

Odyssey Marine Exploration, Inc. v. The Unidentified Shipwrecked Vessel United States Court of Appeals, Eleventh Circuit 636 F.3d 1338 (Decided March 31, 2011)

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**SUIT FOR RECISSION OF A CONTRACT CONCERNING UTILIZATION OF
RESEARCH, WHICH AIDED EFFORTS TO LOCATE A SHIPWRECK, WAS COGNIZABLE
UNDER FEDERAL ADMIRALTY JURISDICTION**

**The Eleventh Circuit Court of Appeals, after finding that appellant’s claim was proper
under federal admiralty jurisdiction, reversed and remanded the district court’s dismissal**

Odyssey Marine Exploration, Inc. v. The Unidentified Shipwrecked Vessel
United States Court of Appeals, Eleventh Circuit
636 F.3d 1338
(Decided March 31, 2011)

The primary question presented in *Odyssey Marine Exploration v. The Unidentified Shipwrecked Vessel* was whether federal court possessed federal admiralty jurisdiction¹ to hear appellant Keith Bray’s (“Bray”) action for contract rescission.² Bray sought to intervene in an *in rem* proceeding initiated by Odyssey Marine Exploration (“Odyssey”), appellee, for ownership of a sunken vessel, claimed by the Kingdom of Spain. At bar was whether Bray’s suit still sounded under federal admiralty jurisdiction after the underlying *in rem* proceeding had been dismissed.

Bray entered into two agreements with Odyssey, an oral contract and a written contract. The oral agreement provided that Bray would furnish research and data concerning the potential site of the *Merchant Royal*, a sunken vessel purportedly containing highly valuable cargo. In consideration for this information, Odyssey was to provide Bray with proceeds from the recovery of the *Merchant Royal*, cover research costs, and keep him informed of their efforts to locate the vessel. According to Bray, he was never kept abreast of the search progress and, after five years, entered into the written contract with Odyssey after it represented that the search for the *Merchant Royal* had ceased. The terms of the written agreement provided that Odyssey would pay Bray a “payment in full” cash sum for his previously furnished research.³

Shortly thereafter, Bray learned that Odyssey had continued searching for the *Merchant Royal* and indeed had found a sunken vessel. Consequently, Odyssey initiated an *in rem* claim to ownership of the vessel, prompting Bray to seek intervention to rescind the written contract and reinstate the oral contract. After finding that the shipwreck was not the *Merchant Royal*, the district court dismissed the *in rem* proceeding. Consequently, the Court, *sua sponte*, evaluated whether it possessed subject matter jurisdiction to consider Bray’s suit. It concluded that with the underlying claim dismissed, Bray’s suit did not lie in federal admiralty jurisdiction.

Bray appealed and the Eleventh Circuit, following *de novo* review, reversed, commenting that “the contracts here have a more genuinely salty flavor,”⁴ and concluded that Bray’s claim was “properly cognizable under federal admiralty jurisdiction.”⁵ The criterion applied by the Court in considering whether a suit sounded in admiralty was to look at the “nature and character of the contract” to see whether the contract involved references to maritime services or transactions.⁶ Here, because the contract concerned an agreement to utilize research that would contribute in the search for a shipwreck, the contract was in admiralty. In reaching its conclusion, the Court relied on precedent that held the salvage of shipwrecks and contracts involving maritime commercial ventures were proper under federal

¹ See 28 U.S.C. § 1333 (2006).

² 636 F.3d 1338, 1339–40 (11th Cir. 2011).

³ *Id.* at 1339.

⁴ *Id.* at 1340.

⁵ *Id.* at 1341.

⁶ *Id.* at 1340 (quoting *Norfolk S. Ry. v. Kirby*, 543 U.S. 14, 24 (2004)).

admiralty jurisdiction.⁷ Consequently, the Eleventh Circuit reversed and remanded the judgment of the district court.

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⁷ *Id.* at 1341 (citing *Treasure Salvors, Inc. v. Unidentified Wrecked and Abandoned Sailing Vessel*, 569 F.2d 330, 333–36 (5th Cir. 1978)).