Current Legal Trends and Yacht Broker Matters

Disclosure

In July 2010, the President signed into law the Dodd-Frank Act which enacted new and stricter provisions intended to (1) reform the mortgage lending industry and (2) enhance consumer protection as a result of the "subprime crisis." This comprehensive piece of legislation creates a new independent watchdog, housed at the Federal Reserve, with the authority to ensure American consumers receive clear and accurate information when securing mortgages, credit cards and other financial products, including boat loans, with the ultimate goal of protecting consumers from hidden fees, abusive terms, mortgage steering and deceptive practices. As this body of law is further developed and implemented by subsequent regulations, it is sure to bring change to the recreational marine industry in ways that affect dealers and brokers alike.

As Congress and the President addressed lender accountability and enhanced consumer protection on a national level, the courts have addressed consumer protections and disclosures which warrant a prudent yacht broker's attention. Evolving case law and new legislation at all levels in this country compel the attention of yacht brokers to understand the importance of disclosures and representations made in the process of selling a yacht. As we all know, yacht brokers act as agents for their clients. Agency is defined as the fiduciary relationship that arises when one person requests another person (the "Agent") to act on his/her behalf, and the Agent agrees.

As an agent, a broker has a duty to reveal any known material defect in the yacht they are representing, listing and selling. In a recent Florida case, a Fort Lauderdale yacht brokerage firm was found liable for nearly $2 million in damages after a purchaser filed suit claiming the 66-foot yacht he purchased in 2007 was unseaworthy. HMY Yacht Sales, which brokered the $2.3 million transaction, was found liable for negligent misrepresentation by a federal jury. The individual HMY broker also was found liable of negligent misrepresentation.

In this case, the purchaser alleged that HMY and the broker, through a series of unfair consumer trade practices, misrepresentations and reckless, deceitful conduct, misled and induced the purchaser into buying "Double Billed", a 2005 twin screw 66 foot fiberglass motor yacht for a purchase price of over $2,275,000.00.

A close reading and understanding of the HMY case demonstrates that misrepresentations made by a broker, such as exaggerations of the yacht's performance characteristics, also known as "puffery", can be actionable if proven false or untrue. False or misleading oral or written statements, visual descriptions or other misrepresentations of any kind which have the capacity, tendency or effect of deceiving or misleading consumers could result in a claim for monetary damages against a yacht broker. This can be the case when a broker knows of the falsehood, and maybe even in situations where the broker should have known of the falsehood.

In Connecticut, our Supreme Court has held that held that "even an innocent misrepresentation of fact may be actionable if the declarant has the means of knowing, ought to know, or has the duty of knowing the truth…The governing principles are set forth in similar terms in § 552 of the Restatement (Second) of Torts (1977): 'One who, in the course of his business, profession or employment ... supplies false

information for the guidance of others in their business transactions, is subject to liability for pecuniary loss caused to them by their justifiable reliance upon the information, if he fails to exercise reasonable care or competence in obtaining or communicating the information.'" (*Williams Ford, Inc. v. Hartford Courant Co.*, 232 Conn. 559, 575 (1995)).

Actual or implied knowledge of a defect that is not disclosed to or readily ascertainable by a consumer may be sufficient in most states to render a broker liable to a claim, even in situations where a used vessel is sold "as is" and a survey is conducted by the buyer (which was the case in the HMY decision).

Bohonnon Law Firm, LLC
203 – 787 – 2151
bohonnon.com