

**UNITED STATES DISTRICT COURT
DISTRICT OF MAINE**

ARTHUR CRIBBY, ET AL.,)	
)	
Plaintiffs)	
)	
v.)	Docket no. 00-CV-36-B
)	
STINSON SEAFOOD CO., L.P., ET AL.)	
)	
Defendants)	

FINDINGS OF FACT AND CONCLUSIONS OF LAW

SINGAL, District Judge

Six fishermen brought claims against two Defendants, Stinson Seafood Co., L.P., and its managing partner, Stinson Seafood, Inc. Stinson Seafood Co., L.P. filed a counterclaim against the six Plaintiffs. Based upon maritime jurisdiction, the Court held a bench trial on January 19, 2001. The Court makes the following findings of fact and conclusions of law pursuant to Rule 52(a).

I. FINDINGS OF FACT

A. The Parties

1. At all relevant times, Defendant Stinson Seafood Co., L.P. (“Stinson”) was a limited partnership organized and existing under Delaware law, with a business address in Prospect Harbor, Maine
2. Defendant Stinson Seafood, Inc. was the managing partner of Stinson, which operated as a fishing enterprise.

3. Stinson Seafood, Inc. was incorporated under the laws of Maine, with a registered office in Brunswick, Maine.
4. During the summer of 1999, the six Plaintiffs – Arthur Cribby, Joseph Frontiero, William Mooney, Jr., Joseph Parisi, Roderick Penney and James Sanfilippo – worked as independent fishermen for Stinson.

B. Circumstances Prior to June 1999

5. Prior to June 1999, a number of Plaintiffs, including Arthur Cribby and James Sanfilippo, worked as fishermen for Stinson.
6. During that time, the fishermen worked as employees at will without written employment contracts.
7. Sanfilippo generally worked as a mate, and once or twice served as captain on fishing voyages.
8. A mate is the second-in-command of a fishing vessel. He assumes control of a ship in case the captain takes a break or becomes incapacitated.
9. Cribby worked as a deckhand for Stinson.
10. Comprising the general crew, deckhands perform a variety of tasks under the direction of a captain or mate.
11. During this period, Stinson paid its fishermen by apportioning them a share of a vessel's income. After a fishing voyage, the ship captain would receive 5% of the gross income. From the remaining gross, the crew received a crew share of 43%. Each crewmember received an equal portion of the crew share. Consequently, if five fishermen worked on one fishing trip, each would receive 20% of the crew

share. A mate was paid the same as a deckhand. The captain received one share plus the initial allotment of 5%.

12. Prior to June 1999, Stinson paid for all maintenance and repair expenses associated with its fishing excursions.

C. Stinson Introduces Written Contracts

13. By June 1999, the directors of Stinson had decided to alter its relationship with its employees. Instead of having employees, Stinson opted to follow the prevailing industry trend and hire independent contractors.

14. In June 1999, Stinson approached several of its employees with written contracts entitled "F/V Western Wave INDEPENDENT FISHERMAN CONTRACT."

15. When Stinson approached Sanfilippo to sign an independent fisherman contract, the company made him captain of the F/V Western Wave. This was the first time that he had ever served as a full-fledged captain.

16. The other five Plaintiffs signed on as deckhands for the Western Wave.

17. Stinson did not hire a mate for the Western Wave.

18. James Sanfilippo signed an independent fisherman contract on June 12, 1999.

19. Arthur Cribby signed an independent fisherman contract on June 14, 1999.

20. Joseph Frontiero signed an independent fisherman contract on June 15, 1999.

21. Joseph Parisi signed an independent fisherman contract on June 15, 1999.

22. William Mooney, Jr. signed an independent fisherman contract on July 10, 1999.

23. Roderick Penney signed an independent fisherman contract on August 8, 1999.

24. The contracts are form agreements, virtually identical to one another.

25. Each of the contracts is for a 90-day period.

26. Stinson drafted the contracts without input from the fishermen.

27. One provision of each contract states:

B. For the purpose of this agreement Adjusted Gross Revenue of the vessel is the Net Revenue received by the Manager for the catch ... less administrative fee of 3%, fuel expense of 6%, and maintenance expenses in excess of \$10,000/month. Maintenance expenses will be accrued at the rate of \$10,000/month and will be reviewed on a periodic basis. If actual maintenance expenses cumulatively exceed the base rate of \$10,000/month the Manager reserves the right to deduct the overage from the net revenue until expenses are back in line with accrual.

