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Sisson v. Ruby United States Supreme Court, June 25, 1990 110 S. CT. 2892 (1990 WL 84059)

Arthur Gribbon '92

MOORE V. PHILLIPS PETROLEUM CO.

United States Court of Appeals, Fifth Circuit, 21 September 1990.
912 F.2d 789

A time charterer is not responsible for injuries sustained by a debarking passenger despite actual or constructive knowledge that a hazardous condition exists.

FACTS: Appellant Mack J. Moore (Moore) was a production worker employed by ODECO Oil and Gas Co. (ODECO). ODECO and Phillips Petroleum Co. (Phillips) owned an unmanned fixed platform located on the Outer Continental Shelf off the coast of Louisiana. ODECO entered into a time charter agreement for the vessel M/V C-DICTATOR (DICTATOR) with the vessel owner, Co-Mar Offshore Marine Co. (Co-Mar). Moore was transported aboard the Dictator to the fixed platform. To reach the platform, Moore swung from a rope attached to a beam extending from the top deck of the platform. The rope broke and Moore suffered a shoulder injury. This method of debarkation is normally used.

ODECO, as Moore's employer, paid Moore worker's compensation. Moore then sued ODECO under the Longshore and Harbor Workers' Compensation Act, 35 U.S.C. §905(b) (LHWCA), alleging that ODECO as time charterer knew that the rope was rotten, thereby breaching the duty of due care owed to him as a passenger.

ISSUE: Is a time charterer liable to a passenger under the LHWCA when the debarking passenger is injured due to a hazardous condition of which the time charterer has actual or constructive knowledge?

ANALYSIS: The Court of Appeals for the Fifth Circuit established that the LHWCA is applicable because the platform in question lies on the Outer Continental Shelf. The court stated that under §5(b) a covered person who is caused injury by the negligence of a vessel may bring an action against the vessel as a third party. 33 U.S.C. §905(b). The court had previously held that an injured worker has standing to sue the time charterer when the time charterer is also his employer.

The court went on to state that appellant must first establish that a duty of due care was owed to him by ODECO acting as the time charterer, because as an employer, ODECO is only obligated to pay an employee worker's compensation when that employee is injured. The court further found that since no express agreement was created to further extend the traditional sphere of control and responsibility of a time charterer, it could only hold ODECO liable under §5(b) if the duty breached lay within the traditional control of a time charterer.

The court noted that a time charterer is responsible for the routes it chooses to follow, the cargo it chooses to store and its destination, while the vessel owner remains liable for the ship's seaworthiness, the crew's negligence and the safety of its embarkation/debarkation system for passengers. Therefore, the court found that either Co-Mar, as vessel owner, or ODECO, as the employer, were responsible for Moore's unsafe debarkation. The court stated that ODECO, as employer, controlled the physical condition of the rope and could be charged with knowledge of its impairment. The court further found that ODECO is liable under worker's compensation, which it was already paying to the appellant. On the other hand, the Fifth Circuit found Co-Mar to be responsible for the safe debarkation of passengers. The court found that in either event, the responsibility for safe debarkation is not a traditional responsibility of a time charterer under 5(b) and that no cause had been shown to warrant an extension of the traditional duties as noted.

Judy L. Berberian '91

SISSON V. RUBY

United States Supreme Court, June 25, 1990
110 S. CT. 2892 (1990 WL 84059)

A fire on board a pleasure yacht docked at a marina, on "navigable waters," which causes damage to neighboring pleasure craft and the marina, is a "potential hazard to maritime commerce arising out of an activity that bears a substantial relationship to traditional maritime activity" and therefore, admiralty jurisdiction is appropriate under 28 U.S.C. §1331(1).

