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Great Lakes Dredge & Dock Co. v. City of Chicago United States Court of Appeals, Seventh Circuit 24 August 1993 3 F.3d 225 (7th Cir. 1993)

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make the vessel seaworthy by the start of the voyage. *Id.* (citing *Atlantic Richfield*, 640 F.2d at 761-62).

Because the Fifth Circuit found that Deutsche Shell did not exercise due diligence in maintaining its radar, it declined to decide whether a general average act occurred and whether the issue was properly raised in the proceeding. *Deutsche Shell*, 993 F.2d at 469. The court upheld the district court's conclusion that Deutsche Shell failed to exercise due diligence to maintain the vessel's radar in seaworthy conditions. *Id.* at 470. The court held that the radar failed because of water incursion resulting from Deutsche Shell's lack of maintenance. *Id.* at 472. The court cited the district court's findings that no repair log was kept and the antenna array was never removed and overhauled despite the manufacturer's recommendation that an overhaul be performed every two years. *Id.* at 471. The antenna cover which is exposed to harsh weather conditions becomes porous after time, allowing water seepage. *Id.* After the accident, a technician boarded the vessel to repair the radar system. *Deutsche Shell*, 993 F.2d at 471. His report indicated signs of water damage. *Id.* After extensive study, all evidence pointed to water incursion as a

cause of the radar failure. *Id.* at 472. The court noted that Deutsche Shell would have discovered all of the radar system's problems had it performed a routine overhaul. *Id.* at 473.

The circuit court, contrary to the district court, did find evidence that the T/R Cell had been replaced within its useful life expectancy. *Id.* Nonetheless, the court held that the water incursion, resulting from Deutsche Shell's lack of maintenance, caused the radar to fail and was sufficient to support Placid's judgment. *Deutsche Shell*, 993 F.2d at 473.

Deutsche Shell contended that even if there was a lack of due diligence in maintaining the radar, such inaction did not proximately cause the grounding of the vessel as the district court concluded. *Id.* at 473-74. The court rejected this argument, finding that the river flood state and the pilot's decision to anchor because of the two failed radar units were sufficiently foreseeable events. *Id.* at 474. The court noted that grounding is the risk a vessel faces when operating without an adequate radar system. *Id.*

Robin Smolen '95

GREAT LAKES DREDGE & DOCK CO. v. CITY OF CHICAGO
UNITED STATES COURT OF APPEALS, SEVENTH CIRCUIT
24 AUGUST 1993
3 F.3d 225 (7th Cir. 1993)

Seventh Circuit holds that admiralty jurisdiction extends to tortious acts only if the alleged act (1) occurred "on the navigable waters of the United States," (2) created "a potential hazard to maritime commerce," and (3) was "substantially related to traditional maritime activity." Federal admiralty jurisdiction extends to a claim alleging that the negligent installation of pile clusters on a navigable waterway of the United States caused substantial damage on land far from the waterway and resulted in the closing of the waterway. Seventh Circuit holds that a corporate shipowner's liability is limited to the owner's interest in the vessel under the Limitation Act for damages resulting from the acts of purely ministerial employees, but is not limited when a managerial employee personally participates in the negligent act.

FACTS: On April 13, 1992, a breach occurred in the roof of a freight delivery tunnel below the Chicago River. *Great Lakes Dredge & Dock Co. v. City of Chicago*, 3 F.3d 225, 226 (7th Cir. 1993). Water flooded the tunnel and tunnel system located throughout downtown Chicago, resulting in damage to some of the buildings connected to the tunnel system. *Id.* Business was disrupted in downtown Chicago for several days and because the Captain of the Port of Chicago ordered the river closed near the tunnel rupture, maritime traffic was disrupted for more than a month. *Id.* Thereafter, the City of Chicago ("City"), individuals, and businesses filed suit in the Cook County Circuit Court against Great Lakes Dredge & Dock Company ("Great Lakes"), alleging that Great Lakes' negligent installation of pile clusters near the Kinzie Street Bridge in the Chicago River caused the tunnel breach and resulting flood. *Id.*

Claiming federal admiralty jurisdiction, Great Lakes filed a three-count complaint in the District Court for the Northern District of Illinois on October 6, 1992. *Id.* Great Lakes sought exoneration from or limitation of liability pursuant to the Limitation of Vessel Owner's Liability Act (Limitation Act), 46 App. U.S.C.A. §§ 181-96 (West 1993), and requested contribution or indemnity from the City for any damages which Great Lakes might be adjudged liable. *Great Lakes*, 3 F.3d at 226. Great Lakes maintained that the City was responsible for the flooding "either because it failed to disclose to Great Lakes the existence of the tunnel near the Kinzie Street Bridge or because it failed to adequately repair and maintain the tunnel." *Id.*