C. Crew Share will be 45% of the Adjusted Gross Revenue and will be shared between the crew as follows:

Captain. Share will be 30% of Crew Share.

Mate. Share will be 20% of Crew Share.

Deckhand. Share will be 12.5% of Crew Share.

(F/V Western Wave Independent Fisherman Contract, at 8, Exs. A-F.)

28. Another provision states:

This contract will be enforced and interpreted under the laws of the State of Maine.

(F/V Western Wave Independent Fisherman Contract, at 4, § 20(B), Exs. A-F.)

29. Another provision reads:

This contract constitutes the entire agreement between the parties and all prior arrangements and negotiations between the parties are hereby deemed to be merged herein.

(F/V Western Wave Independent Fisherman Contract, at 4, § 20(A), Exs. A-F.)

D. The Western Wave Operates Without a Mate

30. From mid-June to mid-September 1999, Sanfilippo captained the Western Wave.

31. During that time, the Western Wave never had a mate.

32. It was understood between the parties that the Western Wave should have a mate in case Sanfilippo ever was incapacitated while fishing.
33. Sanfilippo did not have full authority to hire mates or deckhands. Instead, he would find someone then seek confirmation from Tom Jordan, a manager with Stinson.
34. Every time that Sanfilippo asked Jordan to approve the hiring of a certain deckhand, Jordan assented to Sanfilippo's choice.
35. Sanfilippo asked Jordan to help him find a mate.
36. Jordan and Sanfilippo both spent time and effort seeking a mate to work on the Western Wave, but apparently no one with the requisite qualifications would agree to serve as mate.
37. Sanfilippo chose not to promote any of his deckhands to the position of mate because he doubted each deckhand's capacity to serve as mate.

E. The Western Wave Encounters Troubled Waters

38. Without a mate, Sanfilippo usually embarked on fishing expeditions with five or four deckhands. Each day, the Western Wave would be out fishing for twelve to eighteen hours.
39. Stinson did not criticize Sanfilippo for sailing with fewer than five deckhands.
40. Stinson paid the fishermen each Friday, based on the earnings of the previous week.
41. By mid-summer, crewmembers began complaining that the amounts that Stinson was paying them were inadequate. Specifically, the amounts of their paychecks

reflected less than 45% of the Western Wave's adjusted gross revenue. This alleged deficit was a result of the Western Wave lacking a mate. For example, if the captain set sail with five deckhands, Stinson would pay the captain 30% of the crew share and each of the five deckhands 12.5% of the crew share, for a total of 92.5%. The company retained the remaining 7.5% of the crew share. If the Western Wave went out to sea with the captain and four deckhands, Stinson would retain 20% of the crew share.

42. Sometime in July, Sanfilippo expressed to Jordan the crewmembers' dissatisfaction with their compensation.
43. Jordan defended the company's policy of retaining a portion of the crew share as based on the terms of the contracts.
44. In mid-September 1999, Stinson increased the amount that it paid its fishermen.
45. This pay increase occurred during the final week of the 90-day contractual period for Sanfilippo, Cribby, Frontiero and Parisi.
46. Instead of paying Sanfilippo 30% of the crew share that week, Stinson paid him 32.5% of the crew share.
47. Instead of paying Cribby 12.5% of the crew share, Stinson paid him 14% of the crew share.
48. Cribby confronted Jordan about the eleventh-hour pay hike and asked him why the company had not paid the fishermen the entire crew share earlier in the summer. Jordan responded by telling him that Stinson knew it had acted in error, but that it was too late to reimburse the crew their actual wages for the past three months.

49. The total amount that Stinson retained from the crew share of the Western Wave during the summer of 1999 was \$12,597.81.

