Admiralty Practicum

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Unites 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

Stephen W. Beyer '92

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

against a stevedore whose breach of the warranty of workmanlike performance, implicit in the stevedoring contract, resulted in injuries for which the shipowner was held liable. Its purpose was to make the party responsible for the injuries pay for the result of its negligence. But while the court noted that the *Ryan* doctrine might no longer be valid, (in light of the adoption by a number of circuits of the policy of apportioning liability according to the comparative fault of each party as opposed to following indemnity principles espoused in *Ryan*), the court did point out that it was unnecessary to decide its validity because Selvick's claim fell outside the scope of *Ryan*. The warranty runs against the stevedore, not against the cargo owner who had merely hired the stevedore, and in this case Selvick was suing the cargo owner, Valders, and not the stevedore, Strauss.

The court also rejected Selvick's claim that it was an intended beneficiary of the stone supply contract between Valders and C-Way. Relying on the Restatement (Second) of Contracts, secs. 302, 304 (1981), the court held that Selvick was only an incidental beneficiary and, therefore, not entitled to damages from Valders. Finally, as Selvick was unable to produce any evidence to substantiate its claim as an intended beneficiary to the contract, the court held that Valders was accountable only to C-Way for any breach caused by the alleged negligence of Strauss.

Stephen W. Beyer '92

HINES V. BRITISH STEEL CORPORATION

United States Court of Appeals, Seventh Circuit, 23 July 1990
907 F.2d 726

Absent an express contractual provision to supervise stevedoring operations, a time charterer has no general duty to do so, and is not liable under the Longshore and Harbor Workers Compensation Act for the injuries or death of a longshoreman arising out of such operations.

FACTS: On October 3, 1987, Clark Hines (Hines), a longshoreman who was employed by Ceres Terminals, Inc. (Ceres), was killed while performing stevedoring duties aboard the M.S. Ravenna (the Ravenna). British Steel Corporation (BSC) had time chartered the Ravenna from its owner, Roscoe Shipping, S.A., and had docked the vessel in Chicago on October 1, 1987 to unload a cargo of steel. The master and the crew of the Ravenna were employees of Roscoe Shipping.

Just prior to the accident, the steel had been completely unloaded from the Ravenna. Hines and other Ceres employees were clearing dunnage (pieces of lumber used to protect cargo during transport) out of the ship's holds. Captain Tore Sorenson, a Ceres superintendent, was in charge of the stevedoring operations aboard the Ravenna. At the time of the accident, BSC's cargo representative, John Folan, was not on board the vessel.

An unused bundle of dunnage was secured with Ceres owned slings to one of the ship's cranes. The crane operator then improperly swung the loaded crane over the open hatch of the hold in which the men were working. Swinging a loaded crane over an open hatch while men are working below is a forbidden activity and Ceres crane operators are instructed not to do so. For no discernible reason, the bundle of dunnage fell from the crane and struck a dumpster in the hold. The bundle broke apart, and pieces of flying dunnage struck Hines, who later died.

Rachelle Hines, wife of the decedent, brought this action as special administrator of his estate under the Longshore and Harbor Workers (LHWCA), 33 U.S.C. §905 (b), against BSC to recover damages for her husband's death. She filed the suit in the Circuit Court of Cook County, Illinois, but BSC removed it to the United States District Court for the Northern District Of Illinois. BSC then moved for summary judgment on the grounds that it had no general duty to supervise stevedoring operations aboard the Ravenna. The plaintiff asserted that the various agreements BSC made with Ceres and Roscoe Shipping showed a clear intent by BSC to control Ceres unloading operations.

The district court granted summary judgment in favor of BSC, finding that BSC was amenable to suite under the LHWCA but concluding that the Supreme Court decision in *Scindia Steam Navigation Co., Ltd. v. De Los Santos*, 451 U.S. 156 (1981) precluded a finding that BSC had a general duty to oversee Ceres operations. The court found that the language of the charter party, together with Captain Sorenson's testimony that Folan took no part in the actual stevedoring operations, indicated that BSC had no special duty to ensure the safety of the longshoremen. Rachelle Hines appealed the decision.

ISSUE: Did BSC, a time charterer, owe a duty to Ceres, an independent stevedoring contractor, to supervise the stevedoring operations aboard the Ravenna?

ANALYSIS: In *Scindia*, the Supreme Court interpreted the vessel's duty to inspect or supervise the stevedore's cargo operations under the 1972 amendments to 33 U.S.C. 905(b) as nonexistent. The court held that a shipowner "is not liable to longshoremen for injuries caused by dangers unknown to him." Although *Scindia* involved a shipowner and not a time charterer, the principles discussed there apply with equal force to the present case.

In this case, the crane was in good working condition, the dangerous act of the crane operator was unforeseeable, and the BSC cargo representative was not on board the vessel at the time of the accident. Under these conditions, the court found, BSC is not liable pursuant to *Scindia*, absent an express contractual agreement. Appellant argued that BSC contractually undertook control of the stevedoring operations and therefore had a duty of care to the Ceres employees under Restatement of Torts (Second) 414. The court noted that the comments to Section 414 suggest that the right to make recommendations, to inspect, and to order work stopped or resumed is not enough to constitute retention of control, and that there must be a retention such that the stevedore cannot do the work in his own manner. The court also noted that few courts have applied Section 414 in the context of a lawsuit under Section 904(b) of the LHWCA, but the Supreme Court in *Scindia* recognized the Restatement as a useful analytical tool. However, the court also remarked that Section 414 does not address the contractual relationship between BSC and Roscoe Shipping. Accordingly, it is applicable only to the various agreements between BSC and Ceres. Since BSC did not retain the requisite degree of control of stevedoring operations outlined in Section 414, no duty is imposed on BSC by this section.

Appellant further argued that clause 8 of the charter agreement between BSC and Roscoe Shipping, together with paragraph "j" of BSC's instructions to the ship's Master, gave BSC control over the discharging of the cargo. Paragraph "j" gave BSC the right to appoint a stevedore, who was to remain under the direct control of the ship's Master. Clause 8 of the charter party provided in relevant part that the captain would be under the orders of BSC and that BSC was to "load, stow, trim and discharge the cargo at its own expense *but such stowage shall be conducted by and under the control of the Master and the Owners shall be responsible for the proper stowage and correct delivery of the cargo.*" The court observed that clause 8 is a stan-