FACTS: Everett Sisson owned the Ultorian, a 56 foot pleasure yacht. On September 24, 1985, while the Ultorian was docked at a marina on Lake Michigan, a navigable waterway, a fire erupted in the vessel's washer/dryer unit. The fire destroyed the Ultorian and damaged several neighboring vessels and the marina. The owners of the neighboring vessels and the marina filed claims against Sisson for over $275,000 in damages. Invoking the Limitation of Liability Act 46 U.S.C. §183(a), Sisson filed a petition for declaratory and injunctive relief in federal district court to limit his liability to $800, the salvage value of the Ultorian after the fire. Sisson argued that the federal court had maritime jurisdiction over his limitation of liability action under 28 U.S.C. §1331(1). The district court disagreed, and dismissed the petition for lack of subject-matter jurisdiction. Sisson sought reconsideration on the ground that the Limitation of Liability Act independently conferred jurisdiction over the action. The district court denied Sisson's motion. The Court of Appeals for the Seventh Circuit affirmed, holding that neither 1331(1) nor the Limitation of Liability Act conferred jurisdiction. The Supreme Court granted certiorari.

ISSUES: 1) Whether a limitation of liability suit brought in connection with a fire on board a pleasure yacht docked at a marina on navigable waters falls within the admiralty jurisdiction of the federal courts. 2) Whether the Limitation of Liability Act 46 U.S.C. § 183(a) independently confers admiralty jurisdiction over the suit.

ANALYSIS: The United States Supreme Court held that a fire on board a pleasure vessel docked at a marina, on navigable waters, which causes damage to neighboring pleasure vessels and the marina, was within the admiralty jurisdiction of the federal district court. Prior to the decision of this case, admiralty jurisdiction, under 28 U.S.C. §1331(1), was proper if the incident at issue: 1) occurred on navigable waters and 2) bore a significant relation to traditional maritime activities. *Executive Jet Aviation v. City of Cleveland*, 409 U.S. 249, 266 (1972). In deciding the case at bar, the Supreme Court expanded upon the two part test in order to clarify the scope of admiralty jurisdiction. The Court began its opinion by reviewing the development of the jurisdictional test. Prior to the decision in *Executive Jet*, admiralty jurisdiction was determined largely by the application of the "locali-

ty" test. *The Plymouth*, 3 Wall. 20, 36 (1866) (Every species of tort, high seas or navigable waters is of admiralty cognizance). The Court in *Executive Jet*, however, noted "serious difficulties" when the "locality" test was mechanically applied to "perverse and casuistic borderline situations." *Id.* at 268.

This second requirement became most important in noncommercial "borderline" situations, and in such cases the federal courts struggled to define "traditional maritime activities." Following *Chapman v. City of Grosse Point Farms*, 385 F.2d 962 (6th Cir. 1967), a case upon which the decision in *Executive Jet* was largely based, the lower courts required a relationship between the wrong and maritime commerce or navigation. Unfortunately, the strict application of this definition narrowed the scope of admiralty jurisdiction to a point unintended by the Supreme Court. Additionally, the application of this definition produced irreconcilably different results than if the case had involved a commercial vessel. For example, in the case at bar, there can be little doubt that, notwithstanding the Admiralty Extension Act, 46 U.S.C. §740 (1970), a fire on board a commercial vessel which destroys the vessel and damages the adjacent pier would fall within admiralty jurisdiction. However, the same fire on board a pleasure vessel did not fall within admiralty jurisdiction because it did not bear a significant relation to the traditional maritime activities of navigation or commerce.

Thus the Supreme Court was faced with the necessity of clarifying the test so that it would maintain the desired breadth of jurisdiction and also, uniformly between commercial and noncommercial incidents. As a result, the Court held that admiralty jurisdiction is now proper, under 28 U.S.C. §1331(1), when the incident at issue: 1) occurs on navigable waters and 2) is a potential hazard to maritime commerce arising out of an activity that bears a substantial relation to traditional maritime activity.

In reformulating the test, the Court relied heavily on the underlying rationale of its previous decision in *Foremost Ins. Co. v. Richardson*, 457 U.S. §668 (1982) (involving the collision of two pleasure craft). In *Foremost*, the Court recognized that the foundation for admiralty jurisdiction in noncommercial situations, was the "potential disruptive impact" of such incidents on maritime commerce. Id. at 674-675. In the case at bar, the Court decided that this element, when qualified by the requirement that the incident also "arise" out of an activity that bears a substantial relation to traditional maritime activities, naturally served to clarify the intended jurisdiction.