50. Of that sum, Stinson retained \$10,661.38 in connection with work done by the six Plaintiffs, while \$1,936.43 relates to work done by fishermen who are not parties to this action.

F. The Counterclaim

51. In March 2000, Plaintiffs filed suit against both Stinson and its managing partner, Stinson Seafood, Inc.

52. Stinson responded by filing a counterclaim against the six fishermen on May 19, 2000. The counterclaim alleges that the six owe Stinson \$12,988.28 for excess maintenance costs related to a damaged fishing net, also known as a seine.

53. Twice during the summer of 1999, the Western Wave's seine was damaged badly.

54. Repairing the seine cost Stinson more than \$25,000.

55. Cribby and Sanfilippo testified that they thought maintenance expenses did not include major repairs, rather that they included such things as replacing worn cables, tightening tubes, ensuring that the vessel meets safety requirements, and replacing oil, filters, fluids, coolants and the like.

56. The former owner and president of Stinson, Richard Klingaman, testified that the company considered repairs to be a subcategory of maintenance expenses, and therefore repair costs must be deducted from the net revenue before calculating the adjusted gross revenue.

57. During the summer of 1999, however, Tom Jordan reassured the crew that as long

as they did not cause any more damage to the seine, their wages would not be reduced to compensate for the repair costs.

II. CONCLUSIONS OF LAW

A. Plaintiffs' Claims

58. Applying federal maritime choice-of-law rules, the Court finds that the disputed independent fisherman contracts are governed by Maine law. See, e.g., Advani Enters., Inc. v. Underwriters at Lloyds, 140 F.3d 157, 162 (2nd Cir. 1998).
59. Each of the independent fisherman contracts is an integrated contract.
60. The compensation provision of each contract is ambiguous because it is susceptible to two reasonable interpretations. See, e.g., Villas by the Sea Owners Ass'n v. Garrity, 748 A.2d 457, 461 (Me. 2000).
61. When a written contract is ambiguous, the court must determine the intent of the parties in entering that contract, and that determination is a question of fact. See, e.g., Hilltop Cmty. Sports Ctr. v. Hoffman, 755 A.2d 1058, 1063 (Me. 2000).
62. Ambiguities in a contract are construed against the drafter. See, e.g., John Swenson Granite, Inc. v. State Tax Assessor, 685 A.2d 425, 428 (Me. 1996); Gendron Realty, Inc. v. N.J. Gendron Lumber Co., 519 A.2d 723, 725 (Me. 1987).
63. When a contract is ambiguous the Court may consider extrinsic evidence to determine the intent of the parties. See, e.g., Villas, 748 A.2d at 461.
64. When an ambiguous contract is integrated a court may only consider extrinsic evidence that is not inconsistent with the unambiguous language of the contract.

- See, e.g., Hilltop, 755 A.2d at 1063 n.2.
65. Relevant extrinsic evidence may include matters from the parties' negotiations or the parties' courses of dealing. See, e.g., Villas, 748 A.2d at 461; Diversified Foods, Inc. v. First Nat'l Bank, 605 A.2d 609, 613 (Me. 1992).
66. The parties did not negotiate the terms of the contracts.
67. Defendants' course of dealing included paying the fishermen the full crew share for one week. See Villas, 748 A.2d at 463 (considering as extrinsic evidence how party acted during course of performance).
68. Also in Defendants' course of dealing, one of Stinson's agents acknowledged that the company knew it had been acting in error regarding how it paid its fishermen.
69. The contract does not state or imply that it was solely the captain's responsibility to hire a mate.
70. Therefore, it is no more Sanfilippo's fault than it is Stinson's fault that the Western Wave sailed without a mate during the summer of 1999.
71. The contract does not state or imply that the captain was obligated to have a total crew of six fishermen on each fishing voyage.
72. Therefore, it is no more Sanfilippo's fault than it is Stinson's fault that the Western Wave often sailed with fewer than six fishermen during the summer of 1999.
73. Citing the rule of contract interpretation that specific contractual language controls more general contractual language, see M. De Matteo Constr. Co. v Me. Tpk. Auth., 184 F. Supp. 907, 911 (D. Me. 1960), Defendants argue that the phrases allocating the crew share,

Captain. Share will be 30% of Crew Share.

