts. As the Supreme Court explained, a conceptual analysis is appropriate. *See Norfolk S. Ry. Co.*, 543 U.S. at 22-25, 125 S. Ct. 385. We must “focus[ ] our inquiry on whether the principal objective of a contract is maritime commerce,” *id.* at 25, 125 S. Ct. 385, and we must look to the “nature and character of the contract,” *id.* at 24, 125 S. Ct. 385. Here, the nature and character of these non-compete and non-disclosure agreements, as well as the agreement to provide technical equipment in exchange for a percentage of the recovery, are clearly “salty.” *Id.* at 22, 125 S. Ct. 385. As the district court correctly found, the contracts at issue here “were by their terms entered into in connection with maritime commercial venture and are therefore maritime in nature; thus, the Court has jurisdiction of the claims brought thereunder pursuant to 28 U.S.C. § 1333.” *Williamson v. Recovery Ltd. P’ship*, 2007 WL 102089, at \*2, 2007 U.S. Dist. LEXIS 4438, at \*6 (S.D.N.Y. Jan. 16, 2007).

*Williamson v. Recovery Ltd. P’ship*, 542 F.3d 43, 49-50 (2d Cir. 2008). The Court therefore affirmed the district court’s determination that the contracts at issue are maritime contracts, and that the dispute was properly in federal court. Defendants petitioned the United States Supreme Court for a Writ of Certiorari. On January 12, 2009, the Supreme Court denied the Writ. *Columbus Exploration, LLC v. Williamson*, (No. 08-684), --- S. Ct. ----, 2009 WL 56270, 77 USLW 3346 (U.S. Jan. 12, 2009).

While not bound by the decision,<sup>3</sup> this Court is persuaded that both the result and analysis

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<sup>3</sup> Plaintiffs suggest that the Court may be bound by this decision under the doctrine of collateral estoppel. A federal court decision is to be given collateral estoppel effect if (1) the precise issue raised in the present case was raised and actually litigated in the prior proceeding; (2) determination of the issue must have been necessary to the outcome of the prior proceeding; (3) the prior proceeding *must have resulted in a final judgment on the merits*; and (4) the party against whom estoppel is sought must have had a full and fair opportunity to litigate the issue in the prior proceeding. *E.g., Smith v. SEC*, 129 F.3d 356, 362 (6<sup>th</sup> Cir. 1997)(en banc)(emphasis added). Without deciding whether the other elements are established, the Court notes that the lawsuit in the Southern District of New York, as far as can be gleaned from the record developed by the parties in this case, has not

employed by of the Court of Appeals for the Second Circuit, with respect to the very contracts that are at issue in this case, are correct. This Court agrees, as the Court of Appeals in *Williamson* found, that *Norfolk Southern Railway Company v. Kirby*, 543 U.S. 14 (2004), clarified that the approach for determining whether a contract is maritime or non-maritime. In *Kirby*, the Supreme Court advised that, “to ascertain whether a contract is maritime one, [a court] cannot look to whether a ship or other vessel was involved in the dispute . . . .” *Id.* at 23. Instead, such a determination depends upon “the nature and character of the contract, and the true criterion is whether it has reference to maritime service or maritime transactions.” *Id.* at 23-24 (citations omitted). Here, the covenants not to compete, the non-disclosure agreements, and the lease agreement for sonar equipment were each made in exchange for a percentage of the recovery. The Court concludes that the parties entered into these contracts in connection with and in furtherance of a maritime commercial venture and are, therefore, maritime in nature. Thus, the Court finds that it has subject-matter jurisdiction over the *Williamson* Plaintiffs’ claims.

#### **B. Motions to Dismiss**

The Court previously denied Defendants’ motions to dismiss without prejudice to reactivation, if appropriate, following resolution of the issues related to subject-matter jurisdiction. Defendants’ motions, however, rely on a variety of state-law principles to argue that the *Williamson* Plaintiffs’ claims should be dismissed. Defendants maintained that the contracts involved in the instant case are non-maritime contracts governed by the law of the State of Ohio, and that the liability of the Director Defendants arose from Delaware LLC statutes. They

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reached a final judgment. Collateral estoppel, therefore, cannot apply.

did not address, for instance, federal common law as it relates to the piercing-the-corporate-veil issues or the maritime-laches arguments raised by the *Williamson* Plaintiffs in response to Defendants' statute of limitations defense.

The Court finds that reactivation of the Defendants' motions to dismiss, as previously filed, is not appropriate, given the posture of this case and the Court's determination that the contracts at issue are maritime in nature.<sup>4</sup> Nonetheless, Defendants may desire to re-frame their legal arguments in light of this determination, and consistent with what has transpired in *Williamson* matter in the Southern District of New York. Further, Defendants may wish to reassert defenses that did not rely on a finding related to the maritime nature of the contracts. That being the case, Defendants are not required, but are granted **LEAVE TO FILE** motions to dismiss the *Williamson* Plaintiffs' amended complaint, consistent with this Opinion and Order, within **TWENTY-ONE (21) DAYS**.

**IT IS SO ORDERED.**

*1-29-2009*  
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DATED

  
\_\_\_\_\_  
EDMUND A. SARGUS, JR.  
UNITED STATES DISTRICT JUDGE

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<sup>4</sup> Moreover, the record is devoid of information relating to the progress of the identical case pending in the Southern District of New York.