The Court purposefully relaxed the qualifying requirement and emphasized that the definition of "traditional maritime activities" requires "broad perspective," in order to maintain the desired breadth and uniformity. Thus, under the new test, the Court found, the fire on board Sisson's yacht clearly falls within admiralty jurisdiction, as it was a potential hazard to maritime commerce that could spread to nearby commercial vessels or make the marina inaccessible to such vessels, and because it "arose" from an activity that bore a substantial relation to traditional maritime activity — the storage and maintenance of a vessel. Moreover, applying the same test to an identical commercial situation would produce the same result.

To ensure that jurisdiction, under this new test, would not be narrowed by application, the Supreme Court specifically noted that the incident over which admiralty jurisdiction is sought, must be characterized by its "general features." In this case for example, the jurisdictional inquiry did not turn on the source of the fire or the specific location of the yacht, but rather, on whether a fire could potentially disrupt maritime commerce. Moreover, the activity from which the incident arose was not a laundry room fire on board a vessel, but simply the storage and maintenance of a vessel on navigable waters. It is through this type of "general" characterization, the court held, that the fundamental interest of admiralty jurisdiction will be satisfied.

The Supreme Court did recognize that Sisson had also argued that the Limitation of Liability Act provided an independent basis for maritime jurisdiction. In dictum in the opinion, the Court pointed out that since thee was jurisdiction under §1331(1), there was no need to decide that issue. However, the Court implied that if the issue again presented itself, it would hold that the Limitation of Liability Act would not independently provide jurisdiction.

Arthur Gribbon '92

UNITED STATES ex rel. VALDERS STONE & MARBLE V. C-WAY CONSTR. CO.

United States Court of Appeals, Seventh Circuit, 3 August 1990

909 F.2d 259

Cargo owner is not liable for breach of implied warranty of workmanlike performance nor under third party beneficiary theory to barge owner for negligence of stevedore with whom cargo owner had contracted.

FACTS: A contractor on a federal marine construction project in Indiana, C-Way Construction Company (C-Way), hired a barge from bareboat charterer Selvick Marine Towing Company (Selvick), to transport stone. The stone supplier, Valders Stone & Marble (Valders), contracted with Rusty Strauss & Son Excavating (Strauss), to load the stone on the barge. The barge was damaged in the loading process, allegedly as a result of negligence on the part of Strauss. When C-Way refused to pay, claiming a setoff due to its obligation to compensate Selvick for damage to the barge, Valders brought suit against C-Way for payment on the stone. In a trial between Valders and C-Way, before a federal magistrate, Valders' motion for summary judgment was denied and the dispute was resolved in favor of C-Way. Selvick intervened in the suit claiming that Valders was liable for the barge damage on the theories of non-delegable duty in contract and the warranty of workmanlike performance in admiralty. Summary judgment was granted to Valders on Selvick's claim for the reasons that Strauss was an independent contractor and that Selvick lacked privity with Valders. Selvick appealed and Valders cross-appealed.

ISSUES: 1) Should the doctrine of pendent appellate jurisdiction be applied to a non-admiralty based interlocutory order (Valders v. C-Way) if its resolution is not essential to resolving the primary appeal?

2) Is the cargo owner, Valders, who contracts with a stevedore, Strauss, to load stone onto a barge liable to the barge owner, Selvick, for damages resulting from alleged negligence on the part of the stevedore?

ANALYSIS: The Court of Appeals for the Seventh Circuit refused to apply pendent appellate jurisdiction to Valders' cross-appeal against C-Way, and dismissed it without prejudice. The court found there was no admiralty jurisdiction, and the Seventh Circuit had previously stated that pendent appellate jurisdiction will be found only in a limited number of cases, such as "[w]hen an ordinarily unappealable interlocutory order is inextricably entwined with a appealable [interlocutory] order" and only if "there are compelling reasons for not deferring the appeal of the former order to the end of the lawsuit." *Ill. ex rel. Hartigan V. Peters*, 861 F.2d 164, 166 (7th Cir. 1988). A close relationship was not adequate, "it must be practically indispensable."

As to Selvick's appeal, the court applied general maritime law in addressing both the breach of implied warranty of workmanlike conduct and third party beneficiary arguments. Selvick argued that the doctrine developed in *Ryan Stevedoring Co. v. Pan-Atlantic S.S. Corp.*, 350 U.S. 124 (1956), should be applied. The Ryan doctrine was developed to allow a shipowner to bring an indemnity action