Mate. Share will be 20% of Crew Share.

Deckhand. Share will be 12.5% of Crew Share.

should outweigh the phrase “Crew Share will be 45% of the Adjusted Gross Revenue.” The Court, however, finds as a matter of interpretation that the three phrases allocating the crew share are not more specific than the phrase defining the crew share:

Crew Share will be 45% of the Adjusted Gross Revenue *and* will be shared between the crew as follows:

Captain. Share will be 30% of Crew Share.

Mate. Share will be 20% of Crew Share.

Deckhand. Share will be 12.5% of Crew Share.

(F/V Western Wave Independent Fisherman Contract, at 8, Exs. A-F (emphasis added).) Therefore, the phrases allocating the crew share do not control the phrase defining the crew share.

74. Based on Defendants’ course of dealing, the Court finds that the parties intended that the Western Wave’s crewmembers would be paid the entire crew share and that Defendants would not retain any of the crew share.

75. Thus, Defendants should have paid 45% of the adjusted gross revenue to the crew of the Western Wave, without retaining any portion of the crew share.

76. The Court finds Defendants liable for breaching the independent fisherman contracts with the six Plaintiffs.

77. Thus, the Court awards compensatory damages to Plaintiffs in the amount of \$10,661.38, plus prejudgment interest. See 14 M.R.S.A. § 1602.¹

¹ Because some of the deckhands who served on the Western Wave during the summer of 1999 are not plaintiffs in this action, Defendants need not disgorge the entire \$12,597.81. Regarding the \$10,661.38, the parties previously agreed that Plaintiffs’ counsel would allocate any award between the individual Plaintiffs.

B. Stinson's Counterclaim

78. Under the terms of the independent fisherman contracts, crewmembers must contribute to maintenance expenses if they exceed \$10,000 over the course of a month.
79. The contract, however, does not define "maintenance."
80. The plain meaning of the word "maintenance" does not include major repairs, such as repairing the vessel's fishing net.
81. In addition, one of Stinson's agents told Plaintiffs that Stinson would not reduce their wages based on the damage to the seine, thereby waiving Stinson's claim. See Associated Builders, Inc. v. Coggins, 722 A.2d 1278, 1281 (Me. 1999); Kirkham v. Hansen, 583 A.2d 1026, 1027 (Me. 1990).
82. Therefore, the Court finds that Plaintiffs are not liable to Defendant Stinson on its counterclaim.

III. CONCLUSION

Based on the foregoing findings of fact and conclusions of law, the Court finds Defendants **LIABLE** to Plaintiffs and **ORDERS** that Plaintiffs shall recover \$10,661.38 in compensatory damages plus prejudgment interest. In addition, the Court concludes that Plaintiffs are **NOT LIABLE** to Defendant Stinson on its counterclaim, and that Defendant Stinson shall recover nothing.

SO ORDERED.

GEORGE Z. SINGAL
United States District Judge

Dated this 5th day of March 2001.

ARTHUR CRIBBY DAVID J. BERG, ESQ.
 plaintiff [COR LD NTC]
 LATTI & ANDERSON LLP
 30-31 UNION WHARF
 BOSTON, MA 02109
 617-523-1000

JOSEPH FRONTIERO DAVID J. BERG, ESQ.
 plaintiff (See above)
 [COR LD NTC]

JOSEPH PARISI DAVID J. BERG, ESQ.
 plaintiff (See above)
 [COR LD NTC]

JAMES SANFILIPPO DAVID J. BERG, ESQ.
 plaintiff (See above)
 [COR LD NTC]

v.

STINSON SEAFOOD COMPANY, LP LEONARD W. LANGER
 defendant [COR LD NTC]
 MARSHALL J. TINKLE
 [COR]
 TOMPKINS, CLOUGH, HIRSHON &
 LANGER
 THREE CANAL PLAZA
 P.O. BOX 15060
 PORTLAND, ME 04112-5060
 207-874-6700

STINSON SEAFOOD INC

LEONARD W. LANGER