

**DECISION**



*H. Neitzman*  
*J. King*  
**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D. C. 20548

7959

FILE: B-192003

DATE: October 6, 1970

MATTER OF: McDonald and McMoore Enterprises, Inc.

**DIGEST:**

1. One who offers a vessel for charter is bound to furnish one that is seaworthy and if no express warranty of seaworthiness is contained in the charter party, the law will imply one.
2. Absence of radar or loran will not make a vessel unseaworthy; however, lack of a radio and navigational equipment will.
3. Evidence indicates vessel was unseaworthy and if serious, the charterer may treat the contract as discharged even after contract has been partially performed.
4. Oral contracts for Government charters such as was entered into here have been declared unenforceable because of a statute requiring that all Government contracts be in writing.
5. Government will pay claimant on quantum meruit and quantum valebat basis but it must be shown that Government has received a benefit and the unauthorized goods or services were expressly or legally ratified by authorized Government officials.
6. Government did not receive a benefit where sole purpose was to go from Pago Pago to Rose Island on official business and trip was aborted because of unseaworthiness not the fault of the Government.

John E. O'Grady, an authorized certifying officer of the United States Department of the Interior (Interior), has requested an advance decision on the propriety of certifying a voucher for payment of \$1,500. The voucher was presented by McDonald and McMoore Enterprises [sic], Inc. (McDonald), for payment of transportation charges for a charter trip from Pago Pago, American Samoa, to Rose Island in the Pacific Ocean.

Mr. O'Grady, as an authorized certifying officer, is entitled to an advance decision by the Comptroller General on the question of law whether the transportation charges for the charter should be certified for payment. 31 U.S.C. 82d (1970). And as required by our procedures, Mr. O'Grady has submitted the original voucher presented for certification. 52 Comp. Gen. 83 (1972).

Personnel from the Hawaiian and Pacific Islands National Wildlife Refuges make periodic trips to Rose Island as a part of their refuge management activities. A trip was planned for October 7, 1977, by Interior employees for a duration of three days.

The Refuge Manager at Honolulu called the Office of Marine Resources (OMR), Government of Samoa, to make arrangements for the trip and to determine what vessels could be available. The OMR Office Manager indicated that McDonald was the only contractor at Pago Pago capable of providing the services required. Because of the distance from Honolulu to Pago Pago, all arrangements for the charter were made by the OMR Office Manager. The vessel selected (only two were available) was the "MERIDIAN" which the Office Manager described as a "class vessel."

Upon arrival in Pago Pago, the Refuge Manager discovered that the vessel was not as represented. However, he and four other Interior employees embarked on the voyage to Rose Island. The Refuge Manager terminated the trip prior to destination for health and safety reasons which included:

1. No radio contact capabilities with the main islands;
2. Engine failures related to dirty fuel;
3. No LORAN or other adequate locating devices;
4. Inability to determine location with any accuracy;
5. Inadequate water supply;
6. Inadequate food; and
7. Inexperienced crew.

The original invoice presented by McDonald was for \$2,250, which represents a charter of three days at \$750 per day. The Refuge Manager changed the invoice to indicate only two days, the actual time spent on the vessel, or \$1,500. McDonald has agreed to accept this amount as its total charges for the voyage.

The Certifying Officer states that: "We believe that the contractor misrepresented the vessel and in so doing, endangered the lives of government personnel and crew members. Safety considerations made it imperative to return to port."

The Certifying Officer requests advice as to what amount, if any, should be paid to the contractor.

One who offers a vessel for charter is bound to furnish one that is staunch, tight and seaworthy, unless it is otherwise expressly stipulated, and if no express warranty of seaworthiness is contained in the charter party, the law will imply one. Oxford Paper Co. v. The Nidarholm, 42 U.S. 681 (1931); The Caledonia, 157 U.S. 124 (1895); Work v. Leathers, 97 U.S. 379 (1878).

