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Article 8

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BAYVIEW CHARTER BOATS, INC. v. SULLIVAN

United States District Court, E.D. New York, 2 September 1988
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Shipowner must file petition with the federal district court within six months of receipt of written notice of claim in order to limit his liability under 46 U.S.C. App. §185 and to enable the court to exercise jurisdiction to determine issues of liability.

FACTS: On August 10, 1986, while petitioner Bayview Charter Boats, Inc. (Bayview) was operating a ferry service in the Great South Bay, claimant Joseph Russo (Russo) sustained severe personal injuries when he was struck, while swimming therein, by one of Bayview's vessels. The claimants' attorney subsequently sent notice to Bayview in both September of 1986 and April of 1987 of the possibility of legal action againt it. On August 17, 1987, Russo and his wife filed suit against Bayview in the Supreme Court of the State of New York. Bayview filed its answer to the state court complaint on September 17, 1987 asserting as an affirmative defense 46 U.S.C. App. §183, where the right of a shipowner to limit liability is codified. On the same day, Bayview also submitted a 46 U.S.C. App. §185 (Section 185) petition for limitation of liability with the United States District Court, Eastern District, New York. Bayview also posted security with the district court in an amount equal to the value of the vessel and its freight (the Limitation Fund) in compliance with Section 185. On September 18, 1987 the court entered an order providing in part that notice of the petition be published while staying the state court action brought by the claimants. The claimants opposed the petition on the ground that it was not filed within six months of written notice of claim, the time limit set forth in the statute. The district court's decision centered on the question of timeliness of the petition and the proper forum for trial of this matter, but also discussed issues relating to the availability of the limitation defense in the federal district court if the petition were dismissed.

The court held that the petition submitted by Bayview was not filed within six months of the owners receipt of written notice of the Russo's claim, thus it was dismissed as untimely. The dismissal of the petition together with the fact that the claimants brought their suit in state court denied the district court jurisdiction to decide the limitation defense issues and to require an increase in the amount of the fund deposited with the court. Likewise, the stay imposed on September 18, 1987 was lifted so that the claimants could pursue their remedies in state court and the Limitation Fund was released to Bayview.

ISSUE: May a federal district court exercise admiralty jurisdiction over a personal injury claim brought in state court, after a petition requesting limitation of liability under Section 185 is dismissed as untimely?

ANALYSIS: The district court made a determination that where a personal injury suit is brought in state court and the shipowner's limitation petition under Section 185 is dismissed as untimely, the owner lacks "the procedural vehicle for bringing the limitation issues before the federal forum." The district court noted that it would have had subject matter jurisdiction to decide issues concerning the limitation defense had the claim originally been brought in federal court. Furthermore, if the limitation petition were filed in a timely manner it would have given the district court jurisdiction to "either decide the limitation issues or to consider appropriate stipulations protecting the jurisdiction of the admiralty court to decide those issues." *In re Dammers & Vanderheide & Scheepvaart Maats Christina B.V.*, 836 F.2d 750, 760 (2d Cir. 1988).

In *Cincinatti Gas & Electric Co. v. Abel*, 533 F.2d 1001 (6th Cir. 1976), *cert denied*, 429 U.S. 858 (1976), the Court stated that the purpose of imposing the six month time limit for filing the petition was "to cut down on the right of the shipowner to limit his liability" and it held that the time limit should be strictly construed. Since Bayview received a letter dated September 2, 1986 informing it of the incident and the possibility of the commencement of a lawsuit against it, this constituted the "written notice of claim" which started the six month time limit. Thus the filing of the petition was untimely.

The court proceeded to mention that technically, Bayview's right to the limitation defense was preserved when it was asserted in the state court answer to the personal injury claim. However, the court determined that Bayview's position was flawed because it "has not pointed to a basis for the exercise of the federal court's admiralty jurisdiction in this case." Since the claimants brought suit in state court and the petition was dismissed as untimely, in order for the federal court to decide the limitation of liability issues, the case would have had to be removed thereto. *In re Vatican Shrimp Co., Inc. v. Solis*, 820 F.2d 674 (5th Cir. 1987), *cert denied*, ——U.S. ——, 108 S.Ct. 345, 98 L.Ed 2d 371 (1987), these exact circumstances were present and that court held that removal was precluded by the "well-pleaded complaint rule." Removal is possible only where the basis of federal jurisdiction appears on the face of the plaintiff's complaint and not in cases where the federal issues appear only as a defense. This claim could not be properly removed since the limitation issues arose only in its answer to the state claim.

The court further noted that there was no basis other than a Section 185 petition filed in a timely manner, which gave the federal court jurisdiction to decide on the issue of liability of Bayview as well as those with respect to the Limitation Fund deposited with the district court. Since no federal jurisdiction existed, there was no basis to maintain the fund in the court and it was released and the stay was lifted.

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