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Platoro Limited Inc. v. Unidentified Remains, United States Court of Appeals, Fifth Circuit, 20 January 1983 695 F.2d 893

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ANALYSIS: Appellants' argument was that a physician's treatment of an injured seaman created an implied maritime contract, breached by the physician's alleged malpractice, and hence their third party complaints set forth "general maritime law" claims under the doctrine of maritime indemnity described in *Ryan Stevedoring Company Inc. v. Pan Atlantic Steamship Corporation* 350 U.S. 124, 132 (1956). The court found this argument foreclosed by its decision in *Penn Tanker v. United States*, 409 F.2d 514, 517-18 (5th Cir. 1969). In *Penn*, the court stated: "We are unwilling to accept the tenuous argument that the relationship of hospitals and shipowners, concerning treatment of seamen, is comparable to those relationships which have been held to justify the application of *Ryan*." *Penn Tanker v. United States*, *supra*, 517-18.

The court further notes that its grounds for jurisdiction in *Penn* were based on the fact that the hospital was a U.S. Public Health Service Hospital, and the claim was based on the Federal Tort Claims Act, *not* maritime jurisdiction.

After rejecting on pleadings and the record any theories of independent diversity jurisdiction between third party plaintiffs Diamond M. and Halliburton and the defendant Dr. Fresh, the court examined the question of ancillary jurisdiction. Citing the Second Circuit's decision in *Leather's Best Inc. v. The Mormaclynx*, 451 F.2d 800, 810 n.12 (1971), the court agreed that a third party claim, lacking independent grounds of jurisdiction could be appended to an admiralty action under the doctrine of ancillary jurisdiction, so long as the ancillary claim arises out of the same core of operative facts as the main admiralty action.

The problem that remained for the court was that the main federal claim had been settled. Could they retain jurisdiction over what was only a state claim against the doctor? The Supreme Court in *United Mine Workers v. Gibbs*, 383 U.S. 715 (1966), specifically stated that when the main federal claim is dismissed prior to trial, an appended state claim "should be dismissed as well." *United Mine Workers*, *supra*, at 726. See *Aldinger v. Howard and Pendent Jurisdiction*, 77 Col. L. Rev. 127, 135, n.40 (1977), duly noted by the court.

However, the court noted, the federal courts have been more flexible in practice, and have weighed various factors, balancing considerations of making decisions on less settled areas of state law against causing undue prejudice to a party. Noting that little activity had occurred in the action, the statute of limitations on the state claim had not run, and the question of the doctor's liability to the ship owner was somewhat unclear under the law of the forum state, Louisiana, the court declined jurisdiction. In the opinion of the Fifth Circuit, without the admiralty claim to serve as a jurisdictional anchor, it would be an improvident exercise of ancillary jurisdiction to hear the third party actions. This unnecessary and unjustified adjudication of state law claims would involve the federal court in a "complex and unsettled quadrant of Louisiana State law, excommunicating the state courts from their rightful place in our jurisprudential panoply." 677 F.2d at 1044.

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That the litigation had been entirely in federal court; that at least one district court was willing to enjoin state court action; that salvor's claim had always been in admiralty; and that the Texas legislature changed its mind about waiver of immunity only after there had been a dismissal on eleventh amendment grounds; the only reasonable construction of the Texas legislature's resolution was as a waiver of Texas' eleventh amendment immunity; thus, suit by the salvor could be maintained in federal court.

FACTS: This case had its origin over four hundred years ago when in 1555 the Spanish galleon Espirita Santa sank in a storm. There it remained until the plaintiff, Platoro, discovered it in 1967. At that time Platoro was able to recover various artifacts from the sunken vessel and removed them to its home state of Indiana.

It was at this point that the State of Texas applied to a state court and received a temporary restraining order against Platoro to prevent further recovery of items from the wreck. In response to the restraining order Platoro entered into negotiations with Texas and erroneously believed that an agreement was reached to divide the recovered items equally between them. Due to this belief Platoro turned the artifacts over to Texas and the state took measures to clean and preserve them.

As it became clear that Texas did not recognize any agreement between the parties, Platoro brought an *in rem* action in the Southern District of Texas against the vessel in order to recover compensation for its salvage activities. The district court ruled in favor of Platoro, 371 F.Supp. 351 (S.D. Tex. 1970), but the Fifth Circuit reversed and remanded with instructions to dismiss because the items had been kept in Austin, Texas since their recovery and Austin is in the Western District. The Fifth Circuit also pointed out that since a state was asserting ownership rights there might be an eleventh amendment violation. To avoid this problem Platoro sought an eleventh amendment waiver from the Texas legislature but the request was refused. Platoro then went ahead with another suit, which was brought in the Western District of Texas. The district court held for Texas and granted the state ownership of the recovered items thereby barring under the eleventh amendment any further salvage claim Platoro wished to bring in federal court unless Texas consented to the action. 508 F.2d 1113 (5th Cir. 1975).

Instead of appealing Platoro chose to go to the Texas legislature once again and finally received the eleventh amendment waiver resolution it had been seeking. Platoro then filed the present action in the Western District Court of Texas but the suit was dismissed by the district court on the ground that it was time barred. The Fifth Circuit reversed and remanded the case for trial after holding that the running of the statute of limitations had been tolled. 614 F.2d 1051 (5th Cir. 1980).

On remand the district court ruled in favor of Platoro and held that they should be compensated for their salvage services, 518 F. Supp. 816. They determined the amount of compensation to be at least equal to the present value of the *res*. The court also awarded attorney's fees and prejudgment interest to Platoro. Texas appeals this judgment to the Fifth Circuit of the Court of Appeals.

