Admiralty Practicum

Spring 1990 Article 7

California Home Brands, Inc v. Ferreira United States Court of Appeals, Ninth Circuit, 28 March 1989 871 F.2d 830

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AMER. HOME v. L & L MARINE *(Cont.)*
contributed equally to the accident and the weather encountered was not so unusual as to be unforeseeable.

The resulting damages were properly allocated among the parties proportionally according to the comparative degree of their fault. L&L had neither a vessel interest nor a cargo interest and could not be considered a contributing participant in a common nautical venture. L&L was sued merely as a tortfeasor and the concept of general-average adjustment, as used by the other parties to adjust the damages among themselves, does not apply. While the district court's allocation of damages was proper, it did not include the costs of hull repair and cargo lightering. For this reason the damage award is vacated and remanded for reconsideration.

The work done by the tug Jaguar was properly classified as towage. It was the Cost Guard vessel on the scene that actually performed the crucial act of rescue by attaching the floating hawser to the Maya, and the Jaguar then merely pulled the Maya off the Shoal. The finding of the district court that this work would properly be classified as towage rather than salvage was affirmed.

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CALIFORNIA HOME BRANDS, INC. v. FERREIRA
United States Court of Appeals, Ninth Circuit, 28 March 1989
871 F.2d 830

Shipowner cannot sue seaman, whose negligence allegedly caused injury to co-seaman, for indemnification or contribution based upon shipowner's Jones Act liability to said co-seaman.

FACTS: In January 1985, Manuel Rebelo, a crewmember of the M/V Pan Pacific, sustained personal injuries on board the vessel. Rebelo filed a claim for maintenance and cure. In response to Rebelo's claim, the shipowners, California Home Brands Inc. (CHB), commenced an action for declaratory relief, denying responsibility for maintenance and cure. Rebelo counterclaimed for negligence under the Jones Act, unseaworthiness, and maintence and cure.

CHB commenced a separate action against Danny Ferreira, a co-seaman, for contribution and/or indemnification, claiming Ferreira's puported negligence contributed to Rebelo's injuries. Ferreira, moved to dismiss CHB's complaint and after a hearing, the trial court held that CHB's suit against its own employee for indemnity and contribution was barred as a matter of law.

ISSUE: Is a shipowner-employer who may be liable to an injured seaman-employee under the Jones Act entitled to such indemnity and contribution from a co-seaman whose negligence allegedly caused the injury?

ANALYSIS: In its affirmation of the district court's decision, the Ninth Circuit Court of Appeals rendered judgement for Ferreira despite numerous arguments by CHB for indemnification and contribution.

The Court explicitly declined to recognize conventional land-based tort liability theories regarding indemnity or contribution from fellow employees, continuing to be guided by rules specifically developed in the context of maritime employment.

Traditional maritime law recognized only two claims by a seaman injured in the course of employment - a seaman injured while on board a vessel was entitled to "maintenance and cure" (which included wages until the end of the voyage), and recovery of damages for injuries sustained due to the unseaworthiness of the ship *The Osceola,* 189 U.S. 158 (1903). A vessel owner's duty to provide such "maintenance and cure" is implied as part of the employment contract, and this duty is not subject to abrogation by the parties. Similarly, the owner's duty to provide a seaworthy ship is absolute; once a seaman proved that his injuries were caused by the unseaworthy condition of the vessel or its equipment, the shipowner was liable regardless of fault. *Carlisle Packing Co. v. Sandanger,* 259 U.S. 255 (1912). The common law concept of negligence as a basis for tort liability was not extended to employment injuries at sea until passage of the Jones Act, 46 U.S.C. §688 (1920), which created a negligence right of action for seamen against their employers. CHB argued that if Congress had intended to protect seamen from personal liability, the Jones Act would have included an express immunizing provision. The Court refused to accept this rationale, stating that the purpose of the Act was to benefit and protect seamen by enlarging the remedies available to them. The Court concluded that to interpret the statute to allow lawsuits against seamen would frustrate the beneficial purpose of the Act.

CHB attempted to further advance its cause of action against Ferreira under principles of maritime indemnity and contribution established under two prior U.S. Supreme Court decisions. See *Halcyon Lines v. Haenn Ship Ceiling and Refitting Corp.,* 342 U.S. 482 (1952) and *Cooper Stevedoring Corp. Inc. v. Fritz Kople Inc.,* 417 U.S. 106 (1974). In *Halcyon,* a shipowner was sued by a longshoreman for injuries sustained on board a vessel. The shipowner sought to implead the longshoreman's employer, who was otherwise exempted by statute, as a third party defendant. The Supreme Court held that no right of contribution existed in such non-collision maritime cases. In *Cooper,* an injured longshoreman sued the vessel owner, who later impleaded the non employer, stevedoring company as a third party defendant. The Supreme Court held that the vessel owner was entitled to implead such stevedoring company as a joint tortfeasor. CHB's attempt to wed these holdings to the facts of the case at bar was held to be too sweeping. The Court indicated that unless a direct cause of action exists by one seaman against another for shipboard injuries, the employer can have no right of indemnification or contribution from the employee.

Similarly, the Ninth Circuit upheld the district court's holding that before any statutory rights were created, a seaman could not sue his co-employee for negligence. The Court in interpreting the Jones Act concluded that Ferreira could not be directly liable to Rebelo and therefore, no basis existed for CHB's claim for indemnity against Ferreira. See, *C.H.B. Foods, Inc. v. Rebelo,* 662 F.Supp. 1359 (S.D.CAL.1987).

CHB also argued that it had a right to indemnity from Ferreira on an implied contractual basis, citing the "primary duty rule" adopted in *Reinhart v. United States,* 475 F.2d 151 (9th Cir. 1972). (Seaman-employee may not recover from his employer for injuries caused by his own failure to perform a duty imposed on him by his employment.) The Court held that *Reinhart* had no application in this case because the primary duty rule works only to bar a plaintiff's suit for damages when his injury resulted from his own breach. It does not create any rights against third parties. Given the conditions of maritime employment, the implication of a covenant of workmanlike performance running from the seaman to his employer and entitling the latter to indemnity is not a reasonable one. See *Flunker v. United States,* 528 F.2d 239 (9th Cir. 1975).

Finally, the policy arguments advanced by CHB for indemnity and contribution were rejected by the Court as not in keeping with the history and purpose of the Jones Act. The Court concluded that to subject a seaman to the costs of defending a lawsuit by his employer and the threat of ultimate liability would place an intolerable burden on what is already considered a difficult occupation. See *Socony-Vacume Co. v. Smith,* 305 U.S. 424 (1939).

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