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UNITED STATES v. ZP CHANDON
United States Court of Appeals, Ninth Circuit, 6 November 1989
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Seaman wages earned after the filing of a petition for reorganization under Chapter 11 of the bankruptcy laws have priority over preferred ship mortgages and are not subject to automatic stay provisions of the Bankruptcy Act.

FACTS: On October 1, 1981 Tractug Associates (Tractug), a California limited partnership obtained a loan from the Federal Maritime Administration (MARAD) to finance the construction of three vessels; ZP Chandon, ZP Chalone and ZP Montelena. Tractug defaulted on the notes and MARAD opted to foreclose on the vessels.

On December 12, 1983 the U.S. brought an admiralty action to foreclose against the vessels in the U.S. District Court for the Northern District of California. On the same day the U.S. brought an identical action in the U.S. District Court for the Central District of California, against the ZP Condon and ZP Chandon, after which they were arrested. The next day Tractug filed for reorganization under Chapter 11 of the Bankruptcy Act. The vessels were released pursuant to the automatic stay provision of 11 U.S.C. §362 (a)(4)(1988). The U.S. moved for relief from the automatic stay order in Bankruptcy Court in order to pursue the foreclosure action. The motion was denied.

On October 24, 1984 International Organization of Masters, Mates and Pilots (MMP) and Tractug entered into a wage deferral agreement, which was approved by the Bankruptcy Court. Tractug was to pay into an escrow account the amount of \$165 a day for tugboat master, \$132 for each mate and \$100 for each deckhand for one year.

On November 21, 1985 the Bankruptcy Court granted the United States' renewed motion for relief from the automatic stay. The Bankruptcy Court granted MMP's motion to allow it to intervene in any foreclosure action.

The U.S. then brought this action against the five vessels for admiralty foreclosure in the U.S. District Court for the Western District of Washington. MMP's motion to intervene was granted. MMP sought enforcement of maritime liens arising from wages prior to the automatic stay, wages deferred under the agreement with Tractug and unpaid employment benefit plan contributions. Shortly thereafter the Seattle District Court and the California District Court consolidated their actions in the Seattle District Court.

After the vessels were arrested, the U.S. District Court of Washington issued an order for the sale of the three vessels. On July 18, 1986 the U.S. District Court for the Northern District of California issued an order for the sale of the ZP Condon and further stated that if the U.S. was a purchaser at the foreclosure, the U.S. would be liable for the payment of valid maritime liens and that those liens shall have priority over the mortgage interests of the U.S.

The U.S. contended that the December 13, 1983 filing of the bankruptcy petition by Tractug invalidated the post-petition claims of MMP. The U.S. alleged that claims for unpaid employee benefit plan contributions do not give rise to preferred maritime liens. The U.S. moved for partial summary judgment against MMP and MMP cross-motivated for partial summary judgment. The court denied MMP's motion and granted the U.S. motion for partial summary judgment as against the unpaid wages. MMP appealed the decision.

ISSUE: Does a claim for seamen's wages earned after the filing of a petition for reorganization under Chapter 11 have priority over a preferred ship mortgage?

ANALYSIS: The U.S. Ninth Circuit Court of Appeals reversed the District Court's conclusion and held a maritime lien for unpaid seamen's wages had priority over preferred mortgage liens. *All Alaskan Seafoods, Inc. v. M/V Sea Producer*, 882 F.2d 425, 428 (9th Cir. 1986).

The Court held that the enactment of the Bankruptcy Act and the Congressional grant of jurisdiction to the Bankruptcy Court restricts the Bankruptcy Court's jurisdiction over Admiralty cases. According to the Bankruptcy Act, automatic stay provisions apply to any attempt to create, perfect or enforce any lien against property. The court construed the Act to be limited to land-based transactions where the recording of a lien interest is required and creditors first in time are entitled to priority over the liens. However, the statute omits any reference to maritime law. See *American Ins. Co. v. Canter*, 26 U.S. (1 Pet.) 511 (1828) and *In Re Pacific Caribbean Shipping (.U.S.A.), Inc.*, 789 F.2d 1406 (9th Cir. 1986).

The District Court read 11 U.S.C. §362 (a)(4)(1988), which referred to the phrase "any lien" to include maritime liens. But this section does not expressly refer to maritime liens, sustaining the U.S.'s allegation that those liens are codified liens pursuant to 11 U.S.C. §101 (1988). The Court of Appeals refused to speculate as to whether Congressional silence in reference to maritime liens meant to include them, holding that it was unlikely that the drafters of the Bankruptcy Act forgot to include maritime liens in the statute. The Court of Appeals concluded that maritime liens do have priority over preferred ship mortgages and are "sacred liens" entitled to protection "as long as a plank of a ship remains." See *The John G. Stevens*, 170 U.S. 113, 119 (1898).

The Court of Appeals further held that MMP's continuing to work under a wage deferred agreement that allowed Tractug to attempt to reorganize its business did not demonstrate inequitable conduct precluding extinction of MMP's maritime lien priority over the preferred ship mortgages held by the U.S.

The U.S. argued that the District Court decision could be upheld on the basis of the floating credit card doctrine discussed in *Northern Marine Works v. U.S.*, 307 F.2d 537 (9th Cir. 1962). The Court of Appeals, however, did not consider this argument because the facts of that case were distinguishable.

In conclusion, the Court of Appeals held that the automatic stay provisions of the Bankruptcy Act did not apply to maritime liens for seamen's wages earned after the vessel owner's filing for reorganization. The court also decided that the district court should distribute the funds from the foreclosure sale by the methods prescribed under maritime law.

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