It has been held that the absence of radar or loran will not make a vessel unseaworthy. President of India v. West Coast Steamship Co., 213 F. Supp. 352 (D. Ore. 1962), aff'd 327 F.2d 638 (9th Cir. 1964); 2A Benedict on Admiralty, section 64, 7th Ed. (1977). However, a vessel may be declared unseaworthy for lack of a radio. T.S.J. Hooper, 60 F.2d 737 (2d Cir. 1932), cert. den. Eastern Transportation Co. v. Northern Barge Corp., 287 U.S. 562 (1932). The record shows that the vessel "MERIDIAN" was without radio contact with the main islands and because of this fact one could conclude that the vessel was unseaworthy. Further, the vessel must be supplied with the means by which it can be safely navigated. 2A Benedict on Admiralty, section 66, 7th Ed. (1977). The record also shows that the Captain of the vessel "MERIDIAN" was unable to determine its location at sea in relation to the location of Rose Island. This too would seem to indicate that proper navigation instruments were not available or if available, not capable of being used, and such fact would also render the vessel unseaworthy.

Thus, in our opinion the lack of radio and navigational equipment, together with the other problems encountered on the voyage by Interior employees are sufficient evidence that the

vessel was unseaworthy. And if the initial unseaworthiness is sufficiently serious, the charterer may treat the contract as discharged even after the contract has been partially performed. Scrutton On Charter Parties & Bills of Lading, 47, 18th Ed. (1974).

However, the preceding question of seaworthiness presumes that a valid charter contract was executed by the parties involved. In United States v. American Renaissance Lines, Inc., 494 F.2d 1059 (D.C. Cir. 1974), cert. denied, 419 U.S. 1020 (1974), the court rendered unenforceable an oral charter agreement between the Government and a private shipper for the carriage of foodstuffs because of a statute requiring that all Government contracts be in writing. 31 U.S.C. 200(a)(1) (1970). See also Clark v. United States, 95 U.S.C. 539 (1877); 70 Am. Jur. 2d Shipping, 155 (1973); 55 Comp. Gen. 833, 836 (1976). The record shows that the Refugee Manager entered into an oral contract with McDonald through the Office Manager, OMR, Government of Samoa, for the proposed trip to Rose Island on October 7, 1977. It was not until November 25, 1977, almost two months after the aborted trip, that Interior issued a Order For Supplies Or Services. The Order was issued in response to an invoice from McDonald. Thus, following the precepts of the court in American Renaissance Lines, supra, the oral contract of charter would be unenforceable.

It is well recognized that, in appropriate circumstances, payment may be made for services rendered on a quantum meruit basis (the reasonable value of work and labor), or for goods furnished on a quantum valebat basis (the reasonable value of goods sold and delivered). 46 Comp. Gen. 348 (1966). However, before a right to payment under that basis may be recognized it must be shown that the Government has received a benefit, and that the unauthorized goods or services were expressly or legally ratified by authorized officials of the Government. Coast Marine and Industrial Supply Company, Inc., B-183043, April 4, 1975, 75-1 CPD 208. See also Work v. Leathers, supra, where the Court held that a vessel owner is liable for the breach of his contract because of unseaworthiness; however, the user of the vessel would be liable on a quantum meruit basis to the extent he uses it.

The record shows that the Government did not receive benefit here which would entitle McDonald to its charter transportation charges. The voyage was arranged for the sole purpose of transporting the Interior employees to Rose Island from Pago Pago on official business. Thus, the Government received no benefit when the trip was aborted through no fault of the Government for the reasons previously stated (unseaworthiness) and the employees were forced to return to American Samoa without accomplishing their mission. Ratification would also not be forthcoming because Interior officials have in effect suggested that payment should not be made.

Accordingly, the request by McDonald for payment of charter transportation charges of \$1,500 is hereby denied. We will retain the original invoice in our files.

*R. G. Kistner*  
Deputy Comptroller General  
of the United States