Jerome B. Grubart, Inc. ("Grubart"), a downtown business which allegedly suffered flood damage, and the City filed a motion to dismiss Great Lakes' complaint

for lack of subject matter jurisdiction under Federal Rule of Civil Procedure 12(b)(1), or in the alternative, for failure to state a claim upon which relief could be granted under Rule 12(b)(6). *Id.* The district court granted the motions and Great Lakes appealed to the United States Court of Appeals for the Seventh Circuit. *Id.*

ISSUES: (a) Did the district court err in concluding that federal admiralty jurisdiction does not extend to a claim alleging that the negligent installation of pile clusters on a navigable waterway of the United States caused substantial damage on land far from the waterway and resulted in the closing of the waterway?

(b) Did the district court err in dismissing a corporate shipowner's claim under the Limitation of Vessel Owner's Liability Act for failure to state a claim upon which relief can be granted before determining which corporate employees, if any, were negligent?

ANALYSIS: (a) The Seventh Circuit began by noting that admiralty jurisdiction over torts was originally determined by the "locality" (or "situs") test. *Id.* at 227. The court stated that "[u]nder this test, 'every species of tort, however occurring, and whether on board a vessel or not, if upon the high seas or navigable waters, is of admiralty cognizance.'" *Great Lakes*, 3 F.3d at 227 (quoting *The Plymouth*, 70 U.S. (3 Wall.) 20, 36 (1865)). The court further observed, however, that the Supreme Court never held this test to be the determinative factor establishing admiralty jurisdiction. *Id.* The Seventh Circuit described a three prong test to determine the existence of admiralty jurisdiction which the Supreme Court has established during the previous twenty years in *Executive Jet Aviation, Inc. v. City of Cleveland*, 409 U.S. 249 (1972), *Foremost*

Insurance Co. v. Richardson, 457 U.S. 668 (1982), and *Sisson v. Ruby*, 497 U.S. 358 (1990), *rev'g Complaint of Sisson*, 867 F.2d 341 (7th Cir. 1989) (Cudahy, J.). *Great Lakes*, 3 F.3d at 227-28. The Seventh Circuit stated that in order for admiralty jurisdiction to exist over an alleged negligent act, the act must have (1) occurred "on the navigable waters of the United States," (2) created "a potential hazard to maritime commerce," and (3) been "substantially related to traditional maritime activity." *Id.* at 228. The Seventh Circuit first observed that the district court, although knowledgeable of this three prong test, utilized a "totality of the circumstances" test, set forth in *Kelly v. Smith*, 485 F.2d 520, 525 (5th Cir. 1973). *Great Lakes*, 3 F.3d at 228. The Seventh Circuit stated that following *Sisson*, this established three prong test must be utilized, rather than the sort of policy analysis engaged in by the district court. *Id.* The court then applied the facts of this case to the three prong test and concluded that federal admiralty jurisdiction existed over this case. *Id.* at 230.

(1) In addressing the "locality" requirement, the court stated that "a tort occurs on navigable waters when its "substance and consummation" take place there,' even though the allegedly negligent act itself occurred on land." *Id.* at 229 (quoting 1 *Benedict on Admiralty* § 172 at 11-32 (7th ed. 1991), in turn quoting *The Plymouth*, 70 U.S. (3 Wall.) 20 (1865)). The court held that the alleged tort occurred on navigable waters because Great Lakes' vessels operated in the navigable "channel" of the Chicago River, a navigable waterway of the United States, while installing the pile clusters. *Id.* (citing *Escanaba Co. v. City of Chicago*, 107 U.S. 678, 683 (1883)). Although Great Lakes installed the pile clusters outside the navigable channel, the court held this to be irrelevant because the navigable waterway extends from shore to

shore. *Great Lakes*, 3 F.3d at 229 (citing *Greenleaf Johnson Lumber Co. v. Garrison*, 237 U.S. 251, 263 (1915)).