ISSUES: Whether the Texas legislature's resolution of waiver only authorized a suit in a Texas state court, so that it still had the effect of barring Platoro's district court action under the eleventh amendment?

Whether Texas' claim that Platoro failed to show "marine peril," an element of a salvage claim, and that Texas had rejected Platoro's salvage services made the district court's salvage award improper?

Whether the district court's salvage award to Platoro of an amount at least equal to the present value of the *res* was proper considering the nature of the award and the fact that Platoro was a co-salvor?

ANALYSIS: The Fifth Circuit first addressed the issue of the effect the Texas legislature's resolution had on Platoro's suit. It is well established that the eleventh amendment bars suits in federal courts against a state unless the state has consented. *Florida Department of Health and Rehabilitative Service v. Florida Nursing Home Assoc.*, 450 U.S. 147, (1981). Texas is now claiming that their legislature's resolution did not waive immunity to a suit in federal court but instead restricted Platoro to a state court action. The court rejected this contention and held that the resolution passed by the Texas legislature was a total waiver of immunity.

In coming to its decision the court relied on *Florida Department of Health* which reaffirmed *Edelman v. Jordan*, 415 U.S. 673, and stated that "in deciding whether a state has waived its constitutional protection under the eleventh amendment, we will find waiver only where stated 'by the most express language or by such overwhelming implications from the text as [will] leave no room for any other reasonable construction' ". In applying this test to the present situation where the resolution was enacted to permit one particular suit the court looked not only to the text of the resolution but also to the circumstances surrounding its passage. Given the fact that the litigation between these parties had been entirely in federal court, that Platoro's claim had always been in admiralty and that the legislature passed the resolution granting a waiver only after there had been a dismissal on eleventh amendment grounds the court held that the only reasonable construction of the resolution was a Texas waiver of its eleventh amendment rights.

Having found that Platoro had a right to bring its suit in a Texas district court the court dealt next with Texas' claim that Platoro was still not entitled to a salvage award because: 1) Platoro did not establish "marine peril", a prerequisite element of a salvage claim; and 2) Texas had rejected Platoro's salvage services. Handling these claims in order the court first cited *Treasure Salvors, Inc. v. Unidentified Wrecked and Abandoned Sailing Vessel*, 569 F.2d 330 (5th Cir. 1978) aff'd in part and rev'd in part sub nom. and *Florida Department of State v. Treasure Salvors Inc.*, 102 S.Ct. 3304, 73 L.Ed. 2d 1057 (1982) as being undistinguishable from this case (another Spanish galleon had been sunk off the coast of Florida for three hundred years) and found "marine peril" existed as a matter of law due to the fact that the ship's location was unknown. The court then ruled on Texas' second argument for barring Platoro's recovery. Texas' contention that it rejected Platoro's services was based on the presence of two laws on its books at the time the *Espirita Santa* was discovered: Tex. Penal Code art. 147(B)(3) (repealed 1969) required nonresidents to receive a permit from the state before they could engage in exploration or excavation of any "archeological" site in Texas; and Tex. Rev. Civ. Stat. Ann. art. 5421 (repealed 1977), which authorized the state Attorney General to sue anyone who had taken any minerals or property of value from the state. The court rejected this argument on the grounds that the two statutes created only a constructive rejection of salvage services and not an express rejection. The distinction is important because an express rejection of salvage services by a person with authority over a vessel would bar any recovery by the salvor whereas a constructive rejection would bar recovery only if the rejection was reasonably understood by the salvor. It is clear from the facts of this case that Platoro had no reason to believe that its services had been rejected. First, at the time it found the vessel and began salvage, Platoro had no way of knowing that Texas owned the ship, and second, though the statutes were on the books at the time, they were not calculated to put Platoro on notice of rejection of its services. For these reasons there had been no rejection of services and the court held that Platoro was entitled to a salvage award.

Finally the court addressed the propriety of the award granted by the district court. In ruling that the district court's award of compensation for Platoro's salvage services of an amount at least equal to the value of the *res* was improper, the court gave great weight to two factors: 1) Platoro was a co-salvor with two others; and 2) the nature of the award itself.

Salvage law has established that when one co-salvor sues but the others do not, then the share of the award due to the non-suing co-salvors is returned to the owners. *The Blackwell*, 77 U.S. 1, (1869). Under this rule the court found that Platoro could not recover for its co-salvors because the Texas legislature's resolution did not indicate any intention of allowing Platoro to bring a representative suit on behalf of the others and because of the fact that Platoro did not at any time bring suit in a representative capacity. Therefore the co-salvors' shares of the award should be returned to Texas and Platoro is entitled to only a one-third portion of the salvage award.

The court was also troubled by the nature of the award. An award expressed in terms of the value of the *res* and not in dollars is only granted when title to the *res* is passed as well. *Treasure Salvors* 569 F.2d 337. Since Texas has a great interest in the *res* due to its historical value it would be inequitable to force them to either turn the artifacts over to Platoro or sell them and give Platoro the proceeds. This would be especially unfair under the district court's award since the value was deemed to be equal to the present value of the *res* and Texas' cleansing and preserving the artifacts had increased their value well above what it was at the time Platoro had salvaged them. Since a general principle of salvage law is that the value of the award should not exceed the value of the *res* as recovered the court remanded the case to the district court so that they could establish a monetary value of the *res* as recovered and also establish the share of the award which Platoro, as a co-salvor, was entitled to.

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