

Cammon v. City of New York, et. al. 95 N.Y.2d 583 (Decided December 21, 2000)

George Schwab IV, Class of 2003

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NO PREEMPTION OF LABOR LAW BY FEDERAL MARITIME LAW

Federal Maritime Law does not preempt plaintiff's claim under New York Labor Law §§ 200, 240(1) and § 241(6) establishing general duty to protect health and safety of employees, and requiring reasonable and adequate safety protections for construction, evacuation and demolition work.

Cammon v. City of New York, et. al.

95 N.Y.2d 583

(Decided December 21, 2000)

Plaintiff Willie Cammon, a foreman dock builder, was injured while repairing a wood fender system at the South Bronx Transfer Station, also known as the Hunts Point Sanitation Department Transfer Station. The injury occurred while plaintiff was working from a float stage in navigable waters that was secured to the land based transfer station. Specifically, plaintiff was cutting timber from the bulkhead. While working on the timber a passing tugboat created turbulence that moved the crane bar and float stage. The timber came loose and subsequently struck, plaintiff's head and body.

New York City ("the City") owns and operates the Marine Transfer Station and contracted with defendant, general contractor, Anjac Enterprises, Inc. ("Anjac") to repair structures at the facility. Anjac subcontracted the pier-repair to third-party defendant Macro Enterprises, LTD., ("Macro") plaintiff's employer. Macro agreed "to perform all work...strictly in conformance and compliance with all laws, rules, regulations, ordinances and statutes in force in the locality in which the work is located. As a construction worker "engaged in maritime employment" (33 U.S.C.A. § 902(3)) plaintiff qualified and received compensation and medical benefits under the Longshore and Harbor Worker's Compensation Act ("LHWCA") (33 U.S.C.A. § 901 *et seq*).

Plaintiff commenced this action in Supreme Court, alleging violations of State Labor Law §§ 200, 240(1) and 241(6) against the City and Anjac. Anjac asserted a third-party complaint against plaintiff's employer Macro, seeking contribution and indemnification.

The City and Anjac moved for summary judgment dismissing the complaint upon the ground that federal maritime law preempts New York Labor Law. In the alternative, defendants moved for summary judgment on their contractual and common law indemnification claims against third-party defendant Macro. Plaintiff cross-moved for partial summary judgment on liability on his Labor Law § 240(1) and § 241(6) claims. Supreme Court granted defendant's motion for summary judgment to the extent of dismissing the complaint and denied plaintiff's cross motion.

The Appellate Division reversed and reinstated the complaint, holding that federal maritime law did not preempt plaintiff's Labor Law causes of action. The Appellate Division subsequently granted the defendants and third-party defendant leave to appeal to the Court of Appeals and certified the following question: "[w]as the order of this Court, which reversed the order of the Supreme Court, properly made?" The Court of appeals, Smith, J., held that, *under the circumstances presented* plaintiff's Labor Law claims are not preempted. *Affirmed.*

Defendants and third party defendants maintain that federal maritime law should apply to the exclusion of plaintiff's claims. Maritime law does not generally impose liability without actual proof of negligence. Alternatively, New York Labor Law § 240(1), however, imposes strict liability upon an owner or contractor. *Zimmer v. Chemung County Performing Arts*, 65 N.Y.2d 513(1985). Thus, plaintiff would have to show actual negligence on the part of the defendants. In support of their contention, that to impose state liability standards where admiralty jurisdiction exists would disrupt the uniformity of federal maritime law, defendants rely on the First Department case, *Tibak v. City of New York*, 546 N.Y.S.2d 602 (1st Dept. 1985). "In that case (unlike this case), the First Department determined that plaintiff's Labor Law claims were superseded by federal admiralty law, and held that "the rights and liabilities of the parties under the general maritime law cannot be enlarged or impaired by state statute. *Id.* at 602. Defendants also argue that the Second Department has similarly held with respect to Labor Law § 240 in *Erikson v. Long Is. Light. Co.*, 653 N.Y.S.2d 670 (2d Dept. 1997) and *Rigopoulos v. State of New York*, 653 N.Y.S.2d 667 (2d Dept. 1997).

Plaintiff argues that federal maritime law does not preempt his Labor Law claims because there is no federal law or interest directly impacted by its implementation. Consequently, plaintiff contends, uniformity of maritime law would not be affected by allowing State law claims in this case. Paramount to plaintiff's

argument is the interest that New York has in regulating safe construction practices within its borders and there is a presumption against restricting exercise of its police powers to protect the health and safety of its citizens.

Judge Smith clarifies, that the fact that federal maritime law is involved does not necessarily mean that State law is superseded. Although, it remains unclear the extent to which State courts may apply their substantive law to maritime cases, there are a number of factors to consider including: whether the State rule conflicts with federal law; hinders uniformity; makes substantive changes; or interferes with the characteristic features of maritime law or commerce.

The Supreme Court has addressed the issue of the applicability of procedural state law in maritime actions. In *Western Fuel Co. v. Garcia*, 257 U.S. 233 (1921), the Court held that a widow of a maritime worker killed in California territorial waters could bring a wrongful death action in admiralty. The Court reasoned: “[t]he subject matter is maritime and local in character and the...supplement to the rule applied in maritime courts...will not work material prejudice to the characteristics of general maritime law.”

Shortly thereafter, the Supreme Court again applied the so called “maritime but local” rule where a carpenter’s injury occurred on navigable waters. *Grant Smith-Porter Ship Co. v. Rohde*, 257 U.S. 469 (1922). The Court concluded that State compensation law should apply, stating that “as to certain local matters regulation of which would work no material prejudice to the general maritime law, the rules of the latter might be modified or supplemented with state statutes.” *Id.* at 477.

The Court in this case reasoned, given the fact that plaintiff’s theory of liability arose under New York Labor Law, that the protection of workers engaged in maritime activities is a concern of federal maritime law. Consequently, this case is unlikely to disrupt general maritime law principles by the application of a state law liability statute. “State application of strict liability here will not unduly interfere with the federal interest in maintaining the free flow of maritime commerce.”

New York’s Labor Law is a local statute enacted to protect the health and safety of workers. Thus, an important local concern is at issue in the resolution of this issue of preemption. Application of the doctrine of “maritime but local” establishes that under these circumstances where the tort was maritime but local and there are no

far-reaching implications that may undermine general maritime principles, New York Labor Law is applicable even though it applies strict liability.

The lengthy dissent by Judge Rosenblatt, joined by Judge Levine, argued that maritime law preempts Labor Law § 240(1), therefore dissenting in part. The dissenters point out that the construction work and the cause of the injury (passing tug) have a substantial connection to maritime activity. The thrust of the dissent hinges on the proposition that there is an irreconcilable conflict between Labor Law § 240(1) and maritime law. That “under Labor Law § 240(1), an injured workers contributory negligence does not reduce a defendant’s liability, but under maritime law it does. Thus, this conflict, the dissent argues, has direct implications on the administration of maritime law and recovery under maritime law.

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