The court next cited the Admiralty Extension Act, 46 App. U.S.C.A. § 740 (West 1993), which provides that admiralty jurisdiction extends to all damage resulting from a vessel on navigable waters even if the damage occurs on land. *Great Lakes*, 3 F.3d at 229. Although the respondents contended that Great Lakes' barges were not "vessels" because they were utilized as stationary platforms at the time of the incident, the court stated "that a craft is a 'vessel' if its purpose is to some reasonable degree 'the transportation of passengers, cargo, or equipment from place to place across navigable waters.'" *Id.* (quoting *Johnson v. John F. Beasley Construction Co.*, 742 F.2d 1054, 1063 (7th Cir. 1984), *cert. denied*, 469 U.S. 1211 (1985)). Because Great Lakes engaged in such transportation, the court held Great Lakes' barges to be within that definition. *Id.*

The court further rejected the appellees' argument that admiralty jurisdiction was precluded because the area of damage and the passage of six months were "too 'remote from the negligent act.'" *Id.* (quoting *Gutierrez v. Waterman S.S. Corp.*, 373 U.S. 206, 210 (1963)). The court held that the temporal proximity requirement was simply a "specialized rule" of proximate cause and the six months between Great Lakes' work and the damage was sufficiently proximate to invoke the Admiralty Extension Act, 46 App. U.S.C.A. § 740 (West 1993). *Great Lakes*, 3 F.3d at 229.

(2) Because commerce on the Chicago River was disrupted for more than a month while the river was closed, the court held that the alleged tort created a "potential hazard to maritime commerce." *Id.* at 230. The court further rejected the

appellees' argument that *Sisson* precluded an analysis of what actually occurred because here, unlike *Sisson*, maritime commerce was actually disrupted and thus such a counter-factual analysis was not necessary. *Id.* at 230 n.7 (citing *Sisson*, 497 U.S. at 358 and *Foremost*, 457 U.S. at 668).

(3) Finally, the Seventh Circuit noted that when determining if an activity is "substantially related to traditional maritime activity," a court need only be "concerned with 'the general character of the activity.'" *Id.* at 230 (quoting *Sisson*, 497 U.S. at 365). Although one of the purposes of pile clusters is to protect bridges, the court held that the installation of pile clusters is related to maritime activity because pile clusters also protect ships when they collide with bridges and aid ships in navigation. *Id.*

(b) The Limitation Act, 46 App. U.S.C.A. § 183(a) (West 1993), is intended to shield owners from liability beyond their interest in the vessel for loss or damage incurred without the privity or knowledge of the ship owner. *Great Lakes*, 3 F.3d at 230. Although the Limitation Act does not define "privity or knowledge," the court stated that "privity or knowledge" is understood to be an owner's 'personal participation ... in the fault or negligence which caused or contributed to the loss or injury.'" *Id.* at 231 (quoting *Coryell v. Phipps*, 317 U.S. 406, 411 (1943)). The court further noted that a corporate shipowner's employees consist of two

groups: corporate managers, who have discretionary authority, and ministerial employees. *Id.* (citing 3 Benedict on Admiralty § 42 at 5-14 (7th rev. ed. 1991)). The court ruled that a corporate shipowner is shielded from liability for damages resulting from the acts of purely ministerial employees, but is not shielded from liability when a managerial employee personally participates in the negligent act. *Id.* (citing 3 Benedict on Admiralty § 42 at 5-14 (7th rev. ed. 1991)). Because the record did not indicate whether the alleged negligent act was performed by a managerial or ministerial employee, the court held that the district court erred in dismissing Great Lakes' claim without making such a factual determination. *Id.* The court rejected the district court's reliance on *Joyce v. Joyce*, 975 F.2d 379 (7th Cir. 1992), for the proposition that the Limitation Act, 46 App. U.S.C.A. § 183(a) (West 1993), will not limit Great Lakes' liability. *Great Lakes*, 3 F.3d at 231-32. The court ruled that *Joyce* was not applicable to the present case because *Joyce* involved the negligent entrustment of an individual rather than a corporate shipowner. *Id.* at 232. Finally, the court ruled that the "personal contracts doctrine" would not prevent Great Lakes from utilizing the Limitation Act, 46 App. U.S.C.A. § 183(a) (West 1993), as the district court ruled, because the "personal contracts doctrine" only applied to contracts and this action sounded in tort. *Great Lakes*, 3 F.3d at 232.

John M. Kiba '94

CERAMIC CORP. OF AMERICA V. INKA MARITIME CORP.
UNITED STATES COURT OF APPEALS, NINTH CIRCUIT
6 AUGUST 1993
1 F.3d 947 (9th Cir. 1993)

Japan is not an alternative forum for a judgment declaring that vessel interests have no right to recover general average contributions because Japan would automatically enforce a forum selection clause in the bill of lading and dismiss the action, thus providing a "clearly unsatisfactory" remedy.