Admiralty Practicum

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Article 7

Transatlantic Marine Claims Agency, Inc. v. Ace Shipping Corp., Division of Ace Young Inc., 109 F.3d 105, 1997 A.M.C. 1772 (2nd Cir. 1997) (Decided March 13, 1997)

William Carraher, Class of 2000

III. Primary Duty Rule - Under this rule, a seaman may not recover for an injury caused by his own failure to perform a duty imposed on him by his employment. Defendant here argues that Ribitzki's injury was caused by his failure to properly clean the pit room. Thus, defendant contends he should be precluded from recovery. The court, however, recognized an exception to this rule in that when a plaintiff is injured by a condition he did not create nor could control, the primary duty rule does not apply. Thus, the court held that because Ribitzki did not create the cramped or slippery conditions, nor could he have controlled or eliminated them, the primary duty rule was not applicable.

The Court of Appeals thus reversed the district court by finding that Ribitzki presented sufficient evidence to defeat defendant's summary judgment motions. The case was remanded to the district court for further proceedings.

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SUBJECT MATTER JURISDICTION

The intentions of the parties, prior courses of dealing and trade usage are controlling in determining whether a "mixed" contract qualifies for admiralty jurisdiction.

Transatlantic Marine Claims Agency, Inc. v. Ace Shipping Corp., Division of Ace Young Inc.,
109 F.3d 105, 1997 A.M.C. 1772 (2nd Cir. 1997)
(Decided March 13, 1997)

In March 1994, Daewoo Automotive Components, Ltd. ("Daewoo") contracted with defendant-appellant Ace Shipping Corp. ("Ace") for the transport of automobile parts from New York to Korea. Six bills of lading for the transportation of the parts from New York, via Seattle, to Pusan, Korea were executed, and served as contracts of carriage.

Ace is classified as a non-vessel-owning common carrier ("NVOCC"). As such, Ace arranges for shipment of cargo, but does not itself own a ship. Ace arranged for shipment with Hyundai Intermodal, Inc. ("Hyundai"), which placed the cargo on a train from New York to Seattle. Enroute to Seattle the train derailed which caused severe damage to the cargo and significantly lessened its value. The cargo was insured by the plaintiff-appellee Transatlantic Marine Claims Agency ("Transatlantic"), which paid Daewoo and brought this action in admiralty as a subrogee of Daewoo. Ace, Hyundai, Burlington Northern (the rail carrier), and Conrail were named as defendants.

Ace failed to respond to the complaint and Transatlantic prevailed on a motion for default judgment, and was awarded $51,753.86 against Ace. Transatlantic entered into a stipulation with the remaining defendants, discontinuing its case against them. Ace then appealed the default judgment entered in the district court, claiming the court lacked subject matter jurisdiction. In the complaint Transatlantic invoked only admiralty jurisdiction, probably due to the fact that the original claim failed to meet the amount in controversy required by the *Federal Rules of Civil*

Procedure. Also, attached to the complaint was "schedule B," a synopsis of the bill of lading. This schedule did not clearly describe how the goods would travel from New York to Seattle; overland or by ship. Since the incident from which the claim arose took place in Montana, on land, the court had to decide whether admiralty jurisdiction is proper.

In the court's analysis, admiralty jurisdiction would be permissible in this case under two theories: 1) an admiralty tort (negligence); or 2) breach of an admiralty contract. The court quickly dismissed the tort theory. Supreme Court precedents hold that admiralty torts must have a "substantial relation" to maritime activities. *See Foremost Ins. Co. v. Richardson*, 457 US 668, 673-674, 102 S.Ct. 2654, 2657-58, 73 L.Ed.2d 300 (1982) and *Sisson v. Ruby*, 497 U.S. 358, 364, 110 S.Ct. 2892, 2896, 111 L.Ed.2d 292 (1990). Therefore, admiralty jurisdiction cannot lie for damage to cargo which occurs on the land portion of a voyage. Moving to the second theory, the general rule is that admiralty jurisdiction arises only when the subject matter of the contract is predominantly maritime in nature. *See Rea v. The Eclipse*, 135 U.S. 599, 608, 10 S.Ct 873, 876, 34 L.Ed. 269 (1890); *Atlantic Mutual Ins. Co. v. Balfour Maclaine Int'l, Ltd.*, 968 F.2d 196, 199 (2d Cir. 1922). With certain exceptions, a "mixed" contract, which has both maritime and non-maritime aspects, is also generally not within admiralty jurisdiction. *Atlantic Mutual*, 968 F.2d at 199; *Berkshire Fashions, Inc. v. M.V. Hakusan II*, 954 F.2d 874, 880 (3d Cir.1992).

In the present instance it was not clear from the evidence available to the district court whether Daewoo and Ace intended the goods to be transported exclusively by ship, bringing the case under admiralty jurisdiction, or by a combination of ship and rail, negating admiralty jurisdiction. If the parties contemplated any overland transportation of the goods, admiralty jurisdiction would be destroyed.

The controlling case is *Berkshire Fashions, Inc. v. M.V. Hakusan II*, 954 F.2d 874 (3d Cir. 1992). In *Berkshire* a foreign corporation contracted through a bill of lading to have cargo shipped from Taiwan to New York. The bill of lading did not specifically describe how the goods would travel along every step of their journey.

Ruling that the bill of lading was ambiguous, the Court of Appeals remanded to the district court to take evidence on prior courses of dealing and industry customs. It was necessary on remand to determine "whether in executing the initial bill of lading, the parties entertained a reasonable expectation of only maritime transport of the umbrellas."

Similarly, in the present case, the bill of lading did not provide sufficient factual details of the parties' intentions. Thus, the circuit court, herein, remanded to the lower court for factual determinations on whether a mixed contract was contemplated by the parities, or could be reasonably implied through custom and trade usage. If a mixed contract is found to have been contemplated then admiralty jurisdiction is not present.

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